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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 May 23, 2024

Appointed to the Radiation Advisory Board for a term to expire April 16, 2025, Joseph W. "Joe" Markham of Keller, Texas (replacing Charles D. Cavnor of Little Elm, who resigned).

Appointed to the Radiation Advisory Board for a term to expire April 16, 2029, David M. Dutton, D.V.M. of Comfort, Texas (pursuant to SB 1592, 88th Legislature, Regular Session).

Appointed to the Radiation Advisory Board for a term to expire April 16, 2029, Sockalingam "Sam" Kannappan of Houston, Texas (replacing Lynn S. Silguero of Frisco, whose term expired).

Appointed to the Radiation Advisory Board for a term to expire April 16, 2029, William J. "Will" Pate, DrPH of League City, Texas (Dr. Pate is being reappointed).

Appointed to the Radiation Advisory Board for a term to expire April 16, 2029, Suresh D. Pillai, Ph.D. of College Station, Texas (replacing Douglas N. "Doug" Posey, D.V.M. of Robstown, whose term expired).

Appointed to the Radiation Advisory Board for a term to expire April 16, 2029, Kevin L. Raabe of Floresville, Texas (Mr. Raabe is being reappointed).

Appointed to the Radiation Advisory Board for a term to expire April 16, 2029, Sandra M. Ramirez of Houston, Texas (replacing John P. Hageman of San Antonio, whose term expired).

Appointed to the Radiation Advisory Board for a term to expire April 16, 2029, Jeanette Ruiz, M.D. of Austin, Texas (replacing Mark A. Silberman, M.D. of Austin, whose term expired).

Greg Abbott, Governor

TRD-202402372



Proclamation 41-4113

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on Tuesday, April 30, 2024, as amended on Tuesday, May 2, 2024, Tuesday, May 7, 2024, and Monday, May 15, 2024, certifying that the severe storms and flooding that began on April 26, 2024, and included heavy rainfall, flash flooding, river flooding, large hail, and hazardous wind gusts caused widespread and severe property damage, injury, or loss of life in Anderson, Angelina, Austin, Bandera, Bastrop, Baylor, Bell, Bexar, Blanco, Bosque, Brazos, Brown, Burleson, Burnet, Caldwell, Chambers, Cherokee, Clay, Coleman, Colorado, Comal, Concho, Coryell, DeWitt, Dickens, Eastland, Ellis, Falls, Fayette, Freestone, Galveston, Gillespie, Gonzales, Gregg, Grimes, Guadalupe, Hamilton, Hardin, Harris, Haskell, Hays, Henderson, Hill, Hood, Houston, Hunt, Jasper, Jefferson, Johnson, Karnes, Kaufman, Kendall, Kerr, Kimble, Knox, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Llano, Madison, Mason,

McCulloch, McLennan, Medina, Menard, Milam, Mills, Montgomery, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Robertson, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Shelby, Smith, Somervell, Sutton, Tarrant, Travis, Trinity, Tyler, Van Zandt, Walker, Waller, Washington, Wichita, Williamson, and Wilson Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamation and declare a disaster in the additional counties of Calhoun, Delta, Jones, and Lamar.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 20th day of May, 2024.

Greg Abbott, Governor

TRD-202402362



Proclamation 41-4114

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on Tuesday, April 30, 2024, as amended on Tuesday, May 2, 2024, Tuesday, May 7, 2024, Monday, May 15, 2024, and Monday, May 20, 2024, certifying that the severe storms and flooding that began on April 26, 2024, and included heavy rainfall, flash flooding, river flooding, large hail, and hazardous wind gusts caused widespread and severe property damage, injury, or loss of life in Anderson, Angelina, Austin, Bandera, Bastrop, Baylor, Bell, Bexar, Blanco, Bosque, Brazos, Brown, Burleson, Burnet, Caldwell, Calhoun, Chambers, Cherokee, Clay, Coleman, Colorado, Comal, Concho, Coryell, Delta, DeWitt, Dickens, Eastland, Ellis, Falls, Fayette, Freestone, Galveston, Gillespie, Gonzales, Gregg, Grimes, Guadalupe, Hamilton, Hardin, Harris, Haskell, Hays, Henderson, Hill, Hood, Houston, Hunt, Jasper, Jefferson, Johnson, Jones, Karnes, Kaufman, Kendall, Kerr, Kimble, Knox, Lamar, Lampasas,

Lavaca, Lee, Leon, Liberty, Limestone, Llano, Madison, Mason, McCulloch, McLennan, Medina, Menard, Milam, Mills, Montgomery, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Robertson, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Shelby, Smith, Somervell, Sutton, Tarrant, Travis, Trinity, Tyler, Van Zandt, Walker, Waller, Washington, Wichita, Williamson, and Wilson Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamation and declare a disaster in the additional counties of Denton, Montague, Cooke, and Collin.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 26th day of May, 2024.

Greg Abbott, Governor
TRD-202402368



Proclamation 41-4115

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on February 27, 2024 certifying wildfires that began on February 23, 2024, posed an imminent threat of widespread or severe damage, injury, or loss of life or property in several counties; and

WHEREAS, the Texas Division of Emergency Management has confirmed that the same wildfire conditions continue to exist in these and other counties in Texas, with the exception of Fannin, Gregg, Harrison, Nacogdoches, Newton, and Upshur Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in Andrews, Archer, Armstrong, Bailey, Baylor, Borden, Brewster, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crane, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Donley, Ector, El Paso, Floyd, Foard, Gaines, Garza, Glasscock, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hockley, Howard, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Knox, Lamb, Lipscomb, Loving, Lubbock, Lynn, Martin, Midland, Moore, Motley, Ochiltree, Oldham, Parmer, Pecos, Potter, Presidio, Randall, Reeves, Roberts, Sherman, Stonewall, Swisher, Terry, Throckmorton, Upton, Ward, Wheeler, Wichita, Wilbarger, Winkler, Yoakum, and Young Counties.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 27th day of May, 2024.

Greg Abbott, Governor
TRD-202402369



THE ATTORNEY GENERAL

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

An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. For information about pending requests for opinions, telephone (512) 463-2110.

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

Requests for Opinions

RQ-0541-KP

Requestor:

The Honorable Daniel M. Gonzalez

Dimmit County Attorney

103 North 5th Street

Carrizo Springs, Texas 78834

Re: Authority of a county commissioners court to use county labor and equipment to open and close graves in private cemeteries (RQ-0541-KP)

Briefs requested by June 20, 2024

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

TRD-202402370

Justin Gordon

General Counsel

Office of the Attorney General

Filed: May 28, 2024



Opinions

Opinion No. KP-0466

The Honorable Glenn Hegar

Texas Comptroller of Public Accounts

Post Office Box 13528

Austin, Texas 78711-3528

Re: Application of conflict-of-interest rules to grants awarded by the Texas Opioid Abatement Fund Council (RQ-0533-KP)

S U M M A R Y

In Opinion JM-671, this office concluded that the statutory predecessor to Government Code subsection 572.058(a) did not apply to contracts and so did not abrogate the common law as stated in *Meyers v. Walker*.

Instead, JM-671 concluded that the strict conflict-of-interest rule from *Meyers v. Walker* governed contract formation and voided any contract entered into by an agency if a member of its governmental body had any pecuniary interest in the contract. Since the issuance of JM-671, this office has not reconsidered its reasoning or conclusion. Doing so here, this office concludes it is likely that a court considering the questions addressed in JM-671 would decide them differently today. Accordingly, we hereby overrule JM-671 and its progeny to the extent they conflict with this opinion.

Further, a court newly considering whether subsection 572.058(a) applies to contracts and abrogates the common law would likely conclude that it does. Under subsection 572.058(a), an elected or appointed officer with a conflict must disclose the interest and recuse him or herself from participating in the matter. Accordingly, neither JM-671 nor subsection 572.058(a) is a bar to the award of a grant by the Texas Opioid Abatement Fund Council ("Council") established in chapter 403 of the Government Code. Instead, Council members must publicly disclose their interests in an open meeting of the Council and must refrain from deliberating or voting on matters as directed by section 572.058. Accordingly, Council members may participate in deliberations and vote on matters that do not involve their personal or professional interest.

Government Code chapter 2261 provides for contracting standards and oversight for state contracting. Subsection 2261.252(e) provides that section 2261.252 applies only to a contract for the purchase of goods or services solicited through a purchase order if the amount of the purchase order exceeds \$25,000. We question whether a grant award from the Council is made via a purchase order. But we do not resolve fact questions in an Attorney General Opinion and leave the determination about the application of section 2261.252 to the Council.

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

TRD-202402371

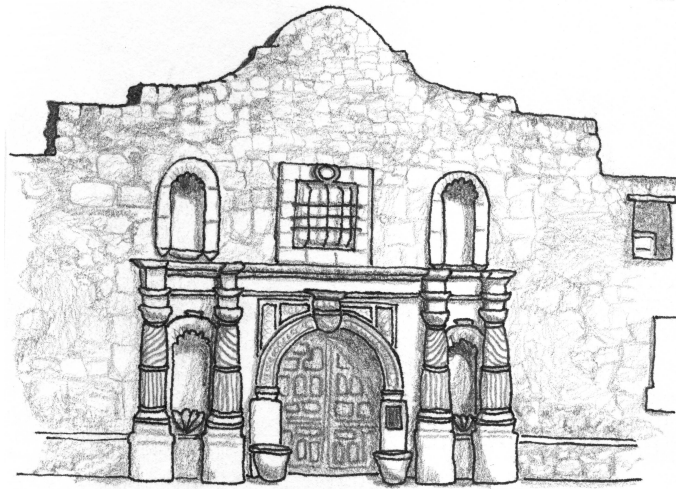
Justin Gordon

General Counsel

Office of the Attorney General

Filed: May 28, 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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 2. LICENSING

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §2.1

The Texas Department of Agriculture (Department) proposes amendments to 4 Texas Administrative Code, Chapter 2 (Licensing), Subchapter A (General Provisions), §2.1 (Application for a License).

The Department identified the need for the proposed amendments during its rule review of this subchapter conducted pursuant Texas Government Code, §2001.039, the adoption for which can be found in the *Review of Agency Rules* section of this issue.

The proposed amendments to §2.1 change language to allow the Department to determine what constitutes an incomplete application, change references to Chapter 2 from "these rules" to "this chapter," remove unnecessary language, make grammatical corrections, make editorial changes to language to improve the rule's readability, and update the form of a legal citation to the Texas Government Code, §2005.004.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, the Department has determined the following:

- (1) the proposed amendments will not create or eliminate a government program;
- (2) implementation of the proposed amendments will not require the creation or elimination of existing employee positions;
- (3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the Department;
- (4) the proposed amendments will not require an increase or decrease in fees paid to the Department;
- (5) the proposed amendments do not create a new regulation;

(6) the proposed amendments will not expand, limit, or repeal an existing regulation;

(7) the proposed amendments will not increase or decrease the number of individuals subject to the rules; and

(8) the proposed amendments will not affect this state's economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Ms. Christina Osborn, the Director for Consumer Product Protection, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Ms. Osborn has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be increased consumer protection through improved readability and clarity of this subchapter, and increased efficiency in the licensing process. Ms. Osborn has also determined that for each year of the first five-year period the proposed amendments are in effect, there will be no costs to persons who are required to comply with the proposal.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

Written comments on the proposed amendments may be submitted by mail to John "Chris" Gee, Lead Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to Chris.Gee@TexasAgriculture.gov. 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 Section 12.016 of the Texas Agriculture Code, which allows the Department to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposed amendments is Texas Agriculture Code, Chapter 12.

§2.1. *Application for a License.*

(a) An application is not an agency request for information for any purpose under the Texas Government Code, the Texas Agriculture Code, or this chapter ~~[these rules]~~.

(b) (No change.)

(c) An applicant for an initial license or renewal of a license shall submit to the department in a timely fashion all application forms, bonds, tests, data, fees, and other material required [by law] to precede the issuance of such initial license or renewal license.

(d) Any application for a license that does not include all such required forms and materials, or which includes forms or other materials that contain deficient information or on which required information is missing, may be determined to be [is] an incomplete application.

(e) An incomplete application shall become void on the one-year anniversary of its [the] submission [of the incomplete application]. A void application will not be processed and any application fee associated with the void application shall not be refunded. This action is not a denial of a license for any purpose under the Texas Government Code, the Texas Agriculture Code, or this chapter [these rules].

(f) The department shall within 15 days after receipt of the first application form:

(1) [issue a license,] if the application is complete and correct and the applicant is eligible and meets all the requirements for the license, issue a license;

(2) if the application is complete and a determination regarding the issuance of a license will be delayed beyond 15 days, send the applicant a written notice stating that the application is complete and accepted and [;] that a determination regarding issuance of the license will be delayed [;] and [stating] the time period within which a determination will be made; [or]

(3) - (4) (No change.)

(g) (No change.)

(h) If notice of protest is timely filed and the commissioner determines that the specified time periods for processing under subsection (f) of this section have been exceeded and that good cause does not exist for exceeding those time periods, the license or permit filing fee shall be reimbursed in full to the applicant. The term "good cause" as used in this subsection has the meaning specified in [\$2005.004 or] the Texas Government Code, §2005.004.

(i) (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 May 22, 2024.

TRD-202402280

Susan Maldonado

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: July 7, 2024

For further information, please call: (512) 463-6591



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 21. INTERCONNECTION AGREEMENTS FOR TELECOMMUNICATIONS SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes rule amendments to multiple sections of its Chapter 21, Interconnection Agreements for Telecommunications Service Providers. The specific proposed amendments are detailed below. This rule review is performed in accordance with Texas Government Code §2001.039, which requires a state agency to review and consider for readoption each of its rules every four years.

The proposed changes make amendments to the following rules: 16 Texas Administrative Code (TAC) §21.5, relating to Representative Appearances; §21.31, relating to Filing of Pleadings, Documents, and Other Materials; §21.33, relating to Formal Requisites of Pleading and Documents to be Filed with the Commission; §21.35, relating to Service of Pleadings and Documents; §21.41, relating to Motions; §21.61, relating to Threshold Issues and Certification of Issues to the Commission, §21.75, relating to Motions for Clarification and Motions for Reconsideration; §21.95, relating to Compulsory Arbitration; §21.99, relating to Approval of Arbitrated Agreements; §21.101, relating to Approval of Amendments to Existing Interconnection Agreements; §21.103, relating to Approval of Agreements Adopting Terms and Conditions pursuant to Federal Telecommunications Act of 1996 (FTA) §252(i); §21.123, relating to Informal Settlement Conference; and §21.125, relating to Formal Dispute Resolution Proceeding.

The proposed amendments make minor and confirming changes to the following rules, such as removing requirements to file multiple copies of a document with the commission and remove outdated information: 16 TAC §21.5; §21.31; §21.33; §21.75; §21.95; §21.99; §21.101; §21.103; §21.123; and §21.125.

The proposed amendments to §21.33 and §21.35 authorize electronic filing of documents in lieu of filing multiple paper copies and also remove the paper filing requirements across the chapter to be consistent with current commission electronic filing practices.

The proposed amendments to §21.41 clarify the process for granting continuances and extending filing deadlines by revising the applicable standards of review.

The proposed amendments to §21.61 permit more flexibility in the determination and appeal of threshold issues.

The proposed amendments to §21.95 revise the requirements for waiver regarding telecommunication service provider interconnection agreements and require an arbitration notice to be issued in writing, electronically or otherwise.

The proposed amendments to §21.123 and §21.125 provide for electronic delivery as a method for service to align with current commission practice.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rules are in effect, the following statements will apply:

(1) the proposed rules will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rules will not require the creation of new employee positions and will not require the elimination of existing employee positions;

- (3) implementation of the proposed rules will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rules will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rules will not create a new regulation;
- (6) the proposed rules will not expand, limit, or repeal an existing regulation;
- (7) the proposed rules will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed rules will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rules. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rules will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Jena Abel, Agency Counsel, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Abel has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be streamlined filing requirements for activities related to commission review of telecommunications interconnection agreements. There will not be no probable economic cost to persons required to comply with the rules under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed sections are in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by June 28, 2024. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be

filed by June 28, 2024. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 55293.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

16 TAC §21.5

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq. which governs interconnection agreements entered into by telecommunications carriers and local exchange carriers.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, 14.052; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq.

§21.5. *Representative Appearances.*

(a) Generally. Any person may appear before the commission or in a hearing in person or by authorized representative. The presiding officer may require a representative to submit proof of authority to appear on behalf of another person. The authorized representative of a party must [shall] specify the particular persons or classes of persons the representative is representing in the proceeding.

(b) Change in authorized representative. Any person appearing through an authorized representative must [shall] provide written notification to the commission and all parties to the proceeding of any change in that person's authorized representative. A copy of the notification must be filed with the commission's Central Records Division under the applicable control number [The required number of copies of the notification shall be filed in Central Records under the control number(s)] for each affected proceeding and must [shall] include the authorized representative's name, address, telephone number, email address, and facsimile number.

(c) Lead counsel. A party represented by more than one attorney or authorized representative in a matter before the commission may be required by the presiding officer to designate a lead counsel who is authorized to act on behalf of all [of] the party's representatives. All[, but all] other attorneys or authorized representatives for the party may take part in the proceeding in an orderly manner, as ordered by the presiding officer.

(d) Change in information required for notification or service. Any person or authorized representative appearing before the commission in any proceeding must [shall] provide written notification to the commission and all parties to the proceeding of any change in their address, telephone number, facsimile number, or email address within ten working days of the change. A copy of the notification must be filed with the commission's Central Records Division under the applicable control number. The required number of copies of the notification shall be filed in Central Records under the control number(s)] for each affected proceeding.

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 May 23, 2024.

TRD-202402331

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: July 7, 2024

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



SUBCHAPTER B. PLEADINGS, DOCUMENTS, AND OTHER MATERIALS

16 TAC §§21.31, 21.33, 21.35, 21.41

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq. which governs interconnection agreements entered into by telecommunications carriers and local exchange carriers.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, 14.052; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq.

§21.31. *Filing of Pleadings, Documents, and Other Materials.*

(a) Applicability. This section applies to all pleadings as defined in §21.3 of this title (relating to Definitions) and the following documents:

- (1) letters or memoranda relating to any item with a control number;
- (2) discovery requests and responses; and
- (3) Decision Point List (DPL) filings.

(b) File with the commission filing clerk. All pleadings and documents required to be filed with the commission must [shall] be filed with the commission's Central Records Division [eommission fil-

ing clerk] and must [shall] state the control number in the heading, if known.

~~[(c) Number of items to be filed. Unless otherwise provided by this chapter or ordered by the presiding officer, the number of copies to be filed, including the original, is as follows:]~~

~~[(1) for applications filed pursuant to §21.97 of this title (relating to Approval of Negotiated Agreements); §21.101 of this title (relating to Approval of Amendments to Existing Interconnection Agreements); and §21.103 of this title (relating to Approval of Agreements Adopting Terms and Conditions Pursuant to Federal Telecommunications Act of 1996 (FTA) §252(i)): three copies;]~~

~~[(2) for all other petitions and responses: ten copies;]~~

~~[(3) for discovery requests: ten copies;]~~

~~[(4) for testimony and briefs: ten copies, except when it is known that two or more of the Commissioners will serve as the presiding officer;]~~

~~[(5) for testimony and briefs when two or more of the Commissioners will serve as the presiding officer: 19 copies;]~~

~~[(6) for the final approved interconnection agreement: two copies; and]~~

~~[(7) for other pleadings and documents: ten copies.]~~

~~(c) [(4)] Receipt by the commission. Pleadings and any other documents are [shall be] deemed filed when received by commission's Central Records Division. Central Records will [the required number of copies and the electronic copy, if required, in conformance with §21.33 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission); are presented to the commission filing clerk for filing The commission filing clerk shall] accept pleadings and documents if the person seeking to make the filing is in line by the time the pleading or document is required to be filed.~~

~~(d) [(e)] No filing fee. No filing fee is required to file any pleading or document with the commission.~~

~~(e) [(f)] Office hours of Central Records [the commission filing clerk. With the exception of open meeting days, for the purpose of filing documents, the office hours of the commission filing clerk are from 9:00 a.m. to 5:00 p.m., Monday through Friday, on working days.]~~

~~(1) For the purpose of filing documents, the [The] office hours of Central Records are from 9:00 a.m. to 5:00 p.m., Monday through Friday, on working days, except on Fridays, when Central Records will close for all purposes from noon to 1:00 p.m.~~

~~(2) Central Records will open at 8:00 a.m. on open meeting days. With the exception of paragraph (3) of this subsection, no filings will be accepted between the hours of 8:00 a.m. and 9:00 a.m.~~

~~(3) On open meeting days, between the hours of 8:00 a.m. and 9:00 a.m., the presiding officer, a commissioner, or the Office of Policy and Docket Management (OPDM) [Commissioners and the Policy Development Division] may file items related to the open meeting on behalf of the commission or an individual commissioner [Commissioners].~~

~~[(A) The Commissioners and the Policy Development Division shall provide the filing clerk with an extra copy of all documents filed pursuant to this paragraph for public access.]~~

~~[(B)] The presiding officer or OPDM will [Policy Development Division shall] provide the parties of record a copy of each document [copies of documents] filed under this paragraph as soon as possible after filing. To the extent practicable, the existence of a docu-~~

ment [documents] filed under this paragraph will [shall] be announced prior to the discussion on the noticed item at the open meeting. In addition to providing copies via mail or facsimile, staff may transmit the documents to the parties of record by electronic transmission or via hand-delivery at the open meeting.

~~[(g) Filing a copy or facsimile copy in lieu of an original. Subject to the requirements of subsection (e) of this section and §21.33 of this title, a copy of an original document or pleading, including a copy that has been transmitted through a facsimile machine, may be filed, so long as the party or the attorney filing such copy maintains the original for inspection by the commission or any party to the proceeding.]~~

~~(f) [(h)] Filing deadline. All documents must [shall] be filed by 3:00 p.m. on the date due, unless otherwise ordered by the presiding officer.~~

§21.33. Formal Requisites of Pleadings and Documents to be Filed with the Commission.

(a) Applicability. This section applies to all pleadings as defined in §21.3 of this title (relating to Definitions) and the following documents:

- (1) Letters or memoranda relating to any item with a control number;
- (2) Reports required under [~~pursuant to~~] commission rules or requested by [~~request of~~] the commission;
- (3) Discovery requests; and
- (4) Decision Point List (DPL) filings.

(b) Requirements of form.

(1) Style.

(A) All requests for dispute resolution or arbitration must [shall] be styled as follows: Petition of {Party} for {Compulsory Arbitration or Post-Interconnection Dispute Resolution} with {Party} under FTA relating to {concise description of major issue}. All responses to requests for dispute resolution or arbitration must [shall] be styled as follows: Response of {Party} to Petition of {Party} for {Compulsory Arbitration or Post-Interconnection Dispute Resolution} under FTA relating to {concise description of major issues}.

(B) Requests for dispute resolution [~~pursuant to~~] §21.131 of this title (relating to Request for Expedited Ruling) and §21.133 of this title (relating to Request for Interim Ruling Pending Dispute Resolution) must [shall] also include such specific requests, as appropriate, in the pleading style, as follows: Petition of {Party} for {Compulsory Arbitration or Post-Interconnection Dispute Resolution} and Request for {Expedited Ruling or [~~and/or~~] Request for Interim Ruling} with {Party} under FTA relating to {concise description of major issues}.

(2) Unless otherwise authorized or required by the presiding officer or this chapter, documents must [shall]:

(A) include the style and control number of the docket or project in which they are submitted, if available;

(B) identify by heading the nature of the document submitted and the name of the party submitting the same; and

(C) be signed by the party or the party's representative.

(3) Whenever possible, all documents should be provided on 8.5 by 11 inch paper. However, any log, graph, map, drawing, or chart submitted as part of a filing will be accepted on paper larger than provided in subsection (g) of this section, if it cannot be provided legibly on letter-size paper. The document must be able to be folded to a

size no larger than 8.5 by 11 inches. Documents that cannot be folded may not be accepted.

(c) (No change).

(d) Citation.

(1) Form. Any party filing with the commission should endeavor to comply with the rules of citation set forth, in the following order of preference, by: the commission's "Citation Guide;" the most current edition of the "Texas Rules of Form," published by the University of Texas Law Review Association (for Texas authorities); and the most current edition of "A Uniform System of Citation," published by The Harvard Law Review Association (for all other authorities). Neither Rule 1.1 of the Uniform System nor the comparable portion of the "Texas Rules of Form" are [shall be] applicable in proceedings.

(2) Copies. When a party cites to authority other than PURA and other Texas state statutes, commission rules, reported Texas cases, an FCC decision, the United States Code, the Texas Administrative Code, the Code of Federal Regulations, or a document on file with the commission, such party must [shall] provide a copy of the cited authority to the presiding officer and all parties of record. Copies of authority may be provided to the presiding officer and all parties of record electronically.

(e) Signature. Every pleading and document must [shall] be signed by the party or the party's authorized representative, and must [shall] include the party's address, telephone number, facsimile number, and email address. If the person signing the pleading or document is an attorney licensed in Texas, the attorney's State bar number must [shall] be provided.

(f) Page limits. Unless otherwise authorized by the presiding officer, page limits must be in accordance with the following standards [shall be as follows]:

(1) With the exception of DPLs and discovery responses, no pleading or brief relating to interconnection agreements may [shall] exceed 50 pages, excluding exhibits.

(2) Prefiled direct testimony must [shall] not exceed 75 pages in length per witness, excluding exhibits or [~~and/or~~] attachments. A party may request [~~requesting~~] the presiding officer to establish a larger page limit and must [shall so move, and shall] provide support on relevant factors in accordance with [~~pursuant to~~] paragraph (4) of this subsection.

(3) The page limitation does [shall] not apply to copies of legal authorities provided under [~~pursuant to~~] subsection (d)(2) of this section.

(4) A presiding officer may establish a larger or smaller page limit. In establishing parties' page limits, the presiding officer will [shall] consider such factors as which party has the burden of proof, the number of parties opposing a party's position, alignment of parties, the number and complexity of issues, the number of witnesses per party, and demonstrated need.

(g) Hard copy filing standards. Hard copies of each document may [shall] be filed with the commission in accordance with the requirements set forth in paragraphs (1)-(4) of this subsection.

(1) Each document must [shall] be typed or printed on paper measuring 8.5 by 11 inches. Oversized documents being filed on larger paper under [~~pursuant to~~] subsection (b)(3) of this section must [shall] be filed as separate referenced attachments. Except for responses to discovery, each document must consist of the same [~~no single document shall consist of more than one~~] paper size.

(2) A [One] copy of each document must[, that is not the original file copy, shall] be filed without bindings, staples, tabs, or separators.

(A) This copy must [shall] be printed on both sides of the paper or, if it cannot be printed on both sides of the paper, every page of the copy must [shall] be single sided.

(B) All pages of the copy filed under [pursuant to] this paragraph, starting with the first page of the table of contents, must [shall] be consecutively numbered through the last page of the document, including attachments, if any.

(3) For documents for which an electronic filing is required, all non-native figures, illustrations, or objects must [shall] be filed as referenced attachments. Non-native [No non-native] figures, illustrations, or objects must not [shall] be embedded in the text of the document. "Non-native figures" means tables, graphs, charts, spreadsheets, illustrations, drawings and other objects which are not electronically integrated into the text portions of a document.

(4) Unless otherwise provided by §21.31 of this title (relating to Filing of Pleadings, Documents and Other Materials), this section, or the applicable commission rule under this title [Whenever possible], all documents and copies must [shall] be printed on both sides of the paper.

(h) Electronic filing standards. Any document may be filed, and all documents containing more than ten pages must [shall] be filed, electronically in accordance with the requirements of paragraphs (1)-(7) of this subsection. Electronic filings are registered by submission of the relevant electronic documents via external storage for digital media [diskette] or the internet, in accordance with transfer standards available in the commission's central records office or on the commission's website [World Wide Website], and, as applicable, the submission of the required number of [paper] copies to the commission [filing clerk] under the provisions of this section and §21.31 of this title[(relating to Filing of Pleadings, Documents and Other Materials)].

(1) All non-native figures, illustrations, or objects must be filed as referenced attachments. No non-native figures, illustrations, or objects may [shall] be imbedded in the text of the document. "Non-native figures" means tables, graphs, charts, spreadsheets, illustrations, drawings and other objects which are not electronically integrated into the text portions of a document.

(2) Oversized documents must [shall] not be filed in electronic media, but must [shall] be filed as referenced attachments.

(3) Each document that has five or more headings or [and/or] subheadings must [shall] have a table of contents that lists the major sections of the document, the page numbers for each major section and the name of the electronic file that contains each major section of the document. Discovery responses are exempt from the requirements of this paragraph.

(4) Each document must [shall] have a list of file names that are included in the filing and must [shall] be referenced in a [an ASCH] text file.

(5) The table of contents and list of file names must [shall] be placed at the beginning of the document.

(6) Each external storage device for digital media must [diskette shall] be labeled with the control number, if known, and the name of the person submitting the document.

(7) Any information submitted under claim of confidentiality should not be submitted in electronic format.

(i) External storage for digital media. Each document that is submitted to the commission on an external storage device for digital media may be password-protected but must be made accessible to commission staff. In addition to the applicable requirements of subsection (h) of this section, each external storage device for digital media provided to the commission must be accompanied by:

(1) a statement indicating the contents of the device'

(2) the docket number in which each document on the device is to be filed; and

(3) a statement indicating which documents are to be filed confidentially.

[(i) Disk format standards. Each document that is submitted to the filing clerk on diskette shall be submitted as set forth in paragraphs (1)-(3) of this subsection.]

[(1) 3.5 inch diskette;]

[(2) 1.44 M double sided, high density storage capacity; and]

[(3) IBM format.]

(j) File format standards.

(1) Electronic filings must [shall] be made in accordance with the current list of preferred file formats published by [available in] the commission's Central Records Division [central records office and] on the commission's website [World Wide Website].

(2) Electronic filings that are submitted in a format other than that required by paragraph (1) of this subsection will not be accepted until after successful conversion of the file to a commission-approved [commission] standard.

§21.35. *Service of Pleadings and Documents.*

(a) Pleadings and Documents submitted to a presiding officer. At or before the time any document or pleading regarding a proceeding is submitted by a party to a presiding officer, a copy of such a document or pleading must [shall] be filed with the commission filing clerk and served on all parties. These requirements do not apply to documents which are offered into evidence during a hearing or which are submitted to a presiding officer for in camera inspection; provided[, however,] that the party submitting documents for in camera inspection must [shall] file and serve notice of the submission upon the other parties to the proceeding. Pleadings and documents submitted to a presiding officer during a hearing, prehearing conference, or open meeting must [shall] be filed with the commission filing clerk as soon as is practicable.

(b) Methods of service. Except as otherwise expressly provided by order, rule, or other applicable law, service on a party may be made by delivery of a copy of the pleading or document to the party's authorized representative or attorney of record either in person; by agent; by courier receipted delivery; by first class mail; by certified mail, return receipt requested; [or] by registered mail to such party's address of record;[;] or by facsimile transmission to the recipient's current facsimile machine. Service of a pleading or document under this paragraph may also be made by electronic mail.

(1) Service by mail is [shall be] complete upon deposit of the document, enclosed in a wrapper properly addressed, stamped and sealed, in a post office or official depository of the United States Postal Service, except for state agencies. For state agencies, mailing must [shall] be complete upon deposit of the document with the General Services Commission.

(2) Service by agent or by courier received delivery is [shall be] complete upon delivery to the agent or courier.

(3) Service by facsimile transmission is [shall be] complete upon actual receipt by the recipient's facsimile machine.

(4) Service by electronic mail is complete upon issuance by the sender's electronic mail account.

(5) [(4)] Unless otherwise established by the receiving party, if service is made by hand delivery, facsimile transmission, or electronic mail, it is [shall be] presumed that all pleadings are received on the day filed.

(A) If service is made by overnight delivery, it is [shall be] presumed that pleadings are received on the day after filing.

(B) If service is made by regular mail, it is [shall be] presumed that pleadings are received on the third day after filing.

(C) Service after 5:00 p.m. local time of the recipient will [shall] be deemed served on the following day.

(c) Evidence of service. A return receipt or affidavit of any person having personal knowledge of the facts is [shall be prima facie] evidence of the facts [shown thereon] relating to service. A party may present other evidence to demonstrate facts relating to service.

(d) Certificate of service. Every document required to be served on all parties in accordance with [pursuant to] subsection (a) of this section must [shall] contain the following or similar certificate of service: "I, (name) (title) certify that a copy of this document was served on all parties of record in this proceeding on (date) in the following manner: (specify method). Signed, (signature)." The list of the names and addresses of the parties on whom the document was served, should not be appended to the document.

§21.41. Motions.

(a) General requirements. A motion must [shall] be in writing, unless the motion is made on the record at a prehearing conference or hearing. It must [shall] state the relief sought and the specific grounds supporting a grant of relief. If the motion is based upon alleged facts that are not a matter of record, the motion must [shall] be supported by an affidavit. Written motions must [shall] be served on all parties in accordance with §21.35 of this title (relating to Service of Pleadings and Documents).

(b) Time for response. Unless otherwise provided by the presiding officer, commission rule, or statute, a responsive pleading, if made, must [shall] be filed by a party within five working days after receipt of the pleading to which the response is made.

(c) Rulings on motions. The presiding officer must [shall] serve orders ruling on motions upon all parties, unless the ruling is made on the record in a hearing or prehearing conference open to the public.

(d) Motions for continuances and extensions.

(1) Generally. Motions for continuance and for extension of a deadline must [shall] set forth the specific grounds for which the moving party seeks a continuance or an [and/or] extension and must [shall] reference all other motions for continuance or [and/or] extension filed by the moving party in the proceeding. [The moving party shall attempt to contact all other parties and shall state in the motion each party that was contacted and whether that party objects to the relief requested. The moving party shall have the burden of proof with respect to the need for the continuance and/or extension.]

(2) Standard of Review. The moving party must show good cause with respect to the need for the continuance or extension.

(A) Motions for Continuance. The moving party must show good cause with respect to the need for a continuance. Motions for continuance [Continuances] will not be granted based on the need for discovery if the party seeking the continuance previously had the opportunity to obtain or [and/or] compel discovery from the person from whom discovery is sought, except when necessary due to discovery abuses, surprise or discovery of facts or evidence which could not have been discovered previously through reasonably diligent effort by the moving party.

(B) Motions for Extension. Unless otherwise provided by statute, the time for filing any documents may be extended, upon the filing of a motion, prior to the expiration of the applicable period of time, showing that there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion.

(3) Granting of motion. The presiding officer may grant timely filed motions for continuance or extension [and/or extension of deadline continuances] agreed to by all parties provided that any applicable statutory deadlines are extended as necessary.

(e) Deadlines for motions for continuance [and extension of filing deadline].

(1) Unless otherwise ordered by the presiding officer, motions for continuance of a prehearing conference, informal settlement conference, or discovery conference must [shall] be in writing and must [shall] be filed no less than two working days prior to the conference or hearing.

(2) Unless otherwise ordered by the presiding officer, motions for continuance of the hearing on the merits must [shall] be in writing and must [shall] be filed not less than three working days prior to the hearing. In addition to the requirements in paragraph (1) of this subsection[(e)(1) of this section], motions for continuance must [shall] state proposed dates for a rescheduled hearing.

~~[(3) Unless otherwise ordered by the presiding officer, motions for extension of a filing deadline shall be in writing and shall be filed not less than one working day prior to the filing deadline.]~~

(3) [(4)] Untimely motions for continuance will [and/or extension of a deadline shall] be presumed to be denied. The moving party has the burden to show good cause for untimely filing.

(f) Modification of [discovery] deadlines.

(1) Notwithstanding the requirements of subsections (b), (d), and (e) of this section [Notwithstanding the foregoing], the deadlines for responses, objections and motions to compel may be modified by agreement of the affected parties, by filing a letter or other document evidencing the agreement no later than the date the responses, objections or motions to compel are due.

(2) In the event the parties' agreed modification of a discovery deadline affects a scheduled discovery conference, parties must also comply with subsection (e) of this section.

(3) Unless the parties show good cause for untimely filing of a modified deadline, the presiding officer may impose the original deadlines for subsequent filings.

(4) In no event will [shall] the modification of discovery deadlines by agreement be allowed if such modification would affect a statutory deadline, unless the parties' agreed modification is accompanied by a written waiver and is approved by the presiding officer.

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 May 23, 2024.

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Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: July 7, 2024

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



SUBCHAPTER C. PRELIMINARY ISSUES, ORDERS, AND PROCEEDINGS

16 TAC §21.61, §21.75

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq. which governs interconnection agreements entered into by telecommunications carriers and local exchange carriers.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, 14.052; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq.

§21.61. *Threshold Issues and Certification of Issues to the Commission.*

(a) Threshold issues. Threshold issues are legal or policy issues that the [a] presiding officer determines to be of such significance that the issues must [to the proceeding that these issues should] be addressed prior to proceeding with the other issues in the docket [proceeding]. Threshold issues include~~;~~ but are not limited to, issues to be certified to the commission in accordance with subsection (b) of this section.

(1) Threshold issues may be identified by the presiding officer or by motion of a party to the proceeding.

(A) The presiding officer will establish a reasonable timeframe to raise or challenge a threshold issue.

(B) Parties must [shall] raise any threshold issues as well as challenges to the arbitrability of any issue at the first prehearing conference. If such challenges are not raised at the first prehearing conference, they will [shall] be deemed waived by the parties.

(C) The presiding officer will provide the parties [Parties shall be given] an opportunity to brief the question of threshold issues. At the discretion of the presiding officer, reply briefs may be permitted. Any determination on threshold issues by the presiding officer will [shall] be made in a written order.

(2) Once a presiding officer has determined that there are one or more threshold issues in a proceeding, the presiding officer may certify each issue in accordance with subsection (b) of this section. A

decision on a threshold issue is subject to a motion for reconsideration and is eligible for appeal. For purposes of this paragraph the term "motion for reconsideration" and "appeal" are interchangeable.

~~[(2) Once a presiding officer has determined that there is a threshold issue(s) in a proceeding, the presiding officer shall take up the threshold issue(s) prior to proceeding with the other issues or certify the issue(s) to the commission pursuant to subsection (b) of this section. A decision on a threshold issue is not subject to motion for reconsideration.]~~

(b) Certification. Certified issues will [shall] be addressed by the commission [prior to proceeding with the other issues in the proceeding].

(1) Issues for certification. The presiding officer may certify to the commission a significant issue that involves an ultimate finding in the proceeding. Issues appropriate for certification include [are]:

(A) the commission's interpretation of its rules and applicable statutes;

(B) which rules or statutes are applicable to a proceeding; or

(C) whether commission policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.

(2) Procedure for certification. The presiding officer will file [shall submit] the certified issue and issue notice to the parties [to the Policy Development Division, with notice to the parties when the issue is so submitted]. The [Policy Development Division shall place the] certified issue will be placed on the commission's agenda to be considered at the earliest time practicable. Parties may file briefs on the certified issue within five working days from the date the presiding officer files the certified issue [of its submission].

(3) Abatement.

(A) In a compulsory arbitration proceeding, the presiding officer may abate all or a part of the proceeding while a certified issue is pending only if agreed to by the parties.

(B) In a post-interconnection dispute proceeding, the presiding officer may abate all or a part of the proceeding while a certified issue is pending at the presiding officer's discretion.

(4) Commission action. The commission will [shall] issue a written decision on the certified issue no later than six working days after the open meeting at which the issue is decided by the commission, unless extended for good cause. A commission decision on a certified issue is not subject to a motion for reconsideration or appeal. For purposes of this paragraph the term "motion for reconsideration" and "appeal" are interchangeable.

§21.75. *Motions for Clarification and Motions for Reconsideration.*

(a) Motions for clarification. This subsection only applies to motions for clarification of arbitration awards [Arbitration Awards]. Motions for clarification of an arbitration award [Arbitration Award] may be made to the presiding officer requesting that an ambiguity be clarified or an error, other than an error of law, be corrected.

(1) Procedure. A motion for clarification must [shall] be filed within ten working days of the issuance of the presiding officer's decision or order. The motion for clarification must [shall] be served on all parties by hand delivery, facsimile transmission, electronic mail, or by overnight courier delivery. Responses to a motion for clarification must [shall] be filed within five working days of the filing of the motion.

(2) Content. A motion for clarification must [shall] specify the alleged ambiguity or error and, as appropriate, include proposed ~~[contract]~~ language that corrects the alleged ambiguity or error.

(3) Denial or granting of motion. The presiding officer will [shall] grant or deny the motion within ten working days of the filing of the motion. If the motion is granted, the presiding officer will [shall] issue a decision or revised order within 15 working days of the filing of the motion.

(b) Motions for reconsideration. Motions for reconsideration [rehearing], appeals, or motions for rehearing must [reconsideration shall] be styled accordingly and will be presented directly to the commission ["Motion for Reconsideration" and shall be made directly to the commission]. For purposes of dispute resolution and approval proceedings the terms "motion for reconsideration," "appeal," and "motion for rehearing," [and "motion for reconsideration"] are interchangeable.

(1) Limitations.

(A) Only parties to the negotiation in a compulsory arbitration under [pursuant to] §21.95 of this title (relating to Compulsory Arbitration) may file motions for reconsideration.

(B) In a proceeding under [pursuant to] §21.97 of this title (relating to Approval of Negotiated Agreements), only parties to the negotiated agreement may file motions for reconsideration. Issues subject to motions for reconsideration are limited to modifications made to the agreement.

(C) In a proceeding under [pursuant to] §21.99 of this title (relating to Approval of Arbitrated Agreements), only parties to the arbitrated agreement may file motions for reconsideration.

(D) In a proceeding under [pursuant to] §21.125 of this title (relating to Formal Dispute Resolution Proceeding), only parties to the agreement may file motions for reconsideration. Issues subject to motions for reconsideration are limited to interpretations of and modifications made to the negotiated agreement.

(E) In a proceeding under [pursuant to] §21.101 of this title (relating to Approval of Amendments to Existing Interconnection Agreements), only parties to the amended agreement may file motions for reconsideration. Issues subject to motions for reconsideration are limited to amendments or modifications made to the agreement.

~~[(F) In a proceeding pursuant to §21.105 of this title (relating to Approval of Agreements Adopting Terms and Conditions of T2A), only parties to the agreement may file motions for reconsideration. Issues subject to motions for reconsideration are limited to non-T2A portions of the agreement.]~~

~~[(G)]~~ (F) Any motions for reconsideration not filed by parties will be considered as a comment filed by an interested party.

(2) Procedure. A motion for reconsideration must [shall] be filed within 20 days of the issuance of the order under consideration. The motion for reconsideration must [shall] be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery, or by electronic mail. Responses to a motion for reconsideration must [shall] be filed within ten days of the filing of the motion.

(3) Content. A motion for reconsideration must [shall] specify the reasons why the order is unjustified or improper. If the moving party objects to contract language recommended by the presiding officer, then the motion must [shall] contain alternative contract language along with an explanation of why the alternative language is appropriate.

(4) Commission Agenda [ballot]. Upon filing a motion for reconsideration, the commission will [Policy Development Division

shall send separate ballots to each Commissioner to] determine whether the motion will be placed on an open meeting agenda and considered at an open meeting. The commission will [Policy Development Division shall] notify the parties by facsimile or [and] electronic mail whether any commissioner, [Commissioner] by individual ballot, has added the motion to an open meeting agenda, but will not identify the requesting commissioner [Commissioner(s)].

(5) Denial or granting of motion.

(A) The motion is deemed denied if, after five working days of the filing of a motion, the parties have not been notified that the motion has been placed on an open meeting agenda.

(B) If the commission determines that ruling on the motion is necessary, the motion will be placed on the agenda for the next regularly scheduled open meeting or such other meeting as determined by the commission.

~~[(A) The motion is deemed denied if, after five working days of the filing of a motion, no Commissioner by separate agenda ballot has placed the motion on the agenda for an open meeting. In such event, the Policy Development Division shall so notify the parties by facsimile and electronic mail.]~~

~~[(B) If a Commissioner does ballot in favor of considering the motion, it shall be placed on the agenda for the next regularly scheduled open meeting or such other meeting as the Commissioner may direct by the agenda ballot. In the event two or more Commissioners vote to consider the motion, but differ as to the date the motion shall be heard, the motion shall be placed on the latest of the dates specified by the ballots.]~~

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

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Public Utility Commission of Texas

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



SUBCHAPTER D. DISPUTE RESOLUTION

16 TAC §§21.95, 21.99, 21.101, 21.103

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq. which governs interconnection agreements entered into by telecommunications carriers and local exchange carriers.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, 14.052; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq.

§21.95. *Compulsory Arbitration.*

(a) Request for arbitration.

(1) Any party to negotiations concerning a request for interconnection, services or network elements in accordance with [pursuant to] the Federal Telecommunications Act of 1996 (FTA) §251 may request arbitration by the commission by filing with the commission [commission's filing clerk] a petition for arbitration. The petitioner must [shall] send a copy of the petition and any documentation to the negotiating party with whom agreement cannot be reached the date the petition is filed with the commission [not later than the day on which the commission receives the petition].

(2) The petition must be received by the commission during the period from the 135th to the 160th day [(inclusive)] after the date the negotiating party received the request for negotiation. The commission will [shall] perform a sufficiency review of the petition. To the extent that a petition is determined to be insufficient, the commission will [shall] file a notice of insufficiency within five working days of receipt of the petition. In the absence of a notice of insufficiency, the petition will [shall] be presumed sufficient.

(3) Where a petition for arbitration is found insufficient, the presiding officer may consider dismissal without prejudice in accordance with [pursuant to] §21.67 of this title (relating to Dismissal of a Proceeding) and order the petitioner to refile.

(4) A petition that is procedurally sufficient must be filed [on file] with the commission by the 160th day after the date on which petitioner requested negotiation.

(5) In addition to the requirements of form specified in §21.33 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission) the petition for arbitration must [shall] include:

(A) the name, address, telephone number, facsimile number, and email address of each party to the negotiations and the party's designated representative;

(B) a description of the parties' efforts to resolve their differences by negotiation, including [but not limited to] the dates of the request for negotiation and the projected timeline for compliance under FTA deadlines;

(C) a Decision Point List (DPL) that includes a list of any unresolved issues and the position of each party [of the parties] on each issue [of those issues];

(D) the proposed contract language from each party, as applicable, for each unresolved issue;

(E) all [agreed] contract language agreed upon by the parties;

(F) if the arbitration request concerns a request for interconnection under §26.272 of this title (relating to Interconnection), the material required by §26.272(g) of this title;

(G) the [most] current version of the interconnection agreement being negotiated by the parties, if any, containing both the agreed language and the disputed language of both parties; and

(H) a certificate of service that complies with the requirements of §21.35 of this title (relating to Service of Pleadings and Documents).

(b) Response. Any non-petitioning party to the negotiation must [shall] respond to the request for arbitration by filing the response with the commission [commission's filing clerk] and serving a copy on each party to the negotiation. In accordance with [Pursuant to] FTA §252(b)(3) the response must be filed within 25 days after the commission received the request for arbitration. The response must [shall] indicate any disagreement with the matters contained in the petition for arbitration, including a detailed response to the DPL and alternative proposed contract language, and may provide [such] additional information [as] the party wishes to present.

(c) Selection and replacement of presiding officer.

(1) Upon receipt of a complete petition for arbitration, the commission may delegate authority to a presiding officer [shall be selected to act for the commission, unless two or more of the Commissioners choose] to hear the arbitration [en banc]. The parties will [shall] be notified of the commission-designated presiding officer or whether the commission will hear the arbitration directly by electronic mail or in writing[; or of the Commissioners' decision to act as presiding officer themselves]. The presiding officer and [along with] designated commission staff will act as an arbitration team. The presiding officer may be advised on legal and technical issues by members of the arbitration team. The commission staff members included in the arbitration [selected to be part of the] team will [shall] be identified to the parties.

(2) If at any time a presiding officer is unable to continue presiding over a case, a substitute presiding officer will [shall] be appointed who will [shall] perform any remaining functions without the necessity of repeating any previous proceedings. The substitute presiding officer will [shall] read the record of the proceedings that occurred prior to their appointment before issuing an arbitration award or other decision.

(d) (No change.)

(e) Prehearing conference; challenges. As soon as is practical [practical] after selection, the presiding officer will [shall] schedule a prehearing conference with the parties to the arbitration. At the prehearing conference, parties may [should be prepared to] raise any challenges to the appointment of the presiding officer or to the inclusion of any issue identified for arbitration in the petition and responses. [If such challenges are not raised at the first prehearing conference, they shall be deemed waived by the parties].

(1) The presiding officer may establish criteria for waiver of issues, including threshold issues, identified for arbitration. If a challenge to the appointment of the presiding officer is not raised at the first prehearing conference, such a challenge will be deemed waived by the parties

(2) The presiding officer will [shall] serve parties with the orders ruling on challenges within ten working days of the first prehearing conference.

(3) The presiding officer may [has the authority to] schedule additional prehearing conferences to consider discovery, procedural schedules, clarification of issues, amending pleadings, stipulations, evidentiary matters, requests for interim relief, and any other matters that [as may] assist the disposition of the proceedings in a fair and efficient manner.

(f) Notice. The presiding officer will establish a procedural schedule [shall make arrangements] for the arbitration hearing, which may not be scheduled earlier than 35 days after the commission receives a complete request for arbitration. The presiding officer will [shall] notify the parties, not less than ten days before the hearing, of the date, time, and location of the hearing.

(g) Record of hearing. The arbitration hearing will [shall] be open to the public. If any party requests it, a stenographic record will [shall] be made of the hearing by an official court reporter appointed by the commission. It is the responsibility of the party ordering the stenographic record to request that the commission have an official reporter present. A party may purchase a copy of the transcript from the official reporter at rates set by the commission. The court reporter must [shall] provide the transcript and exhibits in a hearing to the presiding officer at the time the transcript is provided to the requesting party. If no court reporter is requested by a party, the presiding officer will [shall] record the proceedings and maintain the official record and exhibits. Each party to the arbitration hearing is [shall be] responsible for its own costs of participation in the arbitration process.

(h) Hearing procedures.

(1) The parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the hearing.

(2) Redirect examination may be allowed at the discretion of the presiding officer, provided that parties have reserved time for redirect.

(3) The presiding officer may temporarily close the arbitration hearing to the public to hear evidence containing information filed as confidential under §21.77 of this title (relating to Confidential Material). The presiding officer will [shall] close the hearing only if there is no other practical means of protecting the confidentiality of the information.

(4) Each party, as applicable, must provide a copy of all exhibits or must pay the court reporter costs associated with the production of any copies the party asks the court reporter to provide.

~~[(4) In addition to providing sufficient copies for all parties, the presiding officer, and, if appropriate, the court reporter, parties shall provide three copies of all exhibits for purposes of appeal at the hearing.]~~

(i) Applicable rules. The rules of privilege and exemption recognized by Texas law [shall] apply to arbitration proceedings under this subchapter. The Texas Rules of Civil Procedure, Texas Rules of Civil Evidence, Texas Administrative Procedure Act §2001.081, and Chapter 22 of this title (relating to Procedural Rules [Practice and Procedure]) may be used as guidance in proceedings under this chapter.

(j) Authority of presiding officer.

(1) Generally. The presiding officer has broad discretion in conducting the arbitration hearing, including the authority given to a presiding officer under [pursuant to] §22.202 of this title (relating to Presiding Officer). In addition, the presiding officer has broad discretion to ask clarifying questions and to direct a party or a witness to provide information[.] at any time during the proceeding, as provided by [set out in] subsection (q) of this section.

(2) Subpoenas.

(A) Issuance of Subpoenas. In accordance with Texas Government Code [Pursuant to APA], §2001.089, the presiding officer may issue a subpoena for the attendance of a witness or for the production of books, records, papers, or other objects. Motions for subpoenas to compel the production of books, records, papers, or other objects must [shall] describe with reasonable particularity the objects desired and the material and relevant facts sought to be proved by them.

(B) Service and return. A subpoena may be addressed to the sheriff or any constable, who may serve the subpoena in any manner authorized by the Texas Rules of Civil Procedure; and ser-

vice thereof may be accepted by any witness by a written memorandum, signed by such witness, attached to the subpoena, or by any other method authorized by the Texas Rules of Civil Procedure.

(C) Fees. Subpoenas must [shall] be issued by the presiding officer only after sums have been deposited to ensure payment of expense fees incident to the subpoenas. Payment of any such fees or expenses must [shall] be made in the manner prescribed by Texas Government Code [in APA], §2001.089 and §2001.103.

(D) Motions to quash. Motions to quash subpoenas must [shall] be filed within five working days after the issuance of the subpoena, unless the party ordered to respond to the subpoena shows that it was justifiably unable to file objections at that time.

(k) Discovery. In accordance with [Pursuant to] subsection (j) of this section, the presiding officer has broad discretion regarding discovery. Except as modified in paragraphs (1) - (3) of this subsection, Chapter 22, Subchapter H of this title (relating to Discovery Procedures) must [shall] serve as guidance for all discovery conducted under this chapter.

(1) Scope. The presiding officer will [shall] permit only such discovery as the presiding officer determines is essential, considering public policy, the needs of the parties and the commission, the commission's deadlines under FTA §252(b)(4)(C)[(e)], and considering the desirability of making discovery effective, expeditious and cost effective. The presiding officer will [shall] be the judge of the relevance and materiality of the discovery sought.

(2) Limits. Parties may obtain discovery relevant to the arbitration by submitting requests for information (RFIs), requests for inspection and production of documents (RFPs), requests for admissions (RFAs), and depositions by oral or written examination. RFIs, RFPs and RFAs must [shall] contain no more than 40 requests (subparts are counted as separate requests). The presiding officer, upon a motion filed by a party, may permit a party to propound more than 40 requests provided that the moving party has made a clear demonstration of the relevance of and the need for the additional requests. Factors to be considered by the presiding officer in determining whether to allow additional requests [shall] include[; but are not limited to]: the number of unresolved issues, the complexity of the unresolved issues, and whether the proceeding addresses costs or [and/or] cost studies.

(3) Timing. Discovery may commence upon the filing of the petition for arbitration. Parties must [shall] file a proposed discovery schedule that accommodates the commission's deadlines under FTA §252(b)(4)(C)[(e)], taking into consideration relevant commission regulatory timeframes. The presiding officer may impose a discovery schedule that accommodates the commission's deadlines under FTA §252(b)(4)(C)[(e)]. If any party requests an extension that will affect the ability to complete the proceeding within the commission's deadlines under FTA §252(b)(4)(C)[(e)], all parties must agree to the extension and file a joint waiver to extend such deadlines.

(l) Time for hearing. The arbitration hearing will [shall] be conducted expeditiously and in an informal manner. The presiding officer is authorized [empowered] to impose reasonable time limits on the arbitration hearing. The presiding officer may continue an arbitration [a] hearing from time to time and place to place. Unless additional time is allowed by the commission or additional information is requested by the presiding officer, the hearing may not exceed five working days.

(m) Evidence.

(1) Relevance. The parties may only offer such evidence as is relevant and material to a proceeding and must [shall] provide such evidence as the presiding officer deems necessary [may deem necessary]

to determination of the proceeding]. The presiding officer will [shall] be the judge of the relevance and materiality of the evidence offered.

(2) Conformity to rules. The presiding officer will [shall] have the authority to decide whether [or not] to apply strict rules of evidence [or any other rules] as to the admissibility, relevance, or weight of any material tendered by a party on any matter of fact or expert opinion. The presiding officer will [shall] provide notice of this decision prior to the deadline for filing direct testimony.

(3) Exhibits. The offering of exhibits is [shall be] governed by §22.226 of this title (relating to Exhibits).

(4) Offers of proof. Offers of proof are [shall be] governed by §22.227 of this title (relating to Offers of Proof).

(5) Stipulation of facts. Stipulation of facts are [shall be] governed by §22.228 of this title (relating to Stipulation of Facts).

(6) Prefiled evidence.

(A) Parties to the hearing must file [shall provide] their direct case [cases to the presiding officer] at least 15 working days prior to the hearing unless the presiding officer establishes a different deadline. A copy of the direct case and notice of filing must be provided to each of the other parties to the hearing the same day the direct case is filed with the commission [Ten copies of the direct case shall be filed with the commission filing clerk and a copy shall be provided to each of the other parties to the hearing at the same time it is provided to the presiding officer].

(B) The prepared direct case must [shall] include all of the party's direct evidence on all DPL issues in the proceeding, including written direct testimony of all of its witnesses and all exhibits that the party intends to offer as part of its direct case. The prepared case must [shall] present the entirety of the party's direct evidence on each of the issues in controversy and must [shall] serve as the party's complete direct case.

(C) Prefiled evidence must [shall] include, to the extent allowed or requested by the presiding officer, prefiled rebuttal testimony and exhibits and must [shall] be filed not less than eight working days prior to the hearing unless the presiding officer establishes a different deadline.

(7) Public Information. Except as provided in §21.77 of this title (relating to Confidential Information), all materials filed with the commission or provided to the presiding officer will [shall] be considered public information under the Texas Public Information Act (TPIA), Texas Government Code, §552.001, *et. seq.*

(n) Sanctions. Whenever a party fails to comply with a presiding officer's order or commission rules in a manner deemed material by the presiding officer, the presiding officer will establish [shall fix] a reasonable period of time for compliance. If the party does not comply within that time period, then after notice and opportunity for a hearing, the presiding officer may impose a remedy as set forth in §21.71 of this title (relating to Sanctions).

(o) Decision Point List (DPL) and witness list.

(1) Ten days after the filing of the response to the petition, the parties must [shall] file a revised DPL that is jointly populated to the extent practicable, taking into consideration the status of discovery.

(2) Parties must [shall] file a jointly populated DPL in a format approved by the presiding officer, no later than five working days before the commencement of the hearing. An electronic copy of the DPL must [shall] also be provided. The DPL must [shall] identify all issues to be addressed, the witnesses who will address each issue, and a short synopsis of each witness's position on each issue, with specific

citation to the parties' testimony relevant to that issue. The DPL must [shall] also provide the parties' competing contract language. Except as provided in §21.77 of this title (relating to Confidential Material), all materials filed with the commission or provided to the presiding officer will [shall] be considered public information under the TPIA, Texas Government Code, §552.001, *et. seq.*

(p) Cross-examination. Each witness presenting written prefiled testimony must [shall] be available for cross-examination by the other parties to the arbitration. The presiding officer will [shall] judge the credibility of each witness and the weight to be given their testimony based upon their response to cross-examination. If the presiding officer determines that the witness's responses are evasive or non-responsive to the questions asked, the presiding officer may disregard the witness's testimony on the basis of a lack of credibility.

(q) Clarifying questions. The presiding officer or an arbitration team member, at any point during the proceeding, may ask clarifying questions and may direct a party or a witness to provide additional information as needed to fully develop the record of the proceeding. This has no effect on a party's responsibility to meet its burden of proof. If a party fails to present information requested by the presiding officer, the presiding officer will [shall] render a decision based on [the basis of] the best information available [from whatever source derived]. Moreover, failure to provide requested information may subject a party to sanctions, as set forth in §21.71 of this title.

(r) Briefs. The presiding officer may require the parties to submit post-hearing briefs or written summaries of their positions. The presiding officer will [shall] determine the filing deadline and any limitations on the length of such submissions. Reply briefs are [shall] not [be] permitted unless the presiding officer determines that they would aid in the resolution of the proceeding, after consideration of applicable deadlines.

(s) Time for decision. The presiding officer will [shall] endeavor to issue a proposal for award [Proposal for Award] on the arbitration within 30 days after the filing of any post-hearing briefs.

(1) If post-hearing briefs are not filed, the presiding officer will [shall] endeavor to issue the proposal for award [Proposal for Award] within 30 days after the conclusion of the hearing.

(2) The arbitration team must [shall] issue an arbitration award not later than nine months after the date on which a party receives a request for negotiation under FTA, unless the parties have waived the nine-month deadline in writing or orally on the record.

(t) Decision.

(1) Proposal for award [Award]. The proposal for award will [Proposal for Award shall] be based upon the record of the arbitration hearing. The presiding officer may agree with the positions of one or more of the parties on any or all issues or may offer an independent resolution of the issues. The presiding officer is the judge of whether a party has met its burden of proof. The proposal for award will [Proposal for Award shall] include:

(A) a ruling on each of the issues presented for arbitration by the parties, including specific contract language;

(B) a statement of any conditions imposed on the parties to the agreement in order to comply with the provisions of FTA §252(c);

(C) a statement of how the final decision meets the requirements of FTA §251, including any regulations adopted by the Federal Communications Commission (FCC) in accordance with [pursuant to] FTA §251;

(D) the rates for interconnection, services, or ~~[and/or]~~ network elements established in accordance with ~~[a]ccording to~~ FTA §252(d);

(E) a schedule for implementation of the terms and conditions by the parties to the agreement;

(F) a narrative report explaining the rulings included in the proposal for award ~~[Proposal for Award]~~, unless the arbitration is conducted by two or more of the commissioners acting as the presiding officers; and

(G) to the extent that a ruling establishes a new or different price for an unbundled network element, combination of unbundled network elements, or resold service, a statement requiring that all certificated carriers be notified of such price either through web posting, mass mailing, or electronic mail within ten days of the date the ruling becomes final.

(2) Exceptions to the proposal for award ~~[Proposal for Award]~~. Within ten working days of the issuance of the proposal for award ~~[Proposal for Award]~~ the parties must ~~[shall]~~ file any exceptions to the proposal for award ~~[Exceptions to the Proposal for Award]~~ specifying any alleged ambiguities or errors. To the extent that a party objects to contract language within the proposal for award ~~[Proposal for Award]~~, the party's exceptions ~~[Exceptions]~~ to the proposal for award ~~[Proposal for Award]~~ must include alternative contract language along with an explanation of why the alternative language is appropriate, with citation to the record.

(3) Arbitration award ~~[Award]~~. The arbitration award will ~~[Arbitration Award shall]~~ be based upon the record of the arbitration hearing. The presiding officer will ~~[shall]~~ endeavor to issue the arbitration award ~~[Arbitration Award]~~ within ten working days of the receipt of parties' exceptions ~~[Exceptions]~~ to the proposal for award ~~[Proposal for Award]~~. The presiding officer may agree with the positions of one or more of the parties on any or all issues or may offer an independent resolution of the issues. The presiding officer is the judge of whether a party has met its burden of proof. The arbitration award will ~~[Arbitration Award shall]~~ include:

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

(C) a statement of how the final decision meets the requirements of FTA §251, including any regulations adopted by the FCC in accordance with FTA ~~[pursuant to]~~ §251;

(D) the rates for interconnection, services, or ~~[and/or]~~ network elements established according to FTA §252(d), as appropriate;

(E) (No change.)

(F) a narrative report explaining the presiding officer's rationale for each of the rulings included in the final decision, unless the arbitration is conducted by a majority ~~[two or more]~~ of the commissioners acting as the presiding officers; and

(G) to the extent that a ruling establishes a new or different price for an unbundled network element;~~[-]~~ combination of unbundled network elements;~~[-]~~ or resold service, a statement requiring that all certificated carriers be notified of such price either through a web posting, mass mailing, or electronic mail within ten days of the date the ruling becomes final.

(u) Distribution. The proposal for award and arbitration award will ~~[Proposal for Award and Arbitration Award shall]~~ be filed with the commission as a public record and will ~~[shall]~~ be mailed by first class mail, or transmitted via facsimile to all parties of record in the arbitration. On the same day that a decision is issued, the presiding

officer will ~~[shall]~~ notify the parties by facsimile or electronic mail that a decision has been issued. If a decision involves 9-1-1 issues, the presiding officer will ~~[shall]~~ also notify the Commission on State Emergency Communications ~~[(CSEC)]~~ by facsimile or electronic mail on the same day.

(v) Implementation. Unless modified, implementation of the terms and conditions of the arbitration award must ~~[Arbitration Award shall]~~ comply with §21.99 of this title (relating to Approval of Arbitrated Agreements).

(w) Motions for reconsideration. No motions for reconsideration of the proposal for award ~~[Proposal for Award]~~ are permitted. Motions for reconsideration of the arbitration award must be filed in accordance with ~~[Arbitration Award shall be filed pursuant to]~~ §21.75 of this title (relating to Motions for Clarification and Motions for Reconsideration).

§21.99. Approval of Arbitrated Agreements.

(a) Application. Any interconnection agreement resulting from arbitration must ~~[shall]~~ be submitted to the commission for approval and filed in the same proceeding within 30 days of the date of the presiding officer's arbitration award ~~[Arbitration Award]~~, unless otherwise provided. Following the issuance of the presiding officer's arbitration award ~~[Arbitration Award]~~ under §21.95 of this title (relating to Compulsory Arbitration), the parties must ~~[shall]~~ jointly file with the commission a copy of ~~[ten copies of]~~ the final interconnection agreement, ~~[with the commission's filing clerk,]~~ incorporating all contract language ordered by the presiding officer. Any interconnection agreement submitted to the commission for approval is a public record and no portion of the interconnection agreement may be treated as confidential information under §21.77 of this title (relating to Confidential Material). The application for approval of an arbitrated agreement must ~~[shall]~~ be accompanied by:

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

(b) Parties' comments. Any party wishing to file comments on the interconnection agreement incorporating the contract language ordered by the presiding officer as required in subsection (a) of this section, must ~~[shall]~~ do so within five calendar days following the filing of the application under subsection (a) of this section. Any reply comments must ~~[shall]~~ be filed within three calendar days of any initial comments.

(c) Commission approval. The commission will issue its final decision on an agreement adopted by arbitration within 30 calendar days following the filing of the application under subsection (a) of this section. The commission's final decision may reject, approve, or modify the agreement, and will provide ~~[with]~~ written findings as to any deficiencies. If the commission does not act to approve or reject the agreement adopted by arbitration within 30 days after submission by the parties under subsection (a) of this section, the agreement will ~~[shall]~~ be deemed approved.

(d) Effective date. An interconnection agreement approved by arbitration becomes effective within ten calendar days from ~~[days after]~~ the date that the commission's order approving the interconnection agreement is signed by all commissioners ~~[Commissioners]~~ unless otherwise specified in the order approving the agreement.

(e) Filing of agreement. Following the commission's approval of the agreement, the parties to the interconnection agreement must ~~[shall]~~ file a copy of the complete agreement with the commission ~~[two copies, one unbound, of the complete agreement, consistent with the commission's direction, with the commission's filing clerk]~~ within ten working days of the commission's decision. The copy ~~[copies shall]~~ be clearly marked with the control number for the proceeding and the

language "Complete interconnection agreement (as modified) and approved on (insert date)." Also within 15 working days of the approval of the agreement, the incumbent local exchange company (ILEC) must ~~[shall]~~ post notice of the approved interconnection agreement on its website in a manner that is ~~[in a separate,]~~ easily identifiable ~~[area of the website]~~. The ILEC website must ~~[shall]~~ provide a complete list of commission-approved ~~[approved]~~ interconnection agreements, listed alphabetically by carrier, including docket numbers and effective dates. In addition, the ILEC website must ~~[shall]~~ provide a direct link to the commission's website.

§21.101. Approval of Amendments to Existing Interconnection Agreements.

(a) Application. Any amendments, including modifications, to a previously approved interconnection agreement must ~~[shall]~~ be submitted to the commission for review and approval. Any one party to the agreement may file the application for approval of the amendments, provided that all parties to the agreement seek approval. The parties requesting approval must ~~[shall]~~ file a copy with the commission ~~[three copies of the application with the commission's filing clerk and, when applicable,]~~ serve a copy on each of the other parties to the agreement as applicable. An application for approval of an amended agreement must ~~[shall]~~ include:

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

(b) Notice. The commission may require the parties to the agreement to provide reasonable notice of the filing of the agreement. The commission may require publication of the notice in addition to direct notice to affected persons. At the commission's discretion, direct notice may be provided by electronic mail or a website, provided all affected persons are made aware of the website. The commission will ~~[shall]~~ determine the appropriate scope and wording of the notice to be provided.

(c) Proceeding.

(1) Administrative review. The commission delegates its authority to the presiding officer to administratively approve or deny any interconnection agreement amendments. Notice of approval or denial will ~~[shall]~~ be issued within 15 days of the filing of the application. If a notice of denial is filed, the notice of denial without prejudice will ~~[shall]~~ include written findings indicating any deficiencies in the agreement. Amendments to interconnection agreements will ~~[shall]~~ be administratively reviewed by the presiding officer unless the presiding officer determines that a formal review of the amendments is appropriate in accordance with ~~[pursuant to]~~ paragraph (2) of this subsection. At the presiding officer's discretion, approval can be referred directly to the commission should the presiding officer determine that there is an issue that is ~~[issue(s)]~~ more appropriately decided by the commission that does not necessarily require formal resolution.

(2) (No change.)

(d) Comments. An interested person may file comments on the amended agreement by filing the comments with the commission's filing clerk and serving a copy of the comments on each party to the agreement within five days of the filing of the application. The comments must ~~[shall]~~ include the following information:

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

(e) Issues. In any proceeding conducted by the commission in accordance with ~~[pursuant to]~~ subsection (c)(2) of this section, the commission will consider only evidence and argument concerning whether the agreement, or some portion thereof:

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

(f) Authority of presiding officer. The presiding officer has broad discretion in conducting the proceeding, including the authority given to a presiding officer under ~~[pursuant to]~~ §22.202 of this title (relating to Presiding Officer) and ~~[pursuant to]~~ §21.95 of this title. Discovery is [shall be] governed by §21.95(k) of this title. In addition, the presiding officer has broad discretion to ask clarifying questions and to direct a party or a witness to provide information, at any time during the proceeding, as set out in §21.95(q) of this title.

(g) Effective date. Any amendment to an existing interconnection agreement is [shall become] effective upon issuance by the commission of a notice of approval.

(h) Formal approval. When an amendment to an existing interconnection agreement is subject to the formal review process as proposed in subsection (c) of this section, the commission will issue its final decision on the amendment within 90 days following the filing of the application. The commission may reject, approve, or modify the amendment, or the commission may remand the agreement to the presiding officer for further proceedings. If the commission rejects the amendment, the final decision will ~~[shall]~~ include written findings indicating any deficiencies in the amendment.

(i) Filing of agreement. If the presiding officer approves the amendments to the agreement, the parties to the agreement must ~~[shall]~~ file a copy ~~[two copies, one unbound,]~~ of the complete amended interconnection agreement with the commission's filing clerk within ten working days of the presiding officer's decision. The filed copy must ~~[copies shall]~~ be clearly marked with the control number assigned to the proceeding and the language "Amended interconnection agreement as approved (or modified and approved) on (insert date)." Within ~~[Also within]~~ 15 working days of the approval of the agreement, the incumbent local exchange company (ILEC) must ~~[shall]~~ post notice of the approved interconnection agreement on its website in a separate, easily identifiable area of the website. The ILEC website must ~~[shall]~~ provide a complete list of approved interconnection agreements, listed alphabetically by carrier, including docket numbers and effective dates. In addition, the ILEC website must ~~[shall]~~ provide a direct link to the commission's website.

§21.103. Approval of Agreements Adopting Terms and Conditions in accordance with ~~[Pursuant to]~~ *Federal Telecommunications Act of 1996 (FTA) §252(i).*

(a) Application. Under the Federal Telecommunications Act of 1996 (FTA) §252(i), a local exchange carrier must ~~[shall]~~ make available within 15 working days of receipt of request, any interconnection, service, or network element provided under a previously approved interconnection agreement to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. Any agreement adopting terms and conditions of a previously approved interconnection agreement in accordance with ~~[pursuant to]~~ FTA §252(i) must ~~[shall]~~ be submitted to the commission for review and approval. Any or all of the parties to the agreement may file the application for approval. The parties requesting approval must ~~[shall]~~ file a copy ~~[three copies]~~ of the application with the commission's filing clerk and ~~[, when applicable,]~~ serve a copy on each of the other parties to the agreement as applicable. An application for approval of an agreement adopting terms and conditions in accordance with FTA §252(i) must ~~[pursuant to FTA §252(i) shall]~~ include:

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

(b) Provisions incorporated from §21.101 of this title (relating to the Approval of Amendments to Existing Interconnection Agreements). Applications for approval filed under this section will ~~[shall]~~ be processed according to the following provisions of §21.101 of this

title, which are incorporated by reference into this section: §21.101(b), (c), (d), (e), (f), and (g).

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

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Public Utility Commission of Texas

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



SUBCHAPTER E. POST-INTERCONNECTION AGREEMENT DISPUTE RESOLUTION

16 TAC §21.123, §21.125

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq. which governs interconnection agreements entered into by telecommunications carriers and local exchange carriers.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, 14.052; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq.

§21.123. *Informal Settlement Conference.*

(a) Filing a request. Either party to an interconnection agreement may request an informal settlement conference by filing ~~ten copies of~~ a written request with the commission and, on the same day, delivering a copy of the request either by hand delivery, electronic mail, or by facsimile to each party, including the ~~other~~ party ~~[(respondent)]~~ to the interconnection agreement from which the dispute arises. The written request should include:

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

(b) The settlement conference. The commission staff conducting the informal settlement conference will [shall] notify the parties of the time, date, and location of the settlement conference~~[-]~~ which, if held, will [shall] be held no later than ten working days from the date the request was filed. The commission staff may require each party [the respondent] to file a response to the request. The parties should provide the appropriate personnel with authority to discuss and to resolve the disputes at the settlement conference. If the parties are in disagreement as to the need for a settlement conference, the presiding officer may deny the request for good cause.

(c) Conduct. The settlement conference will [shall] be conducted as an informal meeting [informal meetings] and will not be tran-

scribed. Only parties to the interconnection agreement may participate as parties to the settlement conference.

(d) Results of settlement conference. The settlement conference may result in an agreement on the resolution of the dispute described in the request. If an agreement is reached, the agreement will be binding on the parties. ~~If [In the event that]~~ the parties do not reach an agreement as a result of the settlement conference, either party may utilize other procedures for dispute resolution provided in this subchapter. The commission staff conducting the informal settlement conference may participate in a subsequent dispute resolution proceeding involving the parties to the informal settlement conference.

(e) Both formal dispute resolution and informal settlement request. In the event a party negotiating a request for interconnection, services, or network elements under the Federal Telecommunications Act of 1996 (FTA) has requested both formal dispute resolution and an informal settlement conference, the informal settlement conference will precede formal dispute resolution. If agreed to by both parties, any procedural deadlines applicable to formal dispute resolution will be tolled for the duration of the informal settlement proceedings, including time needed for commission approval of an informal settlement agreement. To the extent parties do not settle all matters at issue in the informal settlement conference, the formal dispute resolution proceeding will [shall] not be initiated until the parties jointly file an update of unresolved issues and a revised procedural schedule.

§21.125. *Formal Dispute Resolution Proceeding.*

(a) Initiation of formal proceeding. A formal proceeding for dispute resolution under this subchapter will commence when a party files a petition with the commission and, on the same day, delivers a copy of the petition either by hand delivery, electronic mail, or by facsimile to each party, including the other party ~~[(respondent)]~~ to the interconnection agreement from which the dispute arises (respondent).

(1) The petition must [shall] comply with §21.33 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission). The petition must [shall] include:

(A) (No change.)

(B) a description of the parties' efforts to resolve their differences by negotiation, such as through an informal settlement conference in accordance with §21.123 of this title (relating to Informal Settlement Conference);

(C) - (G) (No change.)

(2) (No change.)

(3) The commission will [shall] perform a sufficiency review of a petition. To the extent that a petition is determined to be insufficient, the commission will [shall] file a notice of insufficiency within five working days of receipt of the petition. In the absence of a notice of insufficiency, the petition will [shall] be presumed sufficient.

(4) Where a request for formal dispute resolution found insufficient, the presiding officer may consider dismissal without prejudice in accordance with [pursuant to] §21.67 of this title (relating to Dismissal of a Proceeding) and order the party to refile.

(b) Response to the petition. Unless §21.127 or §21.129 of this title apply, the respondent must [shall] file a response to the petition within ten days after the filing of the petition. On the response filing date, the respondent must [shall] serve a copy of the response on the petitioner. The response must [shall] specifically affirm or deny each allegation in the petition. The response must [shall] include the respondent's position on each issue in dispute, a cross-reference to the area or areas of the parties' most current interconnection agreement, identified by docket number, applicable or pertaining to the issue in dispute, and

the respondent's proposed solution on each issue in dispute. In addition, the response also must [shall]:

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

(c) Reply to response to complaint. Unless §21.127 or §21.129 of this title apply, the petitioner may file a reply within five working days after the filing of the response to the petition and serve a copy on respondent on the same day. The reply must [shall] be limited solely to new issues raised in the response to the petition.

(d) Provisions incorporated from §21.95 of this title (relating to Compulsory Arbitration). Except as specified otherwise in this subchapter, the following provisions of §21.95 of this title are incorporated by reference into this subchapter: §21.95(c)-(i) and (k)-(r) [~~(d), (e), (f), (g), (h), (i), (k), (l), (m), (n), (o), (p), (q), and (r)~~], except that any discovery schedule must [shall] take into consideration the 50-day deadline in subsection (g) of this section.

(e) Number of copies to be filed. Unless otherwise ordered by the presiding officer, parties must file a copy of each pleading [shall file ten copies of pleadings] subject to this subchapter with the commission.

(f) (No change.)

(g) Notice and hearing. Unless §21.127 or §21.129 of this title apply, the presiding officer will hold [shall make arrangements for] the hearing to address the petition[, which shall commence] no later than 50 days after filing of the complaint. If the parties' joint procedural schedule sets a hearing more than 50 days after the filing of the petition, then approval of the joint procedural schedule will [shall] be conditioned upon the parties filing a joint waiver of the 50-day deadline. The presiding officer will [shall] notify the parties, not less than 15 days before the hearing, of the date, time, and location of the hearing. The hearing will [shall] be transcribed by a court reporter designated by the presiding officer.

(h) Authority of presiding officer. The presiding officer has broad discretion in conducting the dispute resolution proceeding, including the authority given to a presiding officer in accordance with [pursuant to] §22.202 of this title (relating to Presiding Officer) and in accordance with [pursuant to] §21.95 of this title (relating to Compulsory Arbitration). The presiding officer also has [shall also have] the authority to award remedies or relief deemed necessary by the presiding officer to resolve a dispute subject to the procedures established in this subchapter. The authority to award remedies or relief includes[, but is not limited to,] the award of prejudgment interest, specific performance of any obligation created in or found by the presiding officer to be intended under the interconnection agreement subject to the dispute, issuance of an injunction, or imposition of sanctions for abuse or frustration of the dispute resolution process subject to this subchapter and Subchapter D of this chapter (relating to Dispute Resolution), except that the presiding officer does not have authority to award punitive or consequential damages.

(i) (No change.)

(j) Prefiled evidence and witness [evidence/witness] list. The arbitrator must [shall] require the parties to file a direct case and a joint Decision Point List (DPL) on or before the commencement of the hearing. The arbitrator must [shall] require the parties to file their direct cases under the same deadline. The prepared direct case must [shall] include all of the party's direct evidence, including written direct testimony of all of its witnesses and all exhibits that the party intends to offer. The DPL must [shall] identify all issues to be addressed, the witnesses who will be addressing each issue, and a short synopsis of each witness's position on each issue. Except as provided in §21.77 of this title (relating to Confidential Information), all materials filed with the

commission or provided to the arbitrator must [shall] be considered public information under the Texas Public Information Act (TPIA), Texas Government Code, §552.001, *et seq.*

(k) Arbitration award [Award].

(1) The presiding officer will [shall] endeavor to issue a final decision on the dispute resolution within 30 days after the filing of any post-hearing briefs in the dispute resolution proceeding. If no post-hearing briefs are filed, the presiding officer will [shall] endeavor to issue a final decision within 30 days of the close of the hearing.

(2) The arbitration award will [Arbitration Award shall] be filed with the commission as a public record and will [shall] be mailed by first-class mail to all parties of record in the dispute resolution proceeding. On the same day that the arbitration award [Arbitration Award] is issued, the presiding officer will [shall] notify the parties in writing by electronic mail or facsimile that it has been issued. If the decision involves 9-1-1 issues, the presiding officer will [shall] also notify the Commission on State Emergency Communications [(CSEC)] by facsimile on the same day.

(3) The arbitration award will [Arbitration Award shall] be based upon the record of the dispute resolution hearing, and will [shall] include a specific ruling on each of the disputed issues presented for resolution by the parties. The presiding officer may agree with the positions of one or more parties on any or all issues or may offer an independent resolution of the issues. The presiding officer is the judge of whether a party has met their burden of proof. The presiding officer may provide for later implementation of specific provisions as addressed in the presiding officer's decision. The decision may also contain the items addressed in §21.95(t)(1) to the extent deemed necessary by the presiding officer to explain or support the decision.

(4) Within five working days from the date the arbitrator's decision is issued, any commissioner may place the presiding officer's decision on the agenda for the next available open meeting. The decision will [shall] be stayed until the commission affirms or modifies the decision, but such stay will [shall] not stay any order of interim relief already in effect in the proceeding.

(5) If no commissioner places the arbitrator's decision on the open meeting agenda within five working days, the arbitrator's decision is final and effective on the expiration of that fifth working day. The arbitrator must [shall] notify the parties when the arbitrator's decision is deemed final under this paragraph.

(l) Filing of agreement. Where modifications are ordered, the parties to the interconnection agreement must [shall] file in the same docket a copy [number, two copies, one unbound,] of the complete agreement with the filing clerk within five working days of approval. The copy must [copies shall] be clearly marked with the control number assigned to the proceeding and the language "Complete interconnection agreement as approved (or modified and approved) on (insert date)." Also within 15 working days of the approval of the agreement, the incumbent local exchange company (ILEC) must [shall] post notice of the approved interconnection agreement on its website in a manner that is [separate,] easily identifiable [area of the website]. The ILEC website must [shall] provide a complete list of commission-approved [approved] interconnection agreements, listed alphabetically by carrier, including docket numbers and effective dates. In addition, the ILEC website must [shall] provide a direct link to the commission's website.

(m) Motions for reconsideration. Motions for reconsideration are [shall be] governed by §21.75 of this title (relating to Motions for Clarification and Motions for Reconsideration).

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

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Public Utility Commission of Texas

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



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 150. COMMISSIONER'S RULES

CONCERNING EDUCATOR APPRAISAL

SUBCHAPTER AA. TEACHER APPRAISAL

19 TAC §150.1012

The Texas Education Agency (TEA) proposes an amendment to §150.1012, concerning local optional teacher designation systems. The proposed amendment would update procedures and terminology and provide TEA additional discretion to allow system changes outside the existing approval timeline in certain situations.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 150.1012 implements Texas Education Code (TEC), §21.3521 and §48.112, by establishing the requirements for school districts and charter schools to implement local teacher designation systems.

Following is a description of the proposed amendment to §150.1012.

The proposed amendment to §150.1012(a)(1)(D) would update the definition of the term "data capture year" to align with current program terminology.

The proposed amendment to §150.1012(c)(1)(A) would clarify existing procedure to include resubmissions of applications for review.

Proposed new §150.1012(d)(2) would allow flexibility for school districts by expanding TEA's authority to accept a modification of a district's local optional designation system outside of the existing timeline in cases where the timeline is unfeasible based on circumstances outside of a district's control.

The proposed amendment to §150.1012(f)(1) would update language to align with current program terminology. The amended language would specify that a renewal application is required in a district's fourth year after the system application is accepted.

FISCAL IMPACT: Andrew Hodge, associate commissioner for system innovation, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by providing TEA the authority to accept a modification of a district's local optional designation system outside of the existing timeline in cases where the timeline is unfeasible based on circumstances outside of a district's control. The proposed amendment would also allow provisions related to incomplete applications to apply to resubmissions.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Hodge has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be providing school districts and open-enrollment charter schools with clear processes and requirements to implement a local optional teacher designation system. Additionally, it would allow flexibility to modify systems when there is a clear need. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins June 7, 2024, and ends July 8, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 7, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.3521, which establishes a

local optional teacher designation system; and TEC, §48.112, which establishes a teacher incentive allotment.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.3521 and §48.112.

§150.1012. *Local Optional Teacher Designation System.*

(a) General provisions.

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

(A) Beginning of course--The first nine weeks of a year-long course or the first six weeks of a semester course.

(B) Charter school--A Texas public school that meets one of the following criteria:

(i) is operated by a charter holder under an open-enrollment charter granted either by the State Board of Education or commissioner of education pursuant to Texas Education Code (TEC), §12.101, identified with its own county district number;

(ii) has a charter granted under TEC, Chapter 12, Subchapter C, and is eligible for benefits under TEC, §11.174 and §48.252;

(iii) has a charter granted under TEC, §29.259, and Human Resources Code, §221.002; or

(iv) has a charter granted under TEC, §11.157(b).

(C) Classroom teacher--An educator, as defined by TEC, §5.001, who is employed by a school district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.

(D) Data capture year--The school year in which the teacher observation and student growth measure data is collected based on the accepted [proposed] local teacher designation system.

(E) Designated teacher--An exemplary, master, or recognized teacher.

(F) Eligible teaching assignment--An assignment based on campus, subject taught, or grade taught.

(G) End of course--The last twelve weeks of a year-long course or the last six weeks of a semester course.

(H) National Board certification--Certification issued by the National Board for Professional Teaching Standards.

(I) Provisional approval--Conditional approval of a school district local optional teacher designation system that would require resubmission of system review, data validation, additional required documentation, video submission, and/or other technical assistance for further data submission.

(J) Reliability--The degree to which an instrument used to measure teacher performance and student growth produces stable and consistent results.

(K) Rural--A campus within a school district with fewer than 5,000 enrolled students that is categorized as a rural, non-metropolitan: stable, or non-metropolitan: fast growing district type by the Texas Education Agency (TEA); a campus within a school district with fewer than 5,000 enrolled students categorized as rural by the National Center for Education Statistics; or a campus defined in TEC, §48.112(a)(1).

(L) School district--The definition of a school district includes charter schools as defined in subparagraph (B) of this paragraph.

(M) Student growth--Student academic progress achieved in response to the pedagogical practices of teachers, as measured at the individual teacher level by one or more measures of student growth aligned to the standards of the course.

(N) Teacher category--One or more eligible teaching assignments evaluated with the same teacher observation rubric, student growth measure, and optional components and weighting as defined in a district's local designation system.

(O) Teacher observation--One or more observations of a teacher instructing students for a minimum of 45 minutes or multiple observations that aggregate to at least 45 minutes.

(P) Texas Student Data System (TSDS)--Data collected annually during the Class Roster Winter Submission.

(Q) Validity--The degree to which an instrument used to measure teacher performance and student growth measures what it is intended to measure.

(2) Fees for teacher incentive allotment teacher designation and system renewal. A school district requesting approval of a teacher designation system or renewal of such a system shall pay the applicable fees listed in subparagraphs (A) and (B) of this paragraph. The following fees must be paid by the district and cannot be paid by the teachers submitted for designation:

(A) a \$500 fee for each teacher submitted for designation to TEA; and

(B) a \$2,500 system renewal fee for districts where all campuses meet the definition of rural pursuant to paragraph (1)(K) of this subsection the year prior to renewal application submission or a \$10,000 system renewal fee for districts where not all campuses meet the definition of rural pursuant to paragraph (1)(K) of this subsection.

(b) Teacher eligibility.

(1) Teachers eligible to earn or receive designations under an approved local optional teacher designation system must meet the following requirements:

(A) the teacher is employed by the recommending school district or charter partner pursuant to subsection (a)(1)(B)(ii) or (iv) of this section in a role ID coded as 087 (Teacher) and corresponding class roles of 01, 02, or 03, if applicable, in TSDS for 90 days at 100% of the day (equivalent to four and one-half months or a full semester) or 180 days at 50-99% of the day and compensated for that employment. A charter partner operating under subsection (a)(1)(B)(ii) or (iv) of this section is required to report teacher-level data in TSDS or provide teacher-level data to its partner school district for reporting by the district in TSDS;

(B) the teacher was employed by the recommending school district or charter partner pursuant to subsection (a)(1)(B)(ii) or (iv) of this section during the year the teacher's effectiveness was collected in alignment with the recommended designation;

(C) the teacher is not currently designated under a local optional teacher designation system, unless the teacher is being recommended for a higher designation; and

(D) the teacher does not have a suspension, revocation, permanent surrender, or surrender of a certificate issued by the State Board for Educator Certification and is not found on the registry of persons not eligible for employment in public schools under TEC,

§22.092, and Chapter 153, Subchapter EE, of this title (relating to Commissioner's Rules Concerning Registry of Persons Not Eligible for Employment in Public Schools).

(2) School districts are eligible to receive funding for each designated teacher if the teacher meets the requirements in paragraph (1)(A) of this subsection for each district. TEA may exercise administrative discretion to determine the eligibility of a teacher if a district disputes TSDS data. Disputes must be received by TEA by the second Friday in May each year; however, TEA may exercise administrative discretion to allow disputes to be considered outside of this timeline.

(c) Application procedures and approval process.

(1) The following provisions apply to applications submitted under this section.

(A) If TEA determines that an application or resubmission is incomplete, TEA may provide the applicant with notice of the deficiency and an opportunity to submit missing required information. If the missing required information is not submitted within seven business days after the original submission deadline, the application will be denied.

(B) If TEA determines that a system application does not meet the standards established under TEC, §21.3521, and this section, TEA shall permit the applicant to resubmit the application by June 30. If no resubmission is made by the deadline, the application will be denied.

(C) Applicants that are determined to meet the standards established under TEC, §21.3521 and §48.112, and the requirements of the statutorily based framework provided in the figure in this subparagraph shall be approved.
Figure: 19 TAC §150.1012(c)(1)(C) (No change.)

(D) Applications that are determined to meet the standards established under TEC, §21.3521 and §48.112, and this section shall be approved for an initial term of five years. Applications that are determined to need ongoing support may result in provisional approval.

(2) The application shall include the following for each eligible teaching assignment:

(A) components of a local system for issuing designations, including:

(i) a teacher observation component that contains:

(I) a plan for calibration, using the rubric approved under subclause (II) of this clause, that includes congruence among appraisers, a review of teacher observation data and the correlation between teacher observation and student growth data, and implementation of next steps; and

(II) an approved teacher observation rubric including the Texas Teacher Evaluation and Support System, Marzano's Teacher Evaluation Model and rubric created by the National Institute for Excellence in Teaching and The Danielson Group, or another rubric that is based on observable, job-related behaviors that are described with progressive descriptors for each dimension, including alignment to §149.1001 of this title (relating to Teacher Standards) and a clear proficiency indicator. A school district may be required to provide teacher observation videos if the ratings cannot be verified from the data submitted; and

(ii) a specified student growth component by measure and/or assessment that:

(I) if using a student learning objective, is aligned to the Texas Student Learning Objectives (SLO) process described on the TEA website for SLOs at <https://texasslo.org>;

(II) if using a portfolio method, demonstrates that student work is aligned to the standards of the course, demonstrates mastery of standards, utilizes a skills proficiency rubric, and includes criteria for scoring various artifacts;

(III) if using school district- or teacher-created assessments, is aligned to the standards of the course and conforms to a district rubric for district- or teacher-created assessments. A school district must approve district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course;

(IV) if using a school district- or teacher-created assessment in conjunction with a third-party assessment, is aligned to the standards of the course and conforms to a district rubric for district- or teacher-created assessments. A school district must approve district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course;

(V) if using third-party assessments with third-party accompanying growth targets, is aligned to the standards for the course and contains questions that cover a range of student skill levels. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course; or

(VI) if using third-party assessments with district-created growth targets, is aligned to the standards of the course and contains questions that cover a range of student skill levels. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course. Mid-year data may be used in instances where the student was not present for the beginning of course administration.

(B) test administration processes for all student growth that will lead to validity and reliability of results, including:

(i) test security protocols;

(ii) testing windows;

(iii) testing accommodations; and

(iv) annual training for test administrators; and

(C) data for all teachers in eligible teaching assignments, including student growth, and observation data for all teachers in eligible teaching assignments for the data capture year in alignment with TEC, §21.351 or §21.352. Multi-year data shall include student growth and observation data from the same year and teacher category. Single-year data shall include student growth and observation data from the same teacher category. TEA may exercise administrative discretion regarding the requirements of this subparagraph in situations in which data is difficult to provide due to circumstances beyond a district's control and the district would otherwise be unable to provide sufficient data for application consideration.

(d) System expansion, spending modifications, and changes.

(1) School districts must apply for approval through the system application process the year prior to implementation if:

(A) [(4)] adding new eligible teaching assignments or campuses (if started with less than all campuses in the district);

(B) [(2)] adding a new teacher observation rubric;

(C) [(3)] changing a previously approved teacher observation rubric;

(D) [(4)] adding new student growth measures;

(E) [(5)] changing the student growth measure used by an eligible teaching assignment;

(F) [(6)] adding or changing the third-party assessment used in a student growth measure;

(G) [(7)] adding or changing the type of assessment used in a student growth measure;

(H) [(8)] removing a student growth measure used by an eligible teaching assignment;

(I) [(9)] removing an eligible teaching assignment; or

(J) [(10)] modifying a district's spending plan. TEA may exercise administrative discretion to allow spending modifications outside of the approval timeline outlined in this subsection.

(2) TEA may exercise administrative discretion to allow system changes outside of the approval timeline outlined in this subsection in situations in which the application timeline is unfeasible due to circumstances beyond a district's control and the district would otherwise be unable to implement its current system.

(e) Monitoring and annual program submission of approved local designation systems.

(1) For the program submission, approved school districts shall submit the following information regarding a local teacher designation system and associated spending:

(A) the distribution of allotment funds from the previous school year in accordance with the funding provisions of subsection (g) of this section;

(B) a response and implementation plan to annual surveys developed by TEA administered to teachers, campus principals, and human resources personnel gauging the perception of a school district's local designation system; and

(C) teacher observations and student growth measure data for all teachers in eligible teaching assignments if school districts are submitting new teacher designations collected in alignment with §150.1003(b)(5) and (l)(3) of this title (relating to Appraisals, Data Sources, and Conferences). TEA reserves the right to request data for the purposes of performance evaluation and investigation based on data review outcomes. TEA may exercise administrative discretion in circumstances where data is difficult to provide and a district would otherwise be unable to provide sufficient data for application consideration.

(2) Outcomes of the annual program submission may lead to a review, pursuant to TEC, §48.272(e), and subject to the period of review limitation in TEC, §48.272(f), of the local optional designation system that may be conducted at any time at the discretion of [the] TEA staff.

(f) Continuing approval and renewal.

(1) Approved local optional teacher designation systems are subject to review at least once every five years. However, a review may be conducted at any time at the discretion of TEA. The renewal application is required in a district's fourth year after the system appli-

cation is accepted [of system approval] and will follow the process and requirements outlined in subsection (c) of this section.

(A) Charter management organizations that operate approved systems with multiple campus district numbers shall submit an application for each system at the time of required renewal.

(B) Systems with provisional approval in a district's fourth year shall renew in the year after receiving system approval.

(2) Approval of local optional designation systems are voidable by TEA for one or more of the following reasons:

(A) failure to fulfill all local optional designation system requirements as defined in this section;

(B) failure to comply with annual program submission requirements;

(C) failure to comply with the provisions of TEC, §21.3521 and §48.112;

(D) failure to implement the local optional teacher designation system as approved by TEA;

(E) failure to remove district employees from the designation determination process who have a conflict of interest and acted in bad faith to influence designations; or

(F) at the discretion of the commissioner.

(3) Approval of individual teacher designations are voidable by TEA for one or more of the following reasons:

(A) a teacher has not fulfilled all designation requirements;

(B) the school district at which the designation was earned has had its local optional designation system voided;

(C) the National Board for Professional Teaching Standards revokes a National Board certification that provided the basis for a teacher's designation;

(D) the suspension, revocation, permanent surrender, or surrender of a certificate issued by the State Board for Educator Certification to a designated teacher;

(E) the addition of the designated teacher to the registry of persons not eligible for employment in public schools under TEC, §22.092, and Chapter 153, Subchapter EE, of this title;

(F) the district issued a designation in bad faith by not removing a district employee from the designation determination process who had a conflict of interest; or

(G) at the discretion of the commissioner.

(g) Funding.

(1) State funding.

(A) School districts will receive teacher incentive allotment funds based on prior-year estimates. The final amount will be based on data from the current school year as provided in subparagraph (D) of this paragraph. Any difference from the estimated amount will be addressed as part of the Foundation School Program settle-up process according to the provisions in TEC, §48.272.

(B) A school district is eligible to earn the base allotment for each designated teacher assigned to a zero-enrollment campus, a campus with fewer than 20 students, a juvenile justice alternative education program, a disciplinary alternative education program, a residential facility, or central administration if the designated teacher meets the requirements in subsection (b)(2) of this section, plus the

multiplier based on the school district's average student point value and rural status, if applicable.

(C) Funding for teachers who work at multiple campuses shall be calculated and split equally among the campuses where the employee is working in a role coded as 087 (Teacher) in TSDS at each campus.

(D) Designated teacher campus and district of employment shall be determined annually by data collected in TSDS.

(E) School districts shall annually verify and confirm teacher designations and corresponding allotments.

(F) TEA may exercise administrative discretion to redirect or recalculate funds to the district where the designated teacher works if a district disputes TSDS data. Disputes must be received by the second Friday in May each year; however, TEA may exercise administrative discretion to allow disputes to be considered outside of this timeline.

(G) The average point value and rural status for the Texas School for the Deaf and the Texas School for the Blind and Visually Impaired will be calculated by utilizing the home districts of the schools' students.

(2) Status and use of state funds. A school district that receives teacher incentive allotment funding must comply with the requirements of TEC, §48.112, including the requirement that at least 90% of each allotment must be used for compensation of teachers employed at the campus at which the teacher for whom the district received the allotment is employed. School districts that receive funding for designated teachers employed by the charter partner for charter partnerships pursuant to subsection (a)(1)(B)(ii) or (iv) of this section shall pass along at least 90% of the teacher incentive allotment funding and 100% of fees pursuant to subsection (a)(2) of this section paid by the charter partner to the charter partner. Charter partners and districts shall work together to ensure that the spending requirements of TEC, §48.112, are met.

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 May 23, 2024.

TRD-202402322

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: July 7, 2024

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.1

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §104.1, concerning continuing education requirements. The proposed amendment allows course instructors who offer continuing education through a provider listed in §104.2 of this title to receive 2 hours of continuing education

credit for every 1 hour of instruction provided. This credit would apply per course, per renewal period.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does increase the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or emailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§104.1. *Continuing Education Requirements [Requirement]*.

As a prerequisite to the biennial renewal of a dental or dental hygiene license, proof of completion of 24 hours of acceptable continuing education is required.

(1) Each licensee shall select and participate in the continuing education courses endorsed by the providers identified in §104.2 of this title (relating to Providers). A licensee, other than a licensee who resides outside of the United States, who is unable to meet education

course requirements may request that alternative courses or procedures be approved by the Licensing Committee.

(A) Such requests must be in writing and submitted to and approved by the Licensing Committee prior to the expiration of the biennial period for which the alternative is being requested.

(B) A licensee must provide supporting documentation detailing the reason why the continuing education requirements set forth in this section cannot be met and must submit a proposal for alternative education procedures.

(C) Acceptable causes may include unanticipated financial or medical hardships or other extraordinary circumstances that are documented.

(D) A licensee who resides outside of the United States may, without prior approval of the Licensing Committee, complete all required hours of coursework by self-study.

(i) These self-study hours must be provided by those entities cited in §104.2 of this title. Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(ii) Upon being audited for continuing education compliance, a licensee who submits self-study hours under this subsection must be able to demonstrate residence outside of the United States for all periods of time for which self-study hours were submitted.

(E) Should a request to the Licensing Committee be denied, the licensee must complete the requirements of this section.

(2) Effective September 1, 2018, the following conditions and restrictions shall apply to coursework submitted for renewal purposes:

(A) At least 16 hours of coursework must be either technical or scientific as related to clinical care. The terms "technical" and "scientific" as applied to continuing education shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.

(B) Effective January 1, 2021, a licensed dentist whose practice includes direct patient care must complete not less than 2 hours of continuing education annually, and not less than 4 hours for each biennial renewal, regarding safe and effective pain management related to the prescription of opioids and other controlled substances. These 4 hours may be used to satisfy the 16-hour technical and scientific requirement. The courses taken to satisfy the safe and effective pain management requirement must include education regarding:

(i) reasonable standards of care;

(ii) the identification of drug-seeking behavior in patients; and

(iii) effectively communicating with patients regarding the prescription of an opioid or other controlled substance.

(C) Up to 8 hours of coursework may be in risk-management courses. Acceptable "risk management" courses include courses in risk management, record-keeping, and ethics. Dentists may complete continuing education courses described by §111.1 of this title (relating to Additional Continuing Education Required) to satisfy a portion of the risk-management requirement.

(D) Up to 8 hours of coursework may be self-study. These self-study hours must be provided by those entities cited in §104.2 of this title. Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(E) Hours of coursework in the standards of the Occupational Safety and Health Administration (OSHA) annual update course or in cardiopulmonary resuscitation (CPR) basic life support training may not be considered in the 24-hour requirement.

(F) Hours of coursework in practice finance may not be considered in the 24-hour requirement.

(3) As part of the 24-hour requirement, a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission must be completed.

(4) Each licensee shall complete the jurisprudence assessment every four (4) years. This requirement is in addition to the twenty-four (24) hours of continuing education required biennially for the renewal of a license.

(5) A licensee may carry forward continuing education hours earned prior to a renewal period which are in excess of the 24-hour requirement and such excess hours may be applied to subsequent years' requirements. Excess hours to be carried forward must have been earned in a classroom setting and within the one year immediately preceding the renewal period. A maximum of 24 total excess credit hours may be carried forward.

(6) Examiners for The Commission on Dental Competency Assessments-The Western Regional Examining Board-The Council of Interstate Testing Agencies (CDCA-WREB-CITA), States Resources for Testing and Assessments (SRTA), and Central Regional Dental Testing Services Inc. (CRDTS) will be allowed credit for no more than 12 hours biennially, obtained from calibration and standardization exercises associated with the examinations.

(7) Any individual or entity may petition one of the providers listed in §104.2 of this title to offer continuing education.

(8) Providers cited in §104.2 of this title will approve individual courses and/or instructors.

(9) A consultant for the SBDE who is also a licensee of the SBDE is eligible to receive up to 12 hours of continuing education credit biennially to apply towards the biennial renewal continuing education requirement under this section.

(A) Continuing education credit hours shall be awarded for the issuance of an expert opinion based upon the review of SBDE cases and for providing assistance to the SBDE in the investigation and prosecution of cases involving violations of the Dental Practice Act and/or the Rules of the SBDE.

(B) The amount of continuing education credit hours to be granted for each consultant task performed shall be determined by the Executive Director, Division Director, or manager that authorizes the consultant task to be performed. The award of continuing education credit shall be confirmed in writing and based upon a reasonable assessment of the time required to complete the task.

(10) A course instructor who offers continuing education through a provider listed in §104.2 of this title is eligible to receive 2 hours of continuing education credit for every 1 hour of instruction provided. This credit applies per course, per renewal period.

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

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

TRD-202402319

Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 305-8910



CHAPTER 107. DENTAL BOARD
PROCEDURES
SUBCHAPTER A. PROCEDURES
GOVERNING GRIEVANCES, HEARINGS,
AND APPEALS

22 TAC §107.3

The State Board of Dental Examiners (Board) proposes this repeal of 22 TAC §107.3, concerning the effects of student loan payment default on licensure. The proposed repeal implements Senate Bill 37 of the 86th Texas Legislature, Regular Session (2019). The bill prohibits a licensing agency from taking disciplinary action against a person who has defaulted on a student loan, or denying a license to that person based on a default of a student loan.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed repeal is in effect, the proposed repeal does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed repeal is in effect, the public benefit anticipated as a result of this proposed repeal will be to remove a regulation that is not consistent with state law.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed repeal does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed repeal.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed repeal does not create or eliminate a government program; (2) implementation of the proposed repeal does not require the creation or elimination of employee positions; (3) the implementation of the proposed repeal does not require an increase or decrease in future appropriations; (4) the proposed repeal does not require an increase in fees paid to the agency; (5) the proposed repeal does not create a new regulation; (6) the proposed repeal does limit an existing regulation by eliminating requirements that were repealed by state law; (7) the proposed repeal does decrease the number of individuals subject to it by eliminating the requirements of the rule; and (8) the proposed repeal does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed repeal does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed repeal may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed repeal is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or emailed by midnight on the last day of the comment period.

This repeal is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

This proposed repeal implements the amendments to Chapter 56, Texas Occupations Code and Chapter 57, Texas Education Code as set out in Senate Bill 37 of the 86th Texas Legislature, Regular Session (2019).

§107.3. Effects of Student Loan Payment Default on Licensure.

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 May 22, 2024.

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Lauren Studdard
General Counsel
State Board of Dental Examiners
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For further information, please call: (512) 305-8910



22 TAC §107.17

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §107.17, concerning service in non-rule-making proceedings. The proposed amendment updates the cited SOAH rule from 1 TAC §155.103 to 1 TAC §155.105.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3)

the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§107.17. Service in Non-rulemaking Proceedings.

(a) Notification of Decisions and Orders. When the agency is required to provide service of notice to any party of a decision or order, the agency shall notify the party either personally or by first class mail. Notice must be in writing and addressed to the licensee at the licensee's address of record on file with the Board at the time of the mailing or the licensee's attorney of record.

(b) Notification of Notice of Hearing. Notification of a Notice of Hearing shall be made to a licensee by hand delivery, regular, registered or certified mail, courier service, or otherwise in accordance with the APA and the Rules of SOAH. Notice must be in writing and addressed to the licensee at the licensee's address of record on file with the Board at the time of the mailing or addressed to the party's attorney of record. Notice of Hearing in a contested case must comply with Texas Government Code §2001.052. Service is complete when made pursuant to 1 TAC ~~§155.105~~ [§155.103] (SOAH).

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 May 22, 2024.

TRD-202402314

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: July 7, 2024

For further information, please call: (512) 305-8910



SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

22 TAC §107.105

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §107.105, concerning collection of information and records. Because the Board no longer issues citations, the proposed amendment removes the citation language from the rule. Instead, the Board issues administrative penalties pursuant to §264.001 of the Dental Practice Act, and board rule 22 TAC §107.201.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§107.105. Collection of Information and Records.

(a) Dental Records. Upon request by board staff, a dental custodian of records shall provide copies of dental records or original records. Board staff may require a dental custodian of records to sub-

mit records immediately if required by the urgency of the situation or the possibility that the records may be lost, damaged, or destroyed.

(b) Response to Board Requests. In addition to the requirements of responding or reporting to the board under this section, a licensee/registrant shall respond in writing to all written board requests for information within ten days of receipt of such request.

(c) Business Records Affidavits. Dental records must be provided under a business records affidavit or as otherwise required by board staff.

(d) Failure to Comply.

(1) Administrative Penalty. Failure to comply with board staff's request for records or information may be grounds for the issuance of an administrative penalty [citation] pursuant to §264.001 [§254.0115] of the Act.

(2) Disciplinary Action. Failure to comply with board staff's request for records or information may be unprofessional and dishonorable conduct that is subject to disciplinary action by the board pursuant to §263.002 of the Act.

(3) Civil Penalty. Failure to comply with board staff's request for records and other evidence or failure to comply with other law regulating dental patient records may be subject to a civil penalty pursuant to §258.0511 and §264.101 of the Act.

(4) Criminal penalty. Failure to comply with board staff's request for records and other evidence or failure to comply with other law regulating dental patient records, in violation of §258.0511, is a criminal offense pursuant to §264.152 of the Act.

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

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

TRD-202402315

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: July 7, 2024

For further information, please call: (512) 305-8910



22 TAC §107.106

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §107.106, concerning confidentiality of investigations. Because the Board no longer issues citations, the proposed amendment removes the citation language from the rule. Instead, the Board issues administrative penalties pursuant to §264.001 of the Dental Practice Act, and board rule 22 TAC §107.201.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§107.106. Confidentiality of Investigations.

(a) Investigation files and other records are confidential, except board staff shall inform the license holder of the specific allegations against the license holder.

(b) No employee, agent, or member of the board may disclose confidential information except in the following circumstances:

- (1) to another local, state or federal regulatory agency;
- (2) to local, state or federal law enforcement agencies;
- (3) to other persons if required during the course of the investigation;
- (4) to other entities as required by law; and
- (5) a person who has provided a statement may receive a copy of the statement.

(c) A final disciplinary action of the board is not excepted from public disclosure, including:

- (1) the revocation or suspension of a license/registration;

- (2) the placement on probation with conditions of a license/registration that has been suspended;
- (3) the reprimand of a licensee/registrant;
- (4) the issuance of a warning order to a licensee/registrant;
- [and]
- (5) a final cease and desist order issued to a non-licensee;[-]
- and
- (6) an administrative penalty.

(d) A final public action of the board is not excepted from public disclosure, including[;]

- [(+)] a non-disciplinary remedial plan.[; and]
- [(2) an administrative penalty citation.]

(e) Files and other records collected during the investigation of a license application are confidential, except board staff shall maintain a public profile of each licensee that contains the following information:

- (1) License name and former last name;
- (2) License number;
- (3) License status;
- (4) License issue date;
- (5) License expiration date;
- (6) Primary address;
- (7) Information related to issuance of nitrous and sedation/anesthesia permits;
- (8) Area of practice reported by licensee/registrant;
- (9) Dental school and year of graduation; and
- (10) Year of birth.

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 May 22, 2024.

TRD-202402316
 Lauren Studdard
 General Counsel
 State Board of Dental Examiners
 Earliest possible date of adoption: July 7, 2024
 For further information, please call: (512) 305-8910



SUBCHAPTER D. COMPLIANCE PROGRAM

22 TAC §107.300

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §107.300, concerning responsibilities of compliance division. Because the Board no longer issues citations, the proposed amendment removes the citation language from the rule. Instead, the Board issues administrative penalties pursuant to §264.001 of the Dental Practice Act, and board rule 22 TAC §107.201.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§107.300. Responsibilities of Compliance Division.

(a) The Director of Compliance shall ensure that a compliance monitoring program is established and maintained for those licensee/registrants who have received a disciplinary action[;] or remedial plan.[; or administrative penalty citation].

(b) The monitoring program shall be maintained by board staff serving as compliance officers.

(c) Monitoring disciplinary action and remedial plans.

(1) The compliance officer shall provide the licensee/registrant with initial notification of the requirements imposed by the disciplinary action or remedial plan. The initial notification shall include a copy of the disciplinary action or remedial plan and a copy of the compliance program rules and procedures.

(2) The compliance officer shall make good faith efforts to assist the licensee/registrants in attaining and maintaining compliance with the disciplinary action or remedial plan.

(3) The compliance officer shall refer non-compliance with disciplinary action or remedial plans to the Director of Compliance to determine whether to initiate an investigation into non-compliance with the disciplinary action or remedial plan.

~~[(d) Monitoring administrative penalty citations.]~~

~~[(1) The compliance officer shall monitor administrative penalty citations for the response required by §107.201 of this title (relating to Procedures for Alternative Informal Assessment of Administrative Penalty).]~~

~~[(2) The compliance officer shall refer timely requests for appeal of administrative penalty citations to the Director of Compliance to initiate the appeal.]~~

~~[(3) The compliance officer shall refer non-payment of the administrative penalty citation to the Director of Compliance to determine whether to initiate an investigation into non-payment of the administrative penalty citation.]~~

~~(d) [(e)] Applications for modification of a disciplinary action shall be made in accordance with §107.66 of this title (relating to Application for Modification of Board Order).~~

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 May 22, 2024.

TRD-202402317

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: July 7, 2024

For further information, please call: (512) 305-8910



PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 533. PRACTICE AND PROCEDURE SUBCHAPTER B. GENERAL PROVISIONS RELATING TO PRACTICE AND PROCEDURE

22 TAC §533.8

The Texas Real Estate Commission (TREC) proposes an amendment to 22 TAC §533.8, Motions for Rehearing, in Chapter 533, Practice and Procedure. The proposed amendment to this section is made as a result of the Commission's quadrennial rule review.

The amendment is proposed to correct a typographical error in subsection (h) of the rule--changing the word "supersedes" to "supersedes."

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state

employment as a result of implementing the proposed amendment. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendment. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be greater legal accuracy and clarity in the rules.

For each year of the first five years the proposed amendment is in effect the amendment will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§533.8. *Motions for Rehearing.*

(a) The timely filing of a motion for rehearing is a prerequisite to appeal. The motion must be filed with the Commission by:

(1) delivering the motion in-person to the Commission's headquarters;

(2) sending the motion via email to administration@trec.texas.gov; or

(3) sending the motion via fax to (512) 936-3788, ATTN: TREC General Counsel.

(b) Motions for rehearing are controlled by the APA, §§2001.145 - 2001.147 and this section.

(c) A motion for rehearing shall set forth the particular finding of fact, conclusion of law, ruling, or other action which the complaining party asserts caused substantial injustice to the party and was in error, such as violation of a constitutional or statutory provision, lack of authority, unlawful procedure, lack of substantial evidence, abuse

of discretion, other error of law, or other good cause specifically described in the motion. In the absence of specific grounds in the motion, the Commission will take no action and the motion will be overruled by operation of law.

(d) The Commission delegates authority to hear and rule on motions for rehearing to the Commission's Enforcement Committee, consisting of three Commission members appointed by the Commission chair. A motion for rehearing may be ruled upon pursuant to §2001.146(d), Texas Government Code.

(e) Any party may request oral arguments before the Enforcement Committee prior to the final disposition of the motion for rehearing. If the Enforcement Committee grants a request for oral argument, oral arguments will be conducted in accordance with paragraphs (1) - (5) of this subsection.

(1) The chair of the Enforcement Committee or the member designated by the chair to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments to be presented by the parties.

(2) The hearing on the motion shall be limited to a consideration of the grounds set forth in the motion. Testimony by affidavit or documentary evidence, such as excerpts of the record before the presiding officer, may be offered in support of, or in opposition to, the motion; provided, however, a party offering affidavit testimony or documentary evidence must provide the other party with copies of the affidavits or documents at the time the motion is filed. New evidence may not be presented on the substance of the case unless the party submitting the evidence can establish that the new evidence was not reasonably available at the time of the original hearing, or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

(3) In presenting oral arguments, the party filing the motion will have the burden of proof and persuasion and shall open and close. The party responding to the motion may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal, subject to the discretion of the presiding member.

(4) After being recognized by the presiding member, the members of the Enforcement Committee may ask questions of the parties. If a party is represented by counsel, the questions must be directed to the party's attorney. Questions must be limited to the grounds asserted for the motion to be granted and to the arguments made by the parties.

(5) Upon the conclusion of oral arguments, questions by the members of the Enforcement Committee, and any discussion by the members of the Enforcement Committee, the presiding member shall call for a vote on the motion. A member of the Enforcement Committee need not make a separate motion or second a motion filed by a party. The presiding member may vote on the motion. A motion may be granted only if a majority of the Enforcement Committee members are present and vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.

(f) A petition for judicial review must be filed in a District Court of Travis County Texas as provided by the APA. A party filing a petition for judicial review must also comply with the requirements of Texas Occupations Code, §1101.707.

(g) A party who appeals a final decision in a contested case must pay all costs for the preparation of the original or a certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.

(h) If, after judicial review, the administrative penalty is reduced or not assessed, the Executive Director shall remit to the person charged the appropriate amount, plus accrued interest if the administrative penalty has been paid, or shall execute a release of the bond if a supersedeas [supersedes] bond has been posted. The accrued interest on amounts remitted by the Executive Director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed administrative penalty is paid to the Commission and ending on the date the administrative penalty is remitted.

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 May 22, 2024.

TRD-202402301

Abby Lee

Deputy General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: July 7, 2024

For further information, please call: (512) 936-3057



CHAPTER 534. GENERAL ADMINISTRATION

22 TAC §534.4, §534.7

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §534.4, Historically Underutilized Businesses Program, and §534.7, Vendor Protest Procedures, in Chapter 534, General Administration.

The proposed amendments are made as a result of the Commission's quadrennial rule review. The amendments are proposed to correct references to applicable regulations in the Texas Administrative Code.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed new rules or amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater legal accuracy and clarity in the rules.

For each year of the first five years the proposed amendments are in effect, the amendments will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under §1101.151, Occupations Code, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendment to 22 TAC §534.4 is also proposed under §2161.003, Government Code, which requires the agency to adopt such a rule.

The statutes affected by this proposal are Chapters 1101 and 1102, Occupations Code. No other statute, code or article is affected by the proposed amendments.

§534.4. Historically Underutilized Businesses Program.

To comply with Texas Government Code §2161.003, the Commission adopts by reference the rules of the Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter D, Division 1 (relating to the Historically Underutilized Business Program).

§534.7. Vendor Protest Procedures.

(a) The purpose of this section is to provide a procedure for vendors to protest purchases made by the Commission and the Board. Protests of purchases made by the TFC on behalf of the Agency are addressed in 1 TAC Chapter 111, Subchapter C (relating to Complaints and Dispute Resolution). Protests of purchases made by DIR on behalf of the Agency are addressed in 1 TAC [~~Chapter 204,~~] §201.1 (relating to Procedures for Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures). Protests of purchases made by the Statewide Procurement Division of the Comptroller on behalf of the Agency are addressed in 34 TAC Chapter 20, Subchapter F, Division 3 (relating to Protests and Appeals). The rules of TFC, DIR, and the Comptroller are in the Texas Administrative Code, which is on the Internet website of the Office of the Secretary of State, Texas Register Division at: www.sos.state.tx.us/tac/index.shtml.

(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 May 22, 2024.

TRD-202402302

Abby Lee

Deputy General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3057



CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §535.64

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.64, Content Requirements for Qualifying Real Estate Courses, in Chapter 535, General Provisions.

The amendments are proposed to reflect changes to the course approval forms incorporated by reference in subsection (a)(1) - (3) of the rule related to the Principles of Real Estate I, Principles of Real Estate II, and Law of Agency courses. These course approval form revisions were recommended by the Education Standards Advisory Committee. These changes reorder and remove content from the course approval forms to ensure relevancy and that course objectives are being met.

Vanessa Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity and consistency in the rules, as well as ensuring relevant education.

For each year of the first five years the proposed amendments are in effect, the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under §1101.151, Texas Occupations Code, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102, as well as §1101.003, Texas Occupations Code, which allows the Commission to prescribe by rule the content of the qualifying real estate courses listed in this section.

The statute affected by this proposal is Chapter 1101, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.64. Content Requirements for Qualifying Real Estate Courses.

(a) Mandatory qualifying courses. To be approved by the Commission, the following mandatory qualifying courses must contain the content outlined below:

(1) Principles of Real Estate I shall contain the topics and units outlined in the PRINS 1-1 [1-0], Qualifying Real Estate Course Approval Form, Principles of Real Estate I, hereby adopted by reference.

(2) Principles of Real Estate II shall contain the topics and units outlined in the PRINS 2-1 [2-0], Qualifying Real Estate Course Approval Form, Principles of Real Estate II, hereby adopted by reference.

(3) Law of Agency shall contain the topics and units outlined in the LOA-1 [LOA-0], Qualifying Real Estate Course Approval Form, Law of Agency, hereby adopted by reference.

(4) Law of Contracts shall contain the topics and units outlined in the LOC-0, Qualifying Real Estate Course Approval Form, Law of Contracts, hereby adopted by reference.

(5) Promulgated Contract Forms shall contain the topics and units outlined in the PCF-0, Qualifying Real Estate Course Approval Form, Promulgated Contract Forms, hereby adopted by reference.

(6) Real Estate Finance shall contain the topics and units outlined in the REF-0, Qualifying Real Estate Course Approval Form, Real Estate Finance, hereby adopted by reference.

(7) Real Estate Brokerage (mandatory for a broker's license) shall contain the topics and units outlined in the REB-1, Qualifying Real Estate Course Approval Form, Real Estate Brokerage, hereby adopted by reference.

(b) Elective qualifying courses. To be approved by the Commission, the following elective qualifying courses must contain the content outlined below.

(1) Residential Property Management shall contain the topics and units outlined in the PROPM-1, Qualifying Real Estate Course Approval Form, Residential Property Management, hereby adopted by reference.

(2) Real Estate Marketing shall contain the topics and units outlined in the REM-0, Qualifying Real Estate Course Approval Form, Real Estate Marketing, hereby adopted by reference.

(3) Real Estate Math shall contain the topics and units outlined in the REMath-0, Qualifying Real Estate Course Approval Form, Real Estate Math, hereby adopted by reference.

(4) Real Estate Appraisal shall contain the topics outlined in the REA-0, Qualifying Real Estate Course Approval Form, Real Estate Appraisal, hereby adopted by reference.

(5) Real Estate Investment shall contain the topics outlined in the REI-0, Qualifying Real Estate Course Approval Form, Real Estate Investment, hereby adopted by reference.

(6) Real Estate Law shall contain the topics outlined in the REL-0, Qualifying Real Estate Course Approval Form, Real Estate Law, hereby adopted by reference.

(7) Residential Inspection for Real Estate Agents shall contain the outlined in the RIREA-0, Qualifying Real Estate Course Approval Form, Residential Inspection for Real Estate Agents, hereby adopted by reference.

(8) A 30 hour advanced course on any qualifying course subject matter or a combination of several different qualifying course subject matter topics as set out in subsections (a) and (b) of this section.

(c) Course Approval forms. All forms adopted by this section are available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

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 May 22, 2024.

TRD-202402303

Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: July 7, 2024

For further information, please call: (512) 936-3284

◆ ◆ ◆
SUBCHAPTER L. INACTIVE LICENSE STATUS

22 TAC §§535.121, 535.123, 535.124

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.121, Inactive Sales Agent License; §535.123, Inactive Broker Status; and new §535.124, Death of a Designated Broker, in Chapter 535, General Provisions.

Under Chapter 1101, Occupations Code (the Act) and Commission rules, in order for a business entity to obtain a broker's license, the entity must name a designated broker that: (i) holds an active broker's license in good standing with the Commission; and (ii) has managing authority for the business entity (e.g., a corporate officer, an LLC manager, an LLC member with managing authority, or a general partner). Under current Commission rules, when a designated broker for a business entity dies, the business entity license becomes inactive, as does any sponsored sales agent's license. This means that neither the entity nor the sales agent will be able to perform any real estate services that require a license, even if in the middle of a transaction. To return to active status, the entity needs to designate a new broker, who must satisfy the legal requirements referenced above. Even if the entity has a succession plan in place, this transition period can take time and leave consumers in the middle of transactions without representation.

Under the proposed amendments and new rule, the business entity and sponsored sales agents will be given a "safe harbor" or grace period of 14 days from the broker's death before their licenses inactivate. This will provide the entity with time to name a new designated broker that satisfies the statutory requirements

under the Act prior to going inactive. The proposed changes also remove the word "immediately" from §535.121 and §535.123. Through these changes, the proposal better aligns with current agency practice and provides better guidance in the event the designated broker of a licensed business entity dies.

Vanessa Burgess, General Counsel, has determined that for the first five-year period the proposed amendments and new rule are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments and new rule. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments and new rule. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater clarity in the rules to reflect agency processes surrounding broker succession.

For each year of the first five years the proposed amendments and new rule are in effect, the amendments and new rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and new rule are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Chapter 1101, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.121. Inactive Sales Agent License.

(a) The license of a sales agent [immediately] becomes inactive upon:

- (1) the death of the sales agent's sponsoring broker;

(2) the expiration, suspension, revocation or inactivation of the license of the sponsoring broker;

(3) if the sponsoring broker is a business entity, the dissolution of the entity or the forfeiture of its charter;

(4) if the sponsoring broker is a business entity, the expiration, suspension, revocation, or inactivation of the license of the designated broker of the entity [or the death of the designated broker];

(5) termination of sponsorship by the sales agent or sponsoring broker;

(6) failure to timely complete continuing education required under the Act and this chapter; or

(7) receipt by the Commission of an application for inactive status.

(b) If the broker intends to terminate the sponsorship, the broker must immediately:

(1) notify the sales agent in writing; and

(2) terminate the sponsorship:

(A) through the online process approved by the Commission; or

(B) on the appropriate form delivered to the Commission.

(c) If the sales agent intends to terminate the sponsorship, the sales agent must immediately:

(1) notify the broker in writing; and

(2) terminate the sponsorship:

(A) through the online process approved by the Commission; or

(B) on the appropriate form delivered to the Commission.

(d) If a sponsorship is terminated on a form under this section, the effective date of the termination of the sponsorship is the date the Commission receives the completed form and any applicable fee.

(e) It is the responsibility of the sales agent on inactive status to pay all required license renewal fees timely to prevent the inactive license from expiring.

§535.123. Inactive Broker Status.

(a) The license of an individual broker [immediately] becomes inactive when:

(1) the Commission receives an application for inactive status from the broker; or

(2) the broker is placed on inactive status by the Commission for failure to comply with a requirement of the Act or this chapter.

(b) The license of a business entity broker [immediately] becomes inactive when:

(1) the Commission receives an application for inactive status from the broker;

(2) the entity is not qualified to transact business in Texas;

(3) the designated broker's license:

(A) expires;

(B) is suspended, including a probated suspension; or

(C) is revoked, including a probated revocation; or

(4) the designated broker dies or resigns as designated broker, except as provided in §535.124 of this subchapter (relating to Death of a Designated Broker).

(c) The broker must confirm to the Commission in writing that the broker has given all sales agents sponsored by the broker written notice of termination of sponsorship at least 30 days before filing the application for inactive status.

(d) It is the responsibility of the broker on inactive status to pay all required license renewal fees timely to prevent the inactive license from expiring.

(e) To return to active status, a broker on inactive status must apply to the Commission for return to active status on a form approved by the Commission, pay the appropriate fee, and satisfy any continuing education requirements under the Act and this chapter.

§535.124. Death of a Designated Broker.

If the business entity broker sponsors any sales agents, the license of the business entity and any sponsored sales agent becomes inactive upon the expiration of 14 days after the date the designated broker dies, unless prior to the 14th day, the entity:

(1) names a new designated broker;

(2) provides to the Commission the information required by section 535.53(b)(5) of this chapter (relating to Business Entity; Designated Broker); and

(3) the Commission approves the new designated broker.

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 May 22, 2024.

TRD-202402304

Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: July 7, 2024

For further information, please call: (512) 936-3284



SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §§535.209, 535.213, 535.214

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.209, Examinations, §535.213, Qualifying Real Estate Inspector Instructors and Courses, and §535.214, Education and Experience Requirements for a License, in Chapter 535, General Provisions.

The amendments—which primarily rearrange existing requirements are being proposed to clarify that the Texas Practicum is an experience requirement (categorized by statute as field work) and is separate and apart from an educational course. Education providers can still offer the Texas Practicum, but will no longer need to submit a course application for the Texas Practicum or issue course completion certificates to students. Instead, students will submit the credit request form to the agency to obtain credit.

The Texas Real Estate Inspector Committee recommended the amendments.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules and consistency with the applicable statutory requirements.

Except as provided below, for each year of the first five years the proposed amendments are in effect the amendments will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

The amendments would decrease fees paid to the agency as a result of bypassing the course approval requirements and associated fees as outlined above.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also proposed under Texas Occupations Code, §1102.111, which requires the agency, by rule, to provide for substitution of relevant experience in place of certain licensing requirements and limits the number of hours of field work.

The statute affected by this proposal is Texas Occupations Code, Chapter 1102. No other statute, code or article is affected by the proposed amendments.

§535.209. Examinations.

(a) Examinations for licensure.

(1) The examination for a real estate inspector license and for a professional inspector license consists of a national part and a state part.

(2) The Commission adopts the National Home Inspector Examination developed by the Examination Board of Professional Home Inspectors for the national portion of the examination. For the state portion of the examination, questions shall be used which measure competency in the subject areas required for a license by Chapter 1102, and which demonstrate an awareness of its provisions relating to inspectors.

(3) Each real estate inspector applicant must achieve a score of at least 70% on the state portion of the examination. Each professional inspector applicant must achieve a score of at least 75% on the state portion of the examination. Examination results are valid for a period of one year from the date the examination is passed.

(b) Administration of examination. Except as otherwise required by Chapter 1102 or this section, examinations shall be conducted as provided by §535.57 of this chapter (relating to Examinations). An applicant is eligible to take a qualifying examination for a license after the Commission has received evidence of completion of all education and experience required by this subchapter.

(c) Exam Eligibility.

(1) Before the applicant is eligible to take the national portion of the examination, the applicant must submit evidence of completion of the following courses to the Commission:

- (A) Property and Building Inspection Module I;
- (B) Property and Building Inspection Module II;
- (C) Business Operations and Professional Responsibilities Module; and
- (D) Analysis of Findings and Reporting Module, if required for licensure under §535.214 of this subchapter (relating to Education and Experience Requirements for Licensure).

(2) Before the applicant is eligible to take the state portion of the examination, the applicant must submit evidence of completion of the following [~~coursework~~] to the Commission, if required for licensure under §535.214 of this subchapter:

- (A) Texas Law Module;
- (B) Texas Standards of Practice Module; and
- (C) Texas Practicum, as defined by §535.214(h) of this subchapter.

(3) If the applicant has previously passed the national portion of the examination, before the applicant is eligible to take the state portion of the examination, the applicant:

(A) must submit evidence of completion of the required coursework as provided under paragraph (2) [~~subsection (e)(2)~~] of this subsection [~~section~~]; and

(B) is not required to complete coursework outlined under paragraph (1) [~~subsection (e)(1)~~] of this subsection [~~section~~].

(4) If the applicant fails the examination three consecutive times, the applicant may not apply for reexamination or submit a new license application unless the applicant submits evidence to the Commission that the applicant has successfully completed additional qualifying education after the date of the third failed examination, as follows:

(A) for an applicant who failed the national part of the examination, Property and Building Inspection Module I or Property and Building Inspection Module II; or

(B) for an applicant who failed the state part of the examination, Texas Law Module, or Texas Standards of Practice Module.

(5) If the applicant chooses to take the national portion and state portion of the exam separately, the national portion must be taken before the state portion of the exam.

§535.213. *Qualifying Real Estate Inspector Instructors and Courses.*

(a) Approval of Inspector Qualifying Courses. Inspector qualifying courses are approved and regulated as required by §535.62 of this chapter (relating to Approval of Qualifying Courses).

(b) Approved Qualifying Courses of Study. The subjects approved for credit for qualifying inspector courses consist of the following modules:

(1) Property and Building Inspection Module I (40 hours) shall contain the topics and units outlined in the PBIM 1-0, Property and Building Inspection I Qualifying Inspector Course Approval Form, hereby adopted by reference.

(2) Property and Building Inspection Module II (40 hours) shall contain the topics and units outlined in the PBIM 2-0, Property and Building Inspection II Qualifying Real Estate Inspector Course Approval Form, hereby adopted by reference.

(3) Analysis of Findings and Reporting Module (20 hours) shall contain the topics and units outlined in the AFRM-0, Analysis of Findings and Reporting Module Qualifying Real Estate Inspector Course Approval Form, hereby adopted by reference.

(4) Business Operations and Professional Responsibilities Module (10 hours) shall contain the topics and units outlined in the BO-PRM-0, Business Operations and Professional Responsibilities Qualifying Real Estate Inspector Course Approval Form, hereby adopted by reference.

(5) Texas Law Module (20 hours) shall contain the topics and units outlined in the TLM-1, Texas Law Module, Qualifying Real Estate Inspector Course Approval Form, hereby adopted by reference.

(6) Texas Standards of Practice Module (24 hours) shall contain the topics and units outlined in the TSOPM-0, Texas Standards of Practice Module Qualifying Real Estate Inspector Course Approval Form, hereby adopted by reference.

~~[(7) Texas Practicum (40 hours), which shall consist of a minimum of five complete and in-person inspections.]~~

~~[(A) The Texas Practicum must:]~~

~~[(i) be supervised by a currently licensed inspector who has:]~~

~~[(i) been actively licensed as a professional inspector for at least five years; and]~~

~~[(ii) at least three years of supervisory or training experience with inspectors; or]~~

~~[(iii) performed a minimum of 200 real estate inspections as a Texas professional inspector; and]~~

~~[(ii) consist of no more than four students per inspector supervising the Texas Practicum.]~~

~~[(B) The inspector supervising the Texas Practicum must evaluate that upon completion by the student, each report is:]~~

~~{(i) considered satisfactory for release to an average consumer; and}~~

~~{(ii) demonstrates an understanding of:}~~

~~{(I) report writing;}~~

~~{(II) client interaction;}~~

~~{(III) personal property protection; and}~~

~~{(IV) concepts critical for the positive outcome of the inspection process.}~~

~~{(C) An applicant may request credit for completing the Texas Practicum (40 hours) by submitting the credit request form approved by the Commission.}~~

~~{(D) Audits.}~~

~~{(i) The Commission staff may conduct an audit of any information provided on a Texas Practicum credit request form, including verifying that the inspector supervising the Texas Practicum meets the qualifications required to supervise the practicum.}~~

~~{(ii) The following acts committed by a supervisory inspector conducting the Texas Practicum are grounds for disciplinary action:}~~

~~{(I) making material misrepresentation of fact;}~~

~~{(II) making a false representation to the Commission, either intentionally or negligently, that a student completed the Texas Practicum in its entirety, satisfying all requirements for credit to be awarded.}~~

§535.214. *Education and Experience Requirements for a License.*

(a) Sponsored Experience and Education Requirements for a Real Estate Inspector License. To become licensed as a real estate inspector a person must:

(1) satisfy the 90-hour education requirement for licensure by completing the following coursework:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours; and

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(2) have been licensed as an apprentice inspector on active status for a total of at least three months within the 12 month period before the filing of the application;

(3) complete 25 inspections; and

(4) pass the licensure examinations set out in §535.209 of this subchapter (relating to Examinations).

(b) Sponsored Experience and Education Requirements for a Professional Inspector License. To become licensed as a professional inspector, a person must:

(1) satisfy the 134-hour education requirement for licensure by completing the following coursework:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours;

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(D) Texas Law Module, total 20 hours; and

(E) Texas Standards of Practice Module, total 24 hours;

(2) have been licensed as a real estate inspector on active status for a total of at least 12 months within the 24 month period before the filing of the application;

(3) complete 175 inspections; and

(4) pass the licensure examinations set out in §535.209 of this subchapter.

(c) Sponsored Experience Criteria. To meet the experience requirements for licensure under subsections (a) or (b) of this section, or to sponsor apprentice inspectors or real estate inspectors:

(1) the Commission considers an improvement to real property to be any unit capable of being separately rented, leased or sold; and

(2) an inspection of an improvement to real property that includes the structural and equipment/systems of the unit constitutes a single inspection.

(d) Substitute Experience and Education Requirements for a Real Estate Inspector License. As an alternative to subsection (a) of this section, to become a licensed real estate inspector, a person must:

(1) complete a total of 114 [~~154~~] hours of qualifying inspection coursework, which must include the following:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours;

(C) Business Operations and Professional Responsibilities Module, total 10 hours; and

(D) Texas Standards of Practice Module, total 24 hours; and

(2) ~~{(E)}~~ complete the Texas Practicum, as defined by subsection (h) of this section [total 40 hours]; and

(3) ~~{(2)}~~ pass the licensure examinations set out in §535.209 of this subchapter; and

(4) ~~{(3)}~~ be sponsored by a professional inspector.

(e) Substitute Experience and Education Requirements for a Professional Inspector License. As an alternative to subsection (b) of this section, to become a licensed professional inspector, a person must:

(1) complete a total of 154 [~~194~~] hours of qualifying inspection coursework, which must include the following:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours;

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(D) Analysis of Findings and Reporting Module, total 20 hours;

(E) Texas Law Module, total 20 hours;

(F) Texas Standards of Practice Module, total 24 hours; and

(2) ~~[(G)]~~ complete the Texas Practicum as defined by subsection (h) of this section [~~; total 40 hours~~]; and

(3) ~~[(2)]~~ pass the licensure examinations set out in §535.209 of this subchapter.

(f) Courses completed for a real estate inspector license under this section shall count towards the identical qualifying inspection coursework for licensure as a professional inspector.

(g) Experience Credit. The Commission may award credit for education required under subsections (d) and (e) of this section to an applicant who:

(1) has three years of experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property; and

(2) provides to the Commission two affidavits from persons who have personal knowledge of the applicant's work, detailing the time and nature of the applicant's relevant experience.

(h) Texas Practicum.

(1) To receive credit for completion, the Texas Practicum must:

(A) be supervised by a licensed inspector who has:

(i) been actively licensed as a professional inspector for at least five years; and

(ii) at least three years of supervisory or training experience with inspectors; or

(iii) performed a minimum of 200 real estate inspections as a Texas professional inspector;

(B) consist of:

(i) a minimum of five complete and in-person inspections, totaling 40 hours; and

(ii) no more than four students per supervising inspector; and

(C) include a review of each inspection report prepared by the applicant in which the supervising inspector must find that each report:

(i) is considered satisfactory for release to an average consumer; and

(ii) demonstrates an understanding of:

(I) report writing;

(II) client interaction;

(III) personal property protection; and

(IV) concepts critical for the positive outcome of the inspection process.

(2) An applicant may request credit for completing the Texas Practicum by submitting to the Commission the credit request form approved by the Commission.

(3) Audits.

(A) The Commission staff may conduct an audit of any information provided on the credit request form, including verifying

that the supervising inspector meets the qualifications in paragraph (1)(A) of this subsection.

(B) The following acts committed by a supervising inspector conducting the Texas Practicum are grounds for disciplinary action:

(i) making material misrepresentation of fact;

(ii) making a false representation to the Commission, either intentionally or negligently, that an applicant completed the Texas Practicum in its entirety, satisfying all requirements for credit.

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 May 22, 2024.

TRD-202402305

Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: July 7, 2024

For further information, please call: (512) 936-3284



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 363. COUNTY INDIGENT HEALTH CARE PROGRAM

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §363.1, concerning State Assistance Fund; §363.3, concerning Eligibility Dispute; §363.53, concerning Residence; §363.59, concerning Resources; and §363.101, concerning Basic and Optional Services; and new §363.5, concerning Eligibility of a County for State Assistance.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with House Bill 4510, 88th Legislature, Regular Session, 2023, which authorizes HHSC to require a county to provide certain tax information for the purpose of determining eligibility for state assistance under the County Indigent Health Care Program (CIHCP). This proposal also makes updates to reflect the previous transfer of program administration from the Department of State Health Services (DSHS) to HHSC and other minor administrative edits to improve clarity throughout the chapter.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §363.1, State Assistance Fund, makes updates to refer to "HHSC" rather than "DSHS" and minor administrative edits to clarify rule language that may be confusing to stakeholders and the public.

The proposed amendment to §363.3, Eligibility Dispute, makes updates to refer to "HHSC" rather than "department" and the term "provider of assistance" to "health care provider."

Proposed new §363.5, Eligibility of a County for State Assistance, includes new requirements and guidance for counties to

report certain tax information to HHSC in order to be eligible to receive state assistance under CIHCP, as authorized by House Bill 4510. The proposed rule includes the eligibility rules being removed from §363.1(b) and (c) in the proposed amendment to §363.1. This is being done to organize the rules related to eligibility of a county for state assistance into one rule section.

The proposed amendment to §363.53, Residence, clarifies language regarding who can be counted as a county resident with minor administrative edits to clarify language that may be confusing to stakeholders and the public.

The proposed amendment to §363.59, Resources, makes updates to refer to "HHSC" rather than "DSHS" and minor administrative edits to clarify rule language that may be confusing to stakeholders and the public.

The proposed amendment to §363.101, Basic and Optional Services, makes updates to refer to "HHSC" rather than "DSHS" and updates licensing language for Advanced Practice Registered Nurses, certified nurse practitioners, and certified midwives.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create a new regulation;
- (6) the proposed rules will not expand existing regulations;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rob Ries, Deputy Executive Commissioner for Family Health Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be compliance with current statute and improved readability of the rule language.

Trey Wood, Chief Financial Officer, has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rules do not impose any additional costs or fees.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or by e-mail to CIHCP@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, hand-delivered or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R050" in the subject line.

SUBCHAPTER A. PROGRAM ADMINISTRATION

26 TAC §§363.1, 363.3, 363.5

STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the administration of Health and Safety Code Chapter 1001; Health & Safety Code §§61.006-61.009, which require the establishment of eligibility standards and application, documentation, verification, and reporting procedures for counties in determining eligibility under the program; and Health and Safety Code §61.040(a), which provides that HHSC may require a county to provide certain information for determining eligibility for state assistance under Chapter 61, and §61.040(b), which requires HHSC to prescribe the manner in which a county must provide such information.

The amendments and new section affect Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075 and §§61.006-61.009 and §61.040.

§363.1. *State Assistance Fund.*

(a) The Health and Human Services Commission (commission) [Department of State Health Services (department)] is respon-

sible for distributing state assistance to eligible counties to the extent appropriated state funds are available.

~~{(b) The department establishes the eligibility requirements and internal procedures for a county applying for state assistance.}~~

~~{(e) The department determines a county's eligibility for state assistance.}~~

~~(b) [(d)] The commission [department] distributes funds to eligible counties based on a maximum annual allocation.~~

(1) The maximum annual allocation will be based on such factors as spending history, population, and the number of residents living below the Federal Poverty Guideline.

(2) The commission-established ~~[department-established]~~ allocation of the state assistance funds will distinguish the amount of funds allocated between the counties that ~~[actually]~~ were eligible and received state assistance funds the prior state fiscal year, and other potentially eligible counties.

(3) The commission ~~[Up to the legislatively-mandated or department-established appropriated state assistance funds for each county, the department]~~ may reallocate the unspent funds to eligible counties, up to the appropriated state assistance funds available for each county.

(4) No county can be approved for more than the ~~legislatively mandated [legislatively-mandated]~~ or commission-established ~~[department-established]~~ percent of the appropriated state assistance fund within a state fiscal year.

§363.3. Eligibility Dispute.

(a) If a health care provider ~~[of assistance]~~ and a governmental entity or hospital district cannot agree on a household's eligibility for assistance, the provider or the governmental entity or hospital district may submit the matter to the Health and Human Services Commission (commission) ~~[department]~~ not later than the 90th day after the eligibility determination was issued.

(b) The health care provider ~~[of assistance]~~ and the governmental entity or hospital shall submit all relevant information to the commission ~~[department]~~ in accordance with the internal procedures established by the commission ~~[department]~~.

(c) From the information submitted, the commission ~~[department]~~ shall determine the household's eligibility for assistance.

(d) Not later than the 45th day after the receipt of the matter, the commission ~~[department]~~ shall notify each governmental entity or hospital district and the health care provider ~~[of assistance]~~ of the decision and the reasons for the decision.

§363.5. Eligibility of a County for State Assistance.

(a) The Health and Human Services Commission (commission) establishes the eligibility requirements and internal procedures for a county applying for state assistance.

(b) The commission determines a county's eligibility for state assistance.

(c) To be eligible for state assistance under this chapter, a county must provide the following information for September 1 to August 31 of each fiscal year:

- (1) the taxable value of property taxable by the county;
- (2) the county's applicable general revenue tax levy; and
- (3) the amount of sales and use tax revenue received by the county.

(d) A county must submit the information required by subsection (c) of this section:

(1) according to commission guidelines in the program policy manual; and

(2) by the deadline prescribed by the commission.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: July 7, 2024

For further information, please call: (512) 438-2350

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SUBCHAPTER B. DETERMINING ELIGIBILITY

26 TAC §363.53, §363.59

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the administration of Health and Safety Code Chapter 1001; Health & Safety Code §§61.006-61.009, which require the establishment of eligibility standards and application, documentation, verification, and reporting procedures for counties in determining eligibility under the program; and Health and Safety Code §61.040(a), which provides that HHSC may require a county to provide certain information for determining eligibility for state assistance under Chapter 61, and §61.040(b), which requires HHSC to prescribe the manner in which a county must provide such information.

The amendments affect Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075 and §§61.006-61.009 and §61.040.

§363.53. Residence.

(a) A person must live in the Texas county where the person [to which he] applies for assistance.

(b) No time limit is placed on a person's absence from the county. If a person proves county residency at application, the person remains a county resident until factual evidence proves otherwise.

(c) A person is not required to live in a county ~~[There are no durational requirements]~~ for any specific period of time to be considered a resident [residency].

(d) A person is not considered a county resident, even if the person lives in the county, if the person:

(1) is ~~[Even if]~~ a student who is a minor; and

(2) is ~~[student lives in the county, the minor student]~~ primarily supported by a parent ~~[his parents,]~~ whose ~~[home]~~ residence is in another county or state~~], is not considered a county resident].~~

(e) A person cannot qualify for county health care assistance from more than one county simultaneously.

(f) A person is not required to have a permanent dwelling or [a] fixed residence in the person's county to be considered a resident.

§363.59. Resources.

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

(1) Assets--All items of monetary value owned by an individual, excluding personal possessions.

(2) Resources--Both liquid and non-liquid assets a person can convert to meet his immediate needs. As established by the Health and Human Services Commission (commission) [department], resources are either countable or exempt.

(A) Liquid resources are resources that are readily negotiable, such as cash, checking or savings accounts, savings certificates, stocks, or bonds.

(B) Non-liquid resources include vehicles, buildings, land, or certain other property.

(3) Accessible resource--A resource that is legally available to the household.

(4) Inaccessible resource--A resource that is not legally available to the household.

(5) Personal possessions--Furniture, appliances, jewelry, clothing, livestock, farm equipment, and other items if the household uses them to meet personal needs essential for daily living.

(6) Real property--Land and any improvements on it.

(7) Fair market value--The amount of money an item would bring if sold in the current local market.

(8) Equity--The fair market value of an item minus all money owed on it and the cost associated with its sale or transfer.

(b) Resource Limit. The total value of non-exempt resources available to the household cannot exceed:

(1) \$3,000 for households which include the applicant or a relative living in the home who is aged or disabled; or

(2) \$2,000 for all other households.

(c) The following criteria will be used to determine the household's resource limit category.

(1) A related person is a person who meets the Temporary Assistance for Needy Families (TANF) [TANF] relationship criteria, either biologically or by adoption.

(2) An aged person is a person age 60 or older as of the last day of the month for which benefits are being requested.

(3) A disabled person is a person who meets the TANF disability criteria.

(d) In determining eligibility:

(1) a county must not consider the value of the applicant's homestead;

(2) a county must consider as a resource the value of a vehicle under commission-established [department-established] guidelines;

(3) a county must consider a household ineligible for assistance if [; within three months before application or any time after

certification;] the household transfers title of a countable resource for less than its fair market value within three months before application or any time after certification to reach [qualify for assistance; the county must consider the household ineligible for the department-established length of time. This penalty applies if the total of the transferred] resource eligibility guidelines [added to other resources affects eligibility for assistance];

(4) a county must consider as a resource real property other than a homestead and must count that property in determining eligibility;

(5) a county may disregard the applicant's real property if the applicant agrees to the terms of an enforceable obligation negotiated with the county to reimburse the county for all or part of the benefits received under the County Indigent Health Care Program; and

(6) resources from non-household members or [and/or] disqualified household members are excluded, unless a county chooses to include the resources of a person who executed an affidavit of support on behalf of a sponsored alien, as defined in §363.57(a)(4) [at §14.104(a)(4)] of this subchapter (relating to Income) [title], and the resources of the person's spouse, as authorized by Health and Safety Code, §61.008(a)(6).

(e) If a county chooses to include the resources of a person who executed an affidavit of support on behalf of a sponsored alien and the resources of the person's spouse, the county shall adopt written procedures for processing the resources of the sponsor and the sponsor's spouse.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-2350



SUBCHAPTER C. PROVIDING SERVICES

26 TAC §363.101

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the administration of Health and Safety Code Chapter 1001; Health & Safety Code §§61.006-61.009, which require the establishment of eligibility standards and application, documentation, verification, and reporting procedures for counties in determining eligibility under the program; and Health and Safety Code §61.040(a), which provides that HHSC may require a county to provide certain information for determining eligibility for state assistance under Chapter 61, and §61.040(b), which requires HHSC to prescribe the manner in which a county must provide such information.

The amendment affects Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075 and §§61.006-61.009 and §61.040.

§363.101. *Basic and Optional Services.*

(a) Except as specified in the Health and Human Services Commission-established ~~department-established~~ service exclusions and limitations, counties are required to provide the following basic health care services to eligible households by reimbursing providers of services who meet the requirements of this chapter and the responsible county.

(1) Inpatient hospital services. Services must be medically necessary and:

- (A) provided in an acute care hospital;
- (B) provided to hospital inpatients;
- (C) provided by or under the direction of a physician;
- (D) provided for the care and treatment of patients.

and

(2) Outpatient hospital services. Services must be medically necessary and:

- (A) provided in an acute care hospital or hospital-based ambulatory surgical center;
- (B) provided to hospital outpatients;
- (C) provided by or under the direction of a physician;
- (D) are diagnostic, therapeutic, or rehabilitative.

and

(3) Physician services. Services must be medically necessary and provided by a physician in the doctor's office, a hospital, a skilled nursing facility, or elsewhere.

(4) Up to three prescriptions for drugs per recipient per month. New and refilled prescriptions count equally toward this total prescription limit. Drugs must be prescribed by a physician or other practitioner within the scope of practice under law. The quantity of drugs prescribed depends on the prescribing practice of the physician or other practitioner and the needs of the patient.

(5) Skilled nursing facility services (SNF). Services must be medically necessary, ordered by a physician, and provided in a SNF ~~skilled nursing facility~~ that provides daily services on an inpatient basis.

(6) Rural health clinic services. Rural health clinic services must be provided in a rural health clinic by a physician, a physician ~~physician's~~ assistant (PA), an advanced practice registered nurse (APRN) licensed by the Texas Board of Nursing, such as a certified nurse practitioner, a certified nurse midwife, or other specialized nurse practitioner.

(7) Family planning services. These are preventive health and medical services that assist an individual in controlling fertility and achieving optimal reproductive and general health.

(8) Laboratory and x-ray services. These are technical laboratory and radiological services ordered and provided by, or under the direction of, a physician in an office or a similar facility other than a hospital outpatient department or clinic.

(9) Immunizations. These are given when appropriate.

(10) Medical screening services. These medical services include blood pressure, blood sugar, and cholesterol screening.

(11) Annual physical examinations. These are examinations provided once per calendar year by a physician or a PA ~~physician's assistant (PA)~~. Associated testing, such as mammograms, can be covered with a physician's referral. These services may also be provided by an APRN ~~Advanced Practice Nurse (APN)~~ if the services ~~they~~ are within the scope of practice of the APRN ~~APN~~ in accordance with the standards established by the Texas Board of Nursing ~~Nurse Examiners~~ and published in 22 Texas Administrative Code, §221.13.

(b) The following services are optional health care services.

(1) Ambulatory surgical center (ASC) services. These services must be provided in a freestanding ASC, and are limited to items and services provided in reference to an ambulatory surgical procedure, including those services on the Center for Medicare & ~~and~~ Medicaid Services ~~[(CMS)]~~-approved list and selected Medicaid-only procedures.

(2) Federally Qualified Health Center (FQHC) services. These services must be provided in an FQHC by a physician, a PA ~~physician's assistant~~, an APRN ~~a nurse practitioner~~, a clinical psychologist, or a clinical social worker.

(3) PA ~~Physician assistant (PA)~~ services. These services must be medically necessary and provided by a PA under the direction of a physician and may be billed by and paid to the supervising physician.

(4) APRN ~~Advanced practice nurse (APN)~~ services. These services must be provided by an APRN licensed by the Texas Board of Nursing as ~~[An APN must be licensed as a registered nurse (RN) within the categories of practice, specifically,] a certified nurse practitioner, a clinical nurse specialist, a certified nurse midwife~~ ~~[(CNM) and], or a certified registered nurse anesthetist~~ ~~[(CRNA), as determined by the Board of Nurse Examiners]~~. APRN ~~APN~~ services must be medically necessary, provided within the scope of practice of an APRN ~~APN~~, and covered in the Texas Medicaid Program.

(5) Counseling services. Psychotherapy services must be medically necessary based on a physician referral, and provided by a licensed professional counselor ~~[(LPC)]~~, a licensed master social worker-advanced clinical practitioner ~~[(LMSW-ACP)]~~, a licensed marriage family therapist ~~[(LMFT)]~~, or a doctorate-level ~~[Ph.D.]~~ psychologist. These services may also be provided based on an APRN ~~APN~~ referral if the referral is within the scope of the APRN's ~~their~~ practice in accordance with the standards established by the Texas Board of Nursing ~~Nurse Examiners~~ and published in 22 Texas Administrative Code, §221.13.

(6) Diabetic medical supplies and equipment. These supplies and equipment must be medically necessary and prescribed by a physician. The county may require the supplier to receive prior authorization. Items covered are lancets, alcohol prep pads, syringes, test strips, Humulin ~~humulin~~ pens, and glucometers. These supplies and equipment may also be prescribed by an APRN ~~APN~~ if this is within the scope of the APRN's ~~their~~ practice in accordance with the standards established by the Texas Board of Nursing ~~Nurse Examiners~~ and published in 22 Texas Administrative Code, §221.13.

(7) Colostomy medical supplies and equipment. These supplies and equipment must be medically necessary and prescribed by a physician. The county may require the supplier to receive prior authorization. Items covered are colostomy bags/pouches; cleansing irrigation kits, paste, or powder; and skin barriers with flange (wafers). These supplies and equipment may also be prescribed by an APRN ~~APN~~ if this is within the scope of the APRN's ~~their~~ practice in

accordance with the standards established by the Texas Board of Nursing[Nurse Examiners and published in 22 Texas Administrative Code, §221.13].

(8) Durable medical equipment. This equipment must be medically necessary; meet the Medicare/Medicaid requirements; and provided under a written, signed, and dated physician's prescription. The county may require the supplier to receive prior authorization. Items can be rented or purchased, whichever is the least costly. Items covered are crutches, canes, walkers, standard wheel chairs, hospital beds, home oxygen equipment (including masks, oxygen hose, and nebulizers), and reasonable and appropriate appliances for measuring blood pressure. These supplies and equipment may also be prescribed by an APRN [APN] if this is within the scope of the APRN's [their] practice in accordance with the standards established by the Texas Board of Nursing[Nurse Examiners and published in 22 Texas Administrative Code, §221.13].

(9) Home and community health care services. These services must be medically necessary; meet the Medicare/Medicaid requirements; and provided by a certified home health agency. A plan of care must be recommended, signed, and dated by the recipient's attending physician prior to care being given. A plan of care may also be recommended, signed, and dated by a PA or APRN who is licensed by the Texas Board of Nursing as a certified nurse practitioner or clinical nurse specialist. The county may require prior authorization. Items covered are registered nurse [Registered Nurse] (RN) visits for skilled nursing observation, assessment, evaluation, and treatment provided a physician specifically requests the RN visit for this purpose. A home health aide to assist with administering medication is also covered. Visits made for performing housekeeping services are not covered.

(10) Dental care. These services must be medically necessary and provided by a doctor of dental surgery, a doctor of medicine in dentistry, or a doctor of dental medicine[DDS, a DMD, or a DDM]. The county may require prior authorization. Items covered are an annual routine dental exam and the least costly service for emergency dental conditions for the removal or filling of a tooth due to abscess, infection, or extreme pain.

(11) Vision care, including eyeglasses. The county may require prior authorization. Items covered are one examination of the eyes by refraction and one pair of prescribed glasses every 24 months.

(12) Emergency medical services. These services are ground ambulance transport services. When the client's condition is life-threatening and requires the use of special equipment, life support systems, and close monitoring by trained attendants while en route to the nearest appropriate facility, ground ambulance transport is an emergency service.

(13) Physical therapy services. These services must be medically necessary and may be covered if provided in a physician's office, a therapist's office, in an outpatient rehabilitation or free-standing rehabilitation facility, or in a licensed hospital. Services must be within the provider's scope of practice, as defined by Texas Occupations Code Chapter 453.

(14) Occupational therapy services. These services must be medically necessary and may be covered if provided in a physician's office, a therapist's office, in an outpatient rehabilitation or free-standing rehabilitation facility, or in a licensed hospital. Services must be within the provider's scope of practice, as defined by Texas Occupations Code Chapter 454.

(15) Other medically necessary services or supplies that the local governmental municipality/entity determines to be cost effective.

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 May 24, 2024.

TRD-202402345

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: July 7, 2024

For further information, please call: (512) 438-2350

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 9. EXPLORATION AND LEASING OF STATE OIL AND GAS

SUBCHAPTER D. PAYING ROYALTY TO THE STATE

31 TAC §9.51

BACKGROUND AND ANALYSIS OF PROPOSED AMENDMENT

On behalf of the School Land Board ("SLB"), the General Land Office ("GLO") proposes an amendment to 31 TAC §9.51 (relating to Royalty and Reporting Obligations to the State) by amending clause 9.51(b)(3)(E)(iv).

The proposed amendment clarifies the procedures and standards for the reduction by the SLB of interest charged or penalties assessed under Texas Natural Resources Code §52.131 or any other interest or penalties assessed by the Land Commissioner relating to unpaid or delinquent royalties, or unfiled or delinquent reports.

FISCAL AND EMPLOYMENT IMPACTS

Brian Carter, Senior Deputy Director of Asset Enhancement of the GLO, has determined that (i) during the first five-year period the proposed amended rule is in effect, there will be no cost or fiscal implications for local governments expected as a result of enforcing or administering the rule, and that any fiscal impact of reduced penalties and/or interest on the State or the permanent school fund will be offset by reducing the inherent risks of litigation and/or by the more efficient use of audit, revenue reporting, and collections staff in pursuing other and greater amounts due relating to unpaid or delinquent royalties of other lessees, and (ii) there will be no impact on employment expected.

PUBLIC BENEFIT

Brian Carter, Senior Deputy Director of Asset Enhancement of the GLO, has determined that, during the first five-year period the proposed amended rule is in effect, the public benefits expected from the proposed amendment include clarification of the procedures and standards used by the SLB in evaluating requests for reduced penalties and/or interest, greater transparency in agency decision making, and more efficient use of staff time for maintaining income into the permanent school fund. Mr. Carter has further determined that, during the same period, there are

no persons required to comply with this rule amendment, and that there are no probable costs to persons who seek to take advantage of the rule amendment.

PUBLIC COMMENT REQUEST

Comments may be submitted to Walter Talley, Office of General Counsel, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78701 or by facsimile (512) 463-6311, by no later than 30 days after publication.

STATUTORY AUTHORITY

This amendment to 31 TAC §9.51 is proposed pursuant to the authority set out in Texas Natural Resources Code (1) §52.131(j), which states that the SLB may provide procedures and standards for reduction of interest charged or penalties assessed under Texas Natural Resources Code §52.131 or any other interest or penalties assessed by the Land Commissioner relating to unpaid or delinquent royalties, and (2) §52.131(h), which states that the Land Commissioner may establish by rule a reasonable penalty for late filing of reports or any other instrument to be filed pursuant to Texas Natural Resources Code, Chapter 52.

Jeff Gordon, General Counsel of the GLO, has determined, and certifies, that the proposed amendment is within the SLB's authority to adopt.

§9.51. *Royalty and Reporting Obligations to the State.*

(a) (No change.)

(b) Monetary royalties and reports

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

(3) Penalties and interest.

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

(E) Reduction of penalty and/or interest. For royalties due on or after February 26, 2010, the interest rate assessed on delinquent royalties shall be determined as of the date of the first business day of the year the royalty becomes delinquent and will be reduced to prime plus one percent.

(i) - (iii) (No change.)

(iv) A lessee may request in writing a reduction of interest charged or penalties assessed under Texas Natural Resource Code §52.131 or any other interest or penalties assessed by the commissioner relating to unpaid or delinquent royalties, or late filed reports. The board may consider any factors when considering such a request, including the facts and circumstances supporting the lessee's request for a reduction, any history of delinquency by the lessee, any good faith attempts of the lessee to rectify the consequences of the delinquency, including by paying the amount of the unpaid or delinquent royalty, the recommendations of staff, and the costs and risks associated with litigation. For governmental efficiency, the board may delegate to the commissioner and/or to staff designated by the commissioner for this purpose the authority to reduce interest charged or penalties assessed relating to unpaid or delinquent royalties if the aggregate unreduced amount of such penalties and interest to be reduced is equal to or less than a de minimis amount established by the board from time to time at a regular or special public meeting.

(4) - (5) (No change.)

(c) (No change.)

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

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TRD-202402291

Mark Havens

Chief Clerk

General Land Office

Earliest possible date of adoption: July 7, 2024

For further information, please call: (512) 475-1859



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

31 TAC §15.36

The General Land Office (GLO) proposes amendments to 31 Texas Administrative Code (TAC) §15.36, relating to Certification Status of the City of Galveston Dune Protection and Beach Access Plan (Plan). The City of Galveston (City) has proposed amendments to its Plan and to its Erosion Response Plan (ERP) that include adopting a variance for the use of reinforced concrete in the area within 200 feet from the line of vegetation for a certain property partially behind the seawall, prohibiting vehicular beach access at Access Point 7 -- Sunny Beach Subdivision, reducing the size of the Restricted Use Area at Access Point 1(C) by 1,000 linear feet, adding an ADA use area at Access Point 2 and additional vehicular beach access areas at Access Point 6 and Access Point 13, updating the Beach Access Plan in Appendix A, and modifications to the Beach Access Maps in Exhibit C.

The GLO also proposes to change the conditional certification status of the City's Plan to fully certified and to certify its beach access provisions as consistent with state law. During the time its Plan was conditionally certified, the City continued to restore and enhance the public's ability to access and use the public beach. The noncompliance issues noted in the previous Compliance Plan have been resolved, and many of those resolutions are memorialized in the City's proposed amendments to Appendix A and Exhibit C of the Plan.

The GLO proposes to amend §15.36(d) and to add new subsection (e) to certify the amendments to the Plan as consistent with state law. Copies of the City's proposed Plan can be obtained by contacting the GLO or the City of Galveston.

BACKGROUND OF THE PROPOSED AMENDMENTS

Pursuant to the Open Beaches Act, Texas Natural Resources Code (TNRC) Chapter 61; the Dune Protection Act, TNRC Chapter 63; TNRC §33.607, and 31 Texas Administrative Code (TAC) §§15.3, 15.7, and 15.17, a local government with jurisdiction over Gulf coast beaches must submit any proposed amendments to its Plan or ERP to the GLO for certification. If appropriate, the GLO will certify that the Plan or ERP as consistent with state law by amendment of a rule, as authorized in TNRC §§61.011(d)(5), 61.015(b), and 63.121. The certification by rule reflects the state's certification of the Plan; however, the text of the Plan is not adopted by the GLO, as provided in 31 TAC §15.3(o)(4).

On March 21, 2024, the Galveston City Council passed Resolution No. 24-012, which authorized the City Manager to submit proposed amendments to the City's Plan to the GLO for certification. The amendments to the City's Plan were submitted to the GLO with proposed changes shown in redline. The proposed

changes will be adopted in an ordinance by City Council after certification of the Plan amendments as consistent with state law by the GLO. The document submitted to the GLO by the City includes proposed changes to the Plan previously adopted in City Ordinance Numbers 23-030, 23-038, 23-039, and 23-071. The Plan was submitted to the GLO with a request for certification of the amendments to the Plan as consistent with state law, and in accordance with 31 TAC §15.3 and §15.7, and TNRC Chapters 61 and 63.

The City is a coastal community in Galveston County, located on Galveston Island and bordering West Bay, Galveston Bay and the Gulf of Mexico. The City's Dune Protection and Beach Access Plan was first adopted on August 12, 1993, and most recently amended to adopt a Beach User Fee (BUF) increase at Seawall Beach Urban Park, which was conditionally certified by the GLO as consistent with state law effective March 4, 2021. The conditional certification status was renewed on October 22, 2021 and June 3, 2022 in *Texas Register* postings. The amendments to adopt a BUF increase at Seawall Beach Urban Park were conditionally certified because the City was not in compliance with certain beach access requirements under its Plan. The City has since met the requirements, and those amendments are now fully certified as consistent with state law.

ANALYSIS OF PLAN AMENDMENTS AND GLO'S PROPOSED AMENDMENT TO 31 TAC §15.36.

The proposed amendments to the City's Plan include a variance from 31 TAC §15.6(f) that would allow an exemption from the prohibition on the use of concrete under a structure located within 200 feet of the line of vegetation in an eroding area, under limited circumstances. To qualify for an exemption, the proposed or existing use of the structure is required to be multiple-family or commercial, and the structure must have an elevated, reinforced concrete deck at or above Base Flood Elevation. In addition, the proposed or existing structure must be designed, built, rented, or leased to be occupied as an attached, multiple-family residential living unit at least five stories in height, include multiple-family residential living units, be constructed at least in part behind the Galveston seawall, and utilize a stormwater detention system that mitigates peak water runoff on the development site. Exemption requests must be submitted to the Development Services Department and include stamped engineering drawings dated within 12 months of the submittal date, a statement of explanation for the request, documentation of the need to use reinforced concrete instead of fibercrete underneath the structure, and a demonstration that the above provisions will be met. The City will assess a special concrete maintenance fee to be used to pay for the clean-up of concrete from the public beach near the property, should the need arise.

The proposed variance is limited in scope and application to only one potential property, which is located partially behind the seawall. The City is requesting an exemption to the prohibition on concrete beneath a structure within 200 feet of the line of vegetation in an eroding area because of demonstrated concerns that fibercrete would not provide adequate structural support for a robust stormwater detention system under the footprint of a large multiple-family or commercial structure. A robust and effective stormwater detention system is a necessary component of coastal development and prevents further erosion of the beach and dune system, which is particularly important in areas adjacent to or partially behind a seawall or other hard structure. In proposing the rule, the GLO considered the multitude of conditions that must be demonstrated for an exemption to be granted,

the limited geographical scope of the variance, the requisite location partially behind the seawall, and the necessity of a robust and effective stormwater detention system that minimizes impacts to the beach and dune system.

The City also proposes to prohibit vehicles from 1,300 linear feet of beach at Access Point (AP) 7 - Sunny Beach Subdivision. Before vehicles can be prohibited from the beach, public beach access parking must be provided in the nearby public parking lot that will accommodate 92 cars (including 7 ADA spaces). In addition, 330 feet of overflow parallel parking (16 parking spaces, 7 of which will be ADA spaces) will be provided adjacent to the 8 Mile Road right-of-way between the parking lot and the beach. Pedestrian beach access from the parking areas will be via a sidewalk connecting the parking areas to the beach. In addition, a 100-foot-wide turnaround will be available on the beach at the seaward end of 8 Mile Road to allow beachgoers to drop off beach gear, non-motorized watercraft, fishing equipment, and people with mobility concerns.

The proposed modification to beach access meets the criteria in 31 TAC §15.7(h)(1), which states that when vehicles are prohibited from the beach, beach access and use is presumed to be preserved if parking on or adjacent to the beach is adequate to accommodate one car for each 15 linear feet of beach, ingress/egress access ways are no farther than ½ mile apart, and signs are conspicuously posted which explain the nature and extent of vehicular controls, parking areas, and access points, including access for persons with disabilities. Ninety-two public parking spaces are proposed for the parking lot, exceeding the 87 required parking spaces, and the ingress/egress access way is no more than ½ mile from adjacent access points. The City has committed to providing the required beach access signage at this access point and will conduct quarterly inspections of the signage, replacing the signage as needed. The public parking lot and pedestrian access pathway to the beach are required to be constructed and to be available to the public free of charge, and the required beach access signage must be conspicuously posted before the City implements the proposed vehicular prohibition at AP 7. The City is required to maintain the off-beach parking and pedestrian access pathway for the beach to remain closed to vehicular traffic.

The City also proposes to reduce the size of the Restricted Use Area (RUA) at AP 1(C) by 1,000 linear feet and to preserve those uses by authorizing a new ADA-only vehicular beach area at AP 2 and adding additional vehicular beach areas at AP 6 and AP 13. The existing RUA is a 2,640-foot-long stretch of beach adjacent to the east end of Stewart Beach that is open to vehicles for persons with disabilities displaying an ADA placard, people who are fishing, or people who are launching non-motorized personal watercraft. The RUA is also accessible to pedestrians from an adjacent off-beach parking area. To accommodate for the removal of 1,000 feet of existing RUA beach, the City is creating a 500-foot-long area that only vehicles with appropriate ADA placards can use for parking and direct access to the water. This new ADA-only beach area will be located within AP 2 - Stewart Beach in an area that is currently pedestrian only. This ADA-only beach area at AP 2 will be accessible by a vehicular access route shown on the Beach Access Maps in Exhibit C. The other 500 linear feet being removed from the RUA will be relocated to AP 6 - Pocket Park #1 and will consist of a vehicular beach added to the west side of that access point, increasing the area where vehicles are permitted on the beach at AP 6 from 1,690 linear feet to 2,190 linear feet. The proposed Plan amendments also include the addition of a 350-foot vehicular beach at AP 13 -

Pocket Park #3. The conversion of a pedestrian-only beach to vehicular beach at AP 13 is in addition to the required off-beach parking at this access point. The City will be required to adhere to the requirements in 31 TAC §15.7(h)(1) should the City ever propose to prohibit vehicles from driving on the beach in the new vehicular areas in the future.

The removal of 1,000 feet of the RUA and creation of a 500-foot ADA-only vehicular beach area within AP 2 and the expansion of the vehicular beach by 500 feet at AP 6 and 350 feet at AP 13 preserves the public's use of and access to the beach as required in 31 TAC §15.7(h). The GLO considers vehicular beaches to be an adequate preservation of beach access and use for persons with disabilities since vehicles are able to access the water directly and without limitation in those areas. Therefore, the linear footage of beach areas that are accessible for persons with disabilities is being increased from 1,000 feet to 1,350 feet across the island. The expansion of vehicular beaches at AP 6 and AP 13 also preserves the uses of launching non-motorized watercraft and fishing since vehicles can directly access the water. Prior to implementing the proposed changes to beach access in these areas, the required beach access signage must be conspicuously posted, and the 500 linear feet of vehicular beach dedicated to ADA use at AP 2 and the additional 850 linear feet of vehicular beaches at AP 6 and 13 must be available to the public before the City implements the proposed changes.

Since the existing RUA is open to vehicles only as a special use area for persons with disabilities, saltwater fishermen, and the launching of non-motorized personal watercraft, an off-beach parking area and pedestrian beach access pathway area is already required and provided at AP 1(C) - Area west of the Islander East to eastern boundary of Stewart Beach Park. The City proposes to specify in the Plan that 143 parking spaces are available at AP 1(C) and also proposes changes to the parking areas at AP 1(A) - Beachtown Development and AP 1(B) - Palisade Palms to reflect the actual, verified number and location of the parking spaces at these access points, and to incorporate previous changes included in City Ordinance No. 11-037. Ordinance No. 11-037 was adopted by City Council on May 26, 2011 and consisted of on-beach and off-beach parking and pedestrian access requirements for AP 1(A), AP 1(B), and AP 1(C) that were necessary for GLO to certify the City of Galveston Beach Access Plan as consistent with state law at that time.

At AP 1(A), the proposed Plan amendments would add an on-beach parking area with a minimum width of 480 feet and a minimum number of 101 on-beach parking spaces, reduce the number of parking spaces in the off-beach parking lots from 295 spaces to 161 spaces to reflect the actual capacity of the parking lots, and add 46 off-beach parking spaces throughout the subdivision. Therefore, the number of parking spaces reflected in the Plan at AP 1(A) has increased from 295 off-beach spaces to a total of 308 on-beach and off-beach spaces, combined. The number of off-beach parking spaces at AP 1(B) was increased from 108 spaces to 116 spaces, and one off-beach parking area with a minimum of 143 spaces was added in the Plan to AP 1(C). City Ordinance No. 11-037 requires a total of 610 parking spaces at these access points. The current Plan amendments provide a total of 567 parking spaces at APs 1(A), 1(B), and 1(C), which is 43 spaces short of the required number of spaces. To accommodate for this deficit, 50 additional parking spaces have been added to the free parking area at AP 2 - Stewart Beach Park. The City confirmed that they verified that the parking spaces proposed for APs 1(A), 1(B), 1(C), and

in the free parking area at Stewart Beach Park are available on-the-ground.

The GLO notified the City of numerous beach access and parking compliance concerns in 2018. Since that time, the City has been working to achieve compliance with the beach access provisions in its Plan. The City was required to develop a Compliance Plan that outlined the compliance issues and established timelines for resolution. After the City provided an adequate Compliance Plan and achieved partial compliance, the GLO conditionally certified the City's Plan and later renewed the conditional certification status on October 22, 2021 and June 3, 2022 in *Texas Register* postings. On February 1, 2023, the GLO notified the City that the outstanding compliance issues had been resolved since the City had demonstrated full compliance with all beach access and parking concerns noted in the Compliance Plan and submitted a Compliance Maintenance Plan requiring quarterly signage inspections and annual beach access and parking inspections. In addition to the currently proposed amendments described above, the GLO proposes to fully certify the amendments to the Plan that were published in the February 26, 2021 edition of the *Texas Register*. The currently proposed Plan amendments include updates to the Beach Access Plan in Appendix A and to the Beach Access Maps in Exhibit C to reflect the actions taken by the City to resolve the compliance issues. The City is required to maintain the parking areas and pedestrian access pathways in the Beach Access Maps by conducting regular inspections and taking corrective action as needed, as agreed in the Compliance Maintenance Plan provided to the GLO on February 8, 2023.

The City also proposes to amend the Plan to specify that 1,993 public beach access parking spaces are available at AP 3 - Seawall Beach Urban Park, which is 266 spaces short of the 2,259 spaces previously required in the City's Plan. The size of the free parking area at AP 2 - Stewart Beach Park has been increased by 300 spaces to accommodate for the required 266 spaces, bringing the total number of parking spaces in the free parking area to 600 spaces. In the future, 34 parking spaces are available in the free parking area at Stewart Beach for the City to relocate additional required parking from the Seawall Beach Urban Park as needed to make space on the seawall for beach access amenities and public safety.

The proposed Plan amendments also reduce the number of off-beach parking spaces at AP 9 - Pocket Park #2 from 352 spaces to 265 spaces to reflect the actual capacity of the parking lot. To accommodate the deficit in parking, 63 of the required spaces were relocated to AP 8 - Beachside Village, and 24 of the required spaces were relocated to AP 15(A) - Pirates Beach Subdivision. In total, 352 parking spaces are available in these three locations. The location of the off-beach public beach access parking at AP 8 - Beachside Village Subdivision was also changed from Butterfly Street to locations on streets throughout the subdivision.

The City also proposes to amend the Plan to reduce the number of off-beach parking spaces at AP 12 - Bermuda Beach Subdivision from 211 spaces to 87 spaces, distributed on John Reynolds Road, John Reynolds Circle, and Jane Road to reflect the actual verified amount and location of the parking spaces. To accommodate the deficit in parking, the on-beach parking area at Pabst Road was expanded from 150 linear feet to a minimum of 564.2 linear feet, which accommodates a minimum of 124 parking spaces.

The Plan amendments also include administrative changes related to updating non-substantive language for consistency with 31 TAC Chapter 15, including revisions to the requirements regarding permit renewals to mirror the requirements in 31 TAC §15.3(t). Specifically, the amendments change references from "permit extensions" to "renewals," remove the requirement for permit renewals to be submitted to the GLO before City review, and require permit renewals to be in compliance with the requirements outlined in 31 TAC §15.3(t).

FISCAL AND EMPLOYMENT IMPACTS

Ms. Angela Sunley, Deputy Director for the GLO's Coastal Resources Division, has determined that for each year of the first five years the amended rule as proposed is in effect, there will be minimal, if any, fiscal implications to the state government or local economy as a result of enforcing or administering the amended rules. Ms. Sunley has determined that the proposed amendments will not affect the costs of compliance for businesses or individuals. The proposed rulemaking will have no adverse local employment, and no impact statement is required pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. Sunley has determined that the public will be affected by the changes to the beach access plan and the adoption of the updated beach access maps. The amended and updated beach access plan and maps will enhance public beach access by making the public aware of the location of public beach parking throughout Galveston. In addition, the amendments will benefit the public by maintaining or enhancing ADA access to the beach.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments are proposed under TNRC §§33.602, 33.607, 61.011, 61.015(b), 61.022 (b) & (c), 63.091, and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to use and access public beaches and to certify local government beach access and use plans as consistent with state law. The proposed amendments do not exceed federal or state requirements.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by

the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§17 and 19 of the Texas Constitution. The GLO has also determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to property or use of that property. GLO has therefore determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for this proposed rulemaking. Since the proposed rules simply certify the amendments to City of Galveston's Dune Protection and Beach Access Plan and its Erosion Response Plan, they will not affect the operations of the General Land Office. The proposed rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriations to the agency, will not require the creation of new employee positions nor eliminate current employee positions at the agency, nor will it require an increase or decrease in fees paid to the General Land Office. The proposed rule amendments do not create, limit, or repeal existing agency regulations, but rather certify the amendments to the Plan as consistent with state law. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rules would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. The proposed amendments are expected to enhance or preserve beach access and protect environmental protection and safety.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program as provided for in Texas Natural Resources Code §33.2053 and 31 TAC §29.11(a)(1)(J) and §29.11(c) (relating to Actions and Rules Subject to the CMP). GLO has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations and has determined that the proposed action is consistent with the applicable CMP goals and policies. The applicable goals and policies are found at 31 TAC §26.12 (relating to Goals) and §26.26 (relating to Policies for Construction in the Beach/Dune System).

The proposed amendments are consistent with the CMP goals outlined in 31 TAC §26.12(5). These goals seek to balance the benefits of economic development and multiple human uses, the benefits of protecting, preserving, restoring, and enhancing coastal natural resource areas (CNRAs), and the benefits from public access to and enjoyment of the coastal zone. The proposed amendments are consistent with 31 TAC §26.12(5) as they provide the City with the ability to enhance public access and enjoyment of the coastal zone, protect and preserve and enhance the CNRA, and balance other uses of the coastal zone.

The proposed rules are also consistent with CMP policies in 31 TAC §26.26(a)(4) because they enhance and preserve the ability of the public, individually and collectively, to exercise rights of use of and access to and from public beaches.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number

(512) 463-6311 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code §§33.602, 33.607, 61.011, 61.015(b), 61.022 (b) & (c), 63.091, and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to access and use public beaches and certification of local government beach access and dune protection plans as consistent with state law.

Texas Natural Resources Code §§33.602, 33.607, 61.011, 61.015(b), 61.022 (b) & (c), 63.091, and 63.121 are affected by the proposed amendments. The GLO hereby certifies that the section as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

§15.36. Certification Status of City of Galveston Dune Protection and Beach Access Plan.

(a) The City of Galveston (City) has submitted to the General Land Office a dune protection and beach access plan (Beach and Dune Plan) which is adopted on August 12, 1993 and amended on February 9, 1995, June 19, 1997, February 14, 2002, March 13, 2003, January 29, 2004, February 26, 2004, and April 12, 2012. The City's plan is fully certified as consistent with state law.

(b) The General Land Office certifies as consistent with state law the City's Erosion Response Plan as an amendment to the Dune Protection and Beach Access Plan.

(c) The General Land Office certifies as consistent with state law the City's Beach and Dune Plan as amended on January 15, 2016 by Ordinance 16-003 to increase the daily beach user fee to a maximum of \$15.00 and season passes to a maximum of \$50 at Stewart Beach, R.A. Apfel Park, Dellanera Park, and Pocket Parks Nos. #1-3.

(d) The General Land Office [~~conditionally~~] certifies as consistent with state law amendments to the City of Galveston's Dune Protection and Beach Access Plan as amended on January 24, 2019 by Ordinance No. 19-012. The amendments include an increase in the Beach User Fee on the Seawall, the adoption of updated maps in Exhibit B, and a variance for certain in-ground pools. The amendments were adopted by City Council in Ordinance No. 19-012 on January 24, 2019, which incorporated previously adopted Ordinance No. 18-005.

(e) The General Land Office certifies as consistent with state law amendments to the City of Galveston's Dune Protection and Beach Access Plan in accordance with a City Council Resolution dated March 21, 2024. The amendments include a variance for the use of reinforced concrete, prohibit vehicular access at Access Point 7, reduce the size of the Restricted Use Area at Access Point 1(C) by 1,000 linear feet, add an ADA-only vehicular beach area at Access Point 2 and additional vehicular beach access areas at Access Points 6 and 13, and update the Beach Access Plan in Appendix A and Beach Access Maps in Exhibit C.

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

Filed with the Office of the Secretary of State on May 23, 2024.

TRD-202402338

Mark Havens

Chief Clerk

General Land Office

Earliest possible date of adoption: July 7, 2024

For further information, please call: (512) 475-1859

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 850. VOCATIONAL REHABILITATION SERVICES ADMINISTRATIVE RULES AND PROCEDURES

SUBCHAPTER A. VOCATIONAL REHABILITATION GENERAL RULES

The Texas Workforce Commission (TWC) proposes the repeal of the following section of Chapter 850, relating to Vocational Rehabilitation Services Administrative Rules and Procedures:

Subchapter A. Vocational Rehabilitation General Rules, §850.11

TWC proposes the following new section to Chapter 850, relating to Vocational Rehabilitation Services Administrative Rules and Procedures:

Subchapter A. Vocational Rehabilitation General Rules, §850.11

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 850 rule change is to clarify TWC's Vocational Rehabilitation Division's (VRD) Comprehensive System of Personnel Development (CSPD) standards for Qualified Vocational Rehabilitation Counselors (QVRCs) in accordance with 34 Code of Federal Regulations (CFR) §361.18, relating to vocational rehabilitation personnel development.

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. VOCATIONAL REHABILITATION GENERAL RULES

TWC proposes the following amendments to Subchapter A:

§850.11. Qualified Vocational Rehabilitation Counselor

Section 850.11 is repealed and added as new to clarify requirements for QVRCs.

The current rule language in §850.11(a) - (f) is repealed and proposed as new in new §850.11 with the updated QVRC requirements. The current rule language is added throughout new §850.11(e) - (j), except for current §850.11(d) because the rule language is no longer applicable.

The repealed rule language in §850.11(e) is added into two subsections in new §850.11 as follows:

--The rule language regarding the time period for completing the graduate education requirements is added into new §850.11(e).

--The rule language regarding transcript reviews and confirming certifications is moved from repealed §850.11(e) to new §850.11(f).

Additionally, the repealed rule language in current §850.11(a) and (f) is moved, with modifications, to new §850.11(g) and (j), respectively, to align with and clarify the updated QVRC requirements. New §850.11(a) clarifies that VRD develops and maintains the CSPD standards.

New §850.11(b) specifies what is needed for staff to be classified as a QVRC.

New §850.11(c) specifies what staff must do to be qualified to perform non-delegable duties.

New §850.11(d) specifies the minimum education and experience standards required to be hired as a VR counselor.

New §850.11(e) specifies the graduate education requirements that must be completed within seven years from completion of the initial training year.

New §850.11(f) specifies that VRD must conduct transcript reviews and/or confirm certifications to determine compliance with standards, coursework, and graduate education requirements.

New §850.11(g) is the rule language that was repealed from current §850.11(a), with modifications, to align with and clarify the updated QVRC requirements.

New §850.11(h) relating to QVRC financial assistance is the rule language that was repealed from current §850.11(b).

New §850.11(i) relating to the requirements for applying for QVRC program assistance is the rule language that was repealed from current §850.11(c).

New §850.11(j) is the rule language that was repealed from current §850.11(f), with modifications, to align with and clarify the updated QVRC requirements.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to clarify requirements for QVRCs.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

- 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 TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;
- will not change the number of individuals subject to the rules; and
- will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Cheryl Fuller, Director, Vocational Rehabilitation Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure Vocational Rehabilitation Counselors are sufficiently trained and prepared to effectively serve Texans with disabilities.

PART IV. COORDINATION ACTIVITIES

The proposed rule amendments to Chapter 850 have been reviewed by the Rehabilitation Council of Texas (RCT) in accordance with 34 CFR §§361.16 - 361.18.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than July 8, 2024.

40 TAC §850.11

PART VI. STATUTORY AUTHORITY

The rule is repealed under:

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

--Texas Labor Code §352.104(b), which provides TWC with the specific authority to establish rules for monitoring and oversight of VR counselor performance and decision making; 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 repealed rule relates to Title 4, Texas Labor Code, particularly Chapter 352.

§850.11. *Qualified Vocational Rehabilitation Counselor.*

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 May 21, 2024.

TRD-202402261

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: July 7, 2024

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



40 TAC §850.11

The new rule is proposed under:

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

--Texas Labor Code §352.104(b), which provides TWC with the specific authority to establish rules for monitoring and oversight of VR counselor performance and decision making; 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 proposed rule relates to Title 4, Texas Labor Code, particularly Chapter 352.

§850.11. *Qualified Vocational Rehabilitation Counselor.*

(a) The Vocational Rehabilitation Division (VRD) develops and maintains a Comprehensive System of Personnel Development

(CSPD). This system includes procedures to ensure VRD maintains an adequate supply of qualified personnel, referred to as Qualified Vocational Rehabilitation Counselors (QVRCs).

(b) To classify as a QVRC, staff must meet specific state requirements related to education and experience. Standards for QVRCs serve as an internal control to ensure staff are sufficiently trained and prepared to effectively serve Texans with disabilities.

(c) VR counselors are considered qualified to perform non-delegable duties upon meeting the minimum initial standards for hire, successful completion of required training, and an initial probationary period that allows demonstration of performance. The minimum initial standards for hire are aligned with 34 CFR §361.18(c)(1)(ii)(A) and the State of Texas VR Counselor Classification Schedule.

(d) Minimum initial standards for hire as a VR counselor include the following education and experience requirements:

(1) A bachelor's degree in a field of study reasonably related to vocational rehabilitation, to indicate a level of competency and skill demonstrating basic preparation in a field of study such as vocational rehabilitation counseling, social work, psychology, disability studies, business administration, human resources, special education, supported employment, customized employment, economics, or another field that reasonably prepares individuals to work with customers and employers; and

(2) Demonstrated paid or unpaid experience, for not less than one year, consisting of:

(A) Direct work with individuals with disabilities in a setting such as an independent living center;

(B) Direct service or advocacy activities that provide such individual with experience and skills in working with individuals with disabilities; or

(C) Direct experience in competitive integrated employment environments as an employer, as a small business owner or operator, or in self-employment, or other experience in human resources or recruitment, or experience in supervising employees, training, or other activities.

(e) Within seven years from completion of the initial training year, a VR counselor is expected to achieve one or more of the following graduate education requirements:

(1) A master's degree in rehabilitation counseling or clinical rehabilitation counseling;

(2) A master's degree in counseling or a counseling-related field with required completion of specified coursework identified by the VR division;

(3) A master's, specialist, or doctoral degree in specific majors with required specified coursework identified by the Agency's VR division;

(4) A current certified rehabilitation counselor (CRC) certificate from the Commission on Rehabilitation Counselor Certification (CRCC); or

(5) Current licensure for a licensed professional counselor (LPC).

(f) VRD must conduct transcript reviews and/or confirm certifications to determine compliance with standards or to outline coursework to be completed by the VR counselor to meet graduate education requirements.

(g) VRD helps VR counselors to advance as QVRCs by making funds available through the Qualified Vocational Rehabilitation Counselor (QVRC) program for the required graduate education except when:

(1) unforeseen circumstances occur that may restrict or prohibit the funding; or

(2) VRD management discontinues a VR counselor's participation in the program in the best interests of VRD.

(h) The VRD director or designee must approve QVRC financial assistance. This financial assistance is contingent on:

(1) funding;

(2) VRD management approval; and

(3) compliance with qualifications for participation.

(i) Qualifications for participation in the QVRC program require that VR counselors and transition VR counselors applying for assistance must:

(1) have completed the initial training year;

(2) be meeting or exceeding job performance expectations;

(3) obtain the appropriate approvals to pursue a graduate degree or prescribed coursework;

(4) apply for Rehabilitation Services Administration scholarship and university stipend funding, if applicable; and

(5) be accepted by an appropriate institution of higher education.

(j) A VR counselor participating in the QVRC program is expected to pay all costs or expenses:

(1) associated with the college application, admission, and GRE exam(reimbursement of one GRE exam is allowed);

(2) related to tuition, fees, and books for any coursework that must be repeated because of failure to successfully complete; and

(3) related to completing work necessary to remove any grade of "I" (Incomplete) unless compelling reasons exist and payment is approved by the VR division director or designee (for example, serious illness, or university regulations to the contrary).

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 May 21, 2024.

TRD-202402262

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: July 7, 2024

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



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 27. TOLL PROJECTS

SUBCHAPTER G. OPERATION OF DEPARTMENT TOLL PROJECTS

The Texas Department of Transportation (department) proposes amendments to §§27.80 - 27.82 and the repeal of §27.86, all concerning Operation of Department Toll Projects.

EXPLANATION OF PROPOSED AMENDMENTS AND REPEAL

The primary purpose of this rulemaking is to provide contracting flexibility for the department with respect to the operation of its toll projects. In addition, the rulemaking corrects outdated terminology and eliminates unnecessary provisions.

Amendments to §27.80, Definitions, add the defined term "Toll Project Entity" to mean an entity authorized by law to acquire, design, construct, finance, operate, and maintain a toll project, including a regional tollway authority under Transportation Code, Chapter 366, a regional mobility authority under Transportation Code, Chapter 370, or a county under Transportation Code, Chapter 284.

Amendments to §27.81, Free Use of Turnpike Project By Military Vehicle, replace the term "turnpike" with the term "toll" for consistency with current statutory provisions. The amendments also add new subsection (g), which provides that if the department enters into an agreement with a toll project entity to operate a toll project, the use of the project by military vehicles may be governed by the rules and policies of the toll project entity in lieu of the requirements of the section, with exception of subsection (f).

Amendments to §27.82, Toll Operations, update the heading of subsection (f) to distinguish that subsection from new subsection (i). New subsection (i) provides that if the department enters into an agreement with a toll project entity to operate a toll project, the operation of the project may be governed by the rules and policies of the toll project entity in lieu of the requirements of the section, with the exception of subsections (d) and (g).

Repeal of §27.86, Veteran Discount Program, eliminates the stated requirements for an electronic toll collection customer to participate in the veteran discount program established pursuant Texas Transportation Code, §372.053. This rule was never implemented due to system limitations and the department has subsequently determined that the provisions are unnecessary.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of the department's or commission's enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Benjamin Asher, Director, Project Finance, Debt and Strategic Contracts Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Benjamin Asher has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years

in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be consistent regional policies and procedures for the operation of toll projects and elimination of an unnecessary rule.

COSTS ON REGULATED PERSONS

Benjamin Asher, has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Benjamin Asher has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

- (1) it would not create or eliminate a government program;
- (2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;
- (3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;
- (4) it would not require an increase or decrease in fees paid to the agency;
- (5) it would not create a new regulation;
- (6) it would not expand, limit, or repeal an existing regulation;
- (7) it would not increase or decrease the number of individuals subject to its applicability; and
- (8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Benjamin Asher, has also determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §§27.80 - 27.82 and the repeal of §27.86, may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "operation of department toll projects." The deadline for receipt of comments is 5:00 p.m. on July 8, 2024. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

43 TAC §§27.80 - 27.82

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §228.007, which authorizes the department to enter into an agreement with a toll project entity to design, construct, operate, or maintain a toll lane on a state highway and to charge a toll for the use of one or more lanes of a state highway facility, Transportation Code, §228.059, which authorizes a toll collected for the use of a toll lane on a state highway pursuant to an agreement for tolling services with a toll project entity to be governed by the fee and fine structure of the entity issuing the initial toll invoice, Transportation Code, §362.901, which requires the commission to adopt rules relating to the free use of department toll projects by military vehicles, and Transportation Code, §372.053, which authorizes a toll project entity to establish a veterans discount program.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §228.007, §228.059, §362.901, and §372.053.

§27.80. Definitions.

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

- (1) Commission--The Texas Transportation Commission.
 - (2) Comprehensive development agreement--An agreement as defined in §27.2 of this chapter (relating to Definitions).
 - (3) Department--The Texas Department of Transportation.
 - (4) Executive director--The executive director of the department or designee.
 - (5) Military vehicle--A vehicle owned by a branch of the armed forces of the United States or national or state guard of the United States, properly marked according to the rules of the owning military branch, and not registered with a state motor vehicle registry to an individual, corporation, or entity other than the owning military branch or organization.
 - (6) Operational concession--An agreement under which a private operator purchases a right to conduct a business involving a toll project for a specified number of years in return for a fee paid to the department and the assumption of operation and maintenance responsibilities.
 - (7) Tag--A transponder placed on or within a vehicle that is capable of transmitting information used to assess or collect tolls.
 - (8) Toll project--A project of the Texas Department of Transportation as defined by Transportation Code, §201.001.
 - (9) Toll project entity--An entity authorized by law to acquire, design, construct, finance, operate, and maintain a toll project, including a regional tollway authority under Transportation Code, Chapter 366, a regional mobility authority under Transportation Code, Chapter 370, or a county under Transportation Code, Chapter 284.
- §27.81. *Free Use Of Toll [Turnpike] Project By Military Vehicles.*
- (a) Purpose. Transportation Code, §362.901, requires the commission to adopt rules to allow a military vehicle to use toll [turnpike] projects without payment of a toll or fare. This section describes the policies implementing §362.901.

(b) General. Except as provided in subsection (f) or (g) of this section, the department will allow free use of toll [turnpike] projects by military vehicles in convoy and individually. Military vehicles will be allowed free use in all lanes except where it would be unsafe or impractical to do so.

(c) Electronic toll collection (ETC) lanes. The department prefers that military vehicles use ETC lanes. Military vehicles will not be required to carry transponders or be registered with a toll customer service center in order to obtain free passage.

(d) Automated enforcement. The department will develop procedures so that military vehicle images recorded by automated violation enforcement systems, if any, will be rejected and violation notices will not be issued.

(e) Records. The department may maintain records of free passage of military vehicles on its toll [turnpike] projects for audit, reconciliation, and reporting purposes.

(f) Exception. To the extent of any inconsistency with the requirements of this subchapter, the provision of free passage for military vehicles on toll [turnpike] projects that are governed by a trust agreement or indenture in existence on the effective date of this subchapter shall be governed by the terms of that trust agreement or indenture.

(g) Operating agreements with a toll project entity. If the department enters into an agreement with a toll project entity to operate a toll project, the use of the project by military vehicles may be governed by the rules and policies of the toll project entity in lieu of the requirements of this section, with the exception of subsection (f) of this section.

§27.82. Toll Operations.

(a) Toll policies. The department shall adopt policies relating to toll collection and enforcement and the operation of customer service centers. The policies will authorize all fees imposed under this section to be paid by credit card, debit card not requiring the entry of a personal identification number (PIN), money order, personal or cashier's check, or cash. In adopting those policies, the department shall consider:

- (1) whether those policies will provide ease of use by travelers and maximize mobility on toll projects;
- (2) whether those policies will provide a high level of customer service;
- (3) the requirements of project bond covenants;
- (4) cost of operations;
- (5) whether those policies will facilitate the auditing of customer service center operations and the marketing of toll projects; and
- (6) whether those policies will maximize the preservation of revenue streams.

(b) Exception. Toll collection and enforcement policies adopted by the department are not subject to the requirements of §5.10 of this title (relating to Collection of Debts).

(c) Customer account fees. The department may charge fees to customers for purposes of establishing and administering electronic toll collection customer accounts. The commission by minute order will establish customer account fees. In establishing customer account fees, the commission will consider the cost of operations, including the estimated cost to the department for labor, materials, storage, postage, and bank fees, as well as the requirements of project bond covenants. Customer account fees may be waived or dismissed in accordance with toll collection and enforcement policies adopted by the department un-

der this section. Customer account fees may include fees for the following items:

- (1) standard tags;
- (2) specialty tags;
- (3) mailed or faxed account statements;
- (4) account maintenance; and
- (5) checks returned for insufficient funds.

(d) Toll rates. Except as provided in subsections (f) and (g) of this section, the commission by minute order will establish toll rates for the use of a toll project. In setting toll rates, the commission will consider:

- (1) the results of traffic and revenue studies and any schedule of toll rates established in a traffic and revenue report;
- (2) the requirements of project bond covenants; and
- (3) vehicle classifications, type and location of the facility, and similar criteria that apply to a specific project.

(e) Administrative fees. Except as provided in subsection (f) of this section, the owner or lessee of a vehicle who fails to pay the amount owed as stated in an invoice from the department for the use of a toll project may be charged an administrative fee of \$4 per unpaid invoice. Administrative fees may be waived or dismissed in accordance with toll collection and enforcement policies adopted by the department under this section.

(f) Operating agreements with a private entity. The commission may authorize a private entity under contract to operate a department toll project to set toll rates for the use of the toll project and to establish an administrative fee charged to owners of vehicles that use the toll project without paying the proper toll, if:

- (1) the private entity is required under the contract to submit to the department for approval:
 - (A) the methodology for:
 - (i) the setting of tolls;
 - (ii) increasing the amount of the tolls; and
 - (iii) the setting of an administrative fee to be imposed to recover the cost of collecting an unpaid toll; and
 - (B) any proposed change in an approved methodology for the setting of a toll or an administrative fee;
- (2) the private entity will operate the toll project under a comprehensive development agreement or under a contract resulting from a procurement under §27.83 of this chapter (relating to Contracts to Operate Department Toll Projects) that provides an operational concession to the private entity; and
- (3) the commission approves the award of the contract to the private entity.

(g) Dynamic pricing. The executive director will establish toll rates for the use of a toll project where dynamic pricing is in effect. In setting the toll rates, the executive director will consider vehicle classifications, type and location of the facility, regional policies, and similar criteria that apply to a specific project. The toll rates may be established through the approval of an algorithm or other methodology designed to maintain a free-flowing level of traffic on one or more lanes of the toll project.

(h) Toll Assessment Review. An owner or lessee may, not later than the due date specified in the invoice from the department, send a

written request to the department for a review of the toll assessments contained in the invoice. If, after a review, the department determines that the tolls were assessed correctly, the customer will be responsible for paying the amount owed as stated in the invoice. If the department determines that any of the tolls were assessed incorrectly, the department will provide the customer with an updated balance due. If the customer fails to pay the amount owed by the due date specified in the first invoice after the review, the department may charge the customer an administrative fee, as described in subsection (e) of this section. A request under this subsection must be mailed to the department's customer service center at 12719 Burnet Road, Austin, Texas 78727, or submitted through www.txtag.org, and must include the following information:

- (1) the customer's name, address, and contact information;
- (2) the make, model, year, and license plate number of the vehicle associated with the tolls under review;
- (3) the date, time, and location of the tolls under review;
- (4) the reason that the tolls are being disputed; and
- (5) if the dispute involves vehicle ownership, the date that the person purchased or sold the vehicle, as applicable.

(i) Operating agreements with a toll project entity. If the department enters into an agreement with a toll project entity to operate a toll project, the operation of the project may be governed by the rules and policies of the toll project entity in lieu of the requirements of this section, with the exception of subsections (d) and (g) of this section.

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

Filed with the Office of the Secretary of State on May 23, 2024.

TRD-202402325
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 463-3164



43 TAC §27.86

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §228.007, which authorizes the department to enter into an agreement with a toll project entity to design, construct, operate, or maintain a toll lane on a state highway and to charge a toll for the use of one or more lanes of a state highway facility, Transportation Code, §228.059, which authorizes a toll collected for the use of a toll lane on a state highway pursuant to an agreement for tolling services with a toll project entity to be governed by the fee and fine structure of the entity issuing the initial toll invoice, Transportation Code, §362.901, which requires the commission to adopt rules relating to the free use of department toll projects by military vehicles, and Transportation Code, §372.053, which authorizes a toll project entity to establish a veterans discount program.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §228.007, §228.059, §362.901, and §372.053.

§27.86. *Veteran Discount Program.*

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

Filed with the Office of the Secretary of State on May 23, 2024.

TRD-202402326
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 463-3164



CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

SUBCHAPTER H. HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY PERMITS

43 TAC §28.102

The Texas Department of Transportation (department) proposes the amendments to §28.102 concerning Authority's Powers and Duties.

EXPLANATION OF PROPOSED AMENDMENTS

These amendments grant the Hidalgo County Regional Mobility Authority (HCRMA) additional authority to issue permits for the operation of oversize/overweight vehicles on a designated roadway segment within Hidalgo County and clarify the limits of that authority. Transportation Code, §623.363(a)(2), authorizes the Texas Transportation Commission (commission) to designate additional routes for which HCRMA may issue oversize and overweight permits. The statute requires that the commission consult with HCRMA prior to the designation. The department worked with HCRMA to identify the additional route that would benefit the HCRMA permitting process.

Amendments to §28.102, Authority's Powers and Duties, clarify that the purpose of the rule is to authorize the issuance of permits by the HCRMA for roads listed under Transportation Code, §623.363, and those routes identified and designated by the commission. The amendments add an additional route designated by the commission for which HCRMA is authorized to issue permits for the operation of oversize/overweight vehicles. The added route is: the segment of W. Doffing Road from the intersection with Doffin Canal Road/S. Veterans Blvd (Spur 29) to 0.8 miles east of that intersection, which segment is not on the state highway system. This addition expands HCRMA's permitting authority for the operation of the roadways within its jurisdiction and allows HCRMA to provide more complete service to the motor carriers using the permits within Hidalgo County.

These amendments also require, prior to issuing any oversize/overweight permits on the newly added off-system roadway, HCRMA must demonstrate to the department's satisfaction that the roadway has sufficient structure to safely sustain the overweight loads. The amendments also dictate that it is the re-

sponsibility of HCRMA to maintain the off-system road and that the maintenance contract required between the department and HCRMA will provide for the allocation of permit fees between the department and HCRMA. Finally, the amendments dictate that HCRMA may not issue permits that authorize travel on this off-system segment of roadway after September 30, 2025.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that as a result of enforcing or administering the rules for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. The permit fee collected by HCRMA will be used to cover the cost of any additional damage to the roadway added by this amendment.

LOCAL EMPLOYMENT IMPACT STATEMENT

James Stevenson, P.E., Director, Maintenance Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Mr. Stevenson has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be more efficient freight transportation and a potential for vehicle reduction.

COSTS ON REGULATED PERSONS

Mr. Stevenson has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Stevenson has considered the requirements of Government Code, §2001.0221, and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

- (1) it would not create or eliminate a government program;
- (2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;
- (3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;
- (4) it would not require an increase or decrease in fees paid to the agency;

- (5) it would not create a new regulation;
- (6) it would not expand, limit, or repeal an existing regulation;
- (7) it would not increase or decrease the number of individuals subject to its applicability; and
- (8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Mr. Stevenson has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §28.102 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "HCRMA OSOW Permitting." The deadline for receipt of comments is 5:00 p.m. on July 8, 2024. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.369 authorizing the commission to adopt rules necessary to implement Subchapter S, Regional Mobility Authority Permits.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 623, Subchapter S.

§28.102. *Authority's Powers and Duties.*

(a) Authority authorized to issue permits. Subject to subsection (j) of this section, the [The] authority may issue a permit and collect a fee for the movement within the territory of the authority of a vehicle or vehicle combination that exceeds the vehicle size or weight limits specified by Transportation Code, Chapter 621, Subchapters B and C, but does not exceed loaded dimensions of 12 feet wide, 16 feet high, and 110 feet long, and does not exceed 125,000 pounds gross weight for travel on:

- (1) the state-owned roads designated by Transportation Code, §623.363;
- (2) US 281/Military Highway from Spur 29 to FM 1015;
- (3) FM 1015 from US 281/Military Highway, south to the Progreso International Bridge;
- (4) FM 2557 from US 281/Military Highway to Interstate 2;
- (5) FM 3072 from Veterans Boulevard ("I" Road) to Cesar Chavez Road;
- (6) US 281 (Cage Boulevard) from Spur 600 to Anaya Road; [and]
- (7) U.S. Highway 83 Business from South Pleasantview Drive to South Bridge Avenue; and

(8) the segment of W. Doffing Road from the intersection with Doffin Canal Road/S. Veterans Blvd (Spur 29) to 0.8 miles east of that intersection, which segment is not on the state highway system.

(b) Surety bond. The authority shall obtain a surety bond in the amount set by the department to cover the estimated annual maintenance costs of roads identified in subsection (a) of this section. The department will draw on the bond only if revenue collected from permits issued under this subchapter is insufficient to pay for those costs and the authority fails to reimburse the department for those costs. The estimated maintenance costs will be based on the amortized cost of the identified roads, projected regular maintenance and operations costs, and the bridge consumption costs associated with the movement of overweight and oversize vehicles issued a permit by the authority.

(c) Verification of permits. The authority shall provide law enforcement and department personnel access to any of the authority's property to verify compliance with this subchapter by the authority or another person.

(d) Training. The authority shall provide or obtain any training necessary for personnel to issue permits under this subchapter. The department may provide assistance with training on request by the authority.

(e) Accounting. The department shall develop accounting procedures related to permits issued under this subchapter with which the authority must comply for revenue collections and any payment made to the department under subsection (i) of this section.

(f) Audits. The department may conduct audits annually or at the direction of the executive director of all permit issuance activities of the authority. To insure compliance with applicable law, audits at a minimum will include a review of all permits issued, financial transaction records related to permit issuance and vehicle scale weight tickets, and the monitoring of personnel issuing permits under this subchapter.

(g) Revocation of authority to issue permits. If the department determines as a result of an audit that the authority is not complying with this subchapter or other applicable law, the executive director will issue a notice to the authority allowing 30 days for the authority to correct any non-compliance issue. If the department determines that, after that 30-day period, the authority has not corrected the issue, the executive director may revoke the authority's authority to issue permits under this subchapter. The authority may appeal to the commission in writing the revocation of its authority under this subsection. If the authority appeals the revocation, the authority's authority to issue permits under this subchapter remains in effect until the commission makes a final decision on the appeal.

(h) Fees. Fees under this subchapter may be collected, deposited, and used only as provided by Transportation Code, §623.364.

The authority may determine acceptable methods of payment. All fees transmitted to the department must be in U.S. currency. On revocation of the authority's authority to issue permits, termination of the maintenance contract entered into under subsection (i) of this section, or expiration of this subchapter, the authority shall pay to the department all permit fees collected by the authority, less allowable administrative costs.

(i) Maintenance contract. The authority shall enter into a contract with the department for the maintenance of roads identified in subsection (a) of this section for which a permit may be issued under this subchapter. The contract will cover routine maintenance, preventive maintenance, and total reconstruction of the roadway and bridge structures, as determined by the department to maintain the current level of service, and may include other types of maintenance.

(j) Off-system roadways. Before the authority may issue a permit and collect a fee for the movement of a vehicle or vehicle combination on a roadway designated in subsection (a)(8) of this section, the authority must demonstrate to the satisfaction of the department that the roadway has sufficient structure to safely sustain the overweight loads. The authority is responsible for the maintenance and repair of each roadway designated in subsection (a)(8) of this section for which it issues a permit to the level of service determined by the department under subsection (i) of this section. The maintenance contract entered into under subsection (i) of this section must provide details of the allocation of the permit fees to be used for the maintenance of such a roadway. The authority may not issue a permit for the movement of a vehicle or vehicle combination after September 30, 2025, on a roadway designated in subsection (a)(8) of this section.

(k) [j] Reporting. The authority shall provide monthly and annual reports to the department's Finance Division regarding all permits issued and all fees collected during the period covered by the report. The report must be in a format approved by the department.

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 May 23, 2024.

TRD-202402327

Becky Blewett

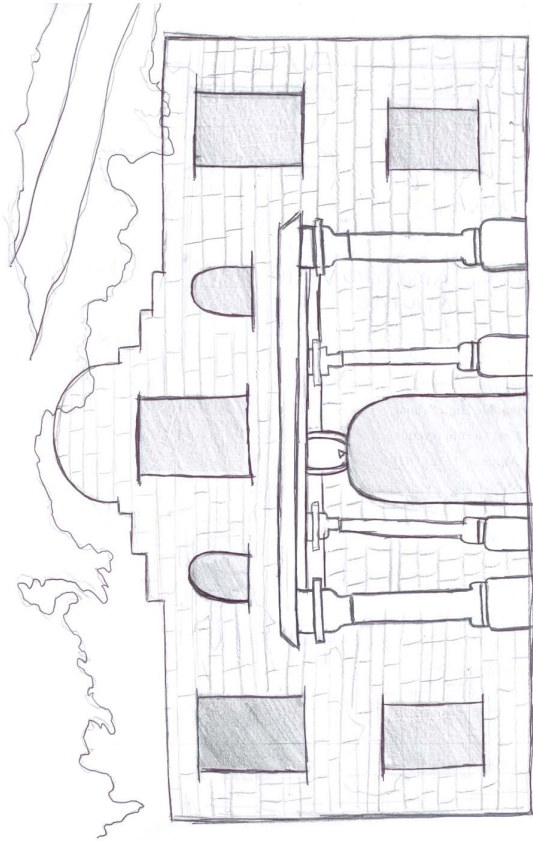
Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: July 7, 2024

For further information, please call: (512) 463-3164





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 10. COMMUNITY DEVELOPMENT

PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM OFFICE

CHAPTER 190. GOVERNOR'S UNIVERSITY RESEARCH INITIATIVE GRANT PROGRAM SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

10 TAC §190.1

The Office of the Governor ("OOG") adopts an amendment to 10 TAC §190.1, concerning Definitions. The rule is adopted without changes to the proposed text as published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2378) and will not be republished. The adopted amendment lists the additional types of national academic recognitions that are considered to be highly prestigious for purposes of determining who qualifies as a "distinguished researcher," rather than cross-reference the list of such recognitions that previously existed in a rule adopted by the Texas Higher Education Coordinating Board but has since been repealed.

REASONED JUSTIFICATION OF ADOPTED AMENDMENTS

The adopted amendment to §190.1 lists the types of national academic recognitions that are considered to be highly prestigious for purposes of determining who qualifies as a "distinguished researcher" for purposes of chapter 62, subchapter H, Tex. Educ. Code.

SUMMARY OF COMMENTS AND AGENCY RESPONSE:

The OOG received no comments in response to this rulemaking.

TAKINGS IMPACT ASSESSMENT

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

STATUTORY AUTHORITY

The amendments are adopted under section 62.162 of the Texas Education Code, which authorizes the Texas Economic Development and Tourism Office, in consultation with the Texas Higher Education Coordinating Board, to adopt rules necessary to administer GURI.

CROSS REFERENCE TO STATUTE

Chapter 62 of the Texas Education Code.

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 May 21, 2024.

TRD-202402253

Adriana Cruz

Executive Director, Economic Development & Tourism

Office of the Governor, Economic Development and Tourism

Effective date: June 10, 2024

Proposal publication date: April 19, 2024

For further information, please call: (512) 936-0100



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 77. SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 77, §§77.40 - 77.42 and 77.70, and the repeal of §77.93, regarding the Service Contract Providers and Administrators program, without changes to the proposed text as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 947). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 77, implement Texas Occupations Code, Chapter 1304, the Service Contract Regulatory Act.

The adopted rules implement House Bill (HB) 1560, 87th Legislature, Regular Session (2021), which repealed the former Residential Service Company Act (Occupations Code, Chapter 1303), and amended Chapter 1304 to include residential service contracts as a type of service contract under the regulatory authority of the Texas Department of Licensing and Regulation (Department). The adopted rules additionally clarify the Department's interpretation of the financial security requirements of Chapter 1304 and correct an obsolete statutory reference in the rules.

Under the Service Contract Regulatory Act, to obtain or renew a registration, providers must demonstrate the ability to meet their financial obligations to service contract holders. In general, Oc-

occupations Code §1304.151 requires providers to satisfy one of three financial requirements: insuring their contracts under a reimbursement insurance policy, maintaining a funded reserve account and security deposit, or meeting net worth requirements. If a provider uses a reimbursement insurance policy, Occupations Code §1304.152 requires the policy to meet certain financial requirements.

HB 1560 enacted Occupations Code §1304.157, which provides that residential service contract providers may meet the financial security requirements of Chapter 1304 by using a reimbursement insurance policy issued by a captive insurance company and maintaining a funded reserve. In this scenario, §1304.157 exempts the policy from the financial requirements of §1304.152 and prescribes a formula for determining the minimum funded reserve for these providers, which differs from the formula provided in §1304.151 for other providers. The adopted rules are necessary to clarify that residential service contract providers electing to financially qualify using an insurance policy from a captive insurance company must also maintain the funded reserve as provided in §1304.157(c).

Occupations Code §1304.157 also requires residential service contracts to include a certain disclosure statement if the seller of the contract is not employed by a registered provider or administrator. Although this disclosure statement generally mirrors that required by the rule at 16 TAC §77.93, the rule contains obsolete references to the repealed Residential Service Company Act. The adopted rules are necessary to resolve this discrepancy, and do so by repealing §77.93 and adding a reference to the statutorily required disclosure statement in the rules at §77.70(d), which concerns the disclosure responsibilities of providers and administrators.

Under Occupations Code §1304.151(a)(2), one of the methods by which providers may meet the Act's financial security requirements is by both maintaining a funded reserve account and placing in trust a security deposit. For providers electing this option, the amount of the required deposit varies under subsections (b) through (b-4) depending on the type of service contract sold, and in the case of motor vehicle dealers, gross revenue generated the preceding year. For residential service contract providers, the minimum deposit is \$25,000.

The formula for determining the required balance in the funded reserve account is stated in Occupations Code §1304.151(b). This formula was amended by House Bill (HB) 4316, 88th Legislature, Regular Session, effective September 1, 2023, and is now computed by subtracting the amount of any claims paid from the product of 40 percent and the gross consideration the provider received from consumers from the sale of all service contracts issued and outstanding in this state.

Because the statutory formula does not contain a floor, a problem arises of whether the Department must grant a registration when a provider elects this financial security option but, due to the amount of claims paid relative to revenue from contracts sold, the statutory formula does not appear to require either a positive balance or an amount that establishes to the Department's satisfaction the provider's ability to meet its obligations. Under subsection (e), the executive director is generally not permitted to impose additional financial security requirements beyond those set forth in §1304.151. Under §1304.1025(b), however, the executive director may not issue or renew a registration unless a provider demonstrates to the executive director's satisfaction an ability to meet its obligations under service contracts and the Act.

The adopted rules clarify the Department's interpretation that, where a provider elects to establish financial security under §1304.151(a)(2), and the amount of security deposit and funded reserve balance are insufficient to evidence that the provider can meet its obligations under service contracts and the Act, the Department has the authority to deny or refuse to renew a registration, or to require the provider to establish financial security under another of the authorized methods.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §77.40, Financial Security--General Requirements. The adopted rules amend subsection (b) to remove unnecessary language. The adopted rules also insert a new subsection (c) to describe the method of financial security provided by Occupations Code §1304.157(c), under which residential service contract providers may insure contracts under a reimbursement insurance policy issued by a captive insurance company if they also maintain a required funded reserve account. The subsections that follow the insertion are re-lettered.

The adopted rules amend §77.41, Financial Security--Reimbursement Insurance Policy. The adopted rules insert language in subsection (c) to clarify that a residential service contract provider who elects to insure its contracts under a reimbursement insurance policy issued by a captive insurance company must also maintain a funded reserve account.

The adopted rules amend §77.42, Financial Security--Funded Reserve Account and Security Deposit. The adopted rules insert a new subsection (f) to include language clarifying that where a provider elects to establish financial security under Occupations Code §1304.151(a)(2) and the amount of security deposit and funded reserve balance are insufficient to evidence that the provider can meet its obligations, the Department has the authority to deny or refuse to renew a registration, or to require the provider to establish financial security under another of the authorized methods.

The adopted rules amend §77.70, Responsibilities of Providers and Administrators. The adopted rules insert into subsection (d)(1) a necessary reference to Occupations Code §1304.157.

Lastly, the adopted rules repeal §77.93, Disclosures, in its entirety.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 947). The public comment period closed on March 25, 2024. The Department did not receive any comments from interested parties on the proposed rules.

COMMISSION ACTION

At its meeting on May 21, 2024, the Commission adopted the proposed rules as published in the *Texas Register*.

16 TAC §§77.40 - 77.42, 77.70

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 1304, 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 1304. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021) and House Bill 4316, 88th Legislature, Regular Session (2023).

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 May 24, 2024.

TRD-202402349

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Effective date: June 13, 2024

Proposal publication date: February 23, 2024

For further information, please call: (512) 475-4879



16 TAC §77.93

STATUTORY AUTHORITY

The adopted repeal is repealed under Texas Occupations Code, Chapters 51 and 1304, 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 adopted repeals are those set forth in Texas Occupations Code, Chapters 51 and 1304. No other statutes, articles, or codes are affected by the adopted repeals.

The legislation that enacted the statutory authority under which the adopted rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021) and House Bill 4316, 88th Legislature, Regular Session (2023).

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 May 24, 2024.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY

19 TAC §109.1001

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 19 TAC §109.1001 are not included in the print version of the Texas Register. The figures are available in the on-line version of the June 7, 2024, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §109.1001, concerning financial accountability ratings. The amendment is adopted with changes to the proposed text as published in the February 23, 2024 issue of the *Texas Register* (49 TexReg 958) and will be republished. The adopted amendment updates financial accountability rating information and rating worksheets for school districts and open-enrollment charter schools.

REASONED JUSTIFICATION: Section 109.1001 includes the financial accountability rating system and rating worksheets that explain the indicators that TEA will analyze to assign financial accountability ratings for school districts and open-enrollment charter schools. The rule also specifies the minimum financial accountability rating information that a school district or an open-enrollment charter school is to report to parents and taxpayers in the district.

The adopted amendment clarifies the financial accountability rating indicators terminology used to determine each school district's and charter school's rating for the 2023-2024 rating year and subsequent years. The adopted amendment also includes some pandemic-related adjustments applicable to 2023 data, as required by Texas Education Code (TEC), §39.087, as that section existed before expiration on September 1, 2023, to the Financial Integrity Rating System of Texas (FIRST) based on TEC, §39.082(b) and (d), which require that the FIRST system include uniform indicators that measure the financial management performance and future financial solvency of a school district or open-enrollment charter school.

19 TAC §109.1001(e)(8)

Adopted new subsection (e)(8) is added, including new Figure: 19 TAC §109.1001(e)(8) that clarifies terminology and calculations for School FIRST indicators for rating year 2023-2024 and beyond. The new worksheet differs from the previous year's worksheet as follows.

A new Indicator 21 has been added to read, "Did the school district receive an adjusted repayment schedule for more than one fiscal year for an over-allocation of Foundation School Program (FSP) funds because of a financial hardship?"

In response to public comment, the proposed changes for Indicator 13 have been moved at adoption to new §109.1001(e)(9) and are effective for the 2025-2026 rating year.

19 TAC §109.1001(e)(9)

In response to public comment requesting a delay in the implementation of Indicator 13 as proposed in Figure: 19 TAC §109.1001(e)(8), new subsection (e)(9) has been added at adoption to include new Figure: 19 TAC §109.1001(e)(9). The new figure allows Indicator 13 as proposed to become effective sub-

sequent to the 2024-2025 rating year. The new worksheet differs from the previous year's worksheet as follows.

Effective for the 2025-2026 rating year, the calculation for Indicator 13 is revised to compare administrative costs to total costs instead of instructional costs. The thresholds for Indicator 13 are adjusted to reflect the revised administrative cost ratio calculation so that school districts with lower administrative costs ratios, which suggest they are effectively managing their administrative expenses, receive the maximum points for this indicator.

19 TAC §109.1001(f)(8)

Adopted new subsection (f)(8) is added, including new Figure: 19 TAC §109.1001(f)(8) that clarifies terminology and calculations for Charter FIRST indicators for rating year 2023-2024 and beyond. The new worksheet differs from the previous year's worksheet as follows.

A new Indicator 21 has been added to read, "Did the charter school receive an adjusted repayment schedule for more than one fiscal year for an over-allocation of Foundation School Program (FSP) funds because of a financial hardship?"

In response to public comment, the proposed changes for Indicator 14 have been moved at adoption to new §109.1001(f)(9) and are effective for the 2025-2026 rating year.

19 TAC §109.1001(f)(9)

In response to public comment requesting a delay in the implementation of Indicator 14 as proposed in Figure: 19 TAC §109.1001(f)(8), new subsection (f)(9) has been added at adoption to include new Figure: 19 TAC §109.1001(f)(9). The new figure allows Indicator 14 as proposed to become effective subsequent to the 2024-2025 rating year. The new worksheet differs from the previous year's worksheet as follows.

Effective for the 2025-2026 rating year, the calculation for Indicator 14 is revised to compare administrative costs to total costs instead of instructional costs. The thresholds for Indicator 14 are adjusted to reflect the revised administrative cost ratio calculation so that charter schools with lower administrative costs ratios, which suggests they are effectively managing their administrative expenses, receive the maximum points for this indicator.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began February 23, 2024, and ended March 25, 2024. Following is a summary of the public comments received and agency responses.

School FIRST Indicators 8 and 13

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(8), a school district administrator, the Texas Association of School Business Officials (TASBO), and the Texas School Coalition recommended that no changes be made to the 2023-2024 School FIRST ratings that rely on fiscal year 2023 data because school districts and charter schools do not have an opportunity to adjust their spending to meet the accountability targets. The school district administrator and TASBO further stated that new indicators should not take effect until the 2025-2026 ratings based on fiscal year 2025 data. They also recommended that recapture amounts be removed from revenue and expenditures for FIRST Indicators 8 and 13.

Response: The agency agrees that Indicator 13 should not take effect for the 2023-2024 rating year and has modified Figure: 19 TAC §109.1001(e)(8) at adoption to reflect the calculation and thresholds for School FIRST Indicator 13 as they existed for rat-

ing year 2022-2023. New Figure: 19 TAC §109.1001(e)(9) was added at adoption to make the proposed administrative cost ratio calculation and thresholds effective for the 2025-2026 rating year.

The agency disagrees with removing recapture amounts from revenue and expenditures for the 2023-2024 School FIRST rating year. School districts that have local revenue in excess of entitlement are legally obligated to reduce their level under TEC, Chapter 49, and one option is through making recapture payments. The agency agrees to analyze indicators for possible adjustments in future rating years.

School FIRST Indicator 10

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(8), a school district administrator proposed that School FIRST Indicator 10 be updated to reflect districts that have Chapter 313 agreements because the revenue from these agreements fluctuate and is not guaranteed.

Response: The agency disagrees with adjusting School FIRST Indicator 10 to exclude revenue from Chapter 313 agreements because it is an operational decision by school districts to enter into Chapter 313 agreements, and school districts may appeal Indicator 10 if they consider the result to be adverse. However, the agency will not evaluate School FIRST Indicator 10 for the 2023-2024 rating year, and all school districts will receive the maximum points for the indicator.

Administrative Cost Ratio Calculation (School FIRST Indicator 13 and Charter FIRST Indicator 14)

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(8), a charter school administrator requested a gradual transition to the proposed thresholds for the administrative cost ratio in Charter FIRST Indicator 14 because schools may need more time to adjust their administrative offices.

Response: The agency agrees to a transition for the proposed thresholds for the revised administrative cost ratio calculation. The agency has modified proposed Figure: 19 TAC §109.1001(e)(8) and Figure: 19 TAC §109.1001(f)(8) at adoption to reflect the calculation and thresholds for School FIRST Indicator 13 and Charter FIRST Indicator 14 as they existed for rating year 2022-2023. New Figure: 19 TAC §109.1001(e)(9) and Figure: 19 TAC §109.1001(f)(9) were added at adoption to make the revised administrative cost ratio calculation and thresholds effective for the 2025-2026 rating year.

Foundation School Program Repayment Plan (School FIRST and Charter FIRST Indicator 21)

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(8), a school district administrator stated that proposed School FIRST Indicator 21 is an unfair and inaccurate way to assess the financial condition of a school district that is repaying an over-allocation of Foundation School Program funds and that a school district's ability to secure a bond guarantee from the Permanent School Fund could be impacted by a reduced School FIRST rating. The school district administrator suggested that a ceiling of 89 points or B = Above Standard Achievement rating, instead of the proposed 70 points or C = Meets Standard Achievement rating, be used for School FIRST Indicator 21 if the agency proceeds with the implementation of the indicator. The school district administrator recommended that the rule be effective no earlier than the 2025-2026 School FIRST rating year because making

Indicator 21 effective retroactively to the 2023-2024 rating year changes the rules of accountability after the school year is over.

Response: The agency disagrees that School FIRST and Charter FIRST Indicator 21 is a not a fair way to assess the financial condition of a school district or that the ceiling should be 89 points or a B = Above Standard Achievement instead of 70 points or a C = Meets Standard Achievement rating. The agency considers whether a school district or charter school received a passed or failed School FIRST rating, not the numerical score, in its determination for approval or disapproval for the Bond Guarantee Program to guarantee bonds. The agency has maintained language as proposed concerning School FIRST and Charter FIRST Indicator 21, making the indicator effective for the 2023-2024 rating year.

Charter FIRST Indicator 1

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(8), a governmental charter school administrator suggested that Charter FIRST Indicator 1 be a ceiling indicator instead of a critical indicator.

Response: The agency disagrees that Charter FIRST Indicator 1 should be a ceiling indicator. Language in 19 TAC §109.1001(n)(9) allows the commissioner of education to adjust the overall score and rating to a passing score and rating upon appeal of Indicator 1 if the certificate of the board and the audit opinion letter from the external auditor for the charter school's annual financial and compliance report (AFR) were signed on or before the due date of the AFR as required in TEC, §44.008.

Charter FIRST Indicators 5 and 6

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(8), a governmental charter school administrator suggested that Charter FIRST Indicators 5 and 6 be revised to exclude the effect of other post-employment benefits (OPEB) and net pension liabilities (NPL) since these amounts are based on actuarial estimates that can have a significant impact on net position. The charter school administrator also suggested that these indicators be revised to exclude the effect of deferred inflows or outflows of resources related to pension plans on total net assets. The charter school administrator further stated that when OPEB, NPL, and deferred inflows and outflows of resources are included in these indicators, the year-over-year changes in net position are less meaningful.

Response: The agency disagrees that the calculation for Charter FIRST Indicator 5 for charter schools should exclude the effect of deferred inflows and outflows of resources related to pension plans. The calculation includes the addition of pension expense, OPEB, and NPL to total net position to exclude their effect in the calculation for Indicator 5; however, deferred outflows and deferred inflows of resources related to pensions are the portions of the effects not recognized in pension expense.

The agency disagrees that the calculation for Charter FIRST Indicator 6 should exclude the effect of OPEB and NPL and the effect of deferred inflows and outflows of resources related to pension plans on total net assets. Indicator 6 is a calculation of the average change in total net assets over three years, not a single year, so the impact of OPEB, NPL, and the effect of deferred inflows or outflows of resources related to pension plans are comparable per year.

Charter FIRST Indicator 8

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(8), a consultant for charter schools requested that the Texas Education Agency evaluate Charter FIRST Indicator 8 for possible rating changes and possibly waive the indicator for the 2023-2024 rating year because the implementation of Financial Accounting Standards Board (FASB) Accounting Standards Update (ASU) Topic 842 for leases is affecting the score for Indicator 8 negatively for some charter schools. The consultant stated that ASU-842 requires the creation of a right-of-use asset and a liability on the lessee's balance sheet for all leases.

Response: The agency agrees that FASB ASU-842 impacts the reporting of assets and liabilities in the Statement of Financial Position because ASU-842 requires a lessee to recognize a right-of-use asset and a lease liability for leases but disagrees with adjusting the determination of points for Indicator 8 for the 2023-2024 rating year because the results of the calculation closely align with the results of prior years. The agency will continue to analyze Indicator 8 for possible adjustments in future rating years.

Charter FIRST Indicator 10

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(8), a governmental charter school administrator suggested that Charter FIRST Indicator 10 be revised to allow a 15% variance when comparing budgeted revenues to actual revenues for the last three fiscal years to allow for fluctuations for smaller schools serving students in correctional facilities or residential treatment centers that do not have control over which students enroll.

Response: The agency disagrees that Charter FIRST Indicator 10 should be revised to allow for a 15% variance because a variance of 10% encourages accuracy and due diligence in budgeting and demonstrates a charter school has given thoughtful consideration to managing its finances. Generally, acceptable variances for school budgets are 5% to 10%, and about 75% of Texas charter schools averaged less than a 10% variance between budgeted and actual revenues over three years. The agency recognizes that there may be challenges with budgeting revenues for certain charter schools with student enrollment that is based on circumstances outside of the control of the charter school. Charter FIRST Indicator 10 will not be evaluated for Charter FIRST rating year 2023-2024, and all charter schools will receive the maximum of 10 points for Indicator 10 for rating year 2023-2024.

Charter FIRST Indicator 13

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(8), a governmental charter school administrator commented that Charter FIRST Indicator 13 appears to measure the impact of long-term debt on a school's operations and that the indicator should be revised to divide long-term indebtedness (bonds and loans), excluding OPEB and NPL, by total assets to determine a ratio. Additionally, the administrator provided a point scale for the ratio and added that a charter school should automatically pass Indicator 13 if the charter school's change of students in membership over five years is 7% or more.

Response: The agency disagrees that Charter FIRST Indicator 13 should be revised to divide long-term indebtedness, excluding OPEB and NPL, by total assets. The calculation for Indicator 11 for Charter FIRST already determines the long-term liabilities to total assets ratio with the point scale that was suggested by

the administrator and allows a charter school to automatically pass the indicator if the charter school's change of students in membership over five years is 7% or more.

Charter FIRST Indicator 16

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(8), a consultant for charter schools requested that the agency adopt a larger scale to establish a "Competency rate of a Charter's actual average daily attendance (ADA)" for Charter FIRST Indicator 16 since it is difficult to estimate a fair (close) enrollment and ADA number. The consultant requested the agency to allow for a scaled range with the measurement based on enrollment size to provide some relief to charter schools.

Response: The agency disagrees with the suggested rule change. Charter schools submit ADA estimates during the summer of the start of each school year, unlike school districts that submit projections biannually, so charter school estimates should be more reflective of environmental conditions. However, the agency agrees that there may be challenges with estimating ADA for certain charter schools. Charter FIRST Indicator 16 will not be evaluated for rating year 2023-2024, and all charter schools will receive the maximum of 5 points for Indicator 16 for rating year 2023-2024.

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(8), a governmental charter school administrator suggested that Charter FIRST Indicator 16 be revised to allow wider fluctuations in enrollment and attendance impacting schools with a smaller number of students.

Response: The agency disagrees with the suggested rule change. Charter schools submit ADA estimates during the summer of the start of each school year, unlike school districts that submit projections biannually, so charter school estimates should be more reflective of environmental conditions. However, the agency agrees that there may be challenges with estimating ADA for certain charter schools. Charter FIRST Indicator 16 will not be evaluated for rating year 2023-2024, and all charter schools will receive the maximum of 5 points for Indicator 16 for rating year 2023-2024.

Charter FIRST Indicator 17

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(8), a governmental charter school administrator suggested that Charter FIRST Indicator 17 be clarified to state the data in the Public Education Information Management System (PEIMS) should be within 3% of all expenses in the financial audit report that are reported in the Statement of Revenues, Expenditures, and Changes in Fund Balance (i.e., on a modified accrual basis) for governmental charter schools.

Response: The agency agrees that the source of data used in the calculation for Charter FIRST Indicator 17 for governmental charter schools should be clarified. At a later date, the agency intends to provide clarification on the sources of data used for governmental charter schools. The agency disagrees with making the suggested change to the rule at this time because TEA staff needs time to update documents to reflect sources for all indicators for governmental charter schools.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §12.104, which subjects open-enrollment charter schools to the prohibitions, restrictions, or requirements relating to public school accountability and special investigations under TEC, Chapter 39, Subchapters A, B, C, D, F, G,

and J, and TEC, Chapter 39A; §39.082, which requires the commissioner to develop and implement a financial accountability rating system for public schools and establishes certain minimum requirements for the system, including an appeals process; §39.083, which requires the commissioner to include in the financial accountability system procedures for public schools to report and receive public comment on an annual financial management report; §39.085, which requires the commissioner to adopt rules to implement TEC, Chapter 39, Subchapter D, which addresses financial accountability for public schools; §39.087, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, and as that section existed before expiration on September 1, 2023, which required the commissioner to adjust the financial accountability rating system under TEC, §39.082, to account for the impact of financial practices necessary as a response to the coronavirus disease (COVID-19) pandemic, including adjustments required to account for federal funding and funding adjustments under TEC, Chapter 48, Subchapter F; and §39.151, which requires the commissioner to provide a process by which a school district or an open-enrollment charter school can challenge an agency decision related to academic or financial accountability under TEC, Chapter 39, including a determination of consecutive school years of unacceptable performance ratings. This process must include a committee to make recommendations to the commissioner. These provisions collectively authorize and require the commissioner to adopt the financial accountability system rules, which implement each requirement of statute applicable to school districts and open-enrollment charter schools.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§12.104; 39.082; 39.083; 39.085; 39.087, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, and as that section existed before expiration on September 1, 2023; and 39.151.

§109.1001. Financial Accountability Ratings.

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

(1) **Annual Financial Report (AFR)**--The audited annual report required by the Texas Education Code (TEC), §44.008, that is due to the Texas Education Agency (TEA) by no later than 150 days after the close of a school district's or an open-enrollment charter school's fiscal year.

(2) **Ceiling indicator**--An upper limit (the maximum score) at which a score from a standard limit of a specific indicator will result regardless of overall points.

(3) **Debt**--An amount of money owed to a person, bank, company, or other organization.

(4) **Electronic submission**--The TEA electronic data feed format required for use by school districts, open-enrollment charter schools, and regional education service centers (ESCs).

(5) **Financial Integrity Rating System of Texas (FIRST)**--The financial accountability rating system administered by the TEA in accordance with the TEC, §39.082 and §39.085. The system provides additional transparency to public education finance and meaningful financial oversight and improvement for school districts (School FIRST) and open-enrollment charter schools and charter schools operated by a public institution of higher education under TEC, Chapter 12, Subchapters D and E (Charter FIRST).

(6) Fiscal year--The fiscal year of a school district or an open-enrollment charter school, which begins on July 1 or September 1 of each year, as determined by the board of trustees of the district or the governing body of the charter holder in accordance with the TEC, §44.0011.

(7) Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state-appropriated funding for school districts in this state.

(8) Open-enrollment charter school--A charter school authorized by the commissioner of education under TEC, Chapter 12, Subchapter D.

(9) Public institution of higher education (IHE)--A public college or university eligible to operate a school district; an open-enrollment charter school; or a TEC, Chapter 12, Subchapter E, charter school authorized by the commissioner.

(10) Summary of Finances (SOF) report--The document of record for FSP allocations. An SOF report is produced for each school district and open-enrollment charter school by the TEA division responsible for state funding that describes the school district's or open-enrollment charter school's funding elements and FSP state aid.

(11) Texas Student Data System Public Education Information Management System (TSDS PEIMS)--The system that school districts and open-enrollment charter schools use to load, validate, and submit their data to the TEA.

(12) Warrant hold--The process by which state payments issued to payees indebted to the state, or payees with a tax delinquency, are held by the Texas Comptroller of Public Accounts until the debt is satisfied in accordance with the Texas Government Code, §403.055.

(b) The TEA will assign a financial accountability rating to each school district, open-enrollment charter school, and charter school operated by a public IHE under TEC, Chapter 12, Subchapters D and E, as required by the TEC, §39.082.

(c) The commissioner will evaluate the rating system every three years as required by the TEC, §39.082, and may modify the system in order to improve the effectiveness of the rating system. If the rating system has been modified, the TEA will communicate changes to ratings criteria and their effective dates to school districts, open-enrollment charter schools, and charter schools operated by public IHEs.

(d) The TEA will use the following sources of data in calculating the financial accountability indicators for school districts, open-enrollment charter schools, and charter schools operated by public IHEs.

(1) AFR. For each school district, open-enrollment charter school, and charter school operated by a public IHE, the TEA will use audited financial data in the district's or charter's AFR. The AFR, submitted as an electronic submission through the TEA website, must include data required in the Financial Accountability System Resource Guide (FASRG) adopted under §109.41 of this title (relating to Financial Accountability System Resource Guide).

(2) TSDS PEIMS. The TEA will use TSDS PEIMS data submitted by the school district, open-enrollment charter school, or charter school operated by a public IHE in the calculation of the financial accountability indicators.

(3) Warrant holds. The TEA will use warrant holds as reported by the Texas Comptroller of Public Accounts in the calculation of the financial accountability indicators.

(4) FSP. The TEA will use the average daily attendance (ADA) information used for FSP funding purposes for the school dis-

trict, open-enrollment charter school, or charter school operated by a public IHE in the calculation of the financial accountability indicators.

(e) The TEA will base the financial accountability rating of a school district on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2014-2015 are based on fiscal year 2014 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2014-2015." Figure: 19 TAC §109.1001(e)(1) (No change.)

(2) The financial accountability rating indicators for rating year 2015-2016 are based on fiscal year 2015 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2015-2016." Figure: 19 TAC §109.1001(e)(2) (No change.)

(3) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated December 2016 for rating year 2016-2017." Figure: 19 TAC §109.1001(e)(3) (No change.)

(4) The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 are based on financial data from fiscal years 2017, 2018, and 2019, respectively, and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated April 2020 for rating years 2017-2018 through 2019-2020." The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 will use the same calculations and scoring method provided in the figure in this paragraph. Figure: 19 TAC §109.1001(e)(4) (No change.)

(5) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated October 2021 for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph. Figure: 19 TAC §109.1001(e)(5) (No change.)

(6) The financial accountability rating indicators for rating year 2021-2022 are based on fiscal year 2021 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated October 2021 for rating year 2021-2022." The financial accountability rating indicators for rating years after 2021-2022 will use the same calculations and scoring method provided in the figure in this paragraph. Figure: 19 TAC §109.1001(e)(6) (No change.)

(7) The financial accountability rating indicators for rating year 2022-2023 are based on fiscal year 2022 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated June 2023 for rating year 2022-2023." The financial accountability rating indicators for rating years after 2022-2023 will use the same calculations and scoring method provided in the figure in this paragraph. Figure: 19 TAC §109.1001(e)(7) (No change.)

(8) The financial accountability rating indicators for rating year 2023-2024 are based on fiscal year 2023 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated June 2024 for Rating Years 2023-2024+." The finan-

cial accountability rating indicators for rating years after 2023-2024 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(e)(8)

(9) The financial accountability rating indicators for rating year 2025-2026 are based on fiscal year 2025 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated June 2024 for Rating Years 2025-2026+." The financial accountability rating indicators for rating years after 2025-2026 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(e)(9)

(10) The specific calculations and scoring methods used in the financial accountability rating worksheets for school districts for rating years prior to 2014-2015 remain in effect for all purposes with respect to those rating years.

(f) The TEA will base the financial accountability rating of an open-enrollment charter school on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2014-2015 are based on fiscal year 2014 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2014-2015."

Figure: 19 TAC §109.1001(f)(1) (No change.)

(2) The financial accountability rating indicators for rating year 2015-2016 are based on fiscal year 2015 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2015-2016."

Figure: 19 TAC §109.1001(f)(2) (No change.)

(3) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2016-2017."

Figure: 19 TAC §109.1001(f)(3) (No change.)

(4) The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 are based on financial data from fiscal years 2017, 2018, and 2019, respectively, and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated April 2020 for rating year 2017-2018." The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(4) (No change.)

(5) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated October 2021 for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(5) (No change.)

(6) The financial accountability rating indicators for rating year 2021-2022 are based on fiscal year 2021 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated October 2021 for rating year 2021-2022." The financial accountability rating indicators for rating years after 2021-2022

will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(6) (No change.)

(7) The financial accountability rating indicators for rating year 2022-2023 are based on fiscal year 2022 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated June 2023 for rating year 2022-2023." The financial accountability rating indicators for rating years after 2022-2023 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(7) (No change.)

(8) The financial accountability rating indicators for rating year 2023-2024 are based on fiscal year 2022 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated June 2024 for Rating Years 2023-2024+." The financial accountability rating indicators for rating years after 2023-2024 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(8)

(9) The financial accountability rating indicators for rating year 2025-2026 are based on fiscal year 2025 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated June 2024 for Rating Years 2025-2026+." The financial accountability rating indicators for rating years after 2025-2026 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(9)

(10) The specific calculations and scoring methods used in the financial accountability rating worksheets for open-enrollment charter schools for rating years prior to 2014-2015 remain in effect for all purposes with respect to those rating years.

(g) The TEA will base the financial accountability rating of a charter school operated by a public IHE on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "IHE Charter FIRST - Rating Worksheet Dated June 2019 for rating years 2016-2017 through 2019-2020." The financial accountability rating indicators for rating years 2016-2017 through 2019-2020 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(g)(1) (No change.)

(2) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "IHE Charter FIRST - Rating Worksheet Dated June 2019 for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(g)(2) (No change.)

(h) The types of financial accountability ratings that school districts or open-enrollment charter schools may receive for the rating year 2014-2015 are as follows.

(1) P for pass. This rating applies only to the financial accountability rating for rating year 2014-2015 based on fiscal year 2014 financial data. In accordance with the procedures established in this section, a school district or an open-enrollment charter school will re-

ceive a P rating if it scores within the applicable range established by the commissioner for a P rating.

(2) F for substandard achievement. This rating applies to the financial accountability rating for rating year 2014-2015 based on fiscal year 2014 financial data. In accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(i) The types of financial accountability ratings that school districts or open-enrollment charter schools may receive for the rating year 2015-2016 and all subsequent rating years are as follows.

(1) A for superior achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an A rating if it scores within the applicable range established by the commissioner for an A rating.

(2) B for above standard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a B rating if it scores within the applicable range established by the commissioner for a B rating.

(3) C for standard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a C rating if it scores within the applicable range established by the commissioner for a C rating.

(4) F for substandard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(5) No Rating. Beginning with the financial accountability rating for rating year 2016-2017 and all subsequent rating years, in accordance with the procedures established in this section, a school district receiving territory due to an annexation order by the commissioner under the TEC, §13.054, or consolidation under the TEC, Chapter 49, Subchapter H, will not receive a rating for two consecutive rating years beginning with the rating year that is based on financial data from the fiscal year in which the order of annexation becomes effective. After the second rating year, the receiving district will be subject to the financial accountability rating system established by the commissioner in this section.

(j) The types of financial accountability ratings that charter schools operated by public IHEs may receive for the rating year 2016-2017 and all subsequent rating years are as follows.

(1) P for pass. Beginning with the financial accountability rating for rating year 2016-2017 and all subsequent rating years, in accordance with the procedures established in this section, a charter school operated by a public IHE will receive a P rating if it scores within the applicable range established by the commissioner for a P rating.

(2) F for substandard achievement. Beginning with the financial accountability rating for rating year 2016-2017 and all subsequent rating years, in accordance with the procedures established in this section, a charter school operated by a public IHE will receive an

F rating if it scores within the applicable range established by the commissioner for an F rating.

(k) The commissioner may lower a financial accountability rating based on the findings of an action conducted under the TEC, Chapter 39 or 39A, or change a financial accountability rating in cases of disaster, flood, extreme weather conditions, fuel curtailment, or another calamity.

(l) A financial accountability rating remains in effect until replaced by a subsequent financial accountability rating.

(m) The TEA will issue a preliminary financial accountability rating to a school district, an open-enrollment charter school, or a charter school operated by a public IHE on or before August 8 of each year. The TEA will base the financial accountability rating for a rating year on the data from the fiscal year preceding the rating year.

(1) The TEA will not delay the issuance of the preliminary or final rating if a school district, an open-enrollment charter school, or a charter school operated by a public IHE fails to meet the statutory deadline under the TEC, §44.008, for submitting the AFR. Instead, the school district, open-enrollment charter school, or charter school operated by a public IHE will receive an F rating for substandard achievement.

(2) If the TEA receives an appeal of a preliminary rating, described by subsection (n) of this section, the TEA will issue a final rating to the school district, open-enrollment charter school, or charter school operated by a public IHE no later than 60 days after the deadline for submitting appeals.

(3) If the TEA does not receive an appeal of a preliminary rating, described by subsection (n) of this section, the preliminary rating automatically becomes a final rating 31 days after issuance of the preliminary rating.

(n) A school district, an open-enrollment charter school, or a charter school operated by a public IHE may appeal its preliminary financial accountability rating through the following appeals process.

(1) The TEA division responsible for financial accountability must receive a written appeal no later than 30 days after the TEA's release of the preliminary rating. The appeal must include adequate evidence and additional information that supports the position of the school district, open-enrollment charter school, or charter school operated by a public IHE. Appeals received 31 days or more after TEA issues a preliminary rating will not be considered.

(2) A data error attributable to the TEA is a basis for an appeal. If a preliminary rating contains a data error attributable to the TEA, a school district or an open-enrollment charter school may submit a written appeal requesting a review of the preliminary rating.

(3) A school district, an open-enrollment charter school, or a charter school operated by a public IHE may appeal any other adverse issue it identifies in the preliminary rating.

(4) The TEA will only consider appeals that would result in a change of the preliminary rating.

(5) The TEA division responsible for financial accountability will select an external review panel to independently oversee the appeals process.

(6) The TEA division responsible for financial accountability will submit the information provided by the school district, open-enrollment charter school, or charter school operated by a public IHE to the external review panel members for review.

(7) Each external review panel member will examine the appeal and supporting documentation and will submit his or her recommendation to the TEA division responsible for financial accountability.

(8) The TEA division responsible for financial accountability will compile the recommendations and forward them to the commissioner.

(9) The commissioner will make a final ratings decision.

(A) The commissioner may adjust a score for an indicator or the overall score upon appeal of the indicator(s) by the school district, open-enrollment charter school, or charter school operated by a public IHE.

(B) Upon appeal of the indicator for the timely submission of a complete AFR, the commissioner may adjust the overall score and rating as described in clauses (i)-(iii) of this subparagraph if the certificate of the board and the audit opinion letter from the external auditor for the school district's or charter school's AFR were signed on or before the due date of the AFR as required in TEC, §44.008.

(i) For a school district or charter school that has a failed preliminary FIRST rating with 85 to 100 points, deduct 15 points from the total points for an overall passing score if no other critical indicators were failed.

(ii) For a school district or charter school that has a failed preliminary FIRST rating with 70 to 84 points, adjust the overall score to 70 points for an overall passing score if no other critical indicators were failed.

(iii) For a school district or charter school that has a failed preliminary FIRST rating with total points less than the threshold for an overall passing score and/or the school district or charter school failed any other critical indicators, no adjustment to the points will be made for the overall score.

(o) A final rating issued by the TEA under this section may not be appealed under the TEC, §7.057, or any other law or rule.

(p) A financial accountability rating by a voluntary association is a local option of the school district, open-enrollment charter school, or charter school operated by a public IHE, but it does not substitute for a financial accountability rating by the TEA.

(q) Each school district, open-enrollment charter school, and charter school operated by a public IHE is required to report information and financial accountability ratings to parents, taxpayers, and other stakeholders by implementing the following reporting procedures.

(1) Each school district, open-enrollment charter school, and charter school operated by a public IHE must prepare and distribute an annual financial management report in accordance with this subsection.

(2) Each school district, open-enrollment charter school, and charter school operated by a public IHE must provide the public with an opportunity to comment on the report at a public hearing.

(3) The annual financial management report for a school district, an open-enrollment charter school, or a charter school operated by a public IHE must include:

(A) a description of its financial management performance based on a comparison, provided by the TEA, of its performance on the indicators established by the commissioner and reflected in this section. The report will contain information that discloses:

(i) state-established standards; and

(ii) the financial management performance of the school district, open-enrollment charter school, or charter school operated by a public IHE under each indicator for the current and previous year's financial accountability ratings;

(B) any descriptive information required by the commissioner, including:

(i) a copy of the superintendent's current employment contract or other written documentation of employment if no contract exists. This must disclose all compensation and benefits paid to the superintendent. The school district, open-enrollment charter school, or charter school operated by a public IHE may publish the superintendent's employment contract on its website instead of publishing it in the annual financial management report;

(ii) a summary schedule for the fiscal year (12-month period) of expenditures paid on behalf of the superintendent and each board member and total reimbursements received by the superintendent and each board member. This includes transactions on the credit card(s), debit card(s), stored-value card(s), and any other similar instrument(s) of the school district, open-enrollment charter school, or charter school operated by a public IHE to cover expenses incurred by the superintendent and each board member. The summary schedule must separately report reimbursements for meals, lodging, transportation, motor fuel, and other items. The summary schedule of total reimbursements should not include reimbursements for supplies and materials that were purchased for the operation of the school district, open-enrollment charter school, or charter school operated by a public IHE;

(iii) a summary schedule for the fiscal year of the dollar amount of compensation and fees received by the superintendent from an outside school district, open-enrollment charter school, charter school operated by a public IHE, or any other outside entity in exchange for professional consulting or other personal services. The schedule must separately report the amount received from each entity;

(iv) a summary schedule for the fiscal year of the total dollar amount of gifts that had a total economic value of \$250 or more received by the executive officers and board members. This reporting requirement applies only to gifts received by the executive officers and board members (and their immediate family as described by Government Code, Chapter 573, Subchapter B, Relationships by Consanguinity or by Affinity) of the school district, open-enrollment charter school (or charter holder), or charter school operated by a public IHE (or charter holder) from an outside entity that received payments from the school district, open-enrollment charter school (or charter holder), or charter school operated by a public IHE (or charter holder) in the prior fiscal year and to gifts from competing vendors that were not awarded contracts in the prior fiscal year. This reporting requirement does not apply to reimbursement by an outside entity for travel-related expenses when the purpose of the travel was to investigate matters directly related to an executive officer's or board member's duties or to investigate matters related to attendance at education-related conferences and seminars with the primary purpose of providing continuing education (this exclusion does not apply to trips for entertainment purposes or pleasure trips). This reporting requirement excludes an individual gift or a series of gifts from a single outside entity that had a total economic value of less than \$250 per executive officer or board member; and

(v) a summary schedule for the fiscal year of the dollar amount received by board members for the total amount of business transactions with the school district, open-enrollment charter school (or charter holder), or charter school operated by a public IHE (or charter holder). This reporting requirement is not to duplicate the items dis-

closed in the summary schedule of reimbursements received by board members; and

(C) any other information the board of trustees of the school district, open-enrollment charter school, or charter school operated by a public IHE determines to be useful.

(4) The board of trustees of each school district, open-enrollment charter school, or charter school operated by a public IHE must hold a public hearing on the annual financial management report within two months after receiving a final financial accountability rating. The public hearing must be held at a location in the facilities of the school district, open-enrollment charter school, or charter school operated by a public IHE. The board must give notice of the hearing to owners of real estate property in the geographic boundaries of the school district, open-enrollment charter school, or charter school operated by a public IHE and to parents of school district, open-enrollment charter school, or charter school operated by a public IHE students. In addition to other notice required by law, the board must provide notice of the hearing:

(A) to a newspaper of general circulation in the geographic boundaries of the school district, each campus of an open-enrollment charter school, or each campus of a charter school operated by a public IHE in one posting prior to holding the public meeting, providing the time and place of the hearing. The notice in the newspaper may not be earlier than 30 days or later than 10 days before the date of the hearing. If no newspaper is published in the county in which the district's central administration office is located or within the geographic boundaries of an open-enrollment charter school's campus or campus of a charter school operated by a public IHE, then the board must publish the notice in the county nearest to the county seat of the county in which the district's central administration office is located or in which the campus of the open-enrollment charter school or the campus of a charter school operated by a public IHE is located; and

(B) through electronic mail to the mass communication media serving the school district, open-enrollment charter school, or charter school operated by a public IHE, including, but not limited to, radio and television.

(5) At the hearing, the school district, open-enrollment charter school, or charter school operated by a public IHE must provide the annual financial management report to the attending parents and taxpayers.

(6) The school district, open-enrollment charter school, or charter school operated by a public IHE must retain the annual financial management report for at least three years after the public hearing and make it available to parents and taxpayers upon request.

(7) Each school district, open-enrollment charter school, or charter school operated by a public IHE that received an F rating must file a corrective action plan with the TEA, prepared in accordance with instructions from the commissioner, within one month after the public hearing of the school district, open-enrollment charter school, or charter school operated by a public IHE. The commissioner may require certain information in the corrective action plan to address the factor(s) that may have contributed to the F rating for a school district, open-enrollment charter school, or charter school operated by a public IHE.

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 May 24, 2024.
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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.12

The Texas State Board of Pharmacy adopts new rule §291.12, concerning Delivery of Prescription Drugs. The new rule is adopted with changes to the proposed text as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1852). The rule will be republished.

The new rule specifies requirements for the delivery of prescription drugs to a patient or patient's agent.

The Board received comments from the Texas Federation of Drug Stores and Jeenu Philip, R.Ph., with Walgreen Co. suggesting the removal of the requirement for pharmacies to maintain records of patient complaints regarding compromised deliveries.

The Board received comments from Lauren Paul, PharmD, with CVS Health expressing concern that the proposed rule does not address distribution from drug manufacturers and wholesalers and suggesting changes to the temperature requirements for delivery by pharmacy employee or same-day courier service.

The Board received comments from Anne Titus Hilby, Deputy General Counsel, with Zipline International Inc. in support of the proposed rule.

The Board received comments from the Pharmaceutical Care Management Association expressing concern about the economic impact of the proposed rule and the lack of a definition for the term "temperature range" and suggesting changes to the general requirements for delivery by common carrier and the counseling information, notification, and compromised delivery requirements for all deliveries.

The Board received comments from A.J. Day, PharmD, with PCCA suggesting clarification of the packaging requirements for delivery by common carrier and the temperature requirements for delivery by pharmacy employee or same-day courier service and suggesting a grammatical correction to the compromised delivery requirements for all deliveries.

The Board received comments from Austin Compounding Pharmacy in support of the proposed rule, expressing concern that certain requirements are vague, and suggesting the notification of delivery requirement for delivery by pharmacy employee or same-day courier service be limited to "through reasonable means."

The new rule is adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.12. *Delivery of Prescription Drugs.*

(a) **Applicability.** This section applies to the delivery of prescription drugs by a pharmacy licensed by the board as a Class A, Class A-S, Class E, or Class E-S pharmacy.

(b) **Delivery by common carrier.** A pharmacy may deliver prescription drugs by use of a common carrier (e.g., U.S. Mail) as provided in §291.9 of this title (relating to Prescription Pick Up Locations) on request of the patient or patient's agent. Common carrier means a person or entity who holds out to the general public a willingness to provide transportation of property from place to place for compensation in the normal course of business. A pharmacy that delivers prescription drugs by use of a common carrier providing a same-day courier service is not subject to subsection (b) of this section and shall comply with subsection (c) of this section.

(1) **Standards.** The pharmacy shall ensure that all prescription drugs are delivered to the patient or patient's agent in accordance with nationally recognized standards, such as those of the manufacturer or the United States Pharmacopeia.

(2) **Packaging.** The pharmacy shall ensure that prescription drugs are packaged in commercially available tamper evident packaging.

(3) **Temperature.** The pharmacy shall ensure that any prescription drug delivered by common carrier is packaged in a manner that maintains a temperature range appropriate for the drug. This may include, without limitation, use of temperature tags, time temperature strips, insulated packaging, gel ice packs, or a combination of these as necessary.

(4) **Irregularity in delivery.** The pharmacy shall provide a method by which a patient or patient's agent can notify the pharmacy as to any irregularity in the delivery of the patient's prescription, to include but not be limited to:

- (A) timeliness of delivery;
 - (B) condition of the prescription drug upon delivery;
- and
- (C) failure to receive the proper prescription drug.

(5) **Refusal to deliver.** The pharmacy shall refuse to deliver by common carrier a prescription drug which in the professional opinion of the dispensing pharmacist may be clinically compromised by delivery by common carrier.

(c) **Delivery by pharmacy employee or common carrier providing a same-day courier service.** A pharmacy may deliver prescription drugs by means of its employee or a common carrier providing a same-day courier service as provided in §291.9 of this title on request of the patient or patient's agent.

(1) **Standards.** The pharmacy is responsible for any problems in the delivery of the prescription drug.

(2) **Temperature.** The prescription drug shall be maintained within the temperature range allowed by the United States

Pharmacopeia or recommended by the manufacturer until the delivery has been received by the patient or patient's agent.

(d) **All deliveries.** A pharmacy that delivers prescription drugs by common carrier or by pharmacy employee or by a common carrier providing a same-day courier service shall also comply with the following:

(1) **Counseling information.** The pharmacy shall comply with the requirements of §291.33(c)(1)(F) of this title (relating to Operational Standards).

(2) **Notification of delivery.** The pharmacy shall notify the patient or patient's agent of the delivery of a prescription drug.

(3) **Compromised delivery.** If a pharmacist determines a prescription drug is in any way compromised during delivery, the pharmacy shall replace the drug or arrange for the drug to be replaced, either by promptly delivering a replacement to the patient or by promptly contacting the prescriber to arrange for the drug to be dispensed to the patient by a pharmacy of the patient's or patient's agent's choice.

(4) **Records.** The pharmacy shall maintain records for two years on the following events:

(A) when a prescription drug was sent and delivered to the patient or patient's agent; and

(B) patient complaints regarding compromised deliveries, which may be documented in the patient profile.

(5) **Controlled substances.** A pharmacy shall comply with all state and federal laws and rules relating to the delivery of controlled substances.

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 May 21, 2024.

TRD-202402269

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8084



SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.131

The Texas State Board of Pharmacy adopts amendments to §291.131, concerning Pharmacies Compounding Non-Sterile Preparations. These amendments are adopted with changes to the proposed text as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1854). The rule will be republished.

The amendments update the personnel, environment, labeling, compounding process, quality assurance, and recordkeeping requirements for pharmacies compounding non-sterile preparations.

The Board received comments from A.J. Day, PharmD, with PCCA suggesting changes to specific definitions, personnel requirements, operational standards, and recordkeeping

requirements, and clarifying certain continuing education, equipment, labeling, component, quality assurance, and quality control requirements,

The Board received comments from Austin Compounding Pharmacy in support of the amendments and expressing concern the requirement that a master formulation record "shall be developed and approved by a pharmacist" may exclude qualified and experienced non-pharmacist staff from supporting formulation development, and suggesting the requirement be changed to require only that a pharmacist be responsible for final approval of the formulation.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.131. *Pharmacies Compounding Non-Sterile Preparations.*

(a) Purpose. Pharmacies compounding non-sterile preparations, prepackaging pharmaceutical products, and distributing those products shall comply with all requirements for their specific license classification and this section. The purpose of this section is to provide standards for the:

(1) compounding of non-sterile preparations pursuant to a prescription or medication order for a patient from a practitioner in Class A (Community), Class C (Institutional), and Class E (Non-resident) pharmacies;

(2) compounding, dispensing, and delivery of a reasonable quantity of a compounded non-sterile preparation in a Class A (Community), Class C (Institutional), and Class E (Non-resident) pharmacy to a practitioner's office for office use by the practitioner;

(3) compounding and distribution of compounded non-sterile preparations by a Class A (Community) pharmacy for a Class C (Institutional) pharmacy; and

(4) compounding of non-sterile preparations by a Class C (Institutional) pharmacy and the distribution of the compounded preparations to other Class C (Institutional) pharmacies under common ownership.

(b) Definitions. In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Active pharmaceutical ingredient--Any substance intended to be used in the compounding of a preparation, thereby becoming the active ingredient in that preparation and furnishing pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals or affecting the structure and function of the body.

(2) Beyond-use date--The date or time after which the compounded non-sterile preparation shall not be stored or transported or begin to be administered to a patient. The beyond-use date is determined from the date or time when the preparation was compounded.

(3) Cleaning--The process of removing soil (e.g., organic and inorganic material) from objects and surfaces, normally accom-

plished by manually or mechanically using water with detergents or enzymatic products.

(4) Component--Any ingredient intended for use in the compounding of a drug preparation, including those that may not appear in such preparation.

(5) Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order, based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(D) for or as an incident to research, teaching, or chemical analysis and not for sale or dispensing, except as allowed under §562.154 or Chapter 563 of the Occupations Code.

(6) Containment primary engineering control--A ventilated device designed and operated to minimize worker and environmental exposures to airborne contaminants through the full or partial enclosure of a potential contaminant source, the use of airflow capture velocities to trap and remove airborne contaminants near their point of generation, the use of air pressure relationships that define the direction of airflow into the cabinet, and the use of high-efficiency particulate air (HEPA) filtration on all potentially contaminated exhaust streams. Examples of containment primary engineering control include containment ventilated enclosures, biological safety cabinets, and compounding aseptic containment isolators.

(7) Controlled room temperature--The temperature maintained thermostatically that encompasses the usual and customary working environment of 20 - 25 degrees C (68 - 77 degrees F).

(8) Designated person(s)--One or more individuals assigned by the pharmacist-in-charge or the pharmacist-in-charge's designee to be responsible and accountable for the performance and operation of the facility and personnel as related to the preparation of compounded non-sterile preparations.

(9) Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 41 degrees C (105 degrees F).

(10) Reasonable quantity--An amount of a compounded drug that:

(A) does not exceed the amount a practitioner anticipates may be used in the practitioner's office or facility before the beyond use date of the drug;

(B) is reasonable considering the intended use of the compounded drug and the nature of the practitioner's practice; and

(C) for any practitioner and all practitioners as a whole, is not greater than an amount the pharmacy is capable of compounding in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation practices.

(11) Refrigerator--A cold place in which the temperature is controlled between 2 - 8 degrees C (36 - 46 degrees F).

(12) Sanitizing--A process for reducing on inanimate surfaces the number of all forms of microbial life including fungi, viruses, and bacteria using an appropriate agent.

(13) SOPs--Standard operating procedures.

(14) USP/NF--The current edition of the United States Pharmacopeia/National Formulary.

(15) Water activity--A measure of the fraction of total water that is unbound and freely available to participate in chemical, biochemical, or physiochemical reactions or provide an environment that can support microbial growth.

(c) Personnel. All personnel who compound or have direct oversight of compounding non-sterile preparations shall be initially trained and qualified by demonstrating knowledge and competency in the areas outlined in paragraph (5)(C) of this subsection.

(1) Pharmacist-in-charge. In addition to the responsibilities for the specific class of pharmacy, the pharmacist-in-charge shall have the responsibility for, at a minimum, the following concerning non-sterile compounding:

(A) determining that all personnel involved in non-sterile compounding possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken or supervised;

(B) determining that all personnel involved in non-sterile compounding obtain continuing education appropriate for the type of compounding done by the personnel;

(C) assuring that the equipment used in compounding is properly maintained;

(D) maintaining an appropriate environment in areas where non-sterile compounding occurs; and

(E) assuring that effective quality control procedures are developed and followed.

(2) Designated person(s). The pharmacist-in-charge or the pharmacist-in-charge's designee shall designate one or more individuals to be responsible and accountable for the performance and operation of the facility and personnel for the preparation of compounded non-sterile preparations. The designated person(s) shall be identified in the facility's SOPs. If the compounding facility has only one person responsible for all compounding in the facility, then that person is the designated person.

(3) Pharmacists. Special requirements for non-sterile compounding.

(A) All pharmacists engaged in compounding shall:

(i) possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken or supervised; and

(ii) obtain continuing education appropriate for the type of compounding undertaken or supervised by the pharmacist.

(B) A pharmacist shall inspect and approve all components, including consideration of all physical and chemical properties of the components, drug product containers, closures, labeling, and any other materials involved in the compounding process.

(C) A pharmacist shall review all compounding records for accuracy and conduct in-process and final checks to ensure that errors have not occurred in the compounding process.

(D) A pharmacist is responsible for the proper maintenance, cleanliness, and use of all equipment used in the compounding process.

(4) Pharmacy technicians and pharmacy technician trainees. All pharmacy technicians and pharmacy technician trainees engaged in non-sterile compounding shall:

(A) possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken;

(B) obtain continuing education appropriate for the type of compounding done by the pharmacy technician or pharmacy technician trainee; and

(C) perform compounding duties under the direct supervision of and responsible to a pharmacist.

(5) Training.

(A) All training activities shall be documented and covered by appropriate SOPs as outlined in subsection (d)(8)(A) of this section.

(B) All personnel involved in non-sterile compounding shall be well trained and must participate in continuing relevant training programs.

(C) Training shall include instruction, experience, and demonstrated proficiency in the following areas:

(i) hand hygiene;

(ii) garbing;

(iii) cleaning and sanitizing;

(iv) handling and transporting components and compounded non-sterile preparations;

(v) measuring and mixing;

(vi) proper use of equipment and devices selected to compound non-sterile preparations; and

(vii) documentation of the compounding process (e.g., Master Formulation Records and Compounding Records).

(d) Operational Standards.

(1) General requirements.

(A) Non-sterile drug preparations may be compounded in licensed pharmacies:

(i) upon presentation of a practitioner's prescription drug or medication order based on a valid pharmacist/patient/prescriber relationship;

(ii) in anticipation of future prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(iii) in reasonable quantities for office use by a practitioner and for use by a veterinarian.

(B) Non-sterile compounding in anticipation of future prescription drug or medication orders must be based upon a history of receiving valid prescriptions issued within an established pharmacist/patient/prescriber relationship, provided that in the pharmacist's professional judgment the quantity prepared is stable for the anticipated shelf time.

(i) The pharmacist's professional judgment shall be based on the criteria used to determine a beyond-use date outlined in paragraph (5)(C) of this subsection.

(ii) Documentation of the criteria used to determine the stability for the anticipated shelf time must be maintained and be available for inspection.

(iii) Any preparation compounded in anticipation of future prescription drug or medication orders shall be labeled. Such label shall contain:

(I) name and strength of the compounded preparation or list of the active ingredients and strengths;

(II) facility's lot number;

(III) beyond-use date as determined by the pharmacist using appropriate documented criteria as outlined in paragraph (5)(C) of this subsection; and

(IV) quantity or amount in the container.

(C) Commercially available products may be compounded for dispensing to individual patients provided the following conditions are met:

(i) the commercial product is not reasonably available from normal distribution channels in a timely manner to meet patient's needs;

(ii) the pharmacy maintains documentation that the product is not reasonably available due to a drug shortage or unavailability from the manufacturer; and

(iii) the prescribing practitioner has requested that the drug be compounded as described in subparagraph (D) of this paragraph.

(D) A pharmacy may not compound preparations that are essentially copies of commercially available products (e.g., the preparation is dispensed in a strength that is only slightly different from a commercially available product) unless the prescribing practitioner specifically orders the strength or dosage form and specifies why the patient needs the particular strength or dosage form of the preparation. The prescribing practitioner shall provide documentation of a patient specific medical need and the preparation produces a clinically significant therapeutic response (e.g., the physician requests an alternate product due to hypersensitivity to excipients or preservative in the FDA-approved product, or the physician requests an effective alternate dosage form) or if the drug product is not commercially available. The unavailability of such drug product must be documented prior to compounding. The methodology for documenting unavailability includes maintaining a copy of the wholesaler's notification showing back-ordered, discontinued, or out-of-stock items. This documentation must be available in hard-copy or electronic format for inspection by the board.

(E) A pharmacy may enter into an agreement to compound and dispense prescription/medication orders for another pharmacy provided the pharmacy complies with the provisions of §291.125 of this title (relating to Centralized Prescription Dispensing).

(F) Compounding pharmacies/pharmacists may advertise and promote the fact that they provide non-sterile prescription compounding services, which may include specific drug products and classes of drugs.

(G) A pharmacy may not compound veterinary preparations for use in food producing animals except in accordance with federal guidelines.

(H) A pharmacist may add flavoring to a prescription at the request of a patient, the patient's agent, or the prescriber. The pharmacist shall label the flavored prescription with a beyond-use-date that shall be no longer than fourteen days if stored in a refrigerator unless otherwise documented. Documentation of beyond-use-dates longer than fourteen days shall be maintained by the pharmacy electronically or manually and made available to agents of the board on request. A pharmacist may not add flavoring to an over-the-counter product at the request of a patient or patient's agent unless the pharmacist obtains a prescription for the over-the-counter product from the patient's practitioner.

(2) Library. In addition to the library requirements of the pharmacy's specific license classification, a pharmacy shall maintain a current copy, in hard-copy or electronic format, of Chapter 795 of the USP/NF concerning Pharmacy Compounding Non-Sterile Preparations.

(3) Environment.

(A) Pharmacies engaging in compounding shall have a designated and adequate area for the safe and orderly compounding of non-sterile preparations, including the placement of equipment and materials.

(B) Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of a drug compounding operation.

(C) A sink with hot and cold running water, exclusive of rest room facilities, shall be accessible to the compounding areas and be maintained in a sanitary condition. Supplies necessary for adequate washing shall be accessible in the immediate area of the sink and include:

(i) soap or detergent; and

(ii) air-driers or single-use towels.

(D) Appropriate measures shall be used to prevent cross-contamination between compounding non-sterile preparations, including dedication of equipment for such operations or the meticulous cleaning of contaminated equipment prior to its use for the preparation of subsequent compounds.

(E) Cleaning and sanitizing of surfaces in the non-sterile compounding area(s) shall occur on a regular basis as defined in appropriate SOPs as outlined in paragraph (8)(A) of this subsection.

(4) Equipment and Supplies.

(A) If the pharmacy engages in compounding non-sterile preparations that require weighing a component of the preparation, the pharmacy shall have a Class A prescription balance, or analytical balance and weights which shall be calibrated and have the accuracy of the balance verified by the pharmacy at least every 12 months as specified in the pharmacy's SOPs. The pharmacy shall document the calibration and verification.

(B) The pharmacy shall have equipment and utensils necessary for the proper compounding of prescription drug or medication orders. Such equipment and utensils used in the compounding process shall be:

(i) of appropriate design and capacity, and be operated within designed operational limits;

(ii) of suitable composition so that surfaces that contact components, in-process material, or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the drug product beyond the desired result;

(iii) cleaned and sanitized immediately prior to and after each use; and

(iv) routinely inspected, calibrated (if necessary), or checked to ensure proper performance.

(C) Weighing, measuring, or otherwise manipulating components that could generate airborne chemical particles (e.g., active pharmaceutical ingredients, added substances, and conventionally manufactured products) shall be evaluated to determine if these activities must be performed in a containment primary engineering control to reduce the potential exposure to personnel or contamination of the facility or compounded non-sterile preparations. The process evaluation shall be carried out in accordance with the facility's SOPs, and the assessment shall be documented.

(D) If a containment ventilated enclosure or biological safety cabinet is used, it shall be certified at least every 12 months or according to manufacturer specifications.

(5) Labeling. In addition to the labeling requirements of the pharmacy's specific license classification, the label dispensed or distributed pursuant to a prescription drug or medication order shall contain the following.

(A) The generic name(s) or the official name(s) of the principal active ingredient(s) of the compounded preparation.

(B) A statement that the preparation has been compounded by the pharmacy. (An auxiliary label may be used on the container to meet this requirement).

(C) A beyond-use date after which the compounded preparation should not be used. The beyond-use date shall be determined as outlined in Chapter 795 of the USP/NF concerning Pharmacy Compounding Non-Sterile Preparations including the following:

(i) The pharmacist shall consider:

(I) physical and chemical properties of active ingredients;

(II) use of preservatives and/or stabilizing agents;

(III) dosage form;

(IV) storage containers and conditions; and

(V) scientific, laboratory, or reference data from a peer reviewed source and retained in the pharmacy. The reference data should follow the same preparation instructions for combining components and packaged in a container with similar properties.

(ii) In the absence of stability information applicable for a specific drug or preparation, the following maximum beyond-use dates are to be used when the compounded preparation is packaged in tight, light-resistant containers.

(I) Aqueous dosage forms. An aqueous preparation is one that has a water activity equal to or greater than 0.6 (e.g., emulsions, gels, creams, solutions, sprays, or suspensions).

(-a-) Nonpreserved aqueous dosage forms: Not later than 14 days when stored in a refrigerator.

(-b-) Preserved aqueous dosage forms: Not later than 35 days when stored at controlled room temperature or in a refrigerator.

(II) Nonaqueous dosage forms. A nonaqueous dosage form is one that has a water activity less than 0.6.

(-a-) Nonaqueous oral liquids: Not later than 90 days when stored at controlled room temperature or in a refrigerator.

(-b-) Other nonaqueous dosage forms: Not later than 180 days when stored at controlled room temperature or refrigerator. Other nonaqueous dosage forms that have a water activity of less than 0.6 (e.g., capsules, tablets, granules, powders, nonaqueous topicals, suppositories, and troches or lozenges).

(iii) Compounded non-sterile preparations requiring shorter beyond-use dates. The beyond-use dates in subclauses (I) and (II) of clause (ii) are the beyond-use dates for compounded nonsterile preparations in the absence of specific stability information. However, the designated person(s) shall still perform due diligence to determine if there is existing stability data that would require a shorter beyond-use date.

(I) The beyond-use date of the compounded non-sterile preparation shall not exceed the shortest remaining expiration date of any of the commercially available starting components.

(II) For compounded non-sterile preparations prepared from one or more compounded components, the beyond-use date generally shall not exceed the shortest beyond-use date of any of the individual compounded components. However, there may be acceptable instances when the beyond-use date of the final compounded non-sterile preparation exceeds the beyond-use date assigned to compounded components (e.g., pH-altering solutions). If the assigned beyond-use date of the final compounded non-sterile preparation exceeds the beyond-use date of the compounded components, the physical, chemical, and microbiological quality of the final compounded non-sterile preparation shall not be negatively impacted.

(iv) Extending beyond-use dates for compounded non-sterile preparations. Beyond-use date limits may be exceeded when supported by valid scientific stability information for the specific compounded preparation.

(I) Compounded non-sterile preparations with a USP/NF monograph. When compounding from a USP/NF compounded preparation monograph for the compounded non-sterile preparation, the beyond-use date shall not exceed the beyond-use date specified in the monograph.

(II) Compounded non-sterile preparations with stability information. If there is a stability study using a stability-indicating analytical method for the active pharmaceutical ingredient(s), compounded non-sterile preparation formulation, and material of composition of the container closure that will be used, then the beyond-use date indicated by the study may be used in lieu of the beyond-use date specified in subclauses (I) and (II) of clause (ii) for aqueous and nonaqueous dosage forms, up to a maximum of 180 days.

(III) If the beyond-use date of the compounded non-sterile preparation is extended beyond the beyond-use date specified in subclauses (I) and (II) of clause (ii), an aqueous compounded non-sterile preparation must pass antimicrobial effectiveness testing.

(-a-) The designated person(s) may rely on antimicrobial effectiveness testing that is conducted, or contracted for, once for each formulation in the particular container closure system, including materials of composition or the container closure system, in which it will be packaged.

(-b-) Alternatively, the designated person(s) may rely on antimicrobial effectiveness testing results provided by an FDA-registered facility or published in peer-reviewed literature as long as the compounded non-sterile preparation formulation, including any preservative, and container closure materials of composition are the same as those tested, unless a bracketing study is performed.

(-c-) When a bracketing study is performed, antimicrobial effectiveness testing may be performed on a low concentration and on a high concentration of the active ingredient in the formu-

lation to establish preservative effectiveness across various strengths of the same formulation (e.g., bracketing). The concentration of all other ingredients, including preservatives, must fall within the bracketed range.

(6) Written drug information. Written information about the compounded preparation or its major active ingredient(s) shall be given to the patient at the time of dispensing. A statement which indicates that the preparation was compounded by the pharmacy must be included in this written information. If there is no written information available, the patient should be advised that the drug has been compounded and how to contact a pharmacist, and if appropriate the prescriber, concerning the drug.

(7) Drugs, components, and materials used in non-sterile compounding.

(A) Drugs used in non-sterile compounding shall be USP/NF grade substances manufactured in an FDA-registered facility.

(B) If USP/NF grade substances are not available, or when food, cosmetics, or other substances are or must be used, the substance shall be of a chemical grade in one of the following categories:

- (i) Chemically Pure (CP);
- (ii) Analytical Reagent (AR); or
- (iii) American Chemical Society (ACS); or
- (iv) Food Chemical Codex; or

(C) If a drug, component, or material is not purchased from an FDA-registered facility, the pharmacist shall establish purity and stability by obtaining a Certificate of Analysis from the supplier and the pharmacist shall compare the monograph of drugs in a similar class to the Certificate of Analysis.

(D) A manufactured drug product may be a source of active ingredient. Only manufactured drugs from containers labeled with a batch control number and a future expiration date are acceptable as a potential source of active ingredients. When compounding with manufactured drug products, the pharmacist must consider all ingredients present in the drug product relative to the intended use of the compounded preparation.

(E) All components shall be stored in properly labeled containers in a clean, dry area, under proper temperatures.

(F) Drug product containers and closures shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the compounded drug product beyond the desired result.

(G) Components, drug product containers, and closures shall be rotated so that the oldest stock is used first.

(H) Container closure systems shall provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of the compounded drug product.

(I) A pharmacy may not compound a preparation that contains ingredients appearing on a federal Food and Drug Administration list of drug products withdrawn or removed from the market for safety reasons.

(8) Compounding process.

(A) All significant procedures performed in the compounding area shall be covered by written SOPs designed to ensure accountability, accuracy, quality, safety, and uniformity in the compounding process. At a minimum, SOPs shall be developed for:

- (i) the facility;
- (ii) equipment;
- (iii) personnel;
- (iv) preparation evaluation;
- (v) quality assurance;
- (vi) preparation recall;
- (vii) packaging;
- (viii) storage of compounded preparations;
- (ix) hand hygiene and garbing; and
- (x) cleaning and sanitizing.

(B) Any compounded preparation with an official monograph in the USP/NF shall be compounded, labeled, and packaged in conformity with the USP/NF monograph for the drug.

(C) Any person with a communicable illness or open lesion that may adversely affect the safety or quality of a drug product being compounded shall report these conditions to the designated person(s). The designated person(s) shall determine whether the person must be excluded from compounding areas until the person's conditions have resolved.

(D) Personnel engaged in the compounding of drug preparations shall perform proper hand hygiene prior to engaging in compounding activities. Proper hand hygiene shall be defined in appropriate SOPs as outlined in subparagraph (A) of this paragraph and appropriate for prevention of preparation and facility contamination.

(E) Garbing requirements and the frequency of changing garb shall be determined by the pharmacy and documented in appropriate SOPs as outlined in subparagraph (A) of this paragraph. The garbing requirements under the pharmacy's SOPs must be appropriate for the type of compounding performed. Gloves shall be worn for the prevention of preparation and facility contamination.

(F) At each step of the compounding process, the pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(9) Quality Assurance.

(A) Initial formula validation. Prior to routine compounding of a non-sterile preparation, a pharmacy shall conduct an evaluation that shows that the pharmacy is capable of compounding a product that contains the stated amount of active ingredient(s).

(B) Finished preparation checks. The prescription drug and medication orders, written compounding procedure, preparation records, and expended materials used to make compounded non-sterile preparations shall be inspected for accuracy of correct identities and amounts of ingredients, packaging, labeling, and expected physical appearance and properties before the non-sterile preparations are dispensed.

(10) Quality Control.

(A) The pharmacy shall follow established quality control procedures to monitor the quality of compounded drug preparations for uniformity and consistency such as capsule weight variations, adequacy of mixing, clarity, or pH of solutions. When developing these procedures, pharmacy personnel shall consider the provisions of Chapter 795, concerning Pharmacy Compounding Non-Sterile Preparations, Chapter 1075, concerning Good Compounding Practices, and Chapter 1160, concerning Pharmaceutical Calculations in Prescription Com-

pounding contained in the current USP/NF. Such procedures shall be documented and be available for inspection.

(B) Compounding procedures that are routinely performed, including batch compounding, shall be completed and verified according to written procedures. The act of verification of a compounding procedure involves checking to ensure that calculations, weighing and measuring, order of mixing, and compounding techniques were appropriate and accurately performed.

(C) Unless otherwise indicated or appropriate, compounded preparations are to be prepared to ensure that each preparation shall contain not less than 90.0 percent and not more than 110.0 percent of the theoretically calculated and labeled quantity of active ingredient per unit weight or volume and not less than 90.0 percent and not more than 110.0 percent of the theoretically calculated weight or volume per unit of the preparation.

(e) Records.

(1) Maintenance of records. Every record required by this section shall be:

(A) kept by the pharmacy and be available, for at least two years, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(C) Documentation of the performance of quality control procedures is not required if the compounding process is done pursuant to a patient specific order and involves the mixing of two or more commercially available oral liquids or commercially available preparations when the final product is intended for external use.

(2) Master Formulation Record and Compounding Record.

(A) Master Formulation Record. A master formulation record shall be developed and approved by a pharmacist for all compounded preparations. Once approved, a duplicate of the master formulation record shall be used as the compound record each time the compound is prepared and on which all documentation for that compound occurs. The master formulation record shall contain at a minimum:

- (i) the formula;
- (ii) the components;
- (iii) the compounding directions;
- (iv) evaluation and testing requirements;
- (v) specific equipment used during preparation;
- (vi) storage requirements;

(vii) a reference to the location of the following documentation which may be maintained with other records, such as quality control records:

(I) the criteria used to determine the beyond-use date; and

(II) documentation of performance of quality control procedures, including, but not limited to, expected physical appearance of the final product.

(B) Compounding Record. The record for each preparation shall document the following:

- (i) identity of all components and their corresponding amounts, concentrations, or volumes;
- (ii) lot number and expiration date of each component;
- (iii) component manufacturer/distributor or suitable identifying number;
- (iv) container specifications;
- (v) unique lot or control number;
- (vi) beyond use date;
- (vii) date of preparation;
- (viii) name, initials, or electronic signature of the person(s) involved in the preparation;
- (ix) name, initials, or electronic signature of the responsible pharmacist;
- (x) finished preparation evaluation and testing specifications, if applicable; and
- (xi) comparison of actual yield to anticipated or theoretical yield, when appropriate.

(f) Office Use Compounding and Distribution of Compounded Preparations to Class C Pharmacies or Veterinarians in Accordance With §563.054 of the Act.

(1) General.

(A) A pharmacy may dispense and deliver a reasonable quantity of a compounded preparation to a practitioner for office use by the practitioner in accordance with this subsection.

(B) A Class A pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute non-sterile compounded preparations to a Class C pharmacy.

(C) A Class C pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute non-sterile compounded preparations that the Class C pharmacy has compounded for other Class C pharmacies under common ownership.

(D) To dispense and deliver a compounded preparation under this subsection, a pharmacy must:

- (i) verify the source of the raw materials to be used in a compounded drug;
- (ii) comply with applicable United States Pharmacopoeia guidelines, including the testing requirements, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191);
- (iii) enter into a written agreement with a practitioner for the practitioner's office use of a compounded preparation;
- (iv) comply with all applicable competency and accrediting standards as determined by the board; and
- (v) comply with the provisions of this subsection.

(2) Written Agreement. A pharmacy that provides non-sterile compounded preparations to practitioners for office use or to

another pharmacy shall enter into a written agreement with the practitioner or pharmacy. The written agreement shall:

(A) address acceptable standards of practice for a compounding pharmacy and a practitioner and receiving pharmacy that enter into the agreement including a statement that the compounded preparations may only be administered to the patient and may not be dispensed to the patient or sold to any other person or entity except as authorized by §563.054 of the Act;

(B) state that the practitioner or receiving pharmacy should include on a separate log or in a patient's chart, medication order, or medication administration record the lot number and beyond-use date of a compounded preparation administered to a patient; and

(C) describe the scope of services to be performed by the pharmacy and practitioner or receiving pharmacy, including a statement of the process for:

(i) a patient to report an adverse reaction or submit a complaint; and

(ii) the pharmacy to recall batches of compounded preparations.

(3) Recordkeeping.

(A) Maintenance of Records.

(i) Records of orders and distribution of non-sterile compounded preparations to a practitioner for office use or to a Class C pharmacy for administration to a patient shall:

(I) be kept by the pharmacy and be available, for at least two years from the date of the record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies;

(II) maintained separately from the records of products dispensed pursuant to a prescription or medication order; and

(III) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy or its representative. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this subsection, either on site or within 72 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(ii) Records may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(B) Orders. The pharmacy shall maintain a record of all non-sterile compounded preparations ordered by a practitioner for office use or by a Class C pharmacy for administration to a patient. The record shall include the following information:

(i) date of the order;

(ii) name, address, and phone number of the practitioner who ordered the preparation and, if applicable, the name, address, and phone number of the Class C pharmacy ordering the preparation; and

(iii) name, strength, and quantity of the preparation ordered.

(C) Distributions. The pharmacy shall maintain a record of all non-sterile compounded preparations distributed pursuant to an order to a practitioner for office use or by a Class C pharmacy for administration to a patient. The record shall include the following information:

(i) date the preparation was compounded;

(ii) date the preparation was distributed;

(iii) name, strength, and quantity in each container of the preparation;

(iv) pharmacy's lot number;

(v) quantity of containers shipped; and

(vi) name, address, and phone number of the practitioner or Class C pharmacy to whom the preparation is distributed.

(D) Audit Trail.

(i) The pharmacy shall store the order and distribution records of preparations for all non-sterile compounded preparations ordered by and or distributed to a practitioner for office use or by a Class C pharmacy for administration to a patient in such a manner as to be able to provide an audit trail for all orders and distributions of any of the following during a specified time period.

(I) any strength and dosage form of a preparation (by either brand or generic name or both);

(II) any ingredient;

(III) any lot number;

(IV) any practitioner;

(V) any facility; and

(VI) any pharmacy, if applicable.

(ii) The audit trail shall contain the following information:

(I) date of order and date of the distribution;

(II) practitioner's name, address, and name of the Class C pharmacy, if applicable;

(III) name, strength, and quantity of the preparation in each container of the preparation;

(IV) name and quantity of each active ingredient;

(V) quantity of containers distributed; and

(VI) pharmacy's lot number;

(4) Labeling. The pharmacy shall affix a label to the preparation containing the following information:

(A) name, address, and phone number of the compounding pharmacy;

(B) the statement: "For Institutional or Office Use Only--Not for Resale"; or if the preparation is distributed to a veterinarian the statement: "Compounded Preparation";

(C) name and strength of the preparation or list of the active ingredients and strengths;

(D) pharmacy's lot number;

(E) beyond-use date as determined by the pharmacist using appropriate documented criteria;

(F) quantity or amount in the container;

(G) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(H) device-specific instructions, where appropriate.

(g) Recall Procedures.

(1) The pharmacy shall have written procedures for the recall of any compounded non-sterile preparations provided to a patient, to a practitioner for office use, or a pharmacy for administration. Written procedures shall include, but not be limited to, the requirements as specified in paragraph (3) of this subsection.

(2) The pharmacy shall immediately initiate a recall of any non-sterile preparation compounded by the pharmacy upon identification of a potential or confirmed harm to a patient.

(3) In the event of a recall, the pharmacist-in-charge shall ensure that:

(A) each practitioner, facility, and/or pharmacy to which the preparation was distributed is notified, in writing, of the recall;

(B) each patient to whom the preparation was dispensed is notified, in writing, of the recall;

(C) if the preparation is prepared as a batch, the board is notified of the recall, in writing;

(D) if the preparation is distributed for office use, the Texas Department of State Health Services, Drugs and Medical Devices Group, is notified of the recall, in writing;

(E) the preparation is quarantined; and

(F) the pharmacy keeps a written record of the recall including all actions taken to notify all parties and steps taken to ensure corrective measures.

(4) If a pharmacy fails to initiate a recall, the board may require a pharmacy to initiate a recall if there is potential for or confirmed harm to a patient.

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 May 21, 2024.

TRD-202402270

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Effective date: June 10, 2024

Proposal publication date: March 22, 2024

For further information, please call: (512) 305-8084



PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.83

The Texas Commission of Licensing and Regulation (Commission), on behalf of the Texas Board of Veterinary Medical Examiners (TBVME), adopts a new rule at 22 Texas Administrative Code (TAC), Chapter 573, Subchapter G, §573.83, regarding the Rules of Professional Conduct, without changes to the proposed text as published in the April 12, 2024, issue of the *Texas Register* (49 TexReg 2242). This rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 22 TAC, Chapter 573, implement Texas Occupations Code, Chapter 801, Veterinarians.

The adopted rule adds §573.83 to Subchapter G, Other Provisions. The adopted rule is necessary to implement House Bill (HB) 4069, 88th Legislature, Regular Session (2023), which requires the adoption of rules for a veterinarian to disclose to an owner or caretaker of an ill or injured animal the description and estimated price of a proposed emergency treatment before providing the treatment.

The adopted rule ensures transparency for the public when receiving emergency veterinary care.

SECTION-BY-SECTION SUMMARY

The adopted rule adds §573.83, Price Transparency for Emergency Care. Subsection (a) defines "emergency care" for purposes of the section. Subsection (b) requires a veterinarian to disclose to the owner or caretaker of an animal that the animal requires emergency treatment. Subsection (c) enumerates the requirements of the disclosure required in subsection (b). Subsection (d) requires a veterinarian to update the disclosures if the animal's medical condition changes. Lastly, subsection (e) states that the person presenting the animal for emergency treatment is presumed to be its owner or caretaker.

PUBLIC COMMENTS

The proposed rule was published in the April 12, 2024, issue of the *Texas Register* (49 TexReg 2242). The public comment period closed on May 13, 2024. The Department received comments from 60 interested parties on the proposed rule. The public comments are summarized below.

Comment: The Department received one comment from an individual who, based on a personal experience, expressed support for the proposed rule.

Department Response: The Department appreciates the comment in support of the proposed rule. The Department did not make any changes to the proposed rule in response to this comment.

Comment: The Department received a comment from one individual who expressed that requiring a veterinarian, rather than front-office staff or a qualified veterinary technician, to leave a pet during an emergency to talk to the owner and provide an estimate is unnecessarily burdensome and onerous.

Department Response: The Department disagrees with the comment because House Bill 4069 delegates these responsibilities to the veterinarian. The Department did not make any changes to the proposed rule in response to this comment.

Comment: The Department received a comment from an individual expressing that a veterinarian should be able to stabilize an animal when there is a life-threatening situation and the person presenting the animal for treatment is willing to pay.

Department Response: The Department agrees with the comment. This comment is consistent with House Bill 4069 and the proposed rule. The Department did not make any changes to the proposed rule in response to this comment.

Comment: Taylor County Republican Party Precinct 403 suggested changes to the proposed rule, including its transfer to other sections (§573.20 or §573.22); adding a definition for the term "animal," as provided by Texas Penal Code §42.092 or by Texas Health and Safety Code §821.001; and adding an interpretation for the term "pricing," as used in §573.29.

Department Response: The Department disagrees with the suggested changes. The terms "animal" and "pricing" are used in the Texas Occupations Code, Chapter 801, and neither term is defined in this statute. In addition, as both terms are commonly used and generally understood, a particular definition to be used only in this rule chapter is unnecessary. The Department did not make any changes to the proposed rule in response to this comment.

Comment: The Department received a comment from an individual recommending that the proposed rule be changed to allow the veterinarian to obtain an advance authorization from an animal's owner to care for the animal if it is in need of immediate, life-saving care, and to allow the veterinarian to provide the detailed cost estimate after having the opportunity to fully examine the animal. Additionally, the commenter requested adding practical guidelines to follow when a veterinarian is unable to contact the owner when an animal's condition changes.

Department Response: The Department disagrees with the suggested changes, as they are inconsistent with the requirements established by House Bill 4069. The Department did not make any changes to the proposed rule in response to this comment.

Comment: The Department received a comment from an individual stating that the proposed rule would impede a veterinarian's ability to stabilize an animal's condition if it is in need of immediate attention. The commenter stated that the proposed rule should be clarified to remove possible undue delays in care in these situations. The commenter also stated that the rule should be amended to allow oral authorization of emergency care. Lastly, the commenter also requested adding practical guidelines to follow when a veterinarian cannot communicate with the owner of an animal to update its medical condition and the estimated price.

Department Response: The Department disagrees with the suggested changes, as they are inconsistent with the requirements established by House Bill 4069. The Department did not make any changes to the proposed rule in response to this comment.

Comment: The Department received comments from 17 individuals and from the Texas Veterinary Medical Association, which also provided an oral comment at the May 21, 2024, Commission meeting, all suggesting the same changes to the proposed rule. These commenters suggested adding language to establish a difference between "immediate life-saving care" and "longer-term less emergent treatments" to allow veterinarians to provide a cost estimate to stabilize the animal and a standard price disclosure for essential critical therapeutics. The commenters also recommended language to consider when a veterinarian cannot communicate with the owner or caretaker of an animal to update its medical condition and the estimated price. Finally, the commenters requested including the alternative for owners to pre-authorize emergency treatments when a veterinarian-client-patient relationship exists.

Department Response: The Department disagrees with the suggested changes, as they are inconsistent with the requirements established by House Bill 4069. The Department did not make any changes to the proposed rule in response to these comments.

Comment: The Department received comments from 36 individuals suggesting adding language to allow veterinarians to provide a cost estimate to stabilize the animal and a standard price disclosure for more long-term treatments. The commenters also recommended adding language to consider when a veterinarian cannot communicate with the owner or caretaker of an animal to update its medical condition and the estimated price.

Department Response: The Department disagrees with the suggested changes, as they are inconsistent with the requirements established by House Bill 4069. The Department did not make any changes to the proposed rule in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The State Board of Veterinary Medical Examiners (Board) met on January 23, 2024, to discuss the proposed rule. The Board recommended the proposed rule to be published in the *Texas Register*. At its meeting on May 21, 2024, the Commission adopted the proposed rule as recommended by the Board.

STATUTORY AUTHORITY

The adopted rule is adopted under the authority of Texas Occupations Code, Chapters 51 and 801, 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 801. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are proposed to be adopted is House Bill 4069, 88th Legislature, Regular Session (2023).

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 May 24, 2024.

TRD-202402351

Doug Jennings

General Counsel

Texas Board of Veterinary Medical Examiners

Effective date: June 13, 2024

Proposal publication date: April 12, 2024

For further information, please call: (512) 475-4879

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 307. BEHAVIORAL HEALTH PROGRAMS

SUBCHAPTER F. BEHAVIORAL HEALTH PARTNERSHIP PROGRAM

26 TAC §§307.251, 307.253, 307.255, 307.257, 307.259, 307.261, 307.263, 307.265, 307.267

The Texas Health and Human Services Commission (HHSC) adopts new Subchapter F, Behavioral Health Partnership Program, in Texas Administrative Code, Chapter 307. New Subchapter F comprises §307.251, concerning Purpose; §307.253, concerning Application; §307.255, concerning Definitions; §307.257, concerning Behavioral Health Partnership Program Liaison Qualifications; §307.259, concerning Local Mental Health Authority or Local Behavioral Health Authority Responsibilities; §307.261, concerning Determining which Local Mental Health Authority or Local Behavioral Health Authority Employs a Behavioral Health Partnership Program Liaison; §307.263, concerning Responsibilities of a Behavioral Health Partnership Program Liaison; §307.265, concerning Texas Health and Human Services Commission Waiver Process; and §307.267, concerning Texas Health and Human Services Commission Notification.

Sections 307.259, 307.261, 307.263, and 307.265 are adopted with changes to the proposed text as published in the February 16, 2024, issue of the *Texas Register* (49 TexReg 840). These rules will be republished.

Sections 307.251, 307.253, 307.255, 307.257, and 307.267 are adopted without changes to the proposed text as published in the February 16, 2024, issue of the *Texas Register* (49 TexReg 840). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The rules comply with Texas Education Code §8.151 and §8.152, as amended by Senate Bill 26, 88th Legislature, Regular Session, 2023, which establishes a process for local mental health authorities (LMHAs) to submit a waiver request to the HHSC Executive Commissioner to hire a licensed master social worker or licensed professional counselor associate in lieu of a non-physician mental health professional (NPMHP) if the LMHA is unable to hire a NPMHP in its designated regional education service center (ESC). This adoption also includes application to Local Behavioral Health Authorities (LBHA). The adoption establishes the behavioral health partnership program (BHPP) as the program name and "behavioral health partnership program liaison" as the position title that includes an NPMHP or a person hired under the waiver process.

COMMENTS

The 31-day comment period ended on March 18, 2024.

During this period, HHSC received comments regarding the proposed rules from one commenter, the Texas Council of Community Centers. A summary of comments relating to the rules and HHSC's responses follows.

Comment: One commenter suggested the cross reference in §307.259(a)(7) addressing the annual activity and evaluation report, be amended to Texas Education Code §8.155 to refer to BHPP liaison duties, not Texas Education Code §8.153, which addresses the required Memorandum of Understanding with a regional educational service center.

Response: HHSC agrees with the comment and made a revision to correct the cross reference to Texas Education Code §8.155 in §307.259(a)(7).

Comment: One commenter stated the rules in §307.259(a)(6) and (7) do not identify specific metrics and do not require a certain mechanism to track outcomes of services provided. The commenter recommended revising language related to metrics and reporting practices in this section.

Response: HHSC declines to revise the rule. HHSC requires a quarterly report to monitor outcomes under §307.259(a)(6), although it is not required by statute. HHSC does not require specific metrics or a specific tracking mechanism as they vary widely by district and students. Additionally, LMHAs and LBHAs are already required to report on outcomes for school districts and students, and HHSC submits an annual report to the Legislature as required by Texas Education Code §8.158.

Comment: One commenter suggested that in compliance with Texas Education Code §8.152(b), the language in §307.261 be amended to reference all the requirements in Texas Education Code §8.152(b) rather than reference the general obligation to employ the BHPP liaison.

Response: HHSC agrees and revised language in §307.261 to add the requirement for the LMHA or LBHA to consult with other LMHAs or LBHAs in the service area and the ESC when making a hiring decision, as is consistent with Texas Education Code §8.152(b).

HHSC made minor editorial changes to §307.263(b), §307.263(b)(3)(C), §307.265(b)(2), and §307.265(b)(5) for clarity. HHSC also updated the agency's contact method in §307.259(a)(8) and §307.265(b).

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Education Code §8.152(c) which provides the Executive Commissioner of HHSC with authority to approve waiver requests for an LMHA to hire a licensed master social worker or licenses professional counselor associate if an NPMHP cannot be hired.

§307.259. Local Mental Health Authority or Local Behavioral Health Authority Responsibilities.

(a) The LMHA or LBHA must:

(1) enter into a memorandum of understanding with the ESC to collaborate regarding the administration of this subchapter;

(2) employ a BHPP liaison to serve as a mental health and substance use resource for school districts located in the region served by an ESC and in which the LMHA or LBHA delivers services;

(3) pay the ESC a reasonable and negotiated cost-recovery fee, not to exceed \$15,000 per year unless the LMHA or LBHA and the ESC agree to a higher amount, for providing the space and administrative support necessary for the BHPP liaison to carry out the professional duties outlined in Texas Education Code §8.155;

(4) supervise the BHPP liaison;

(5) consult with any other LMHA or LBHA in the region and the regional ESC for input on supervising the BHPP liaison and coordinating services provided by the BHPP liaison;

(6) submit a written quarterly activity and evaluation report to the HHSC contract manager regarding the outcomes for school districts and students resulting from services delivered by a BHPP liaison in accordance with §307.263 of this subchapter (relating to Responsibilities of a Behavioral Health Partnership Program Liaison);

(7) submit a written annual activity and evaluation report to the HHSC contract manager regarding the outcomes for school districts and students resulting from services delivered by a BHPP liaison in accordance with Texas Education Code §8.155;

(8) submit a written waiver request to BHPP@hhs.texas.gov if required under Texas Education Code §8.152(c);

(9) ensure an LMSW or an LPC associate is eligible for an HHSC waiver request as outlined in this subchapter and the LMSW or LPC associate has the ability to fulfill the duties outlined in this subchapter if a waiver is requested;

(10) retain documentation in accordance with the LMHA's and LBHA's policies and procedures on efforts made to hire an NPMHP before submitting a waiver request; and

(11) submit a new waiver request, as needed, if the HHSC BHPP liaison vacates the position.

(b) If a BHPP liaison vacates the position within one year of approval of the waiver under subsection (a)(11) of this section, a new waiver request is not required.

(c) If a BHPP liaison vacates the position more than a year after approval of the waiver under subsection (a)(11) of this section, the LMHA or LBHA must attempt to hire a professional pursuant to Texas Education Code §8.152 before requesting a waiver under subsection (a)(11) of this section.

§307.261. *Determining which Local Mental Health Authority or Local Behavioral Health Authority Employs a Behavioral Health Partnership Program Liaison.*

If two or more LMHAs or LBHAs provide services in a region served by a regional ESC, the LMHA or LBHA that primarily operates in the county in which the center is located shall:

(1) in making a hiring decision about a BHPP liaison, consult with the other LMHAs or LBHAs providing services in that region;

(2) consult with the ESC before making the final hiring decision; and

(3) employ the BHPP liaison.

§307.263. *Responsibilities of a Behavioral Health Partnership Program Liaison.*

(a) A BHPP liaison must:

(1) serve as a mental health and substance use resource for school districts located in the region served by a regional ESC in which the LMHA or LBHA provides services; and

(2) operate within the scope of their professional state license.

(b) A BHPP liaison is responsible for carrying out the following functions and duties required of an NPMHP in accordance with Texas Education Code §8.155, including:

(1) helping school district personnel gain awareness and a better understanding of mental health and co-occurring mental health and substance use disorders;

(2) assisting school district personnel to implement initiatives related to mental health or substance use under state law or agency

rules, interagency memorandums of understanding, and related programs; and

(3) ensuring school district personnel are aware of:

(A) the list of recommended best practice-based programs and research-based practices developed under Texas Education Code §38.351;

(B) other public and private mental health and substance use prevention, treatment, and recovery programs available in the school district, including evidence-based programs delivered by an LMHA or LBHA and other public and private mental health resources, such as the Texas School Mental Health Resources database as required by Texas Education Code §38.253; and

(C) other available public and private mental health and substance use prevention, treatment, and recovery program resources administered by the LMHA or LBHA or HHSC to support school districts, students, and families;

(4) on a monthly basis, facilitating mental health first aid training;

(5) on a monthly basis, facilitating training on the effects of grief and trauma and providing support to children with intellectual or developmental disabilities who suffer from grief or trauma; and

(6) on a monthly basis, facilitating training on prevention and intervention programs that have been shown to be effective in helping students cope with pressures to:

(A) use alcohol, cigarettes, or illegal drugs; or

(B) misuse prescription drugs.

(c) A BHPP liaison employed under this subchapter must not treat or provide counseling to a student or provide advice to school district personnel regarding a specific student.

§307.265. *Texas Health and Human Services Commission Waiver Process.*

(a) If an LMHA or LBHA is unable to employ a person who qualifies as an NPMHP for the BHPP liaison position in its designated ESC, the LMHA or LBHA may request a waiver from the HHSC Executive Commissioner, or designee, to employ an LMSW or LPC associate to serve as the BHPP liaison, pursuant to Texas Education Code §8.152(c).

(b) To apply for a waiver, the LMHA or LBHA must complete and submit the written HHSC Local Mental and Behavioral Health Authority Waiver Request Form to BHPP@hhs.texas.gov addressing the following information:

(1) the name of the LMHA or LBHA requesting the waiver;

(2) the LMHA or LBHA's staff member's name and contact information;

(3) the LMHA or LBHA's recruitment efforts to hire an NPMHP;

(4) the duration of time the LMHA or LBHA was unable to hire for this position before requesting a waiver; and

(5) that the BHPP liaison waiver candidate is licensed as an LMSW or LPC associate.

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 May 22, 2024.

TRD-202402279

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: June 11, 2024

Proposal publication date: February 16, 2024

For further information, please call: (512) 243-4241

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 9. EXPLORATION AND LEASING OF STATE OIL AND GAS

SUBCHAPTER E. POOLING AND UNITIZING STATE PROPERTY

31 TAC §9.81

BACKGROUND AND ANALYSIS

On behalf of the School Land Board ("SLB"), the General Land Office ("GLO") adopts an amendment to 31 TAC §9.81 (relating to Pooling and Unitizing of State Property) by changes made to paragraphs 9.81(a), 9.81(b), 9.81(c), and 9.81(d), without changes to the proposed text as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1874) and the text will not be republished.

The adopted amendments to 31 TAC §9.81 update and clarify the timelines associated with School Land Board ("SLB") meetings, pooling committee meetings and makeup, and the GLO process to review and approve pooling and production sharing agreement applications.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the amendments.

STATUTORY AUTHORITY

The amendment to 31 TAC §9.81 is adopted pursuant to the authority set out in Texas Natural Resources Code §31.051(3), which states that the Commissioner of the GLO shall make and enforce suitable rules consistent with the law.

STATUTES AFFECTED

Texas Natural Resources Code Chapter 52 is affected by this adopted amendment.

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

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

TRD-202402287

Mark Havens

Chief Clerk

General Land Office

Effective date: June 11, 2024

Proposal publication date: March 22, 2024

For further information, please call: (512) 475-1859

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety (the department) adopts amendments to §4.1, concerning Transportation of Hazardous Materials. This rule is adopted without changes to the proposed text as published in the April 12, 2024, issue of the *Texas Register* (49 TexReg 2250) and will not be republished.

The proposed amendment updates adoption of the federal hazardous materials regulations as amended through December 1, 2023.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Transportation Code, Section 644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations by reference.

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 May 20, 2024.

TRD-202402250

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: June 9, 2024

Proposal publication date: April 12, 2024

For further information, please call: (512) 424-5848

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SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.15

The Texas Department of Public Safety (the department) adopts amendments to §4.15, concerning Compliance Review and Safety Audit Programs. This rule is adopted without changes to the proposed text as published in the April 12, 2024, issue of the *Texas Register* (49 TexReg 2256) and will not be republished.

The proposed amendment adds as an imminent hazard to the public a motor carrier's refusal to submit to an inspection and the practice of employing unqualified drivers with fraudulent foreign commercial driver licenses. It also specifies the documentation

and retention requirements for a motor carrier that employs foreign commercial driver license personnel consistent with House Bill 4337, 88th Leg., R.S. (2023).

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Transportation Code, Section 644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations by reference.

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 May 20, 2024.

TRD-202402251

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: June 9, 2024

Proposal publication date: April 12, 2024

For further information, please call: (512) 424-5848



PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 259. NEW CONSTRUCTION RULES

SUBCHAPTER B. NEW MAXIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.135

The Texas Commission on Jail Standards (TCJS) adopts an amendment to rule §259.135 concerning dormitory housing and dayrooms, adopted without changes as published in the March 1, 2024, issue of the *Texas Register* (49 TexReg 1245). The rule will not be republished.

The Texas Commission on Jail Standards adopts amendments to Texas Administrative Code, Title 37, §259.135, relating to dormitory housing. Specifically, the adopted amendment addresses the generally accepted industry standard of direct supervision inmate housing areas with congregate levels that exceed 48 inmates. Counties that utilize the direct supervision concept for inmate supervision have been forced to apply for a variance from minimum jail standards to operate inmate housing areas with a congregate level that exceeds 48 inmates. The construction and utilization of inmate housing areas with congregate levels that exceed 48 inmates is common across the nation and 10 counties in Texas currently operate direct supervision housing areas with no negative impact. Amending minimum jail standards to allow congregate levels that exceed 48 inmates when operated as direct supervision will acknowledge that this concept is viable and encouraged for counties that are capable of operating direct supervision facilities.

No comments were received from the public regarding adoption of this amendment.

The amendment is adopted under the authority of Government Code, Chapter 511, which authorizes the Texas Commission on Jail Standards to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

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 May 24, 2024.

TRD-202402339

Brandon Wood

Executive Director

Texas Commission on Jail Standards

Effective date: June 13, 2024

Proposal publication date: March 1, 2024

For further information, please call: (512) 850-8668



37 TAC §259.136

The Texas Commission on Jail Standards (TCJS) adopts an amendment to rule §259.136 concerning dormitory housing and dayrooms, adopted without changes as published in the March 1, 2024, issue of the *Texas Register* (49 TexReg 1245). The rule will not be republished.

The adopted amendment addresses the generally accepted industry standard of direct supervision inmate housing areas and dayrooms with congregate levels that exceed 48 inmates. Counties that utilize the direct supervision concept for inmate supervision have been forced to apply for a variance from minimum jail standards to operate inmate housing areas and dayrooms with a congregate level that exceeds 48 inmates. The construction and utilization of inmate housing areas and dayrooms with congregate levels that exceed 48 inmates is common across the nation and 10 counties in Texas currently operate direct supervision housing areas with no negative impact. Amending minimum jail standards to allow congregate levels that exceed 48 inmates when operated as direct supervision will acknowledge that this concept is viable and encouraged for counties that are capable of operating direct supervision facilities.

No comments were received from the public regarding adoption of this amendment.

The amendment is adopted under the authority of Government Code, Chapter 511, which authorizes the Texas Commission on Jail Standards to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

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 May 24, 2024.

TRD-202402340

Brandon Wood
Executive Director
Texas Commission on Jail Standards
Effective date: June 13, 2024
Proposal publication date: March 1, 2024
For further information, please call: (512) 850-8668



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.

Department of Aging and Disability 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, some agencies were abolished and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 48, Community Care for Aged and Disabled are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 278, Adult Foster Care (AFC) Program.

The rules will be transferred in the Texas Administrative Code effective June 28, 2024.

The following table outlines the rule transfer.

Figure: 40 TAC Chapter 48

TRD-202402379

Texas 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, some agencies were abolished and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 48, Community Care for Aged and Disabled are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 278, Adult Foster Care (AFC) Program.

The rules will be transferred in the Texas Administrative Code effective June 28, 2024.

The following table outlines the rule transfer.

Figure: 40 TAC Chapter 48

TRD-202402380

Figure: 40 TAC Chapter 48

Current Rules Title 40. Social Services and Assistance Part 1. Department of Aging and Disability Services Chapter 48. Community Care for Aged and Disabled	Move to Title 26. Health and Human Services Part 1. Texas Health and Human Services Commission Chapter 278. Adult Foster Care (AFC) Program
Subchapter F. In-Home And Family Support Program	Subchapter A. In-Home And Family Support Program
§48.2701. Definitions.	§278.1. Definitions.
§48.2702. Eligibility Determination Process.	§278.3. Eligibility Determination Process.
§48.2703. Income Eligibility.	§278.5. Income Eligibility.
§48.2704. Functional Eligibility.	§278.7. Functional Eligibility.
§48.2705. Service Plan.	§278.9. Service Plan.
§48.2706. Allowable In-Home and Family Support Program (IH/FSP) Services.	§278.11. Allowable In-Home and Family Support Program (IH/FSP) Services.
§48.2707. Program Restrictions.	§278.13. Program Restrictions.
§48.2708. Service Subsidy and Capital Expenditure.	§278.15. Service Subsidy and Capital Expenditure.
§48.2709. Payments.	§278.17. Payments.
§48.2710. Right To Appeal.	§278.19. Right To Appeal.
§48.2711. Recertification.	§278.21. Recertification.
§48.2721. Definitions for the Transition to Life in the Community (TLC) Program.	§278.23. Definitions for the Transition to Life in the Community (TLC) Program.
§48.2722. Transition to Life in the Community (TLC) Client Eligibility Criteria.	§278.25. Transition to Life in the Community (TLC) Client Eligibility Criteria.
§48.2723. Application for Transition to Life in the Community (TLC) Benefits.	§278.27. Application for Transition to Life in the Community (TLC) Benefits.
§48.2724. Transition to Life in the Community (TLC) Program Benefits.	§278.29. Transition to Life in the Community (TLC) Program Benefits.
§48.2725. Transition to Life in the Community (TLC) Client Rights.	§278.31. Transition to Life in the Community (TLC) Client Rights.
Subchapter K. Minimum Standards for Adult Foster Care	Subchapter B. Minimum Standards for Adult Foster Care
§48.8901. Compliance with Rules.	§278.101. Compliance with Rules.
§48.8902. Provider Qualifications.	§278.103. Provider Qualifications.
§48.8903. Substitute Provider Qualifications.	§278.105. Substitute Provider Qualifications.
§48.8904. Individuals Who May Not Provide Adult Foster Care Services.	§278.107. Individuals Who May Not Provide Adult Foster Care Services.
§48.8905. Home Enrollment Requirements.	§278.109. Home Enrollment Requirements.
§48.8906. Enrollment and Licensure Requirements.	§278.111. Enrollment and Licensure Requirements.
§48.8907. Provider Responsibilities.	§278.113. Provider Responsibilities.

Department of Aging and Disability 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, some agencies were abolished and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 55, Contracting to Provide Home-Delivered Meals are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 281, Contracting to Provide Home-Delivered Meals.

The rules will be transferred in the Texas Administrative Code effective June 28, 2024.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 55

TRD-202402346

Texas 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, some agencies were abolished and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 55, Contracting to Provide Home-Delivered Meals are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 281, Contracting to Provide Home-Delivered Meals.

The rules will be transferred in the Texas Administrative Code effective June 28, 2024.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 55

TRD-202402347

Figure: 40 TAC Chapter 55

Current Rules Title 40. Social Services and Assistance Part 1. Department of Aging and Disability Services Chapter 55. Contracting to Provide Home-Delivered Meals	Move to Title 26. Health and Human Services Part 1. Texas Health and Human Services Commission Chapter 281. Contracting to Provide Home-Delivered Meals
§55.1. Purpose.	§281.1. Purpose.
§55.3. Definitions.	§281.3. Definitions.
§55.5. Contracting Requirements for Provider Agencies.	§281.5. Contracting Requirements for Provider Agencies.
§55.7. Staff Requirements.	§281.7. Staff Requirements.
§55.9. Training Requirements.	§281.9. Training Requirements.
§55.11. Nutrition Education.	§281.11. Nutrition Education.
§55.13. Compliance with Laws and Regulations.	§281.13. Compliance with Laws and Regulations.
§55.15. Menus.	§281.15. Menus.
§55.17. Standard Recipes.	§281.17. Standard Recipes.
§55.19. Modified Diets.	§281.19. Modified Diets.
§55.21. Frozen, Chilled, or Shelf-Stable Meals.	§281.21. Frozen, Chilled, or Shelf-Stable Meals.
§55.23. Meal Packaging.	§281.23. Meal Packaging.
§55.25. Service Initiation.	§281.25. Service Initiation.
§55.27. Service Requirements.	§281.27. Service Requirements.
§55.29. Significant Changes.	§281.29. Significant Changes.
§55.31. Provider Agency Quality Control Measures	§281.31. Provider Agency Quality Control Measures.
§55.33. Suspension of Services.	§281.33. Suspension of Services.
§55.35. Service Plan Changes.	§281.35. Service Plan Changes.
§55.37. Termination of Services.	§281.37. Termination of Services.
§55.39. Recordkeeping.	§281.39. Recordkeeping.
§55.41. Billing and Claims Payment.	§281.41. Billing and Claims Payment.
§55.43. Complaints.	§281.43. Complaints.



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 355, Reimbursement Rates

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 the rules referenced above, the agency will readopt, readopt with amendments, or repeal each rule. The purpose of this review is to assess whether the reasons for initially adopting the rules continue to exist and to seek public comment on whether the reasons for initially adopting the rules continue to exist.

Comments on the review of Chapter 355, Reimbursement Rates, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to ProviderFinanceDept@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 355" 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 1, Part 15, Chapter 355 of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202402377

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: May 29, 2024



Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) publishes this notice of intention to review Chapter 21, Interconnection Agreements for Telecommunications Service Providers, in accordance with Texas Government Code §2001.039, *Agency Review of Existing Rules*. The text of the rule sections will not be published. The text of the rules may be found in the Texas Administrative Code, Title 16,

Economic Regulation, Part 2, or through the commission's website at www.puc.texas.gov.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by Texas Government Code §2001.039(e), this review is to assess whether the reasons for adopting or readopting a rule continue to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each rule section in Chapter 21 continue to exist.

The commission has conducted a review of the rules based on comments received in response to the preliminary notice published in the *Texas Register* on August 18, 2023 (48 TexReg 4563 and October 6, 2023 at 48 TexReg 5866) and proposes amendments of several rules throughout the chapter. The commission contemporaneously proposes amendments in the Proposed Rules section of the *Texas Register*.

If it is determined during this review that any other section of Chapter 21 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding. Thus, this notice of intention to review Chapter 21 has no effect on the sections as they currently exist.

Interested persons may file comments on the review of Chapter 21 electronically through the interchange on the commission's website or may submit comments to the filing clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by June 28, 2024. **When filing comments, interested persons are requested to comment on the sections in the same order they are found in the chapter and to clearly designate which section is being commented upon.** All comments should refer to Project Number 55293.

The notice of intention to review Chapter 21 is proposed for publication under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction and Texas Government Code §2001.039 which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Texas Utilities Code Annotated, Title II, Public Utility Regulatory Act, §14.002; Texas Government Code §2001.039.

TRD-202402336

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: May 23, 2024



Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), in its own capacity and 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 1, Miscellaneous Provisions

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 1, Miscellaneous Provisions, 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. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 1" 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).

TRD-202402320

Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: May 23, 2024



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 25, Part 1, of the Texas Administrative Code:

Chapter 405, Patient Care--Mental 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 405, Patient Care--Mental 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 bhs_rules@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 405" 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).

TRD-202402306

Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: May 22, 2024



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 25, Part 1, of the Texas Administrative Code:

Chapter 411, State Mental Health Authority Responsibilities

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 411, State Mental Health Authority Responsibilities, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to BHS_Rules@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 411" 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).

TRD-202402307

Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: May 22, 2024



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 25, Part 1, of the Texas Administrative Code:

Chapter 414, Rights and Protections of Persons Receiving Mental 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 414, Rights and Protections of Persons Receiving Mental 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 bhs_rules@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 414" 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).

TRD-202402308
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: May 22, 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 readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 306, Behavioral Health Delivery System

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 306, Behavioral Health Delivery System, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to bhs_rules@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 306" 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-202402309
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: May 22, 2024



The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 307, Behavioral Health Programs

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 307, Behavioral Health Programs, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to bhs_rules@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 307" 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-202402312
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: May 22, 2024



The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 352, Comprehensive Rehabilitation 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 352, Comprehensive Rehabilitation Services, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to CRS_Policy@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 352" 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-202402321
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: May 23, 2024



The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 354, Hemophilia Assistance Program

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 354, Hemophilia Assistance Program, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to hemophilia@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 354" 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-202402358

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: May 28, 2024



Department of Aging and Disability Services

Title 40, Part 1

The Texas Health and Human Services Commission (HHSC), as the successor agency of the Texas Department of Aging and Disability Services, proposes to review and consider for re adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 40, Part 1, of the Texas Administrative Code:

Chapter 11, Quality Assurance Fee

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 the rules referenced above, the agency will readopt, readopt with amendments, or repeal each rule. The purpose of this review is to assess whether the reasons for initially adopting the rules continue to exist and to seek public comment on whether the reasons for initially adopting the rules continue to exist.

Comments on the review of Chapter 11, Quality Assurance Fee, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to PFD_LFM@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 11" 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 40, Part 1, Chapter 11 of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202402378

Jessica Miller

Director, Rules Coordination Office

Department of Aging and Disability Services

Filed: May 29, 2024



Adopted Rule Reviews

Texas Health and Human Services Commission

Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 1, Part 15, of the Texas Administrative Code (TAC):

Chapter 382, Women's Health Services

Notice of the review of this chapter was published in the April 5, 2024, issue of the *Texas Register* (49 TexReg 2203). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 382 in accordance with Texas Government Code §2001.039, 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 382. Any amendments, if applicable, to Chapter 382 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 1 TAC Chapter 382 as required by the Texas Government Code §2001.039.

TRD-202402356

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: May 24, 2024



The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 1, Part 15, of the Texas Administrative Code (TAC):

Chapter 395, Civil Rights

Notice of the review of this chapter was published in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2095). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 395 in accordance with Texas Government Code §2001.039, 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 395. Any amendments, if applicable, to Chapter 395 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 1 TAC Chapter 395 as required by the Texas Government Code §2001.039.

TRD-202402324

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: May 23, 2024



Texas Department of Agriculture

Title 4, Part 1

Pursuant to Texas Government Code, §2001.039, the Texas Department of Agriculture (Department) has completed its review of Texas Administrative Code, Title 4, Part 1, Chapter 2 (Licensing), Subchapter A (General Provisions), comprised of §2.1 (Application for a License), §2.3 (Payment of Required License Fees), and §2.4 (Notification of Change of Address).

The notice of intent to review this subchapter was published in the September 22, 2023 issue of the *Texas Register* (48 TexReg 5553). No comments were received in response to this notice.

The Department finds that the reasons for initially adopting this subchapter continue to exist, and readopts it with proposed amendments to §2.1, which can be found in the *Proposed Rules* section of this issue.

TRD-202402267

Susan Maldonado
General Counsel
Texas Department of Agriculture
Filed: May 21, 2024



Department of State Health Services

Title 25, Part 1

Texas Health and Human Services Commission (HHSC), in its own capacity and on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 37, Maternal and Infant Health Services

Notice of the review of this chapter was published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5743). HHSC received no comments concerning this chapter.

HHSC and DSHS have reviewed Chapter 37 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agencies determined that the original reasons for adopting rules in the chapter continue to exist and readopts Chapter 37 except for:

§37.3, Intrauterine Contraceptive Devices;

§37.11, Purpose;

§37.12, Definitions;

§37.15, Withholding of Funds to Providers;

§37.191, Memorandum of Understanding Concerning a Coordinated Statewide Family Planning Program;

§37.192, Memorandum of Understanding on Multiproblem Children and Youth;

§37.193, Memorandum of Understanding Covering the Delivery of Services to Persons Who Are Deaf;

§37.201, Transportation of an Infant to a Hospital's Level III Neonatal Intensive Care Unit;

§37.251, Purpose;

§37.252, Definitions;

§37.253, Professional Standards/Guidelines; §37.254, Statewide Oversight of the Perinatal Care System and Interstate Cooperation;

§37.255, Perinatal Planning Areas;

§37.256, Perinatal Resource Coordinating Groups;

§37.257, Perinatal Plans;

§37.258, Data Analysis and Progress Report; and

§37.259, Designation of Perinatal Care Facilities.

The identified repeals and any amendments, if applicable, to Chapter 37 identified by HHSC and DSHS in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's and DSHS' review of 25 TAC Chapter 37 as required by the Texas Government Code §2001.039.

TRD-202402357

Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: May 28, 2024



The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 137, Birthing Centers

Notice of the review of this chapter was published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1974). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 137 in accordance with Texas Government Code §2001.039, 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 137. Any amendments, if applicable, to Chapter 137 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 25 TAC Chapter 137 as required by the Texas Government Code §2001.039.

TRD-202402337

Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: May 23, 2024



The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 231, Requests for Information or Official Determination on Food Regulation

Notice of the review of this chapter was published in the April 5, 2024, issue of the *Texas Register* (49 TexReg 2204). HHSC received no comments concerning this chapter.

HHSC and DSHS have reviewed Chapter 231 in accordance with Texas Government Code §2001.039, 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 231. Any amendments, if applicable, to Chapter 231 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's and DSHS' review of 25 TAC Chapter 231 as required by the Texas Government Code §2001.039.

TRD-202402341

Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: May 24, 2024



The Texas Health and Human Services Commission (HHSC), in its own capacity and on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 415, Provider Clinical Responsibilities--Mental Health Services

Notice of the review of this chapter was published in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2097). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 415 in accordance with Texas Government Code §2001.039, 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 rules in the chapter continue to exist and readopts Chapter 415 except for:

§415.4, Philosophy;

§415.13, References;

§415.14, Distribution;

§415.314, Notice of Hearing Forms; and

§415.315, References.

The identified repeals and any amendments, if applicable, to Chapter 415 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 25 TAC Chapter 415 as required by the Texas Government Code §2001.039.

TRD-202402323

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: May 23, 2024



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 275, Consumer Managed Personal Attendant Services (CM-PAS) Program

Notice of the review of this chapter was published in the February 16, 2024, issue of the *Texas Register* (49 TexReg 882). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 275 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 275. Any amendments to Chapter 275 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 275 as required by the Texas Government Code §2001.039.

TRD-202402367

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: May 28, 2024



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 (TAC):

Chapter 557, Medication Aides--Program Requirements

Notice of the review of this chapter was published in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2098). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 557 in accordance with Texas Government Code §2001.039, 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 557. Any amendments, if applicable, to Chapter 557 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 557 as required by the Texas Government Code §2001.039.

TRD-202402328

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: May 23, 2024



Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

Chapters 120, 122, and 124

The Texas Department of Insurance, Division of Workers' Compensation (DWC) completed its review of 28 Texas Administrative Code (TAC) Chapters 120, 122, and 124. DWC conducted the review under Texas Government Code §2001.039.

Notice of the review was published in the April 12, 2024, issue of the *Texas Register* (49 TexReg 2323). There were no requests for a public hearing.

DWC received two comments by the May 13, 2024, deadline. No comments suggested repealing a rule in its entirety. Commenters for readoption and for readoption with changes were: Benjamin De Leon for the Office of Injured Employee Counsel (OIEC) and Tracey Jennings for Summit Holdings. There were no commenters against readoption.

As a result of the review, and in accordance with Texas Government Code §2001.039, DWC finds that the reasons for initially adopting the rules continue to exist and readopts all sections in 28 TAC:

-Chapter 120 (Compensation Procedure--Employers);

-Chapter 122 (Compensation Procedure--Claimants); and

-Chapter 124 (Insurance Carriers: Notices, Payments, and Reporting).

DWC will consider suggested repeals or amendments identified during this rule review in future rulemaking under Texas Government Code Chapter 2001 (Administrative Procedure).

This concludes the review of 28 TAC Chapters 120, 122, and 124.

TRD-202402354
Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: May 24, 2024



Department of Aging and Disability Services

Title 40, Part 1

The Texas Health and Human Services Commission (HHSC), as the successor agency of the Texas Department of Aging and Disability Services, adopts the review of the chapter below in Title 40, Part 1, of the Texas Administrative Code (TAC):

Chapter 41, Consumer Directed Services Option

Notice of the review of this chapter was published in the April 5, 2024, issue of the *Texas Register* (49 TexReg 2205). HHSC received no comments concerning this chapter.

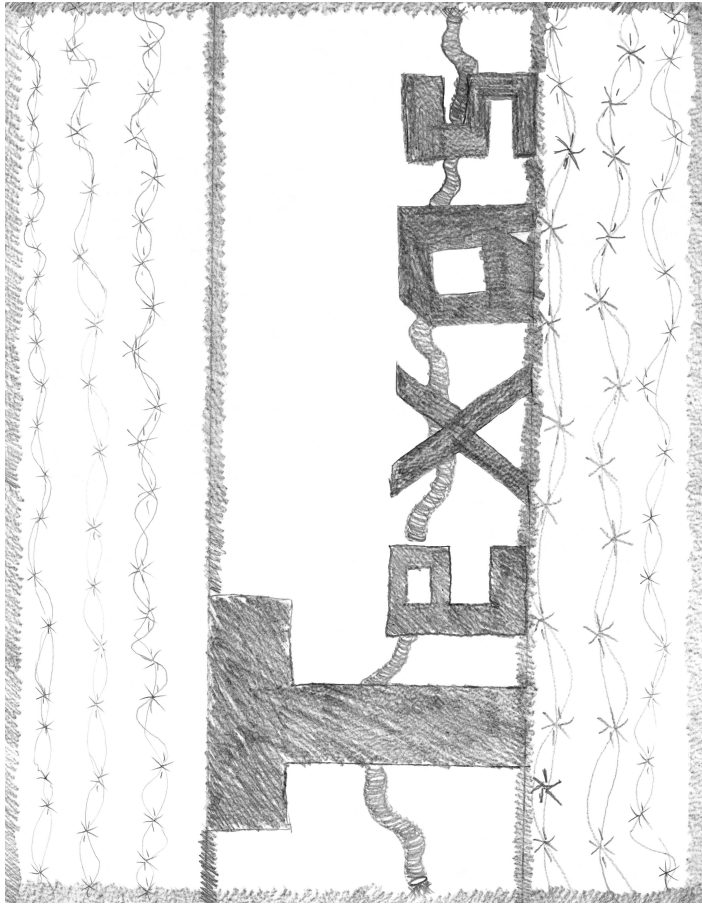
HHSC has reviewed Chapter 41 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 41. Any amendments, if applicable, to Chapter 41 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 40 TAC Chapter 41 as required by the Texas Government Code §2001.039.

TRD-202402329
Jessica Miller
Director, Rules Coordination Office
Department of Aging and Disability Services
Filed: May 23, 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.

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code
Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Health and Safety Code and the Texas Water 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. The Attorney General will consider any written comments, and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Harris County, Texas and the State of Texas, a Necessary and Indispensable Party v. J&S Water Company, L.L.C.*; Cause No. 2019-89465, in the 53rd District Court, Harris County, Texas.

Background: Defendant J&S Water System Company, L.L.C. ("J&S") owns and operates a wastewater treatment plant located approximately 350 feet northeast from the corner of Kodiak Street and Rayford Road in Five Oaks, Harris County, Texas. Harris County and the State, on behalf of the Texas Commission on Environmental Quality ("TCEQ"), filed a civil enforcement suit under the Texas Water Code against J&S for violations of the Texas Water Code and TCEQ rules.

Proposed Settlement: The parties propose a civil penalty of \$180,000, to be divided equally between the State and Harris County, as required by Tex. Water Code §7.107. Of this amount, \$130,000 will be deferred upon timely completion with the injunctive relief included in the AFJ. The remaining non-deferred amount of \$50,000 will be divided equally between the State and Harris County. The AFJ also assesses a civil penalty of \$20,000 to be paid to TCEQ. The parties propose attorney's fees of \$4,000, to be divided equally between the State and Harris County.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Ixchel Parr, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC-066, Austin, Texas 78711-2548; (512) 463-2012; facsimile (512) 320-0911; email: Ixchel.Parr@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202402311
Justin Gordon
General Counsel
Office of the Attorney General
Filed: May 22, 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 06/03/24 - 06/09/24 is 18.00% for consumer¹ credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/03/24 - 06/09/24 is 18.00% for commercial² credit.

¹ Credit for personal, family, or household use.

² Credit for business, commercial, investment, or other similar purpose.

TRD-202402375

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: May 29, 2024

Texas Council for Developmental Disabilities

Request for Applications: Choice-Making Among Youth Age 0-14: A Foundation for a Self-Determined Life

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for activities to increase opportunities for children and parents to learn and practice choice making skills. Choice making serves to empower children with disabilities by fostering a sense of responsibility and autonomy, enhance children's communication abilities, and can contribute to overall community safety such as reducing abuse and neglect. Children who were given more choice making in play activities resulted in more positive behavior outcomes. By promoting choice making in children at younger ages, they will likely be in a better position to make self-determined choices as an adult. Project activities must include a range of developmental strategies and tools to enhance positive choice making skills among children ages birth to age 14 of all abilities and communication levels. The selection of these age groups is intended to supplement the education and training currently offered to individuals over the age of 14. Projects should include strategies to educate and train individuals as well as parents and others in their support network.

TCDD has approved funding for one organization for up to five years. Funding is approved for up to \$300,000 each year. Funds available for this project are provided to TCDD by the Administration for Community Living (ACL), U.S. Department of Health and Human Services, with 100% federal funding pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 25% of total project costs are required for projects. Non-federal matching funds at a reduced rate of 10% of the total project costs are required for project activities conducted in federally designated poverty areas.

Additional information concerning this Request for Applications (RFA) and TCDD is available at <https://tcdd.texas.gov/grants-rfas/funding-available-for-grants/>. All questions pertaining to this

RFA should be directed in writing to TCDD via email at apply@tcdd.texas.gov or via telephone at (512) 437-5432.

Deadline: Proposals are due by 11:59 p.m. on August 23, 2024. Proposals will not be accepted outside of these due dates.

TRD-202402389

Beth Stalvey

Executive Director

Texas Council for Developmental Disabilities

Filed: May 29, 2024



Request for Applications: Self-Determined Health Care

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds to promote the strategies of self-determination in health care to assist in communication with providers and navigating the health care system. Self-determination among individuals with DD includes understanding your own needs, knowing what kind of support may help, and communicating those needs to others. Program components may include knowing your health care rights and finding support from peers. Products may include tools to assist individuals in articulating their health care preferences, and/or tools to help identify when a person with DD may need additional support in a health care system encounter.

TCDD has approved funding for one organization for up to five years. Funding is approved for up to \$125,000 each year. Funds available for this project are provided to TCDD by the Administration for Community Living (ACL), U.S. Department of Health and Human Services, with 100% federal funding pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 25% of total project costs are required for projects. Non-federal matching funds at a reduced rate of 10% of the total project costs are required for project activities conducted in federally designated poverty areas.

Additional information concerning this Request for Applications (RFA) and TCDD is available at <https://tcdd.texas.gov/grants-rfas/funding-available-for-grants/>. All questions pertaining to this RFA should be directed in writing to TCDD via email at apply@tcdd.texas.gov or via telephone at (512) 437-5432.

Deadline: Proposals are due by 11:59 p.m. on August 23, 2024. Proposals will not be accepted outside of these due dates.

TRD-202402388

Beth Stalvey

Executive Director

Texas Council for Developmental Disabilities

Filed: May 29, 2024



State Board for Educator Certification

Correction of Error Concerning Adopted Repeal of and New 19 TAC Chapter 228, Requirements for Educator Preparation Programs

The Texas Education Agency (TEA), on behalf of the State Board for Educator Certification, adopted repeals and new sections for 19 TAC Chapter 228, Requirements for Educator Preparation Programs, in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3531).

Due to error as submitted by TEA, the description of adopted new §228.103(a) in the preamble included an incorrect number of weeks

for the first formal observation of the residency assignment. As specified in the rule, the first formal observation must be within the first four weeks of the residency assignment. To accurately reflect the language in the rule, the description in the preamble should have read as follows:

Adopted new §228.103(a) requires the EPP to provide the first formal observation within the first four weeks of the residency assignment.

TRD-202402387

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Filed: May 29, 2024



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 9, 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 **July 9, 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: 114TH Mobile Home Park, LLC; DOCKET NUMBER: 2022-1644-PWS-E; IDENTIFIER: RN102318094; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(h)(3) and (j)(1)(A) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director (ED) in writing as to the beginning and completion of a water works project and attest to the fact that the completed work is substantially in accordance with the plans and specifications on file with the commission; 30 TAC §290.42(f)(1)(E)(ii), by failing to provide containment facilities for all liquid chemical storage tanks; 30 TAC §290.42(g), by failing to obtain an exception, in accordance with 30 TAC 290.39(l), prior to using innovative/alternate treatment processes; 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies tested upon installation and on an annual basis by a

recognized backflow assembly tester and certified that they are operating within specifications; and 30 TAC §290.46(f)(2) and (3)(A)(i)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; PENALTY: \$8,251; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(2) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2023-0116-PWS-E; IDENTIFIER: RN102682218; LOCATION: Glen Rose, Somervell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(D), by failing to ensure that livestock in pastures are not allowed within 50 feet of the facility's well at Water Plant Number 1; and 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a minimum well capacity of 0.6 gallons per minute per connection; PENALTY: \$1,425; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(3) COMPANY: BARUCH, LP; DOCKET NUMBER: 2022-1021-PST-E; IDENTIFIER: RN100811322; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: temporarily out-of-service underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and (3), by failing to provide an amended registration for any change or additional information to the agency regarding the USTs within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.49(a)(1) and §334.54(b)(3) and TWC, §26.3475(d), by failing to adequately protect the temporarily out-of-service UST system from corrosion; and 30 TAC §334.606, by failing to maintain required UST operator training certification documentation on-site and make it available for inspection upon request by agency personnel; PENALTY: \$7,000; ENFORCEMENT COORDINATOR: Lauren Little, (817) 588-5888; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: BASF CORPORATION; DOCKET NUMBER: 2022-1362-WDW-E; IDENTIFIER: RN100634922; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: agricultural chemical manufacturing facility and waste disposal well (WDW); RULES VIOLATED: §305.125(1) and 30 TAC §331.63(e), 40 Code of Federal Regulations §146.67(c), Underground Injection Control Permit Number WDW 155, and Permit Provision VII.E. Operating Parameters, by failing to maintain an annulus pressure of at least 100 pounds per square inch greater than the injection tubing pressure to prevent leaks from the well into unauthorized zones and to detect well malfunctions; PENALTY: \$2,550; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$1,000; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(5) COMPANY: BBR Water Company; DOCKET NUMBER: 2022-1292-PWS-E; IDENTIFIER: RN101275733; LOCATION: Bulverde, Comal County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards that is readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency; 30 TAC §290.42(1), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 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; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at

least once every three years; 30 TAC §290.46(u), by failing to plug an abandoned public water supply well with cement in accordance with 16 TAC Chapter 76 or submit test results proving that the well is in a non-deteriorated condition; 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 public water system will use to comply with the monitoring requirements; PENALTY: \$4,158; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Blue Sky Farms, LLC; DOCKET NUMBER: 2022-0156-AGR-E; IDENTIFIER: RN101523587; LOCATION: Dublin, Erath County; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0003077000, Part X.U, by failing to maintain grassed waterways; 30 TAC §305.125(1) and §321.44(a) and TPDES Permit Number WQ0003077000, Part VIII, B.3, by failing to orally notify the appropriate TCEQ regional office within one hour of discovery of a discharge of manure, sludge, or wastewater into water in the state; 30 TAC §305.125(1) and (4) and §321.31(a), TWC, §26.121(a)(1), and TPDES Permit Number WQ0003077000, Part VI, A, by failing to prevent the unauthorized discharge of agricultural waste into or adjacent to any water in the state; PENALTY: \$3,338; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: City of Reno; DOCKET NUMBER: 2023-1486-PWS-E; IDENTIFIER: RN102686581; LOCATION: Azle, Parker County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(e)(3)(G), by failing to obtain an exception, in accordance with 30 TAC §290.39(1), prior to using blended water containing free chlorine and water containing chloramines; PENALTY: \$427; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: City of Sonora; DOCKET NUMBER: 2021-0906-PWS-E; IDENTIFIER: RN101384261; LOCATION: Sonora, Sutton 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 an approval prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.42(e)(4)(C) and TCEQ Agreed Order Docket Number 2019-0417-PWS-E, Ordering Provision Number 2.a.i, by failing to provide forced air ventilation, which includes both high level and floor level screened and louvered vents, a fan which is located at and draws air in through the top vent and discharges to the outside atmosphere through the floor level vent; and 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies tested upon installation and on an annual basis by a recognized backflow assembly tester and certified that they are operating within specifications; PENALTY: \$11,475; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$11,475; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(9) COMPANY: Clean Harbors Deer Park, LLC; DOCKET NUMBER: 2021-1517-IWD-E; IDENTIFIER: RN102184173; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: industrial hazardous waste treatment, storage, and disposal facility; RULES VIOLATED: 30

TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0001429000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2 and Other Requirements Number 3(b) for Outfall Number 002 and Effluent Limitations and Monitoring Requirements Number 1 for Outfall Numbers 002, 003, and 004, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and §319.5(b) and TPDES Permit Number WQ0001429000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Number 002, by failing to collect and analyze samples at the intervals specified in the permit; and 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0001429000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Numbers 101 and 201, by failing to comply with permitted effluent limitations; PENALTY: \$65,699; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$26,280; ENFORCEMENT COORDINATOR: Sarah Castillo, (512) 239-1130; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(10) COMPANY: COMMUNITY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2022-0612-WQ-E; IDENTIFIER: RN101238863; LOCATION: Azle, Tarrant County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §305.42(a) and TWC, 26.121(a), by failing to obtain authorization to discharge conventional water treatment plant wastewater into or adjacent to any water in the state; PENALTY: \$2,300; ENFORCEMENT COORDINATOR: Megan Crinklaw, (512) 239-1129; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(11) COMPANY: CREST METAL DOORS, INCORPORATED; DOCKET NUMBER: 2023-0371-AIR-E; IDENTIFIER: RN100851997; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: metal door manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c), New Source Review (NSR) Permit Number 28970, Special Conditions (SC) Number 16.C(1) and (2), and Texas Health and Safety Code, §382.085(b), by failing to maintain records that contained the data and information for volatile organic compounds and particulate matter emissions in pounds per hour as daily averages and in tons per year over the previous 12 months to demonstrate compliance with the SC and the maximum allowable emissions rate for NSR Permit Number 28970; PENALTY: \$5,350; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(12) COMPANY: CTM Investments, Incorporated dba Checkered Flag 29; DOCKET NUMBER: 2023-0129-PST-E; IDENTIFIER: RN102410172; LOCATION: Cresson, Hood County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,556; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: CY-Champ Public Utility District; DOCKET NUMBER: 2023-0927-PWS-E; IDENTIFIER: RN102674900; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(iv) and Texas Health and Safety Code, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Kaisie Hubschmitt, (512) 239-1482; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(14) COMPANY: DCP Operating Company, LP; DOCKET NUMBER: 2023-0906-AIR-E; IDENTIFIER: RN107088759; LOCATION:

Goldsmith, Ector County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §§116.115(c), 116.615(2), and 122.143(4), Standard Permit Registration Number 116553, Air Quality Standard Permit for Oil and Gas Handling and Production Facilities, Special Conditions Number (a)(4), Federal Operating Permit Number O4398/General Operating Permit Number 514, Site-wide Requirements Numbers (b)(2) and (9)(E)(ii), and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$13,625; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(15) COMPANY: Delaware Basin Midstream LLC; DOCKET NUMBER: 2023-0775-AIR-E; IDENTIFIER: RN108748237; LOCATION: Orla, Reeves County; TYPE OF FACILITY: natural gas compression facility; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O3967, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F., and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §§116.115(c), 116.615(2), and 122.143(4), Standard Permit Registration Number 149503, FOP Number O3967, GTC and STC Number 7, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$18,450; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(16) COMPANY: Duke's Junk Recycling LLC; DOCKET NUMBER: 2023-1090-MSW-E; IDENTIFIER: RN111506838; LOCATION: Austin, Travis County; TYPE OF FACILITY: citizens collection station; RULES VIOLATED: 30 TAC §330.11(a) and (e)(1), by failing to submit written notification to the Executive Director that storage, processing, or disposal activities are planned at least 90 days prior to engaging in these activities for a citizens' collection station; PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Eresha DeSilva, (512) 239-5084; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: DUKO OIL COMPANY, INCORPORATED dba Bulk Plant; DOCKET NUMBER: 2022-0957-PST-E; IDENTIFIER: RN101804938; LOCATION: Emory, Rains County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to make available a valid, current TCEQ delivery certificate before depositing a regulated substance into a regulated underground storage tank system; PENALTY: \$22,000; ENFORCEMENT COORDINATOR: Lauren Little, (817) 588-5888; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Energy Transfer GC NGL Fractionators LLC; DOCKET NUMBER: 2023-0632-IWD-E; IDENTIFIER: RN107858045; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: oil and gas extraction facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0005395000 and National Pollutant Discharge Elimination System Permit Number TX0134027, Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$10,912; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$4,365; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(19) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2023-0696-AIR-E; IDENTIFIER: RN102528197; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical storage facility; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O1429, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F., and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review (NSR) Permit Number 7278, Special Conditions (SC) Numbers 1 and 10.C., FOP Number O1429, GTC and STC Number 14, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rate and the emissions limit; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 7278, SC Number 1, FOP Number O1429, GTC and STC Number 14, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 7278, SC Numbers 1 and 10.C., FOP Number O1429, GTC and STC Number 14, and THSC, §382.085(b), by failing to comply with the concentration limit and emissions limit; PENALTY: \$95,528; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$38,211; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(20) COMPANY: Fort Bend County Municipal Utility District 41; DOCKET NUMBER: 2022-1672-PWS-E; IDENTIFIER: RN102985280; LOCATION: Sugar Land, Fort Bend County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 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: \$164; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(21) COMPANY: GEMINI VENTURES INCORPORATED; DOCKET NUMBER: 2022-1684-PST-E; IDENTIFIER: RN101783694; LOCATION: Houston, Harris County; TYPE OF FACILITY: carwash; RULES VIOLATED: 30 TAC §334.49(c)(2)(C) and (4)(C) and §334.54(b)(3) and TWC, §26.3475(d), by failing to inspect the impressed current corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly, and failing to test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.606, by failing to maintain underground storage tank operator training certification documentation on-site and make them available for inspection upon request by agency personnel; PENALTY: \$6,291; ENFORCEMENT COORDINATOR: Danielle Fishbeck, (512) 239-5083; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Great Western Drilling Ltd.; DOCKET NUMBER: 2023-1470-AIR-E; IDENTIFIER: RN109877415; LOCATION: Levelland, Hockley County; TYPE OF FACILITY: oil and gas production site; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Matthew Perez, (325) 659-6707; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(23) COMPANY: Harris County; DOCKET NUMBER: 2024-0082-MWD-E; IDENTIFIER: RN102075306; LOCATION: Katy, Har-

ris 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 WQ0013921001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(24) COMPANY: HONEYGROVE LLC dba Quick Stop 101; DOCKET NUMBER: 2023-0588-PST-E; IDENTIFIER: RN103027728; LOCATION: Honey Grove, Fannin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping association with the underground storage tank system; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Lauren Little, (817) 588-5888; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: JAMAL Enterprises, LP; DOCKET NUMBER: 2022-1619-PWS-E; IDENTIFIER: RN104523766; LOCATION: Amarillo, Randall County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to ensure additional protection was provided at all residences or establishments where an actual or potential contamination hazard exists in the form of an air gap or a backflow prevention assembly, as identified in 30 TAC §290.47(f); 30 TAC §290.46(f)(2) and (3)(A)(ii)(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(s)(1), by failing to calibrate the facility's well meter at least once every three years; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: \$1,957; ENFORCEMENT COORDINATOR: Mason DeMasi, (210) 657-8425; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(26) COMPANY: Jupiter, Incorporated dba US One Stop Food Mart; DOCKET NUMBER: 2023-1769-PST-E; IDENTIFIER: RN102230992; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Ramya Wendt, (512) 239-2513; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(27) COMPANY: ORTEGA, JOSE A; DOCKET NUMBER: 2024-0859-WOC-E; IDENTIFIER: RN111068870; LOCATION: Bandera, Bandera County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Miles Caston, (512) 239-4593; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(28) COMPANY: OWENS AND SONS, INCORPORATED; DOCKET NUMBER: 2022-1608-PST-E; IDENTIFIER: RN101808764; LOCATION: Odessa, Ector County; TYPE OF FACILITY: temporarily out-of-service underground storage tank (UST) system; RULES VIOLATED: 30 TAC §§334.47(a)(2), 334.49(c)(4)(C), and 334.54(b)(3) and TWC, §26.3475(d), by failing to permanently remove from service, no later than 60 days after the

prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, and failing to test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: \$3,948; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: SANDY'S PETROLEUM INCORPORATED dba Nathalies Food Mart; DOCKET NUMBER: 2023-1129-PST-E; IDENTIFIER: RN101908085; LOCATION: Sulphur Springs, Hopkins County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,556; ENFORCEMENT COORDINATOR: Ramyia Wendt, (512) 239-2513; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(30) COMPANY: SMITH COUNTY SAND COMPANY, L.L.C.; DOCKET NUMBER: 2022-0661-WQ-E; IDENTIFIER: RN104388285; LOCATION: Tyler, Smith County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System General Permit Number TXR05R199, Part IV, Section A.3, by failing to investigate the cause of benchmark value exceedances within 90 days following the sampling event; PENALTY: \$779; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(31) COMPANY: TBM Resident Water Supply Corporation; DOCKET NUMBER: 2023-0253-PWS-E; IDENTIFIER: RN101258804; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and Texas Health and Safety Code, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; PENALTY: \$150; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(32) COMPANY: TEXANS R.V. PARK, INCORPORATED dba Mountain View RV Park; DOCKET NUMBER: 2022-1200-PWS-E; IDENTIFIER: RN101222214; LOCATION: Van Horn, Culberson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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: \$500; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(33) COMPANY: Texas Department of Transportation dba TXDOT Bonham Maintenance; DOCKET NUMBER: 2023-0504-PST-E; IDENTIFIER: RN101531713; LOCATION: Bonham, Fannin 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 in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,000; ENFORCEMENT COORDINATOR: Lauren Little, (817) 588-5888; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(34) COMPANY: Texas Lehigh Cement Company LP; DOCKET NUMBER: 2023-0752-AIR-E; IDENTIFIER: RN102597846; LOCATION: Buda, Hays County; TYPE OF FACILITY: cement

manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O1132, General Terms and Conditions and Special Terms and Conditions Number 14, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(35) COMPANY: THIRD LAREDO STORE INCORPORATED dba Kings Oil 387; DOCKET NUMBER: 2022-0930-PST-E; IDENTIFIER: RN102405222; LOCATION: Laredo, Webb County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,719; ENFORCEMENT COORDINATOR: Eresha DeSilva, (512) 239-5084; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(36) COMPANY: UFF, Incorporated dba Shell 7541; DOCKET NUMBER: 2022-0910-PST-E; IDENTIFIER: RN101446904; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Jacob Morton, (903) 535-5156; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(37) COMPANY: Victoria Independent School District; DOCKET NUMBER: 2023-0195-PWS-E; IDENTIFIER: RN101202257; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(d)(2), by failing to provide the facility's pressure tanks with a pressure release device and an easily readable pressure gauge; and 30 TAC §290.46(f)(2) and (3)(A)(i) and (ii)(III), (V), (B)(iv), and (D)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; PENALTY: \$725; ENFORCEMENT COORDINATOR: Mason DeMasi, (210) 657-8425; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(38) COMPANY: WATERFORD, LLC dba Lone Star Supermarket; DOCKET NUMBER: 2023-1524-PST-E; IDENTIFIER: RN101383305; LOCATION: Vidor, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and (3) and §334.8(c)(4)(C), by failing to provide an amended registration for any change or additional information regarding the underground storage tank (UST) system within 30 days of the occurrence of the change or addition, and failing to obtain a delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of an ownership change; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202402365



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 9, 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 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 July 9, 2024**. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: THE AMERICAN LEGION, MISSING IN ACTION POST NO. 231, THE AMERICAN LEGION, DEPARTMENT OF TEXAS, POTTSBORO, TEXAS; DOCKET NUMBER: 2019-1329-PWS-E; TCEQ ID NUMBER: RN110053949; LOCATION: 133 Army Avenue near Pottsboro, Grayson County; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §290.46(n)(1) and TCEQ Agreed Order Docket Number 2018-0048-PWS-E, Ordering Provision Number 2.a., by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the PWS until the facility is decommissioned; Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.45(b)(1)(B)(i), by failing to provide a well capacity of 0.6 gallons per minute per connection; THSC, §341.0315(c) and 30 TAC §290.45(b)(1)(B)(iv), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once every seven days; 30 TAC §290.46(s)(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; 30 TAC §290.46(i), by failing to adopt an accurate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(v), by failing to ensure that

all electrical wiring is securely installed in compliance with a local or national electrical code; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block that extends a minimum of three feet from the well casing in all directions with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inch per foot; 30 TAC §290.41(c)(3)(K), by failing to ensure that wellheads and pump bases are sealed by a gasket or sealing compound and properly vented to prevent the possibility of contaminating the well water; 30 TAC §290.43(e), by failing to ensure that the facility's potable water storage tanks and pressure maintenance facilities are installed in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the PWS will use to comply with the monitoring requirements; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that the valves and mains can be easily located during emergencies; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.42(e)(3)(D), by failing to provide facilities for determining the amount of disinfectant used daily and the amount of disinfectant remaining for use; 30 TAC §290.41(c)(3)(A) and TCEQ Agreed Order Docket Number 2018-0048-PWS-E, Ordering Provision Numbers 2.c. and 2.e., by failing to furnish a copy of the well completion data for review and approval by the executive director (ED) prior to placing the facility's public drinking water well into service; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contains the name of the Facility and an emergency telephone number where a responsible official can be contacted; 30 TAC §290.46(f)(2) and (3)(A)(ii)(III), by failing to maintain water works operation and maintenance records and make them available for review to the ED during the investigation; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: \$2,600; STAFF ATTORNEY: James Sallans, Litigation, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: ANITRIO, INC. dba Mr Discount; DOCKET NUMBER: 2021-0873-PST-E; TCEQ ID NUMBER: RN102276011; LOCATION: 1205 East Ennis Avenue, Ennis, Ellis County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; Texas Health and Safety Code, §382.085(b) and 30 TAC §115.225, by failing to comply with annual Stage I vapor recovery testing requirements; 30 TAC §334.45(c)(3)(A), by failing to securely anchor emergency shutoff valves (also called shear or impact valves) at the base of all dispensers; 30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report suspected releases to TCEQ within 72 hours of discovery; and 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 (relating to Reporting of Suspected Releases) within 30 days; PENALTY: \$28,530; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Jose Carlos Medina; DOCKET NUMBER: 2022-1114-WOC-E; TCEQ ID NUMBER: RN111459558; LOCATION: 101 East Dimmit Street, Crystal City, Zavala County; TYPE

OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.0301(c) and §37.003 and 30 TAC §30.5(a) and §30.331(b), by failing to have a valid and current wastewater operator license prior to performing process control activities at a wastewater treatment facility; PENALTY: \$1,712; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-202402363

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: May 28, 2024



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 9, 2024**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 9, 2024**. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Carol Ann Norra dba Carol Norra Mobile Home Park; DOCKET NUMBER: 2022-0425-PWS-E; TCEQ ID NUMBER: RN101282572; LOCATION: 205 Reidland Road near Crosby, Harris County; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §290.46(n)(1), by failing to maintain at the PWS 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; 30 TAC §290.46(f)(2), (3)(A)(i)(III), (ii)(V), (iv), (B)(iv), and (D)(ii), by failing to maintain water works operation and maintenance records and make them readily

available for review by the executive director upon request; 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; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.45(h)(1), by failing to provide sufficient power to meet the capacity requirements in accordance with the affected utility's approved Emergency Preparedness Plan; 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead by a gasket or sealing compound and provide a well casing vent for the well 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) and §290.43(e), by failing to provide an intruder-resistant fence or well house around each well unit, potable water storage tank, and pressure maintenance facility that remains locked during periods of darkness and when the facility is unattended; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 91011926; PENALTY: \$7,050; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Manuel Rogelio Estrada dba Estrada's Muffler and Welding; DOCKET NUMBER: 2022-0971-MSW-E; TCEQ ID NUMBER: RN102938024; LOCATION: 4205 Broadway Avenue, Haltom City, Tarrant County; TYPE OF FACILITY: automotive repair shop that is responsible for a spill of used motor oil onto a concrete driveway and surrounding soil; RULE VIOLATED: 30 TAC §327.5(c), by failing to submit written information, describing the details of the discharge or spill and supporting the adequacy of the response action, to the appropriate TCEQ regional manager within 30 working days of the discovery of the reportable discharge or spill; PENALTY: \$2,625; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202402364

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: May 28, 2024



Texas Ethics Commission

List of Delinquent Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Dave Guilianelli at (512) 463-5800.

Deadline: Lobby Activities Report due January 10, 2024.

85961 - Karla Martinez, 4003 Verona Cove, Austin, Texas, 78749

82913 - Oberlyn Salinas, 6000 Shepherd Mountain Cove 222, Austin, Texas, 78730

81223 - Tom Stewart, P.O. Box 29154, Austin, Texas, 78755
65029 - Andrea G. Sparks, 2402 Rollingwood Drive, West Lake Hills, Texas, 78746
87648 - Jason C. Sholty, 3949 N. Wilke Road, Arlington Heights, Texas, 60004
83757 - Roy William Bailey, 5956 Sherry Ln., Ste. 800, Dallas, Texas, 75225
85164 - Benjamin Williams, 1301 Lake Park Way, Richardson, Texas, 75080
87343 - Kelbi R. Culwell, 3700 Bay Area Blvd. MC: HB4-22, Houston, Texas, 77058
83576 - Charles Maley, 12173 North Highway 6, Crawford, Texas, 76638
87951 - Corey Perry, 804 Stain Glass Drive, Desoto, Texas, 75115
87376 - Nicholas J. Raymond, 1401 Lavaca St., Austin, Texas, 78701
87570 - Stephen Simcox, 2121 N Pearl Street, Dallas, Texas, 75201
65172 - Patrick Rhode, 9600 Great Hills Trail, Austin, Texas, 78759
87491 - Ash E. Hall, 2101 W. Anderson Lane, #312, Austin, Texas, 78757
87610 - Gray F. Rutledge, 919 Congress Avenue, Suite 400, Austin, Texas, 78701
70700 - Kelly Lynn Hyten, P.O. Box 15252, Austin, Texas, 78761
52910 - Cyrus B.H. Reed, 6404 N IH-350, Austin, Texas, 78752
68463 - Stacey Steinbach, 4401 West Gate, Austin, Texas, 78745
67308 - Mireya Zapata, P.O. Box 41088, Austin, Texas, 78704
60032 - Wendy R. Wilson, 508 W. 14th Street, Austin, Texas, 78701
86001 - Richard J. Ybarra, 3401 Padre Blvd, Suite A, South Padre Island, Texas, 78597
70582 - Geromino M. Rodriguez, Jr., 1345 Philomena Street, Austin, Texas, 78723
24922 - Karen Kenney Reagan, 1122 Colorado, Austin, Texas, 78701
70848 - Brandon Peck, 1401 K Street NW, Washington, DC, 20005
80378 - Joshua David Massingill, 13809 Research Blvd. Ste. 425, Austin, Texas, 78750
70441 - Carrie Simmons, 1122 Colorado St, Austin, Texas, 78701
84838 - Josh Leftwich, P.O. Box 459, Round Rock, Texas, 78680
70656 - Taylor Calvin, 1390 Enclave Parkway, Houston, Texas, 77077
33614 - Bill Jones, 111 Congress Avenue, Austin, Texas, 78701
82484 - Shannon Ghangurde, 3403 Windsor Road, Austin, Texas, 78703
51002 - Anthony Haley, 1212 Guadalupe, Austin, Texas, 78701
83538 - Kimberly C. Avila Edwards, M.D., 4900 Mueller Blvd., Austin, Texas, 78723
87595 - Sarah R. McQuilkin, 1501 Wolfberry Lane, Northlake, Texas, 76226
42973 - Joel Romo, 2720 Bluebonnet Boulevard, Brenham, Texas, 77833
81306 - Richard David Yeates, 1836 Pebble Brook, New Braunfels, Texas, 78130
81098 - Ross Peavey, Box 127150, Austin, Texas, 78711
10053 - George S. Christian, 400 W 15th St Ste 1400, Austin, Texas, 78701
83284 - Daniel John Chepkaukas, 525 North Country Club Road, Muskogee, Texas, 74403
22002 - Hank Clements, III, 5907 Hillcrest Avenue, Unit E, Dallas, Texas, 75205
87455 - Andrew R. Hairston, 1609 Shoal Creek Blvd., Suite 201, Austin, Texas, 78701
70672 - Lorena I. Campos, 1005 Congress Avenue, Austin, Texas, 78701
87516 - Darien B. Flowers, 760 Market Street, 8th Floor, San Francisco, California, 94102
87269 - Lisley Canales, P.O. Box 685137, Austin, Texas, 78768
80802 - Tara Artho, 1701 River Run, Ste. 802, Fort Worth, Texas, 76107
81424 - Ryan Ambrose, 909 Frostwood, Ste. 3:506, Houston, Texas, 77024
11947 - Benjamin W. Sebree, 111 Congress Avenue, Austin, Texas, 78701
69157 - Aidan Alvarado, 113 Michoacan Lp, Laredo, Texas, 78045
86940 - Matthew C. Posey, 4500 Steiner Ranch Blvd #1920, Austin, Texas, 78732
53923 - Steven C. Ray, P.O. Box 742, Corpus Christi, Texas, 78403
59190 - Kelly McBeth, P.O. Box 5100, Austin, Texas, 78763
83061 - Amber Burton, 3693 Southwest Pkwy, Houston, Texas, 77027
83158 - Elizabeth Lorenz, 200 E. Basse Rd., Ste. 201, San Antonio, Texas, 78209
86044 - Curtis D. Hills, 12820 Greenwood Forest Dr. #1421, Houston, Texas, 77066
86867 - Willam Harry Hartfield, 2550 Pacific Ave. Fl. 140, Dallas, Texas, 75226
84635 - Kyle DeLeon, 1510 Frontier Valley Dr, Austin, Texas, 78741
87275 - Arturo I. Martinez De Vara, P.O. Box 377, Von Ormy, Texas, 78073
87400 - Akanksha A. Balekai, 1709 Lawrence Street, Bldg. 4, Austin, Texas, 78741
85209 - Lauren E. Johnson, P.O. Box 12905, Austin, Texas, 78701
86748 - Hilary J. Shine, 2315 Marlandwood Dr., Temple, Texas, 76502
85577 - Kristopher D. Henny, 1122 Colorado St. Ste.102, Austin, Texas, 78701
83305 - Thomas Wolfe, P.O. Box 2659, Austin, Texas, 78681
85414 - Shekira C. Dennis, 2368A Rice Blvd. #197, Houston, Texas, 77005
Deadline: Lobby Activities Report due February 12, 2024
85974 - Chase A. Fruge, 1106 Lavaca Street, Austin, Texas, 78701

85214 - Nicholas Allen Tuccio, 7917 Comfort Cove, Austin, Texas, 78731

87267 - Jaclyn J. Uresti, P.O. Box 13506, Capitol Station, Austin, Texas, 78711

56280 - Craig Preston Chick, 823 Congress Avenue, Austin, Texas, 78701

86457 - Tanya A. Makany-Rivera, 6500 W. Loop S. Ste. 5100, Bellaire, Texas, 77401

86867 - Willam Harry Hartfield, 2550 Pacific Ave. Fl. 140, Dallas, Texas, 75226

65427 - Jerry Philips, P.O. Box 13506, Capitol Station, Austin, Texas, 78711

Deadline: Lobby Activities Report due March 11, 2024

84882 - Jarrett N. Hill, 600 W. 12th St., Austin, Texas, 78701

66348 - William Ryan Brannan, 2201 Point Bluff Dr., Austin, Texas, 78746

65389 - Laurie Vanhooose, 2317 Amur Drive, Austin, Texas, 78745

87462 - Elizabeth Lee Crownover, 1122 Colorado Street, #2323, Austin, Texas, 78701

56279 - Mary L. Tipps, 919 Congress, Austin, Texas, 78701

32068 - Chris D. Macomb, 1115 San Jacinto, Ste. 275, Austin, Texas, 78701

68604 - Melissa R. Hamilton, 919 Congress Avenue, Suite 750, Austin, Texas, 78701

86867 - Willam Harry Hartfield, 2550 Pacific Ave. Fl. 140, Dallas, Texas, 75226

88489 - Jay P. Brown, 1122 Colorado, Austin, Texas, 78701

88489 - Victoria C. Welborn, 208 W 14th Street, Austin, Texas, 78701

87283 - Emily W. Taylor, 17225 El Camino Real, Ste. 310, Houston, Texas, 77058

87117 - Glenna Bruun, P.O. Box 6429, Austin, Texas, 78762

56925 - Adam Goldman, 316 W 12th St., Austin, Texas, 78701

TRD-202402355

Aidan Shaughnessy

Program Supervisor

Texas Ethics Commission

Filed: May 24, 2024



Texas Health and Human Services Commission

Public Notice - MDCP PIT/Factor C

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the waiver application for the Medically Dependent Children Program (MDCP). HHSC administers the MDCP waiver under the authority of Section 1915(c) of the Social Security Act. The proposed effective date for this amendment is August 31, 2024. This amendment proposes to make the following changes:

Appendix B

HHSC updated waiver year (WY) 2 through 5 to reflect an increase in the Point-in-Time (PIT) and unduplicated participants (Factor C).

Appendix J

HHSC revised the unduplicated number of participants (Factor C) and PIT calculations for the overall projected cost of waiver services (Factor D) and the overall projected cost of other Medicaid services furnished to waiver participants (D Prime (D')) for WY 2 through 5. HHSC also updated the estimated annual average per capita Medicaid cost for the comparison population (nursing facility), that would be incurred for individuals served in the waiver, were the waiver not granted (Factor G) and the estimated annual average per capita Medicaid costs for all services other than those included in Factor G for individuals served in the waiver, were the waiver not granted (Factor G') projections, since there was a change in the average length of stay as a result of the updated Factor C and PIT calculations.

The MDCP waiver provides home and community-based services to medically fragile individuals from birth through age 20 who, without the waiver program, would require institutionalization in a nursing facility. Services in the MDCP waiver include respite, adaptive aids, minor home modifications, employment assistance, supported employment, financial management services, transition assistance services, and flexible family support services. Texas uses the MDCP waiver to provide services to Texans in the least restrictive environment possible. These environments include the individual's or a family member's home, or a Child Protective Services foster care home which can meet the individual's complex medical needs.

To obtain a free copy of the proposed waiver amendment, ask questions, or obtain additional information, about the amendment, please contact Julyya Alvarez by U.S. mail, telephone, or email at the addresses and numbers below. A copy of the proposed waiver amendment request may also be obtained online on the HHSC website at:

<https://www.hhs.texas.gov/laws-regulations/policies-rules/waivers>.

The HHSC Access and Eligibility Services for local benefit offices will post this notice for 30 days and will have copies of the proposed changes available for review.

Address:

U.S. Mail

Texas Health and Human Services Commission

Attention: Julyya Alvarez, Waiver Coordinator, Federal Coordination, Rules and Committees

701 West 51st Street, Mail Code H-310

Austin, Texas 78751

Telephone

(512) 438-4321

Email

TX_Medicaid_Waivers@hhs.texas.gov

TRD-202402390

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: May 29, 2024



Public Notice - Texas State Plan Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 24-0003 to the Texas

State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to implement legislative changes as directed by House Bill 2727, 88th Legislature, Regular Session, 2023. The bill directs HHSC to add Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) as providers of home telemonitoring services; clarify that the term "home telemonitoring services" is synonymous with "remote patient monitoring;" and require home telemonitoring providers to establish a plan of care with outcome measures for each patient and to share the plan and outcome measures with the patient's physician. The proposed amendment is effective September 1, 2024.

A corresponding amendment will also update the reimbursement methodology and/or the fee schedules in the current state plan by adjusting fees, rates, or charges for these services. The public notice of intent to submit a state plan amendment for the rates and updates to the fee schedules will be published in a future issue of the *Texas Register*.

To obtain copies of the proposed amendment, interested parties may contact Nicole Hotchkiss, State Plan Coordinator, by mail at the Health

and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-5035; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us.

The Access and Eligibility Services for local benefit offices will post and have copies of the amendment available for review.

TRD-202402348

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: May 24, 2024

◆ ◆ ◆
Department of State Health Services

Licensing Actions for Radioactive Materials

During the second half of April 2023, 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.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
STEPHENVILLE	TEXAS HEALTH HARRIS METHODIST HOSPITAL STEPHENVILLE	L07222	STEPHENVILLE	00	04/16/24
THROUGHOUT TX	ATEX OILFIELD SERVICES LLC	L07223	ANDREWS	00	04/25/24

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
BAYTOWN	COVESTRO LLC	L01577	BAYTOWN	77	04/19/24
BEAUMONT	BAPTIST HOSPITALS OF SOUTHEAST TEXAS	L00358	BEAUMONT	161	04/23/24
BELLAIRE	HOUSTON THROID AND ENDOCRINE SPECIALIST PLLC	L06464	BELLAIRE	04	04/30/24
CORPUS CHRISTI	CHRISTUS TRINITY CLINIC DBA CHRISTUS TRINITY CLINIC-THOMAS SPANN	L05733	CORPUS CHRISTI	11	04/23/24
DECATUR	DECATUR HEALTH SERVICES LLC	L02382	DECATUR	49	04/24/24
EDINBURG	MCALLEN HOSPITALS LP DBA SOUTH TEXAS HEALTH SYSTEM EDINBURG	L04262	EDINBURG	31	04/17/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

EL PASO	TEXAS ONCOLOGY PA DBA EL PASO CANCER TREATMENT CENTER - EAST	L05771	EL PASO	18	04/29/24
FORT WORTH	FORT WORTH HEART PA	L05480	FORT WORTH	54	04/16/24
GRAPEVINE	BAYLOR REGIONAL MEDICAL CENTER AT GRAPEVINE DBA BAYLOR SCOTT & WHITE MEDICAL CENTER GRAPEVINE	L03320	GRAPEVINE	48	04/17/24
HOUSTON	THE CENTER FOR COLLABORATIVE RESEARCH INC	L06284	HOUSTON	04	04/23/24
HOUSTON	TTG ISOTOPES LLC	L06535	HOUSTON	13	04/18/24
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN TEXAS MEDICAL CENTER	L06439	HOUSTON	24	04/16/24
HOUSTON	RADIOMEDIX INC	L06044	HOUSTON	32	04/23/24
HOUSTON	KELSEY – SEYBOLD MEDICAL GROUP PLLC DBA KELSEY- SEYBOLD CLINIC	L00391	HOUSTON	87	04/29/24
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN NORTHEAST HOSPITAL	L02412	HOUSTON	155	04/26/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

HOUSTON	THE METHODIST HOSPITAL DBA HOUSTON METHODIST	L00457	HOUSTON	221	04/25/25
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN SOUTHWEST HOSPITAL	L00439	HOUSTON	267	04/26/24
LAKE JACKSON	BRAZOSPORT CARDIOLOGY PA	L05359	LAKE JACKSON	16	4/16/24
LAKE JACKSON	THE DOW CHEMICAL COMPANY	L00451	LAKE JACKSON	117	04/16/24
LUBBOCK	AURELIO R. CERVERA, M.D., P.A. DBA CASL HEALTH DBA CARDIOVASCULA R ARRHYTHMIAS SERVICES OF LUBBOCK	L07221	LUBBOCK	01	04/22/24
LUBBOCK	TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER	L01869	LUBBOCK	104	04/25/24
MCALLEN	MCALLEN HOSPITALS LP DBA SOUTH TEXAS HEALTH SYSTEM MCALLEN	L01713	MCALLEN	103	04/17/24
NORTH RICHLAND HILLS	COLUMBIA NORTH HILLS HOSPITAL SUBSIDIARY LP DBA MEDICAL CITY NORTH HILLS	L02271	NORTH RICHLAND HILLS	90	04/23/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

PASADENA	PASADENA REFINING SYSTEM INC	L01344	PASADENA	45	04/30/24
PORT ARTHUR	THE MEDICAL CENTER OF SOUTHEAST TEXAS LP	L01707	PORT ARTHUR	77	04/24/24
SAN ANTONIO	METHODIST HEALTHCARE SYSTEM OF SAN ANTONIO LTD LLP	L00594	SAN ANTONIO	390	04/29/24
SWEENY	CHEVRON PHILLIPS CHEMICAL COMPANY LP	L07130	SWEENY	04	04/30/24
TEXARKANA	CHRISTUS HEALTH ARK-LA- TEX DBA CHRISTUS ST MICHAEL HEALTH SYSTEMS	L04805	TEXARKANA	45	04/15/24
THROUGHOUT TX	AMARILLO TESTING & ENGINEERING INC	L02658	AMARILLO	22	04/24/24
THROUGHOUT TX	AMARILLO TESTING & ENGINEERING INC	L02658	AMARILLO	23	04/25/25
THROUGHOUT TX	FENAGH LLC	L07124	AUSTIN	3	04/18/24
THROUGHOUT TX	HOLT ENGINEERING INC	L02752	AUSTIN	23	04/23/24
THROUGHOUT TX	FEDERAL NORM SERVICES LLC	L07063	DALLAS	02	04/25/24
THROUGHOUT TX	ALLIANCE GEOTECHNICAL GROUP INC	L05314	DALLAS	56	04/17/24
THROUGHOUT TX	KLEINFELDER INC	L06960	IRVING	13	04/19/24
THROUGHOUT TX	QSA GLOBAL INC	L06566	LA PORTE	14	04/17/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

THROUGHOUT TX	XCEL NDT LLC	L07039	LONGVIEW	06	04/23/24
THROUGHOUT TX	ATLAS TECHNICAL CONSULTANTS LLC	L06407	LUBBOCK	32	04/15/24
THROUGHOUT TX	SHARED MEDICAL SERVICES INC	L06142	NACOGDOCHE S	43	04/16/24
THROUGHOUT TX	GUARDIAN NDT LLC	L07204	ODESSA	01	04/26/24
THROUGHOUT TX	SCHLUMBERGER TECHNOLOGY CORPORATION	L06303	SUGAR LAND	28	04/18/24
TOMBALL	SAM HOUSTON HEART & VASCULAR CENTER PLLC	L06833	TOMBALL	01	04/23/24
TYLER	TYLER REGIONAL HOSPITAL LLC DBA UT HEALTH EAST TEXAS TYLER REGIONAL HOSPITAL	L06973	TYLER	10	04/22/24
TYLER	DELEK REFINING LTD	L02289	TYLER	38	04/17/24

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
HARLINGEN	HARLINGEN MEDICAL CENTER LIMITED PARTNERSHIP	L05587	HARLINGEN	14	04/23/24
LIVINGSTON	MEMORIAL HOSPITAL OF POLK COUNTY DBA CHI ST LUKES HEALTH MEMORIAL LIVINGSTON	L05552	LIVINGSTON	20	04/19/24
SAN ANGELO	SHANNON MEDICAL CENTER	L02174	SAN ANGELO	85	04/23/24

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
TEXARKANA	J M HURLEY MD PA DBA TEXARKANA CARDIOLOGY CONSULTANTS	L04738	TEXARKANA	22	04/15/24
THROUGHOUT TX	TEXAS A&M UNIVERSITY	L00448	COLLEGE STATION	163	04/22/24
THROUGHOUT TX	HIDDEN STAR ENERGY INC DBA CRESTONE NDT	L07034	PASADENA	08	04/25/24

TRD-202402310
 Cynthia Hernandez
 General Counsel
 Department of State Health Services
 Filed: May 22, 2024



Texas Department of Insurance
 Company Licensing

Application to do business in the state of Texas for Cajun Underwriters Reciprocal Exchange, a foreign reciprocal company. The home office is in Metairie, Louisiana.

Application for incorporation in the state of Texas for Amherst National Insurance Company, a domestic fire and/or casualty company. The home office is in Addison, Texas.

Application for incorporation in the state of Texas for Effective Wealth Management, a domestic health maintenance organization (HMO). The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register*

publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202402391

Justin Beam

Chief Clerk

Texas Department of Insurance

Filed: May 29, 2024



Texas Lottery Commission

Scratch Ticket Game Number 2590 "X"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2590 is "X". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2590 shall be \$50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2590.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, STACK OF CASH SYMBOL, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, \$75.00, \$100, \$150, \$200, \$500, \$1,000, \$20,000 and \$1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2590 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY

31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
STACK OF CASH SYMBOL	WIN\$
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10

\$75.00	SVFV\$
\$100	ONHN
\$150	ONFF
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$20,000	20TH
\$1,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2590), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 2590-0000001-001.

H. Pack - A Pack of the "X" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 020 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "X" Scratch Ticket Game No. 2590.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "X" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose seventy-six (76) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "STACK OF CASH" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly seventy-six (76) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly seventy-six (76) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the seventy-six (76) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the seventy-six (76) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to thirty-five (35) times.

D. On Winning and Non-Winning Tickets, the top cash prizes of \$1,000, \$20,000 and \$1,000,000 will each appear at least once, except on Tickets winning thirty-five (35) times and with respect to other parameters, play action or prize structure.

E. There will be no matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

F. There will be no non-winning Prize Symbols that match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. There will be no matching WINNING NUMBERS Play Symbols on a Ticket.

I. On all Tickets, a Prize Symbol will not appear more than six (6) times, except as required by the prize structure to create multiple wins.

J. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

K. The "STACK OF CASH" (WIN\$) Play Symbol will never appear on the same Ticket as the "2X" (DBL), "5X" (WINX5) or "10X" (WINX10) Play Symbols.

L. The "STACK OF CASH" (WIN\$) Play Symbol will win the prize for that Play Symbol.

M. The "STACK OF CASH" (WIN\$) Play Symbol will never appear more than one (1) time on a Ticket.

N. The "STACK OF CASH" (WIN\$) Play Symbol will never appear on a Non-Winning Ticket.

O. The "STACK OF CASH" (WIN\$) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

P. The "2X" (DBL) Play Symbol will never appear more than one (1) time on a Ticket.

Q. The "2X" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

R. The "2X" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

S. The "2X" (DBL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

T. The "5X" (WINX5) Play Symbol will never appear more than one (1) time on a Ticket.

U. The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

V. The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

W. The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

X. The "10X" (WINX10) Play Symbol will never appear more than one (1) time on a Ticket.

Y. The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

Z. The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

AA. The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

BB. The "2X" (DBL), "5X" (WINX5) and "10X" (WINX10) Play Symbols can appear on the same winning Ticket, as per the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim an "X" Scratch Ticket Game prize of \$75.00, \$100, \$150, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$75.00, \$100, \$150, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim an "X" Scratch Ticket Game prize of \$1,000, \$5,000, \$20,000 or \$1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming an "X" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "X" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "X" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2590. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2590 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$75.00	450,000	13.33
\$100	750,000	8.00
\$150	150,000	40.00
\$200	300,000	20.00
\$500	67,500	88.89
\$1,000	1,850	3,243.24
\$5,000	350	17,142.86
\$20,000	100	60,000.00
\$1,000,000	4	1,500,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.49. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2590 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2590, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202402381
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: May 29, 2024



Scratch Ticket Game Number 2599 "COLOSSAL CASHWORD"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2599 is "COLOSSAL CASHWORD". The play style is "crossword".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2599 shall be \$50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2599.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, BLACKENED SQUARE SYMBOL, \$50.00, \$100, \$150, \$200, \$500 and \$2,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play

Symbol captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2599 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
BLACKENED SQUARE SYMBOL	

\$50.00	FFTY\$
\$100	ONHN
\$150	ONFF
\$200	TOHN
\$500	FVHN
\$2,000	TOTH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2599), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 2599-0000001-001.

H. Pack - A Pack of the "COLOSSAL CASHWORD" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket back 001 and 020 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "COLOSSAL CASHWORD" Scratch Ticket Game No. 2599.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "COLOSSAL CASHWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose the Play Symbols as indicated per the game instructions from the total five hundred fourteen (514) Play Symbols. GAME 1 AND GAME 2 PLAY INSTRUCTIONS: 1. The player completely scratches all of the GAME 1 YOUR 20 LETTERS on the front of the Ticket. Then the player scratches all the letters found in GAME 1 that exactly match the GAME 1 YOUR 20 LETTERS. 2. The player completely scratches all of the GAME 2 YOUR 20 LETTERS on the back of the Ticket. Then the player scratches all the letters found in GAME 2 that exactly match the GAME 2 YOUR 20 LETTERS. 3. If the player has scratched at least 2 complete WORDS within a GAME, the player wins the prize found in the GAME 1 AND GAME 2 PRIZE LEGEND. WORDS revealed in one GAME cannot be combined with WORDS revealed in the other GAME. Each GAME is played separately.

4. Only 1 prize paid per GAME. 5. Only letters within GAME 1 that are matched with the GAME 1 YOUR 20 LETTERS can be used to form a complete WORD. Only letters within GAME 2 that are matched with the GAME 2 YOUR 20 LETTERS can be used to form a complete WORD. 6. In GAME 1, every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the GAME 1 YOUR 20 LETTERS to be considered a complete WORD. In GAME 2, every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the GAME 2 YOUR 20 LETTERS to be considered a complete WORD. Words revealed in a diagonal sequence are not considered valid WORDS. Words within WORDS are not eligible for a prize. Words that are spelled from right to left or bottom to top are not eligible for a prize. 7. A complete WORD must contain at least 3 letters. 8. GAME 1 can win by revealing 2 to 10 complete WORDS. GAME 2 can win by revealing 2 to 7 complete WORDS. BONUS WORDS PLAY INSTRUCTIONS: The player scratches all the letters in BONUS WORD 1 - BONUS WORD 4 that exactly match the GAME 1 YOUR 20 LETTERS on the front of the Ticket. If the player scratched a complete BONUS WORD, the player wins the PRIZE for that BONUS WORD. A completed BONUS WORD cannot be used to win in GAME 1 or GAME 2. GAME 1, GAME 2 and each BONUS WORD are played separately. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly five hundred fourteen (514) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption. Crossword and Bingo style games do not typically have Play Symbol captions;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly five hundred fourteen (514) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the five hundred fourteen (514) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the five hundred fourteen (514) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: GAME 1, GAME 2 and each BONUS WORD are played separately.

D. GENERAL: The BONUS WORDS are only associated with the GAME 1 YOUR 20 LETTERS.

E. GENERAL: Each Ticket in a Pack will be different (i.e., GAME 1 puzzle grid and the GAME 2 puzzle grid will have a different set of words and configurations of words).

F. GENERAL: There will be no matching words on a Ticket.

G. GENERAL: There will be no correlation between any exposed data on a Ticket and its status as a winning or Non-Winning Ticket.

H. GENERAL: Each Ticket consists of a GAME 1 puzzle grid, a GAME 1 YOUR 20 LETTERS play area, four (4) BONUS WORD play areas (each with a BONUS WORDS PRIZE play area), a GAME 2 puzzle grid and a GAME 2 YOUR 20 LETTERS play area.

I. GENERAL: A Ticket can win one (1) time in each BONUS WORD play area and one (1) time in each GAME 1 and GAME 2 puzzle grid for a total of up to six (6) times as per the prize structure.

J. GENERAL: Each of the four (4) BONUS WORDS will contain exactly six (6) letters and will not match any word in the GAME 1 or GAME 2 puzzle grids.

K. GENERAL: The BONUS WORDS Prize Symbols will only appear in the BONUS WORDS PRIZE play area and will never appear in any of the BONUS WORDS play areas, the GAME 1 or GAME 2 puzzle grids, the GAME 1 YOUR 20 LETTERS or the GAME 2 YOUR 20 LETTERS play areas.

L. GENERAL: All WORDS in GAME 1 and GAME 2 puzzle grids will contain a minimum of three (3) letters and a maximum of nine (9) letters.

M. GENERAL: All words used will be from TX_Aproved_Words_Vers.2.042321.doc.

N. GENERAL: Words from TX_Prohibited_Words_Vers.2.042321.doc will not appear horizontally in the GAME 1 YOUR 20 LETTERS or GAME 2 YOUR 20 LETTERS play areas when read from left to right or right to left.

O. GENERAL: Each grid will have a maximum number of different grid formations with respect to other constraints. That is, for identically formatted grids (i.e., the same puzzle grid), all "approved words" will appear in every logical (i.e., 3 letter word = 3 letter pace) position, with regards to limitations caused by the actual letters contained in each word (i.e., this will not place the word "ZOO" in a position that causes an intersection word to require the second letter to be "Z" when in fact, there are no approved words with a "Z" in the second letter position).

P. GENERAL: The presence or absence of any letter in the GAME 1 YOUR 20 LETTERS play area or the GAME 2 YOUR 20 LETTERS play area will not be indicative of a winning or Non-Winning Ticket.

Q. GENERAL: There will be no wins in GAME 2 on the Ticket back, unless there is at least one (1) win in GAME 1 or BONUS WORD 1-BONUS WORD 4 on Ticket front.

R. GENERAL: Consecutive Tickets in a Pack will not have the same four (4) BONUS WORDS. For example, if the first Ticket contains "EQUITY," "GYPSUM," "MERLIN," and "JUNIOR" as BONUS WORDS, then the next Ticket will not contain "EQUITY," "GYP-SUM," "MERLIN," and "JUNIOR" as BONUS WORDS.

S. GAME 1: The GAME 1 puzzle grid will be formatted with at least one thousand (1,000) configurations (i.e., puzzle layouts not including words).

T. GAME 1: All GAME 1 puzzle grid configurations will be formatted within a grid that contains twenty-five (25) spaces (height) by thirteen (13) spaces (width).

U. GAME 1: There will be no matching Play Symbols in the GAME 1 YOUR 20 LETTERS play area.

V. GAME 1: Each GAME 1 puzzle grid will contain the following:

- a) Twelve (12) 3 - letter words
- b) Fifteen (15) 4 - letter words
- c) Eight (8) 5 - letter words
- d) Eight (8) 6 - letter words
- e) Two (2) 7 - letter words
- f) Three (3) 8 - letter words
- g) Two (2) 9 - letter words

W. GAME 1: There will be a minimum of three (3) vowels in the GAME 1 YOUR 20 LETTERS play area. Vowels are A, E, I, O and U.

X. GAME 1: No consonant will appear more than thirty (30) times in the GAME 1 puzzle grid.

Y. GAME 1: On Non-Winning Tickets, there will be one (1) completed word in the GAME 1 puzzle grid.

Z. GAME 1: At least fifteen (15) of the GAME 1 YOUR 20 LETTERS Play Symbols will open at least one (1) letter in the GAME 1 puzzle grid.

AA. GAME 1: The GAME 1 puzzle grid will not have more than ten (10) words completed.

BB. GAME 1: A player will never find a word horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the GAME 1 YOUR 20 LETTERS play area that matches a word in the GAME 1 puzzle grid or BONUS WORDS.

CC. BONUS WORDS: Each BONUS WORD will have at least two (2) letter play spots opened by the GAME 1 YOUR 20 LETTERS.

DD. BONUS WORDS: Non-winning BONUS WORDS Prize Symbols will be different and will not match a winning Prize Symbol.

EE. BONUS WORDS: The BONUS WORDS can be completed and won, as indicated by the prize structure.

FF. BONUS WORDS: On winning Tickets when only one (1) or more of the BONUS WORDS are completed, one (1) completed word will be revealed in the non-winning GAME 1 puzzle grid.

GG. BONUS WORDS: The four (4) BONUS WORDS on a Ticket will be different.

HH. GAME 2: The GAME 2 puzzle grid will be formatted with at least one thousand (1,000) configurations (i.e., puzzle layouts not including words).

II. GAME 2: All GAME 2 puzzle grid configurations will be formatted within a grid that contains eleven (11) spaces (height) by eleven (11) spaces (width).

JJ. GAME 2: There will be no matching Play Symbols in the GAME 2 YOUR 20 LETTERS play area.

KK. GAME 2: Each GAME 2 puzzle grid will contain the following:

- a) Four (4) 3 - letter words
- b) Five (5) 4 - letter words
- c) Three (3) 5 - letter words

d) Three (3) 6 - letter words

e) One (1) 7 - letter word

f) Two (2) 8 - letter words

g) One (1) 9 - letter word

LL. GAME 2: There will be a minimum of three (3) vowels in the GAME 2 YOUR 20 LETTERS play area. Vowels are A, E, I, O and U.

MM. GAME 2: No consonant will appear more than nine (9) times in the GAME 2 puzzle grid.

NN. GAME 2: On Non-Winning Tickets, there will be one (1) completed word in the GAME 2 puzzle grid.

OO. GAME 2: At least fifteen (15) of the GAME 2 YOUR 20 LETTERS Play Symbols will open at least one (1) letter in the GAME 2 puzzle grid.

PP. GAME 2: The GAME 2 puzzle grid will not have more than seven (7) words completed.

QQ. GAME 2: A player will never find a word horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the GAME 2 YOUR 20 LETTERS play area that matches a word in the GAME 2 puzzle grid.

2.3 Procedure for Claiming Prizes.

A. To claim a "COLOSSAL CASHWORD" Scratch Ticket Game prize of \$50.00, \$100, \$150, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100, \$150, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "COLOSSAL CASHWORD" Scratch Ticket Game prize of \$2,000, \$5,000 or \$50,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "COLOSSAL CASHWORD" Scratch Ticket Game top level prize of \$3,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers in Austin, Dallas, Fort Worth, Houston or San Antonio, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification and proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). The Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax

at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "COLOSSAL CASHWORD" Scratch Ticket Game prize, including the top level prize of \$3,000,000, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "COLOSSAL

CASHWORD" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "COLOSSAL CASHWORD" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 4,080,000 Scratch Tickets in Scratch Ticket Game No. 2599. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2599 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$50.00	448,800	9.09
\$100	408,000	10.00
\$150	204,000	20.00
\$200	122,400	33.33
\$500	49,300	82.76
\$2,000	1,150	3,547.83
\$5,000	280	14,571.43
\$50,000	15	272,000.00
\$3,000,000	4	1,020,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.31. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2599 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket

Game No. 2599, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202402382
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: May 29, 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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