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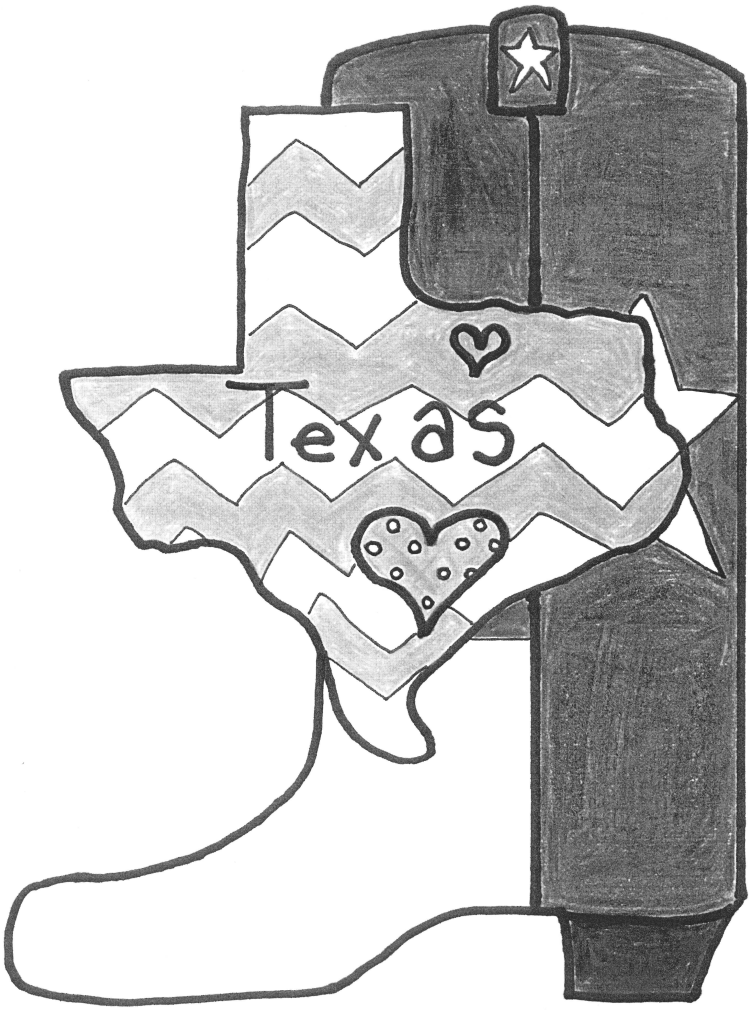
In This Issue


Texas

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 October 17, 2024

Appointed to the Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council for a term to expire August 31, 2025, Mark S. Edwards, M.D. of Sonora, Texas (pursuant to HB 3808, 88th Legislature, Regular Session).

Appointments for October 18, 2024

Appointed to the Advisory Council on Emergency Medical Services for a term to expire January 1, 2028, Donald E. "Donny" Booth of Andrews, Texas (replacing Jeffrey J. "Jeff" Barnhart of Canyon, who resigned).

Appointed to the Advisory Council on Emergency Medical Services for a term to expire January 1, 2030, Sharon A. Malone, M.D. of Van Alstyne, Texas (Dr. Malone is being reappointed).

Appointed to the Advisory Council on Emergency Medical Services for a term to expire January 1, 2030, Taylor J. Ratcliff, M.D. of Belton, Texas (Dr. Ratcliff is being reappointed).

Appointed to the Advisory Council on Emergency Medical Services for a term to expire January 1, 2030, Shawn J. Salter of Bullard, Texas (Mr. Salter is being reappointed).

Appointed to the Advisory Council on Emergency Medical Services for a term to expire January 1, 2030, Alan H. Tyroch, M.D. of El Paso, Texas (Dr. Tyroch is being reappointed).

Appointments for October 22, 2024

Appointed as presiding officer of the Cameron County Regional Mobility Authority for a term to expire February 1, 2026, Frank Parker, Jr. of Brownsville, Texas (Mr. Parker is being reappointed).

Appointments for October 23, 2024

Appointed to the Education Commission of the States for a term to expire at the pleasure of the Governor, Tabatha C. Vasquez of Pflugerville, Texas (replacing Sarah Hicks of Cedar Park, who resigned).

Greg Abbott, Governor

TRD-202404947

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Proclamation 41-4146

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that the presence of E. coli, as identified in multiple tests of the City of Laredo public water system, poses an imminent threat to public health and safety, in Webb County;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in Webb County based on the existence of such threat.

Pursuant to Section 418.017 of the 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 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 16th day of October, 2024.

Greg Abbott, Governor

TRD-202404914

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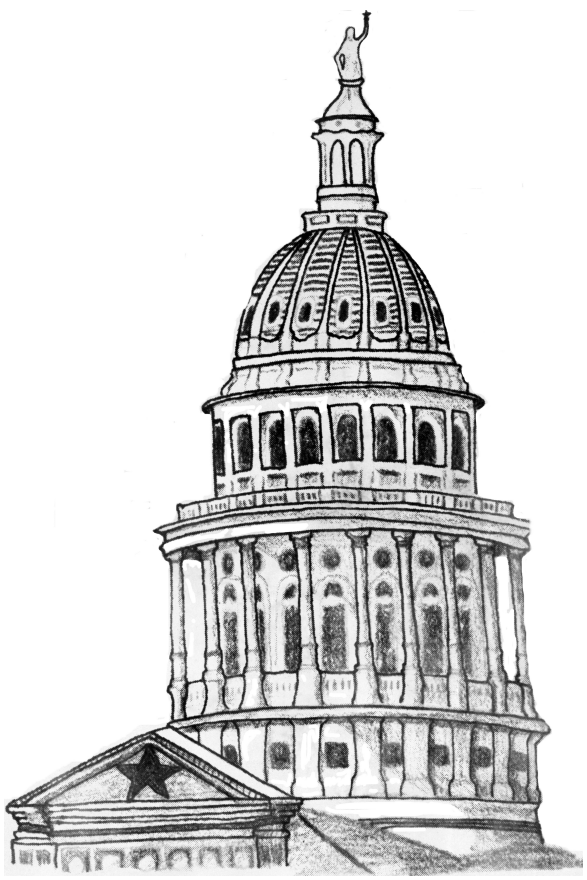


THE ATTORNEY GENERAL

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-0567-KP

Requestor:

The Honorable Giovanni Capriglione

Chair, House Committee on Pensions, Investments, and Financial Services

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

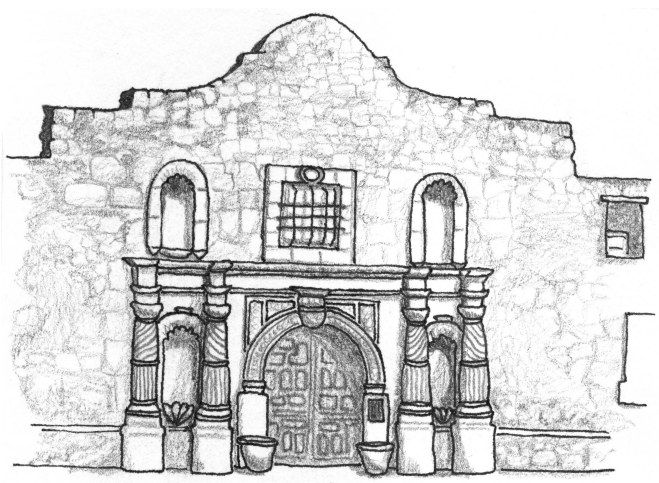
Re: Scope of third-party obligations resulting from child support liens under Family Code chapter 157 (RQ-0567-KP)

Briefs requested by November 18, 2024

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

TRD-202404941
Justin Gordon
General Counsel
Office of the Attorney General
Filed: October 22, 2024

♦ ♦ ♦



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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 40. FINANCIAL DISCLOSURE FOR PUBLIC OFFICERS

1 TAC §§40.2, 40.3, 40.5, 40.9, 40.11, 40.13, 40.15

The Texas Ethics Commission (the TEC) proposes amendments to Texas Ethics Commission Rules in Chapter 40 regarding Financial Disclosure for Public Officers.

Specifically, the TEC proposes amendments to rules §40.2 regarding Disclosure of Financial Activity and §40.11 regarding Publicly Traded Corporation as Source of Income. The TEC also proposes new rules §40.3 regarding PFS Required for Each Year of Service, §40.5 regarding Assets and Liabilities of Business Associations, §40.9 regarding Exchange Traded Funds and Real Estate Investment Trusts, §40.13 regarding Beneficial Interest in Real Property Includes Real Property Held in a Trust, and §40.15 regarding Identification of the Source of Rents Derived From Rental Property.

State law requires state agencies to "review and consider for readoption each of its rules ... not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id.* The TEC is authorized to adopt rules to administer Chapter 572 of the Government Code. Tex. Gov't Code §§ 571.061, .062.

The TEC is continuing its comprehensive review with a review of the TEC's rules regarding financial disclosures, which are codified in Chapter 40. The adoption of amendments to some rules and new rules seek to clarify the rules related to filers submitting personal financial statements.

The rules and amendments are designed to more closely track statutory language and to provide more clarity and notice of the TEC's interpretations of the statutory requirements of Chapter 572 of the Government Code.

James Tinley, General Counsel, has determined that for the first five-year period the proposed amended and new rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amended and new rules. The public will benefit from clear rules that should result in uniform and complete disclosures of information required by Chapter 572 of the Government Code. The state officers required to make the disclosure will similarly benefit from clear rules related to the personal financial statement. The proposed rules do not impose a burden beyond the statutory requirements in Chapter 572.

The General Counsel has also determined that for each year of the first five years the proposed amended and new rules are in effect, the public benefit will be consistency and clarity in the Commission's rules regarding personal financial statements. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended and new rules.

The General Counsel has determined that during the first five years that the proposed amended and new rules are in effect, they 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 in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended and new rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended and new rules may do so at any Commission meeting during the agenda item relating to the proposed amended and new rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The amended and new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Chapter 572 of the Government Code.

The proposed amended and new rules affect Chapter 572 of the Government Code.

§40.2. Disclosure of Financial Activity.

For purposes of §572.023 of the Government Code, a filer's personal financial statement must include:

(1) the filer's financial activity in which the filer held an ownership interest, including but not limited to community property; and

(2) the financial activity of the filer's spouse and dependent children if the filer exercised [~~or held the right to exercise~~] any degree of [~~legal or~~] factual control over the activity, notwithstanding a partition agreement.

§40.3. PFS Required for Each Year of Service.

(a) A state officer who serves for any portion of a calendar year must file a PFS the following year covering financial activity that occurred during the portion of the year the state officer held office.

(b) A member of the legislature who retires at the end of the member's term in January is not required to file a PFS covering the calendar year of service in which member retires.

(c) Comments:

(1) For example, under subsection 40.3(a) of this section, if a state officer ceases to be a state officer in October 2024, the state officer is required to file a PFS in by the deadline provided by §572.026(a) of the Government Code in calendar year 2025, covering financial activity that occurred through October 2024, provided the state officer does not holdover.

(2) Under subsection 40.3(b) of this section, a member of the legislature who retires at the end of the member's term in January 2025 is required to file a PFS in 2025 covering calendar year 2024. The member is not required to file a PFS in calendar year 2026 covering calendar year 2025 by virtue of service from January 1 to January 6 of 2025, before the member's successor is sworn into office.

§40.5. Assets and Liabilities of Business Associations.

Assets and liabilities of business associations that must be reported under §572.023(b)(9) of the Government Code shall be reported as though they are the assets and liabilities of the individual filer.

§40.9. Exchange Traded Funds and Real Estate Investment Trusts.

Ownership interests in exchange-traded funds and real estate investment trusts shall be reported under §572.023(b)(2) of the Government Code as though they were shares of stock.

§40.11. Publicly Traded Corporation as Source of Income [~~over $500~~].

For purposes of §572.023(b)(4), Government Code, a publicly traded corporation is identified as a source of income by disclosing its full name in addition to the category of the amount of income.

§40.13. Beneficial Interest in Real Property Includes Real Property Held in a Trust.

(a) Except as provided in subsection (b), a filer must disclose real property held in a trust for the benefit of the filer as a beneficial interest in real property under §572.023(b)(6) of the Government Code.

(b) A filer is not required to disclose real property held in a blind trust that complies with §572.023(c) of the Government Code only if the filer does not have actual knowledge of the property held in a trust for the filer's benefit.

§40.15. Identification of the Source of Rents Derived from Rental Property.

An identification of the source of rents derived from a rental property must include the name of the lessee and the address of the rental property.

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

Filed with the Office of the Secretary of State on October 17, 2024.

TRD-202404901

Jim Tinley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 463-5800

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CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1

The Texas Ethics Commission (TEC) proposes amendments to 1 Texas Administrative Code, Chapter 50, §50.1, regarding the Legislative Per Diem. The existing rule and the proposed amendments implements the Constitutional requirement that the TEC set the legislative per diem rate. Tex. Const. art. III, §§ 24(a), 24a(e).

The Texas Constitution requires the TEC to set the per diem to which members of the legislature and the lieutenant governor are entitled for each day during each regular and special session of the Legislature. *Id.* The per diem rate shall reflect "reasonable estimates of costs" and may be raised or lowered biennially, but "may not exceed during a calendar year the amount allowed as of January 1 of that year for federal income tax purposes as a deduction for living expenses incurred in a legislative day by a state legislator in connection with the legislator's business as a legislator." *Id*.

Under the Internal Revenue Code, a state legislator may deduct the greater of the federal employees' per diem (the "GSA rate") or the legislator's state per diem, as long as the state legislator's per diem does not exceed 110 percent of the GSA rate. 26 U.S.C. § 162(h)(1)(B). Therefore, the Texas Constitution allows the TEC to set the per diem rate at no more than 110 percent of the GSA rate.

The GSA rate is made up of the lodging rate, and meals and incidental expenses rate prescribed by the GSA and published exclusively on its website. The GSA rate for Austin as of January 1, 2025, is $267 (of which $187 is lodging and $80 is meals and incidental expenses).

The rule as amended would set the per diem for members of the legislature and the lieutenant governor at $267 for each day during the regular session and any special session. The proposed rule amendment sets the per diem equal to the GSA rate as a reasonable estimate of costs associated with the legislature attending the legislative session in Austin.

James Tinley, General Counsel, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for local government as a result of enforcing or administering the proposed rule. The fiscal implication for the state over the first five years will be an increase of $3,516,240 over the current per diem rate. The fiscal impact calculation assumes there will be three legislative session in the next five years. The impact may increase if one or more special legislative sessions are called.

The General Counsel has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefit from the members of the legislature receiving a per diem in compliance with the Texas Constitution that reflects a reasonable estimate of cost for their attendance in Austin for legislative sessions, outweighs the cost. There will not be an

effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rule.

The General Counsel has determined that during the first five years that the proposed amended rule is in effect, it 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 in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; or increase or decrease the number of individuals subject to the rule's applicability.

The Commission invites comments on the proposed amended rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rule may do so at any Commission meeting during the agenda item relating to the proposed amended rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us

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

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The proposed amended rule affects amendment affects the Texas Constitution, Article III, §24; Article III, §24a; and Article IV, §17.

§50.1. Legislative Per Diem.

(a) The legislative per diem is $267 [~~$221~~]. The per diem is intended to be paid to each member of the legislature and the lieutenant governor for each day during the regular session and for each day during any special session.

(b) If necessary, this rule shall be applied retroactively to ensure payment of the $267 [~~$221~~] per diem for 2025 [~~2019~~].

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

Filed with the Office of the Secretary of State on October 17, 2024.

TRD-202404900
Jim Tinley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 463-5800

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B. ADVISORY COMMITTEES

DIVISION 1. COMMITTEES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §351.847, concerning Aging Texas Well Advisory Committee, and new §351.847, concerning the Aging Texas Well Advisory Committee; and the repeal of §351.849, concerning the Texas Respite Advisory Committee, and new §351.849, concerning Texas Respite Advisory Committee.

BACKGROUND AND PURPOSE

The Aging Texas Well Advisory Committee (ATWAC) is established under Executive Order Rick Perry (R.P.) 42 and by the executive commissioner in accordance with Texas Government Code §523.0201 and is subject to Texas Administrative Code §351.801. The committee advises the executive commissioner and HHSC on aging topics and issues and makes recommendations to HHSC and state leadership consistent with Executive Order R.P. 42.

The ATWAC is set to abolish on March 1, 2026. Abolition of the ATWAC would result in the loss of a primary source of public input for key aging programs and initiatives. The proposed new §351.847 updates the agency name from the Department of Aging and Disability Services (DADS) to HHSC, per Senate Bill (S.B.) 200, 84th Legislature, Regular Session, 2015; extends the abolishment date to March 1, 2032, and revises the rule in several places to ensure the rule conforms with HHSC's advisory committee rule standards.

The Texas Respite Advisory Committee (TRAC) is established under Texas Government Code §523.0201; Texas Government Code Chapter 2110; Texas Human Resources Code §161.079; The Lifespan Respite Care Act, 42 United States Code §300ii; and is subject to §351.801. The committee advises the executive commissioner and the health and human services system on developing strategies to reduce barriers to accessing respite services; improving the quality of respite services; and providing training, education, and support to family caregivers.

The TRAC is set to abolish on March 1, 2026. Abolition of the TRAC would result in the loss of a primary source of public input for developing strategies to reduce barriers to accessing respite services and improve the quality of respite services in Texas.

The proposed new §351.849 updates the agency name from DADS to HHSC, per S.B. 200, 84th Legislature, Regular Session, 2015; extends the abolishment to March 1, 2028, and revises the rule in several places to ensure the rule conforms with HHSC's advisory committee rules standards.

The proposed rule language for both sections updates certain citations to the Texas Government Code as modified by House Bill (H.B.) 4611, 88th Legislature, Regular Session, 2023. HB 4611 made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. The updated citations will become effective on April 1, 2025.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §351.847 deletes the rule as currently written.

New §351.847: (1) updates the rule language and organization by aligning it with HHSC's advisory committee rule standards; (2) replaces "DADS" with "HHSC" throughout the rule; (3) adds subsections regarding required training and travel reimbursement; and (4) updates the date of abolishment in subsection (j) from March 1, 2026, to March 1, 2032.

The proposed repeal of §351.849 deletes the rule as currently written.

New §351.849: (1) updates the rule language and organization by aligning it with HHSC's advisory committee rule standards; (2) replaces "DADS" with "HHSC" throughout the rule; (3) adds subsections regarding required training and travel reimbursement; (3) decreases the committee membership from "no more than 24 members" to "15 members;" and (4) updates the date of abolishment in subsection (j) from March 1, 2026, to March 1, 2028.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the repeals and new rules will be in effect, enforcing or administering the repeals and new rules do 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 repeals and new rules will be in effect:

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

(2) implementation of the proposed repeals and new rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed repeals and new rules will result in no assumed change in future legislative appropriations;

(4) the proposed repeals and new rules will not affect fees paid to HHSC;

(5) the proposed repeals and new rules will create new regulations;

(6) the proposed repeals and new rules will repeal existing regulations;

(7) the proposed repeals and new rules will not change the number of individuals subject to the rules; and

(8) the proposed repeals and new rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed new rules apply only to HHSC.

LOCAL EMPLOYMENT IMPACT

The proposed repeals and new rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals and new rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; 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

Haley Turner, Deputy Executive Commissioner of Community Services, has determined that for each year of the first five years the repeals and new rules are in effect, the public benefit will be that the ATWAC and TRAC continue to advise HHS agencies on key aging initiatives and development of strategies to reduce barriers to accessing respite services and improvement of quality of respite services.

Trey Wood has also determined that for the first five years the repeals and new rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules only apply to HHSC.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's 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 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 emailed to HHSRulesCoordinationOffice@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 the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R022" in the subject line.

1 TAC §351.847, §351.849

STATUTORY AUTHORITY

The repeals 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, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees, Texas Human Resources Code §161.079, relating to informal caregiver services, and The Lifespan Respite Care Act, 42 United States Code §300ii.

The repeals affect Texas Government Code §531.0055, Chapter 2110, Texas Government Code §523.0201 and Texas Human Resources Code §161.079.

§351.847. Aging Texas Well Advisory Committee.

§351.849. Texas Respite Advisory Committee.

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

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

TRD-202404919
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 840-8536

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1 TAC §351.847, §351.849

STATUTORY AUTHORITY

The new sections 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, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees, Texas Human Resources Code §161.079, relating to informal caregiver services, and The Lifespan Respite Care Act, 42 United States Code §300ii.

The new sections affect Texas Government Code §531.0055, Chapter 2110, Texas Government Code §523.0201 and Texas Human Resources Code §161.079.

§351.847. Aging Texas Well Advisory Committee.

(a) Statutory Authority. Aging Texas Well Advisory Committee (ATWAC) is established under Executive Order R.P. 42 and by the Texas Health and Human Services Commission (HHSC) executive commissioner in accordance with Texas Government Code §523.0201. The committee is subject to §351.801 of this division (relating to Authority and General Provisions).

(b) Purpose. The committee advises the executive commissioner and HHSC on aging topics and issues and makes recommendations to HHSC and state leadership consistent with Executive Order R.P. 42.

(c) Tasks. The committee performs the following tasks:

(1) identifies and discusses aging policy issues;

(2) assesses state government readiness to address issues facing older Texans;

(3) promotes increased local community preparedness for aging Texans;

(4) assists HHSC by providing recommendations on aging issues and the Aging Texas Well Plan; and

(5) adopts bylaws to guide the operation of the committee.

(d) Reporting requirements. By August 31 of each year, the committee files an annual written report with the executive commissioner covering the meetings and activities in the immediately preceding fiscal year. The report includes:

(1) a list of the meeting dates;

(2) the members' attendance records;

(3) a brief description of actions taken by the committee;

(4) a description of how the committee accomplished its tasks;

(5) a description of activities the committee anticipates undertaking in the next fiscal year;

(6) recommended amendments to this section; and

(7) the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(e) Meetings.

(1) Open meetings. The ATWAC complies with the requirements for open meetings under Texas Government Code Chapter 551 as if it were a governmental body.

(2) Frequency. The ATWAC will meet quarterly.

(3) Quorum. A majority of all members constitutes a quorum for the purpose of transacting official business.

(f) Membership.

(1) The committee is composed of up to 18 members appointed by the executive commissioner. In selecting members to serve on the committee, HHSC considers the applicants' qualifications, background, and interest in serving.

(A) Eleven voting members representing the following categories.

(i) One member representing Area Agencies on Aging.

(ii) One member representing Aging and Disability Resource Centers.

(iii) Nine members representing any of the following:

(I) the academic community;

(II) advocates for older adults, including family or caregivers;

(III) older adults;

(IV) faith-based organizations;

(V) non-profit organizations;

(VI) the aging service-delivery network;

(VII) providers from an adult residential setting;

(VIII) providers from a community setting;

(IX) providers serving persons with disabilities; and

(X) providers of community services.

(B) Up to seven non-voting, ex officio members representing the following.

(i) Texas Department of State Health Services.

(ii) Texas Department of Family and Protective Services.

(iii) Texas Department of Housing and Community Affairs.

(iv) Texas Workforce Commission.

(v) Texas Department of Public Safety.

(vi) Texas Department of Transportation.

(vii) Higher Education Coordinating Board.

(2) Members are appointed for staggered terms so that the terms of an equal or almost equal number of members expire August 31 of each year. Regardless of the term limit, a member serves until his or her replacement has been appointed. This ensures sufficient, appropriate representation.

(A) If a vacancy occurs, the executive commissioner will appoint a person to serve the unexpired portion of that term.

(B) Except as may be necessary to stagger terms, the term of each member is three years. A member may apply to serve one additional term.

(C) This subsection does not apply to ex officio members, who serve at the pleasure of the executive commissioner and do not have the authority to vote on items before the full committee.

(g) Officers. The committee selects a chair and vice chair of the committee from among its members.

(1) The chair serves until December 1 of each even-numbered year. The vice chair serves until December 1 of each odd-numbered year.

(2) A member may serve up to two consecutive terms as chair or vice chair.

(h) Required Training. Each member must complete training on relevant statutes and rules, including this section and §351.801 of this division, Texas Government Code §523.0201, Texas Government Code Chapters 551, 552, and 2110, the HHS Ethics Policy, the Advisory Committee Member Code of Conduct, and other relevant HHS policies. Training will be provided by HHSC.

(i) Travel Reimbursement. Unless permitted by the current General Appropriations Act, members of the committee are not paid to participate in the committee nor reimbursed for travel to and from meetings.

(j) Date of abolition. The committee is abolished and this section expires on March 1, 2032.

§351.849. Texas Respite Advisory Committee.

(a) Statutory Authority. The Texas Respite Advisory Committee (TRAC) is established under Texas Government Code §523.0201; Texas Government Code Chapter 2110; Texas Human Resources Code §161.079; The Lifespan Respite Care Act, 42 United States Code §300ii; and is subject to Texas Administrative Code §351.801 of this division (relating to Authority and General Provisions).

(b) Purpose. The committee advises the Texas Health and Human Services Commission (HHSC) executive commissioner and health and human services system (HHS) on developing strategies to reduce barriers to accessing respite services; improving the quality of respite services; and providing training, education, and support to family caregivers.

(c) Tasks. The committee performs the following tasks:

(1) assists HHSC to identify barriers and best practices for providing and coordinating respite services in Texas;

(2) responds to requests from HHSC for information about the respite needs of caregivers;

(3) advises HHSC about effective methods for expanding the availability of affordable respite services in Texas through the use of funds available from respite care programs;

(4) cooperates and shares resources and knowledge among community stakeholders to facilitate barrier free access for primary caregivers;

(5) educates the public on the need for community-based options for primary caregivers; and

(6) adopts bylaws to guide the operation of the committee.

(d) Reporting requirements. By July 1 of each year, the committee files an annual written report with the executive commissioner covering the meetings and activities in the immediately preceding fiscal year. The report includes:

(1) a list of the meeting dates;

(2) the members' attendance records;

(3) a brief description of actions taken by the committee;

(4) a description of how the committee accomplished its tasks;

(5) a description of activities the committee anticipates undertaking in the next fiscal year;

(6) recommended amendments to this section; and

(7) the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(e) Meetings.

(1) Open meetings. In accordance with statute, the TRAC complies with the requirements for open meetings under Texas Government Code Chapter 551 as if it were a governmental body.

(2) Frequency. The TRAC will meet quarterly.

(3) Quorum. Eight of all members constitutes a quorum.

(f) Membership.

(1) The committee is composed of 15 members appointed by the executive commissioner. In selecting members to serve on the committee, HHSC considers the applicants' qualifications, background, and interest in serving. HHSC tries to choose committee members who represent the diversity of all Texans, including ethnicity, gender, and geographic location. Fifteen voting members representing the following categories:

(A) family caregivers;

(B) primary caregivers;

(C) providers of respite services;

(D) faith-based organizations;

(E) espite care advocacy organizations; and

(F) members of the general public interested in the issue of respite care.

(2) Members are appointed for staggered terms so that the terms of an equal or almost equal number of members expire on December 31 of each year. Regardless of the term limit, a member serves until his or her replacement has been appointed. This ensures sufficient, appropriate representation.

(A) If a vacancy occurs, the executive commissioner will appoint a person to serve the unexpired portion of that term.

(B) Except as may be necessary to stagger terms, the term of each member is three years. A member may apply to serve one additional term.

(g) Officers. The committee selects a chair and vice chair of the committee from among its members.

(1) The chair serves until January 1 of each even-numbered year. The vice chair serves until January 1 of each odd-numbered year.

(2) A member may serve up to two consecutive terms as chair or vice chair.

(h) Required Training. Each member must complete training on relevant statutes and rules, including this section and §351.801 of this division, Texas Government Code §523.0201, Texas Government Code Chapters 551, 552, and 2110, the HHS Ethics Policy, the Advisory Committee Member Code of Conduct, and other relevant HHS policies. Training will be provided by HHSC.

(i) Travel Reimbursement. To the extent permitted by the current General Appropriations Act, a member of the committee may be reimbursed for their travel to and from meetings if funds are appropriated and available and in accordance with the HHSC Travel Policy.

(j) Date of abolition. The committee is abolished and this section expires on March 1, 2028.

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

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

TRD-202404920
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 840-8536

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.503, §355.507

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §355.503, concerning Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs, and §355.507, concerning Reimbursement Methodology for the Medically Dependent Children Program.

BACKGROUND AND PURPOSE

The purpose of the proposal is to clarify the reimbursement methodologies for the long-term services and supports (LTSS) state plan and waiver services delivered through managed care. HHSC maintains fee schedules for LTSS programs and services delivered in STAR+PLUS or STAR Kids programs that represent the rates HHSC would pay contracted providers for these services if the services were delivered under a fee-for-service delivery model. The proposed amendments ensure that HHSC has an established rate methodology for all the services delivered in managed care based on the STAR+PLUS and STAR Kids LTSS billing matrices. The proposal relabels and adds language to the rules to reference the STAR+PLUS and STAR Kids managed care programs and removes references to the expired Community-Based Alternatives Waiver Program and Integrated Care Management-Home and Community Support Services Program. The proposal also consolidates rate methodologies for LTSS state plan services delivered through STAR+PLUS and STAR Kids into the applicable Texas Administrative Code rule. The proposal revises the rate methodology for out-of-home respite under STAR Kids Medically Dependent Children Program (MDCP) to mirror proposed waiver changes and the published billing matrix. Finally, the proposal adds language to the rules to distinguish in-home and out-of-home settings for home health care services, including nursing, occupational therapy, and physical therapy, to ensure compliance with the 21st Century Cures Act, which requires all states to implement the use of electronic visit verification (EVV).

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.503 changes the title to "Reimbursement Methodology for Long-Term Services and Supports State Plan and Home and Community-Based Services Waiver Program Services Delivered through the STAR+PLUS Managed Care Program." Language is revised to remove references to expired programs and add references to STAR+PLUS LTSS State Plan and STAR+PLUS Home and Community-Based Services (HCBS) services, as well as to distinguish between Community First Choice (CFC) and non-CFC services. Language is added to differentiate between in-home and out-of-home nursing services, physical therapy, and occupational therapy. "Assisted Living/Residential Care (AL/RC)" is changed to "assisted living (AL) services" to accurately reflect services offered under STAR+PLUS. Other edits are made to correct or clarify language, correct numbering, and formatting.

Section 355.503 subsection (a) is revised to specify that the rule establishes the fee-for-service (FFS) equivalent rate methodology for services delivered through STAR+PLUS. New subsection (b) is added to describe rate methodologies for STAR+PLUS LTSS state plan services. Subsection (c)(1) is revised to remove language about total allowable costs that is no longer relevant, clarify what is included in the administration and facility cost area, and add language specific to the CFC Personal Attendant Services (PAS) and habilitation reimbursement methodology. Subsection (c)(2) is revised to remove language about updates to federal supplemental security income that is no longer relevant. Subsection (e) is revised to remove language about the number of cost reports to be submitted based on rate enhancement program participation that is no longer relevant.

The proposed amendment to §355.507 changes the title to "Reimbursement Methodology for Long-Term Services and Supports State Plan and Medically Dependent Children Waiver Program Services Delivered through the STAR Kids and STAR Health Managed Care Programs." Language is revised to add references to STAR Kids and STAR Health, distinguish between CFC and non-CFC services, and update service names for in-home respite and flexible family supports. Other edits are made to correct or clarify language, correct numbering, and formatting.

Section 355.507 subsection (a) is revised to specify that the rule establishes the FFS rate methodology for services delivered through STAR Kids and STAR Health managed care. Sub-

section (b) is added to describe rate methodologies for STAR Kids and STAR Health LTSS state plan services. New subsection (c) is added to specify reimbursement rate determination for MDCP services delivered through STAR Kids and STAR Health, update references to nursing facility (NF) reimbursement setting methodology rules and add rate determination for transition assistance services. New subsection (d) adds language clarifying that HHSC does not currently require providers contracted with managed care organizations to submit cost reports.

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 not create a new regulation;

(6) the proposed rules will not expand, limit, or repeal 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 has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The 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.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rules are in effect, the public benefit will be appropriate FFS-equivalent reimbursement methodologies for services provided through STAR+PLUS, STAR Kids, and STAR Health managed care and alignment with billing matrices.

Trey Wood 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 rules do not impose any requirements on regulated persons.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's 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 HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or by email to PFD-LTSS@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, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R068" in the subject line.

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, and Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendments affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§355.503. Reimbursement Methodology for Long-Term Services and Supports State Plan and Home and Community-Based Services Waiver Program Services Delivered through the STAR+PLUS Managed Care Program [~~the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs~~].

(a) General requirements. The Texas Health and Human Services Commission (HHSC) establishes the rate methodology for long-term services and supports (LTSS) state plan and Home and Community-Based Services (HCBS) waiver program services delivered through STAR+PLUS managed care.

(1) HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(2) For HCBS waiver program services, providers [~~Providers~~] are reimbursed for [~~waiver~~] services provided to individuals who meet the criteria for alternatives to nursing facility care. Additionally, providers are reimbursed a one-time administrative expense fee for a pre-enrollment assessment of potential waiver

participants. The pre-enrollment assessment covers care planning for the participant.

(3) [~~(b)~~] [~~Other sources of cost information.~~] If HHSC has determined that there is not sufficient reliable cost report data from which to determine reimbursements and reimbursement ceilings for waiver services, reimbursements and reimbursement ceilings will be developed by using data from surveys,[~~;~~] cost report data from other similar programs, consultation with other service providers or professionals experienced in delivering contracted services,[~~;~~] and other sources.

(b) State plan services reimbursement determination. For LTSS state plan services delivered through STAR+PLUS, Community First Choice (CFC) personal assistance services (PAS) and habilitation services are calculated as specified in §355.9090 of this title (relating to Reimbursement Methodology for Community First Choice); non-CFC PAS is calculated as specified in §355.5902 of this title (relating to Reimbursement Methodology for Primary Home Care); day activity and health services (DAHS) are calculated as specified in §355.6907 of this title (relating to Reimbursement Methodology for Day Activity and Health Services); emergency response services (ERS) are calculated as specified in §355.510 of this subchapter (relating to Reimbursement Methodology for Emergency Response Services (ERS)); financial management services agency (FMSA) fees are calculated as specified in §355.114 of this title (relating to Consumer Directed Services Payment Option.

(c) STAR+PLUS HCBS Waiver reimbursement determination. Recommended reimbursements are determined in the following manner.[~~:~~]

(1) Unit of service reimbursement. Reimbursement for non-CFC PAS [~~personal assistance services~~] and in-home respite care services, and cost per unit of service for nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, speech/language therapy, supported employment, employment assistance, and day activity and health services (DAHS) is [~~will be~~] determined [~~on a fee-for-service basis~~] in the following manner.[~~:~~]

(A) Total allowable costs for each provider are [~~will be~~] determined by analyzing the allowable historical costs reported on the cost report.

[~~(B) Total allowable costs are reduced by the amount of the pre-enrollment expense fee and requisition fee revenues accrued for the reporting period.~~]

(B) [~~(C)~~] Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

(C) [~~(D)~~] Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or Social Security, Medicare Contributions, Workers' Compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(D) [~~(E)~~] Allowable administrative and facility costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's units of service to the amount of total waiver units of service.

(E) [~~(F)~~] For in-home and out-of-home nursing services provided by an RN, in-home and out-of-home nursing services provided by an LVN, in-home and out-of-home physical therapy, in-home and out-of-home occupational therapy, speech/language therapy, supported employment, employment assistance, and in-home respite care services, an allowable cost per unit of service is calculated for each contracted provider cost report for each service. The allowable cost per unit of service[~~;~~] for each contracted provider cost report is multiplied by 1.044. This adjusted allowable cost per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this subchapter [~~title~~] (relating to Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers).

(F) [~~(G)~~] For non-CFC PAS [~~personal assistance services~~], two cost areas are created.[~~:~~]

(i) The attendant cost area includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(ii) The administration and facility [~~Another attendant~~] cost area [~~is created which~~] includes field supervisors' salaries and wages, benefits, and mileage reimbursement expenses; building, building equipment, and operation and maintenance costs; administration costs; and other service costs. [~~the other personal attendant services costs not included in clause (i) of this subparagraph as determined in subparagraphs (A) - (E) of this paragraph.~~] An allowable cost per unit of service is determined for each contracted provider cost report for the administration and facility [~~other attendant~~] cost area. The allowable cost per unit of service for each contracted provider cost report are arrayed. The units of service for each contracted provider cost report in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and [~~is~~] multiplied by 1.044.

(iii) The attendant cost area and the administration and facility [~~other attendant~~] cost area are summed to determine the PAS [~~personal assistance services~~] cost per unit of service.

(G) CFC PAS and habilitation services are calculated as specified in §355.9090 of this title (relating to Reimbursement Methodology for Community First Choice).

(2) Per day reimbursement.

(A) The reimbursement for Adult Foster Care (AFC) and out-of-home respite care in an AFC home is [~~will be~~] determined as a per day reimbursement using a method based on modeled projected expenses, which are developed using data from surveys, cost report data from other similar programs, consultation with other service providers or professionals experienced in delivering contracted services, and other sources. The room and board payments for AFC Services are not covered in these reimbursements and will be paid to providers from the client's Supplemental Security Income (SSI), less a personal needs allowance.

(B) The reimbursement for assisted living (AL) services is [~~Assisted Living/Residential Care (AL/RC) will be~~] determined as a per day reimbursement in accordance with §355.509(a) - (c)(2)(E)(iii) of this subchapter [~~title~~] (relating to Reimbursement Methodology for Residential Care).

(i) The per day reimbursement for attendant care for each of the [~~six~~] levels of care is [~~will be~~] determined based on [~~upon~~] client need for attendant care.

(ii) A total reimbursement amount is [~~will be~~] calculated and the proposed reimbursement is equal to the total reimbursement less the client's room and board payments.

(iii) The room and board payment is paid to the provider by the client from the client's SSI [~~Supplemental Security Income (SSI)~~], less a personal needs allowance.

(iv) The reimbursement for out-of-home respite in an AL [~~AL/RC~~] facility is determined using the same methodology as the reimbursement for AL [~~AL/RC~~] except that the out-of-home respite rates:

(I) are set at the rate for providers who choose not to participate in the attendant compensation rate enhancement; and

(II) include room and board costs equal to the client's SSI, less a personal needs allowance.

~~[(v) When the SSI is increased or decreased by the Federal Social Security Administration, the reimbursement for AL/RC and out-of-home respite provided in an AL/RC facility will be adjusted in amounts equal to the increase or decrease in SSI received by clients.]~~

(C) The reimbursement for out-of-home respite care provided in a Nursing Facility is [~~will be~~] based on the amount determined for the Nursing Facility case mix class into which the [~~CBA~~] participant is classified.

(D) The reimbursement for Personal Care 3 is [~~will be~~] composed of two rate components, one for the direct care cost center and one for the non-direct care cost center.

(i) Direct care costs. The rate component for the direct care cost center is [~~will be~~] determined by modeling the cost of the minimum required staffing for the Personal Care 3 setting, as specified by HHSC [~~the Department of Aging and Disability Services~~], and using staff costs and other statistics from the most recently audited cost reports from providers delivering similar care.

(ii) Non-direct care costs. The rate component for the non-direct care cost center is [~~will be~~] equal to the non-attendant portion of the non-apartment assisted living rate per day for non-participants in the Attendant Compensation Rate Enhancement. Providers receiving the Personal Care 3 rate are not eligible to participate in the Attendant Compensation Rate Enhancement and receive direct care add-ons [~~add-on's~~] to the Personal Care 3 rates.

(3) ERS [~~Emergency Response Services~~]. The reimbursement for ERS is [~~Emergency Response Services will be~~] determined as a monthly reimbursement ceiling, based on the ceiling amount determined in accordance with §355.510 of this subchapter [~~title~~] (relating to Reimbursement Methodology for Emergency Response Services (ERS)).

(4) Requisition fees. Requisition fees are reimbursements paid to [~~the CBA~~] home and community support services contracted providers for their efforts in acquiring adaptive aids, medical supplies, dental services, and minor home modifications for [~~CBA~~] participants. Reimbursement for requisition fees for adaptive aids, medical supplies, dental services, and minor home modifications will vary based on the actual cost of the adaptive aids, medical supplies, dental services, and minor home modifications. Reimbursements are determined using a method based on modeled projected expenses, which are developed by using data from surveys,[~~;~~] cost report data from similar programs,[~~;~~] consultation with other service providers and/or professionals experienced in delivering contracted services,[~~;~~] and/or other sources.

(5) Pre-enrollment expense fee. Reimbursement for pre-enrollment assessment is determined using a method based on modeled projected expenses that are developed by using data from surveys,[~~;~~] cost report data from other similar programs,[~~;~~] consultation with other service providers and/or professionals experienced in delivering contracted services,[~~;~~] and other sources.

(6) Home-Delivered Meals. The reimbursement for Home-Delivered Meals is [~~will be~~] determined on a per meal basis, based on the ceiling amount determined in accordance with §355.511 of this subchapter [~~title~~] (relating to Reimbursement Methodology for Home-Delivered Meals).

(7) Exceptions to the reimbursement determination methodology. HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(d) Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title.

(e) Reporting of cost.

(1) Cost reporting guidelines. If HHSC requires a cost report for any LTSS program or service delivered through STAR+PLUS [~~waiver service in this program~~], providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Excused from submission of cost reports. If required by HHSC, a contracted provider must submit a cost report unless the provider meets one or more of the conditions in §355.105(b)(4)(D) of this title.

~~[(3) Number of cost reports to be submitted.]~~

~~[(A) Contracted providers participating in the attendant compensation rate enhancement.]~~

~~[(i) At the same level of enhancement. If all the contracts under the legal entity participate in the enhancement at the same level of enhancement, the contracted provider must submit one cost report for the legal entity.]~~

~~[(ii) At different levels of enhancement. If all the contracts under the legal entity participate in the enhancement but they participate at more than one enhancement level, the contracted provider must submit one cost report for each level of enhancement.]~~

~~[(B) Contracted providers not participating in the attendant compensation rate enhancement. If all the contracts under the legal entity do not participate in the enhancement, the contracted provider must submit one cost report for the legal entity.]~~

~~[(C) Contractors participating and not participating in attendant compensation rate enhancement.]~~

~~[(i) At the same level of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate at the same level of enhancement, the contracted provider must submit:]~~

~~[(I) one cost report for the contracts that do not participate; and]~~

~~[(II) one cost report for the contracts that do participate.]~~

[(ii) ~~At different levels of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate in the enhancement but they participate at more than one enhancement level, the contracted provider must submit:~~]

[(I) ~~one cost report for the contracts that do not participate; and~~]

[(II) ~~one cost report for each level of enhancement.~~]

(3) [~~(4)~~] Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers; the purpose is to ensure that the database reflects costs and other information that [~~which~~] are necessary for the provision of services[~~,~~] and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported,[~~;~~] or

(ii) an auditor determines that reported costs are not verifiable.

(4) [~~(5)~~] Allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs), in addition to the following.

(A) Client room and board expenses are not allowable, except for those related to respite care.

(B) The actual cost of adaptive aids, medical supplies, dental services, and home modifications are not allowable for cost reporting purposes. Allowable labor costs associated with acquiring adaptive aids, medical supplies, dental services, and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable for cost reporting purposes. Refer to §355.103(b)(20)(K) of this title.

(f) Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(g) Reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

§355.507. Reimbursement Methodology for Long-Term Services and Supports State Plan and [~~the~~] Medically Dependent Children Waiver Program Services Delivered through the STAR Kids and STAR Health Managed Care Programs.

(a) General Requirements. The Texas Health and Human Services Commission (HHSC) determines payment rates for qualified contracted providers for the provision of long-term services and supports (LTSS) state plan and [~~services in the~~] Medically Dependent Children Waiver Program (MDCP) services delivered through the STAR Kids and STAR Heath managed care programs. HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(b) State plan services reimbursement determination. For LTSS state plan services delivered through STAR Kids and STAR Health, adult day care services are calculated as specified in §355.6907 of this title (relating to Reimbursement Methodology for Day Activity and Health Services); personal care services, nurse delegation and supervision services, and private duty nursing are calculated as specified in §355.8441 of this title (relating to Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services); Community First Choice (CFC) attendant and habilitation and personal assistance services (PAS) are calculated as specified in §355.9090 of this title (relating to Reimbursement Methodology for Community First Choice); emergency response services are calculated as specified in §355.510 of this subchapter (relating to Reimbursement Methodology for Emergency Response Services (ERS)); prescribed pediatric extended care services are calculated as specified in §355.9080 of this title (relating to Reimbursement Methodology for Prescribed Pediatric Extended Care Centers); financial management services agency (FMSA) fees are calculated as specified in §355.114 of this title (relating to Consumer Directed Services Payment Option).

(c) MDCP reimbursement determination. Recommended payment rates are developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures). Recommended payment rates for MDCP services are determined as follows.

(1) [~~(b)~~] The rates for in-home respite and flexible family supports nursing services provided by a registered nurse (RN) or licensed vocational nurse (LVN) are [~~will be~~] determined in accordance with §355.502 of this subchapter [~~title~~] (relating [~~Relating~~] to Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers).

(2) [~~(c)~~] The rates for in-home respite and flexible family supports provided by an attendant [~~personal assistance services (PAS)~~] without delegation of the service by an RN are [~~will be~~] based on [~~upon~~] the STAR+PLUS Home and Community-Based Services (HCBS) waiver rate methodology [~~Community-Based Alternatives (CBA) approved rates~~] for PAS in accordance with §355.503 of this subchapter [~~title~~] (relating to Reimbursement Methodology for Long-Term Services and Supports State Plan and Home and Community-Based Services Waiver Program Services Delivered through the STAR+PLUS Managed Care Program) [~~the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs~~)] and §355.112(m) [~~§355.112(l)~~] of this title (relating to Attendant Compensation Rate Enhancement). The rates for in-home respite and flexible family supports provided by an attendant [~~PAS~~] with delegation of the service by an RN are [~~will be~~] based on [~~upon~~] the STAR+PLUS HCBS waiver rate methodology [~~Community-Based Alternatives (CBA) approved rates~~] for PAS in accordance with §355.503 of this subchapter [~~title~~] and the add-on payment for the

highest level of attendant compensation rate enhancement in accordance with §355.112(o) [~~§355.112(n)~~] of this title.

(3) [~~(d)~~] The rate ceiling for respite care. Camp setting [~~camp~~] services is [~~will be~~] equivalent to the Community Living Assistance and Support Services direct service agency (CLASS DSA) out-of-home respite rate. Actual payments for this service are [~~will be~~] the lesser of the rate ceiling or the actual cost of the camp.

(4) [~~(e)~~] Facility-based respite care rates are determined on a 24-hour basis. The rates for facility-based respite care are calculated at 77 percent of the daily nursing facility rate methodology in accordance with §355.307 of this title (relating to Reimbursement Setting Methodology before September 1, 2025). After September 1, 2025, the rates for facility-based respite care are calculated at 77 percent of the daily nursing facility rate methodology in accordance with §355.318 of this title (relating to Reimbursement Setting Methodology for Nursing Facilities on or after September 1, 2025). [~~base rates by level of care~~]. The base rates used in this calculation do not include nursing facility rate add-ons.

(5) [~~(f)~~] The rates for supported employment and employment assistance are [~~will be~~] based on [~~upon~~] the rate methodology [~~CBA approved rates~~] for supported employment and employment assistance in accordance with §355.503 of this subchapter [~~title~~].

(6) Transition assistance services rates are determined in accordance with §355.502 of this subchapter.

(d) [~~(g)~~] Cost reports. If HHSC deems it appropriate to require providers contracted with managed care organizations to deliver LTSS services in STAR Kids and STAR Health to submit a cost report, the [~~The~~] following sections of this title will apply [~~to cost reports or surveys required to obtain the necessary information to determine new payment rates~~]: §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures), §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), §355.107 of this title (relating to Notification of Exclusions and Adjustments), §355.108 of this title (relating to Determination of Inflation Indices), §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs), §355.110 of this title (relating to Informal Reviews and Formal Appeals), and §355.111 of this title (relating to Administrative Contract Violations).

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

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

TRD-202404916
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 867-7817

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CHAPTER 381. GUARDIANSHIP SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Chapter 381, comprising of Subchapter A, §381.1, concerning Purpose; and §381.2, concerning Definitions; Subchapter B, §§381.101, concerning Duties; 381.102, concerning Membership and Eligibility; and 381.103, concerning Officers and Meetings; Subchapter C, §§381.201, concerning Eligible Projects; 381.202, concerning Eligible Applicants; 381.203, Application and Selection Process; 381.204, concerning Grant Period; 381.205, concerning Continuation Funding Policy; 381.206, concerning Grant Amounts; 381.207, concerning Notification of Award; 381.208, concerning Request for Reconsideration; 381.209, concerning Contract; 381.210, concerning Progress Reports; Subchapter D, §§381.301, concerning Purpose; 381.303, concerning Applicability of Standards to Guardianship Programs; 381.305, concerning Ineligibility of Non-compliant Programs; 381.315, concerning Form of Entity; 381.317, concerning Fiscal Responsibility; 381.319, concerning Budget; 381.321, concerning Insurance; 381.323, concerning Fees for Services; 381.325, concerning Guardianship Bonds; 381.331, concerning Guardianship Accountability; 381.333, concerning Service Provider Employee Screening; 381.335, concerning Confidentiality; 381.337, concerning Supervision of Employees and Volunteers; 381.339, concerning Community Involvement; 381.345, concerning Less Restrictive Alternatives to Guardianship; 381.347, concerning Guardianship Program Service Levels, 381.349, concerning Role of Volunteers; 381.351, concerning Staffing Requirements; 381.353, concerning Training Requirements; 381.355, concerning Conflicts of Interest; 381.357, concerning Referral, Intake, and Assessments; 381.359, concerning Prioritization of Potential Clients on Waiting Lists; 381.361, concerning Responsibility for Burial or Cremation; 381.363, concerning Evaluation and Monitoring of Caseloads; 381.365, concerning Personal Care Plans for Guardianship Clients; and 381.367, concerning Financial Care Plans for Guardianship Clients.

BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal rules concerning the Guardianship Advisory Board because the authority for the HHSC Guardianship Advisory Board and related guardianship program grants and standards were transferred from HHSC to the Office of Court Administration by Senate Bill (S.B.) 966, 83rd Legislature, Regular Session, 2013. The governing statute for the HHSC Guardianship Advisory Board and related grants and standards, Texas Government Code Chapter 531, Subchapter D, was subsequently repealed by S.B. 200, 84th Legislature, Regular Session, in 2015.

SECTION-BY-SECTION SUMMARY

The proposed repeal of Chapter 381, concerning Guardianship Services, deletes the rules as they are no longer necessary. The statutory authority for the board was transferred to the Office of Court Administration by S.B. 966, 83rd Legislature, Regular Session, 2013.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the repeals will be in effect, enforcing or administering the repeals 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 repeals will be in effect:

(1) the proposed repeals will not create or eliminate a government program;

(2) implementation of the proposed repeals will not affect the number of HHSC employee positions;

(3) implementation of the proposed repeals will result in no assumed change in future legislative appropriations;

(4) the proposed repeals will not affect fees paid to HHSC;

(5) the proposed repeals will not create a new regulation;

(6) the proposed repeals will repeal existing regulations;

(7) the proposed repeals will not change the number of individuals subject to the rules; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules will be repealed.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because these repeals do not impose a cost on regulated persons and the repeal is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Haley Turner, Deputy Executive Commissioner of Community Services, has determined that for each year of the first five years the repeals are in effect, the public benefit will be eliminating references to the Guardianship Advisory Board in the Texas Administrative Code because HHSC has not overseen the Guardianship Advisory Board since 2013.

Trey Wood has also determined for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the rules will be removed.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's 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 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 emailed to HHSRulesCoordinationOffice@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 the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R022" in the subject line.

SUBCHAPTER A. PURPOSE AND DEFINITIONS

1 TAC §381.1, §381.2

STATUTORY AUTHORITY

The repeals 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, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees.

The repeals affect Texas Government Code §531.0055, Chapter 2110, and Texas Government Code §523.0201.

§381.1. Purpose.

§381.2. Definitions.

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
Texas Health and Human Services Commission
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 840-8536

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SUBCHAPTER B. GUARDIANSHIP ADVISORY BOARD

1 TAC §§381.101 - 381.103

STATUTORY AUTHORITY

The repeals 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, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees.

The repeals affect Texas Government Code §531.0055, Chapter 2110, and Texas Government Code §523.0201.

§381.101. Duties.

§381.102. Membership and Eligibility.

§381.103. Officers and Meetings.

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
Texas Health and Human Services Commission
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For further information, please call: (512) 840-8536

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SUBCHAPTER C. GRANTS FOR LOCAL GUARDIANSHIP PROGRAMS

1 TAC §§381.201 - 381.210

STATUTORY AUTHORITY

The repeals 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, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees.

The repeals affect Texas Government Code §531.0055, Chapter 2110, and Texas Government Code §523.0201.

§381.201. Eligible Projects.
§381.202. Eligible Applicants.
§381.203. Application and Selection Process.
§381.204. Grant Period.
§381.205. Continuation Funding Policy.
§381.206. Grant Amounts.
§381.207. Notification of Award.
§381.208. Request for Reconsideration.
§381.209. Contract.
§381.210. Progress Reports.

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

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SUBCHAPTER D. STANDARDS FOR GUARDIANSHIP PROGRAMS

DIVISION 1. GENERAL

1 TAC §§381.301, 381.303, 381.305

STATUTORY AUTHORITY

The repeals 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, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees.

The repeals affect Texas Government Code §531.0055, Chapter 2110, and Texas Government Code §523.0201.

§381.301. Purpose.
§381.303. Applicability of Standards to Guardianship Programs.
§381.305. Ineligibility of Non-compliant Programs.

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
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DIVISION 2. ADMINISTRATION AND FISCAL MANAGEMENT

1 TAC §§381.315, 381.317, 381.319, 381.321, 381.323, 381.325

STATUTORY AUTHORITY

The repeals 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, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees.

The repeals affect Texas Government Code §531.0055, Chapter 2110, and Texas Government Code §523.0201.

§381.315. Form of Entity.
§381.317. Fiscal Responsibility.
§381.319. Budget.
§381.321. Insurance.
§381.323. Fees for Services.
§381.325. Guardianship Bonds.

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
Texas Health and Human Services Commission
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DIVISION 3. PERSONNEL MANAGEMENT

1 TAC §§381.331, 381.333, 381.335, 381.337, 381.339

STATUTORY AUTHORITY

The repeals 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, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees.

The repeals affect Texas Government Code §531.0055, Chapter 2110, and Texas Government Code §523.0201.

§381.331. Guardianship Accountability.

§381.333. Service Provider Employee Screening.

§381.335. Confidentiality.

§381.337. Supervision of Employees and Volunteers.

§381.339. Community Involvement.

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
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DIVISION 4. GUARDIANSHIP PROGRAMS AND CLIENT SERVICES

1 TAC §§381.345, 381.347, 381.349, 381.351, 381.353, 381.355, 381.357, 381.359, 381.361, 381.363, 381.365, 381.367

STATUTORY AUTHORITY

The repeals 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, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees.

The repeals affect Texas Government Code §531.0055, Chapter 2110, and Texas Government Code §523.0201.

§381.345. Less Restrictive Alternatives to Guardianship.

§381.347. Guardianship Program Service Levels.

§381.349. Role of Volunteers.

§381.351. Staffing Requirements.

§381.353. Training Requirements.

§381.355. Conflicts of Interest.

§381.357. Referral, Intake, and Assessments.

§381.359. Prioritization of Potential Clients on Waiting Lists.

§381.361. Responsibility for Burial or Cremation.

§381.363. Evaluation and Monitoring of Caseloads.

§381.365. Personal Care Plans for Guardianship Clients.

§381.367. Financial Care Plans for Guardianship Clients.

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
Texas Health and Human Services Commission
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TITLE 10. COMMUNITY DEVELOPMENT

PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM OFFICE

CHAPTER 174. ECONOMIC DEVELOPMENT ADVISORY COMMITTEES

10 TAC §174.1, §174.2

The Office of the Governor, Texas Economic Development and Tourism Office ("Office") proposes new 10 TAC §174.1, §174.2, concerning Economic Development Advisory Committees.

EXPLANATION AND JUSTIFICATION OF THE RULES

The Office is authorized by section 481.0211, Texas Government Code, to establish by rule advisory committees to make recommendations to the Office on programs, rules, and policies administered by the Office. This rulemaking establishes provisions for the governance of all advisory committees created under this new chapter, as well as the specific purposes and composition of a new economic development advisory committee.

SECTION BY SECTION SUMMARY

Proposed rule §174.1 would establish provisions of general applicability to all advisory committees created under new chapter 174. The proposed rule sets forth the purpose of the chapter, duration of advisory committees, appointment authority, procedure for selection of chair of advisory committees, maximum number of members, term length, quorum requirements, qualifications,

conflict of interest standards, training requirements, and meeting attendance requirements. The proposed rule further sets forth the responsibilities of the Office with respect to advisory committees and that advisory committee members will serve without compensation and will not be reimbursed for expenses unless otherwise authorized by law.

Proposed rule §174.2 would create the International Business Advisory Committee and establishes the purposes, composition, and qualifications of the committee's members. The proposed rule would also establish how the Office will determine which countries are Countries of Interest for the development and promotion of business relationships between Texas and such countries.

FISCAL NOTE

Adriana Cruz, Executive Director of the Office, has determined that the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction of costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Ms. Cruz has determined that enforcing or administering the rules does not have foreseeable implications relating to the costs or revenues of state or local government.

PUBLIC BENEFIT

Ms. Cruz has determined for the first five-year period the proposed rules are in effect, the public benefit will be clarity and consistency in the creation of and operation of the Office's advisory committees, as well as a benefit to Texas in identifying countries with which the Office can enhance business and economic development relationships.

PROBABLE ECONOMIC COSTS

Ms. Cruz has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with the proposed rules.

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES.

Ms. Cruz has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under §2006.002, Texas Government Code, is not required.

LOCAL EMPLOYMENT IMPACT STATEMENT

Ms. Cruz has determined the proposed rulemaking does not have an impact on local economy; therefore, no local employment impact statement under §2001.022, Texas Government Code, is required.

GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Cruz has determined that during each year of the first five years in which the proposed rules are in effect, the rules:

1) will not create or eliminate a government program;

2) will not require the creation of new employee positions or the elimination of existing employee positions;

3) will not require an increase or decrease in future legislative appropriations to the OOG;

4) will not require an increase or decrease in fees paid to the OOG;

5) will create new regulations;

6) will not expand certain existing regulations, limit certain existing regulations, or repeal existing regulations;

7) will increase the number of individuals subject to the applicability of the rules; and

8) will positively affect the Texas economy.

TAKINGS IMPACT ASSESSMENT

Ms. Cruz has determined that there are no private real property interests affected by the proposed rules; therefore, the Office is not required to prepare a takings impact assessment pursuant to §2007.043, Texas Government Code.

REQUEST FOR PUBLIC COMMENTS

Comments on the proposed rules may be submitted to Terry Zrubek, Office of the Governor, by email to *terry.zrubek@gov.texas.gov* with the subject line "Economic Development Advisory Committee Rules." The deadline for receipt of comments is 5:00 p.m., Central Time, on December 2, 2024, which is at least 30 days from the date of publication in the *Texas Register.*

STATUTORY AUTHORITY

Section 481.0211, Texas Government Code, authorizes the Office to adopt rules relating to the establishment of advisory committees to make recommendations to the Office on programs, rules, and policies administered by the Office.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by the proposed rules.

§174.1. Establishment of Advisory Committees.

(a) This chapter governs the creation and operation of advisory committees, except as otherwise provided by law or rule in this chapter. The purpose of an advisory committee is to make recommendations to the Economic Development and Tourism Office in the Office of the Governor (Office) on programs, rules, and policies administered by the Office. An advisory committee's sole role is to advise the Office. An advisory committee has no executive or administrative powers or duties with respect to the operation of the Office.

(b) The Office shall establish advisory committees by rule in this chapter. An advisory committee is abolished on the fourth anniversary of the date of its creation unless the Office designates a different expiration date for an advisory committee, or an advisory committee has a specific duration prescribed by law.

(c) The Chief of Staff of the Office of the Governor or designee will appoint members to an advisory committee based on advice and input from the Executive Director and staff of the Office. The appointees serve at the pleasure of the Chief of Staff of the Office of the Governor.

(d) Each advisory committee will select from its members a chair to serve as a presiding officer, a vice-chair, and any other officers the members determine are necessary to achieve the purposes of the advisory committee.

(e) An advisory committee must be composed of a reasonable number of members not to exceed twenty-four members. A quorum of an advisory committee consists of a majority of the number of members fixed by rule in this chapter. An advisory committee may act only by majority vote of the members present and voting at the meeting.

(f) Advisory committee members:

(1) shall serve two-year staggered terms;

(2) must have knowledge about and interests in the specific purpose and tasks of an advisory committee established under this chapter;

(3) are subject to the conflict-of-interest provisions established under chapter 481, Texas Government Code;

(4) must complete training regarding the Open Meetings Act, chapter 551, Texas Government Code, and the Public Information Act, chapter 552, Texas Government Code; and

(5) automatically vacate the positions to which they were appointed if they miss three or more consecutive advisory committee meetings, and the Chief of Staff or designee will appoint a new member to fill the remainder of the unexpired term created by the vacancy.

(g) For each advisory committee established under this chapter, the Executive Director of the Office will designate a division of the Office that will be responsible for providing necessary administrative support essential to the functions of the advisory committee.

(h) Advisory committee meetings shall:

(1) relate to the business in an agenda and occur on the date, time, and place established by the division designated under subsection (g) of this section; and

(2) be held at least annually.

(i) For each advisory committee created under this chapter, the Office shall adopt rules that address the purpose and role of the advisory committee. The rules may address additional items, including membership qualifications, terms of service, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this chapter.

(j) Office staff shall maintain minutes of each advisory committee meeting and distribute copies of approved minutes and other advisory committee documents to advisory committee members.

(k) Office staff shall report an advisory committee's recommendations to the Executive Director or designee. The presiding officer of an advisory committee or designee may present the committee's recommendations to the Executive Director of the Office.

(l) Members of an advisory committee will serve without compensation and shall not be reimbursed for expenses unless reimbursement is authorized by law and approved by the Executive Director.

(m) The Office shall monitor the activities, work, usefulness, costs, Office staff time used to support, and composition of advisory committees.

§174.2. International Business Advisory Committee.

(a) The Texas International Business Advisory Committee (IBAC) is established to assist the Office with the international trade relations and economic development in specific countries to benefit the State of Texas. The IBAC shall assist the Office, provide information, referrals, and recommendations to the Office to spur foreign trade and foreign direct investment to the State.

(b) The IBAC shall be composed of no more than fifteen members, the presence of eight of whom constitutes a quorum. The Chief of Staff of the Office of the Governor will select IBAC members on basis of high-level business and government contact in a Country of Interest, business relationships in a Country of Interest, or specialized knowledge about or substantial experience with interacting with a Country of Interest.

(c) For purposes of subsection (b) of this section, the Office will identify Countries of Interest through trade statistics and foreign direct investment figures and will communicate the Countries of Interest to the Chief of Staff of the Office of the Governor and IBAC members.

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

Filed with the Office of the Secretary of State on October 18, 2024.

TRD-202404910
Adriana Cruz
Executive Director
Office of the Governor, Economic Development and Tourism Office
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 936-0100

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TITLE 13. CULTURAL RESOURCES

PART 7. STATE PRESERVATION BOARD

CHAPTER 111. RULES AND REGULATIONS OF THE BOARD

13 TAC §111.27

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

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

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

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

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

Government Growth Impact Statement: Government Code §2001.0221 requires that a state agency prepare a government growth impact statement that reasonably describes what effects a proposed rule may have during the first five years it is in effect. The SPB has determined that the proposed repeal will not create or eliminate a government program, and will not require an increase or decrease in fees paid to the agency. Implementation of the proposal will not require the creation or elimination of employee positions and will not require an increase or decrease in further legislative appropriations to the agency. The proposal does repeal an existing procedural rule regarding voluntary conduct, but it does not create a new prescriptive or proscriptive regulation, or expand, limit, or repeal such a regulation. Though the public's ability to seek to display exhibits in the Capitol through this program will be eliminated, the regulation was not prescriptive. Thus, the number of individuals whose conduct is subject to the rule's applicability is neither increased nor decreased by the proposal, and the proposal has no impact on the state's economy.

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

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

Request for Public Comment: To comment on the proposal, submit written comments by 5:00 p.m. (Central) on December 1, 2024, to spbadmin@tspb.texas.gov . Please add the words Rule Comments in the subject line. A request for public hearing must be in writing and sent separately from any written comments. Send these requests to spbadmin@tspb.texas.gov .

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

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

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

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

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

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

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

(4) blocking ingress and egress:

(A) into the Capitol; or

(B) into rooms or hallways within the Capitol, except as approved by the board;

(5) conducting actions that pose a risk to safety;

(6) smoking in the public areas of the Capitol and Capitol extension;

(7) bringing balloons into the Capitol or Capitol extension; and

(8) riding, leading, placing or displaying livestock, including but not limited to equine and bovine animals, except as approved by the board as part of a scheduled event, or as needed for security purposes.

(b) Visitors and persons using the Capitol, Capitol extension, or Capitol grounds for any purposes shall be required to:

(1) leave the Capitol when the building is closed to the public; and

(2) restrain pets at all times on a leash or similar device in the immediate control of the owner while on the grounds of the Capitol, except as approved by the board. All pets except service [~~Seeing Eye~~] dogs are not permitted in the Capitol.

(c) The board may require and collect a standardized fee from a person or entity that uses the Capitol, the Capitol extension, or the grounds of the Capitol for an event, exhibit, or other scheduled activity. The fee is in an amount set by the board designed to recover the estimated direct and indirect costs to the state of the event, exhibit or activity, including the costs of labor, materials, and utilities directly or indirectly attributable to the event, exhibit, or activity. The office of the State Preservation Board shall set the amounts of fees required under this section in a uniform and nondiscriminatory manner for similar events, exhibits, or other scheduled activities.

(d) Except as provided by this subsection, the sale or consumption of alcoholic beverages, the possession of an open container of an alcoholic beverage, or the gift of an alcoholic beverage in an open container or for on-premises consumption is prohibited in the Capitol, in the Capitol extension, and on the Capitol grounds. This prohibition does not apply to:

(1) areas not under the control of the board, including offices, reception areas, and similar areas under the control of the legislature, a legislative agency, the governor, or another state officer; or

(2) events of significant importance to the history of the Capitol that are conducted in areas under the control of the board and for which the office of the State Preservation Board has approved consumption of alcoholic beverages in response to a written request from the sponsor of the event that documents the importance of the event to the history of the Capitol.

(e) The buildings and grounds under the authority of the board shall not be used for the commercial benefit of any individual, business, corporation, special interest group or other entity.

(f) For the safety of the public, skateboarding, roller skating, roller blading, and related activities are prohibited in the building, garages, and grounds under the authority of the State Preservation Board.

(g) TV satellite trucks may not park on the Capitol drive. TV transmission cables may not be brought into the Capitol or Capitol extension.

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

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

TRD-202404933
Cynthia Provine
Chief Financial Officer
State Preservation Board
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 463-5495

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 1. PRACTICE AND PROCEDURE
SUBCHAPTER I. PERMIT PROCESSING

16 TAC §1.201

The Railroad Commission of Texas (Commission) proposes amendments to §1.201, relating to Time Periods for Processing Applications and Issuing Permits Administratively. The Commission proposes the amendments to update cross-references to other Commission rules in the rule and in the table, as well as other nonsubstantive clarifications.

The Commission proposes amendments to §1.201(a) to more closely align with Government Code §2005.003, the statute which requires adoption of §1.201. The amendments clarify that §1.201 does not apply to all permits issued by the Commission, but only those permits for which the median time for processing a permit application from receipt of the initial application to the final permit decision exceeds seven days. The proposed amendments also replace the definition of "permit" with a reference to Government Code §2005.003 to ensure the Commission's rule is consistent with the statutory definition of the term.

The table in §1.201(a) is proposed to be amended to reflect current permits, operating division names, and permit processing time periods. Sections 3.8 (relating to Water Protection) and 3.57 (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials) are currently proposed to be amended in a separate Commission rulemaking. Thus, the obsolete sections of those rules and the permits issued pursuant to those rules are proposed to be removed from the table in §1.201(a). The amendments also correct other outdated references and remove permits the Commission no longer issues.

The Commission also proposes to restructure the table to limit the information for each permit to: (1) the permit and rule or law governing the permit; (2) the Commission division responsible for processing the permit; and (3) the initial and final review periods as required by Government Code §2005.003. The current table includes information on Commission forms and fees associated with the permits. However, form and fee information is more easily obtained from the Commission's website. The Commission's website is more frequently updated and allows more information about each permit to be accessible to persons seeking a permit from the Commission. The proposed amendments to the table also remove column names to simplify future updates. Column name references are proposed to be removed throughout the section and are replaced with general references to the table.

Several permit types are also proposed to be removed from the table because the permit processing time no longer exceeds seven days, the permit type is no longer issued, or the authorization does not meet the definition of a permit under Government Code §2005.003.

Finally, the Commission proposes amendments in §1.201(c)(7) and (e) to reflect the current name of the division which contains the Docket Services Section.

Paul Dubois, Assistant Director of the Oil and Gas Division and Director of Technical Permitting, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal implications for state or local governments as a result of the amendments. In addition, there is no anticipated cost for persons required to comply with the proposed amendments. The proposed amendments merely update §1.201 to provide current information regarding permit processing time periods at the Commission.

Mr. Dubois has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit will be transparency regarding current Commission permit review time and related requirements.

The Commission has determined that the proposed amendments will not have an adverse economic effect on rural communities, small businesses, or micro-businesses. Therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

The Commission has also determined that the proposed amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the amendments would be in effect, the proposed amendments would not: create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; increase fees paid to the agency; create a new regulation; increase or decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; or affect the state's economy. The amendments merely update the rule to reflect current time periods for administrative review and approval of permits and other authorizations given by the Commission.

Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/legal/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until noon (12:00 p.m.) on Monday, December 2, 2024. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to Texas Register publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments.

The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Paul Dubois at (512) 463-6778. The status of Commission rulemakings in progress is available at https://rrc.texas.gov/general-counsel/rules/proposed-rules/. If you submit a comment and do not see the comment posted at this link within three business days of submittal, please call the Office of General Counsel at (512) 463-7149. The Commission has safeguards to prevent emailed comments from getting lost; however, your operating system's or email server's settings may delay or prevent receipt.

The Commission proposes the amendments under Texas Government Code §2005.003, which requires a state agency that issues permits to adopt procedural rules for processing permit applications and issuing permits; Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and Texas Natural Resources Code §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission.

Statutory Authority: Texas Government Code §§2005.003 and 2001.004; Texas Natural Resources Code §§81.051 and 81.052.

Cross-reference to statute: Texas Government Code Chapters 2001 and 2005; Texas Natural Resources Code Chapter 81.

§1.201. Time Periods for Processing Applications and Issuing Permits Administratively.

(a) Applicability. This rule applies to permits issued administratively by the Commission through the operating divisions listed in Table 1 of this section and for which the median permit processing time exceeds seven days. These permits are listed in [~~the permits listed in Column A of~~] Table 1 of this section. For purposes of this rule, the term "permit" has the meaning assigned in Texas Government Code Chapter 2005. [~~includes any authorization issued administratively by the Commission, through the Oil and Gas Division, the Gas Services Division, the Surface Mining and Reclamation Division, or the Rail/LP-Gas/Pipeline Safety Division, and required by the Commission either to engage in or conduct a specific activity or to deviate from requirements, standards, or conditions in statutes or Commission rules and for which the median processing time exceeds seven days~~].
Figure: 16 TAC §1.201(a)
[~~Figure: 16 TAC §1.201(a)~~]

(b) Completeness. An application is complete when the division or section shown in [~~Column B of~~] Table 1 has determined that the application contains information addressing each application requirement of the regulatory program and all information necessary to initiate the final review by the division or section processing the application. For purposes of this section, certain applicants[~~, as shown in Column D of Table 1,~~] are required to have an approved organization report (Form P-5) on file with the Commission in order for an application to be complete.

(c) Time periods.

(1) The date a permit application is received under this section is the date the application reaches the designated division or section within a division as shown in [~~Column B of~~] Table 1.

(2) The division or section shown in [~~Column B of~~] Table 1 shall process permit applications in accordance with the time periods shown in [~~Columns F and G of~~] Table 1 for a particular permit. Time periods are counted on the basis of calendar days.

(3) The Initial Review Period, shown in [~~Column F of~~] Table 1, begins on the date the designated division or section receives the application and ends on the date the division or section gives written notice to the applicant indicating that either:

(A) the application is complete and accepted for filing; or

(B) the application is incomplete, as described in paragraph (4) of this subsection.

(4) If the division or section determines that an application is incomplete, the division or section shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application. The Initial Review Period shall start again each time the division or section receives a supplemental filing relating to an incomplete application. After the second supplemental submission, if the application is complete, the division or section shall administratively rule on the application; if the application is still incomplete, the division or section shall administratively deny the application. The division or section specifically does not have the authority to accept or review any other additional supplemental submissions. The division or section shall notify the applicant in writing of the administrative decision and, in the case of an administrative denial, the applicant's right to request a hearing on the application as it stands. The applicant may withdraw the application.

(5) The Final Review Period, shown in [~~Column G of~~] Table 1, begins on the date the division or section makes a determination under paragraph (3)(A) of this subsection and ends on the date the permit is:

(A) administratively granted;

(B) administratively denied; or

(C) docketed as a contested case proceeding if the application is neither administratively granted nor administratively denied.

(6) An applicant whose application has been administratively denied may request a hearing by filing a written request for a hearing addressed to the division or section processing the application, within 30 days of the date the application is administratively denied.

(7) Within seven days of either docketing an application under paragraph (5)(C) of this subsection or receiving a written request for a hearing under paragraph (6) of this subsection, the division or section processing the application shall forward the file and any request for hearing, including any memoranda or notes explaining or describing the reasons for docketing or administrative denial, to the Docket Services Section of the Hearings Division, which [~~Office of General Counsel. The Office of General Counsel~~] shall process the application as prescribed in subsection (e) of this section.

(d) Complaint procedure.

(1) An applicant may complain directly to the Executive Director if a division or section does not process an application within the applicable time periods shown in [~~Columns F and G of~~] Table 1, and may request a timely resolution of any dispute arising from the claimed delay. All complaints shall be in writing and shall state the specific relief sought, which may include the full reimbursement of any [~~the~~] fee paid in that particular application process[~~, if any, as shown in Column E of Table 1~~]. As soon as possible after receiving a complaint, the Executive Director shall notify the appropriate division director of the complaint.

(2) Within 30 days of receipt of a complaint, the division director of the division or section processing the application that is the subject of the complaint shall submit to the Executive Director a written report of the facts relating to the processing of the application. The report shall include the division director's explanation of the reason or reasons the division or section did or did not exceed the established time periods. If the Executive Director does not agree that the division or section has violated the established periods or finds that good cause existed for the division or section to have exceeded the established periods, the Executive Director may deny the relief requested by the complaint.

(3) For purposes of this section, good cause for exceeding the established period means:

(A) the number of permit applications to be processed by the division or section exceeds by at least 15 percent the number of permit applications processed by that division or section in the same quarter of the previous calendar year;

(B) the division or section must rely on another public or private entity to process all or part of the permit application received by the agency, and the delay is caused by that entity; or

(C) other conditions exist that give the division or section good cause for exceeding the established period, including but not limited to circumstances such as personnel shortages, equipment outages, and other unanticipated events or emergencies.

(4) The Executive Director shall make the final decision and provide written notification of the decision to the applicant and the division or section within 60 days of receipt of the complaint.

(e) Hearings. If an application is docketed as a contested case proceeding, it is governed by the time periods in this chapter (relating to Practice and Procedure) once the application has been filed with the Docket Services Section of the Hearings Division [~~Office of General Counsel~~].

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

Filed with the Office of the Secretary of State on October 15, 2024.

TRD-202404851
Haley Cochran
Assistant General Counsel, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 475-1295

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CHAPTER 3. OIL AND GAS DIVISION

16 TAC §§3.1, 3.5, 3.7, 3.12, 3.13, 3.16, 3.17, 3.32, 3.36, 3.73, 3.78, 3.81, 3.82

The Railroad Commission of Texas (Commission) proposes amendments to §§3.1, 3.5, 3.7, 3.12, 3.13, 3.16, 3.17, 3.32, 3.36, 3.73, 3.78, and 3.81 relating to Organization Report; Retention of Records; Notice Requirements; Application To Drill, Deepen, Reenter, or Plug Back; Strata To Be Sealed Off; Directional Survey Company Report; Casing, Cementing, Drilling, Well Control, and Completion Requirements; Log and Completion or Plugging Report; Pressure on Bradenhead; Gas Well Gas and Casinghead Gas Shall Be Utilized for Legal Purposes; Oil, Gas, or Geothermal Resource Operation in Hydrogen Sulfide Areas; Pipeline Connection; Cancellation of Certificate of Compliance; Severance; Fees and Financial Security Requirements; and Brine Mining Injection Wells. The Commission also proposes new §3.82, relating to Brine Production Projects and Associated Brine Production Wells and Class V Spent Brine Return Injection Wells.

The Commission proposes the amendments and new rule to implement the provisions of Senate Bill (SB) 1186 (88th Legislature, Regular Session, 2023), relating to the regulation by the Commission of brine mining.

Deep brine aquifers in Texas contain substantial lithium and other valuable deposits, but an incomplete regulatory framework surrounding the brine mining industry presently inhibits the investment required to extract it. The Legislature passed SB 1186 to clarify and complete the Commission's jurisdiction over brine mining to enable this new industry to develop in Texas.

Under current law, the Commission has jurisdiction over brine mining, but to date, the only brine mining in Texas has involved injecting fluid to dissolve subsurface salt formations, then extracting the salts from the resulting artificial brines. The Commission has obtained primary enforcement authority ("primacy") for the Class III Underground Injection Control (UIC) program under the federal Safe Drinking Water Act from the United States Environmental Protection Agency (EPA) for such operations and is therefore authorized to issue permits for those brine mining injection wells.

The EPA regulates the mining of lithium from naturally occurring brines differently from how it regulates mining artificially created brines. The EPA requires wells that re-inject naturally occurring brines into the aquifer from which they were produced after the extraction of minerals ("spent brine return injection wells") to be permitted as Class V injection wells. While the Commission has jurisdiction over this type of brine mining under state law, it does not yet have primacy for the Class V UIC program from the EPA required to permit the spent brine return injection wells. Spent brine return injection wells currently are not subject to any specific regulations, but rather are subject to the federal UIC regulations that exist for all Class V wells.

SB 1186 added a definition of "brine mining" to Texas Water Code §27.036, to clarify the Commission's jurisdiction over both types of brine mining under state law. The bill also instructed the Commission to seek primacy from the EPA for Class V injection wells designed to inject spent brine into the same formation from which it was withdrawn after the extraction of minerals. Additionally, the bill clarified that the Commission's jurisdiction over brine mining includes the authority to regulate brine production wells and brine injection wells.

The amendments proposed in §§3.1, 3.5, 3.7, 3.12, 3.13, 3.16, 3.17, 3.32, 3.36, and 3.73 add references to brine resources and spent brine return injection wells as applicable or otherwise clarify requirements of those sections related to brine production and injection. The amendments proposed in §§3.1 and 3.36 also add references to geothermal resources. The amendments proposed in §3.78 add references to encompass brine resources and revise outdated language related to National Pollutant Elimination System (NPDES) permits and processing of checks.

The Commission proposes amendments to §3.81 to revise the title to Class III Brine Mining Injection Wells. The proposed amendments also clarify the definition of brine mining injection well for purposes of §3.81. That section addresses require-

ments for Class III injection wells used to inject fluid to dissolve subsurface salt formations and then extract the salts from the resulting artificial brines. SB 1186 did not impact the Commission's existing authority over Class III brine mining injection wells or any existing permits for such operations. The proposed amendments to the title will clarify that the requirements of §3.81 do not apply to brine production projects and associated injection wells, which are addressed in proposed new §3.82.

Proposed §3.82(a) describes the scope and purpose of the new rule. The proposed new rule contains regulations for brine production projects and the associated brine production wells for the extraction of elements, minerals, mineral ions, salts, or other useful substances, including, but not limited to, lithium, lithium ions, lithium chloride, halogens or halogen salts, from a subsurface formation but not including oil, gas, or any product of oil or gas, or fluid oil and gas waste. "Product of oil and gas" is defined by Natural Resources Code §85.001 and "fluid oil and gas waste" is defined by Natural Resources Code §122.001. Proposed subsection (a) also states that the section governs Class V spent brine return injection wells used in association with brine production projects for the reinjection of the spent brine. Proposed subsection (a)(2) - (6) contains other clarifications related to the scope of proposed §3.82 including that the section applies to all wells used for brine production or Class V spent brine return injection even if the well was not initially completed for that purpose; an operator of wells subject to §3.82 shall comply with all other applicable Commission rules and orders; and proposed §3.82 does not apply to Class III injection wells or to the injection of hazardous waste as defined under 40 Code of Federal Regulations (CFR) Part 261. Proposed subsection (a)(7) clarifies that the requirements contained in §3.82 apply statewide to brine production projects, regardless of the brine field from which the brine resources are produced and the spent brine reinjected. Proposed §3.82(d) establishes statewide field rules for brine production fields including assignment of acreage, well spacing, and density provisions to promote the regular development of brine resources in a manner that does not damage the reservoir. Section 3.82(d) also contains procedures for requesting exceptions to statewide spacing, density, or acreage provisions or for requesting special field rules. Proposed §3.82(a)(8) specifies that a Commission order or permit governs in the event §3.82 conflicts with a provision or term of the order or permit.

Proposed §3.82(b) contains the definitions for terms used within §3.82. Notable terms include brine, brine field, brine production project, brine production project area, brine production project permit, brine resource, Class V spent brine return injection well, and good faith claim. The proposed definition of "brine field" is a formation or the correlative depth interval designated in the field designation or rules that contains brine resources. The brine production project is a project the purpose of which is the extraction of brine resources from a brine field. The term includes brine production wells, Class V spent brine return injection wells, monitoring wells, brine flowlines, and any equipment associated with the project. The brine production project area is proposed to be defined as the surface extent of the land assigned to a brine production project, as indicated on the plat required by §3.82(e)(3)(N).

Proposed subsection (b) also contains definitions for terms commonly used in Underground Injection Control (UIC) programs such as underground source of drinking water, mechanical integrity, affected person, interested person, confining zone, and area of review. An affected person is a person who, as a result of activity sought to be permitted, has suffered, or faces a substantial risk of suffering, concrete or actual injury or economic damage other than as a member of the general public. A competitor is not an affected person unless it has suffered, or faces a substantial risk of suffering, actual harm to its interest in real property or waste of substantial recoverable substances. Area of review is proposed to be defined as the brine production project area plus a circumscribing area the width of which is one-quarter mile measured from the perimeter of the brine production project area.

Several terms in subsection (b) are proposed to ensure consistency with 40 Code of Federal Regulations §144.3 and §146.3, which contain federal definitions related to Class V UIC wells. Those terms include aquifer, containment, fault, fluid, formation, formation fluid, injection well, lithology, packer, plugging, plugging record, pressure, transmissive fault or fracture, well, well injection, and well plug.

The Commission proposes general requirements for brine production projects in §3.82(c). Brine production projects are required to be permitted in accordance with §3.82 before a person may construct or operate brine production wells or Class V spent brine return injection wells. Proposed §3.82(c)(2) specifies the persons authorized to sign applications and reports related to the brine production project. Proposed paragraph (c)(2)(A) - (C) contains requirements identical to those in §3.81 for Class III brine mining injection wells.

Proposed §3.82(c)(3) requires operators of all Class V spent brine return injection wells to re-inject spent brine into the brine field from which the brine was produced. In proposed subsection (c)(4), the Commission requires all brine production wells and Class V spent brine return injection wells be drilled and completed or recompleted, operated, maintained, and plugged in accordance with the requirements §3.82 and the brine production project permit.

Proposed subsection (c)(5) instructs the Commission to assign a lease number to the brine production project and requires that lease number to be used by the project operator on required forms and reports.

In proposed §3.82(c)(6) - (9), the Commission lists the other rules with which a brine production project shall comply. An applicant for a brine production project permit shall comply with Commission regulations in §§3.1, 3.5, 3.11, 3.12, 3.16, 3.17, 3.18, 3.19, 3.36, and 3.80. An applicant for a brine production project shall also comply with 3.13, 3.14, 3.15, 3.35, and 3.78, but the Commission proposes additional requirements specifically applicable to brine production projects in subsection (c)(7) - (9). Proposed §3.82(c)(7) requires that, in addition to the requirements of §3.13, all wells associated with a brine production project use casing and cement designed to withstand the anticipated pressurization and formation fluids that are capable of negatively impacting the integrity of casing and/or cement such that it presents a threat to underground sources of drinking water or oil, gas, or geothermal resources. Surface casing is required to be set at the depth determined by the Geologic Advisory Unit. Although generally the Commission accepts requests for alternative surface casing depths, such requests will not be considered for brine production projects.

Proposed §3.82(c)(8) states that the requirements of §§3.14, 3.15, and 3.35 apply to all wells associated with a brine production project, except that the well operators shall plug all wells associated with a brine production project and remove all wastes,

storage vessels, and equipment from the site within one year of cessation of brine production project operations.

Proposed §3.82(c)(9) requires all operators of wells drilled and operated in association with a brine production project to comply with the requirements of §3.78 as the requirements are applicable to brine production projects, except that, prior to spudding, the operator shall provide financial security in an amount estimated to plug each well in the brine production project after cessation of brine production project operations. Also, proposed subsection (c)(9) states that for an operator of a brine production project who has satisfied its financial security requirements by filing a cash deposit, the Commission shall refund to the operator the amount estimated to plug each well following its plugging if the amount of the deposit remaining after the refund would be sufficient to plug all remaining wells in the brine production project.

Proposed §3.82 (c)(10) prohibits any person from knowingly making any false statement, representation, or certification in any application, report, record, or other document submitted or required to be maintained under §3.82 or under any permit issued pursuant to §3.82. Proposed subsection (c)(10) also prohibits any person from falsifying, tampering with, or knowingly rendering inaccurate any monitoring device or method required to be maintained under §3.82 or under any permit issued pursuant to that section.

Proposed subsection (d) contains statewide field rules for spacing, acreage, and density of brine production projects. The subsection also addresses the process for requesting an exception to the statewide rules or adopting field rules for a particular brine field. Regarding spacing requirements, proposed subsection (d)(1) requires that all brine production wells and Class V spent brine return injection wells be completed within the brine production project area, which is defined in proposed subsection (b) as the surface extent of the land assigned to a brine production project, as indicated on the plat required by subsection (e)(3)(N). Any well must also be located no less than one-half mile from the boundary of the brine production project area and no less than one-half mile from any interest within the brine production project area that is not participating in the project. Special field rules or an exception obtained pursuant to subsection (d)(4) may alter the spacing requirements. Proposed subsection (d)(2) contains the acreage and density requirements for brine production projects. An applicant for a brine production project permit shall designate and assign acreage within the applicable brine field to the brine production project. Proposed §3.82(e)(3) requires the applicant to designate the total number of acres included in the brine production project area as part of the permit application. The minimum amount of acreage that must be assigned is 1,280 acres per brine production well included in the brine production project, unless special field rules provide different well density requirements or the applicant obtains an exception pursuant to subsection (d)(4). The maximum amount of acreage that may be assigned to a brine production well is 5,120 acres, unless special field rules apply. This requirement is proposed in subsection (d)(2)(C).

Proposed §3.82(d)(2)(B) and (D) contain requirements for operators of brine production projects that elect to file a plat assigning acreage in the brine production project area to a brine production well. Operators are not required to assign acreage to an individual brine production well as long as the total number of acres assigned to the brine production project area divided by the total number of brine production wells equals or exceeds 1,280 acres. If the operator elects to file a plat assigning acreage to a brine production well, proposed subsection (d)(2)(D) requires that the two farthermost points of acreage assigned to the well not exceed 23,760 feet, and the acreage assigned shall include all productive portions of the wellbore. The maximum diagonal proposed in subsection (d)(2)(D) is intended to prevent acreage designation resulting in an irregular shape. The diagonal of 23,760 feet assumes the maximum 5,120 acres has been assigned to the well, creating an acreage assignment in the shape of a rectangle that is two miles wide and four miles long. For this acreage designation, 23,760 feet is the farthest diagonal between two points on opposite sides of the rectangle. Special field rules may alter the maximum diagonal.

Proposed §3.82(d)(2)(E) prohibits multiple assignment of the same acreage in a brine field to more than one brine production well. Proposed subsection (d)(2)(F) requires that acreage included in a brine production project area consist of acreage for which the operator has a good faith claim to produce brine resources. Non-contiguous acreage included in the same brine production project area may not be separated by greater than the minimum spacing distance for wells; however, an operator may obtain an exception to the contiguity requirements pursuant to paragraph (d)(4)(C).

Proposed §3.82(d)(3) contains the required procedure for requesting a brine field designation and special field rules. Prior to submitting a request for special field rules which depart from the statewide spacing, acreage, and density requirements proposed in subsection (d)(1) and (d)(2), a new brine field must be designated by the Commission pursuant to the procedure proposed in subsection (d)(3). Proposed subsection (d)(3)(A) contains the required components of a request for a new field designation.

In §3.82(d)(3)(B), the Commission proposes the procedure and requirements for temporary and permanent field rules that differ from the statewide field rules in proposed in subsection (d)(1) and (d)(2). The Commission will accept applications for temporary brine field rules after the first well has been completed in a brine field. The applicant shall furnish the Commission with a list of the names and addresses of all operators of wells within five miles of the brine discovery well so that notice may be provided prior to the hearing. At the hearing on the adoption of temporary brine field rules, the applicant bears the burden of establishing that each of the proposed temporary brine field rules is reasonably expected to protect freshwater resources, protect correlative rights, prevent waste of recoverable brine resources, and promote the production of additional brine resources in an orderly and efficient manner. Proposed subsection (d)(3)(B) states that any temporary brine field rules adopted after a hearing remain in effect until 18 months after adoption or until permanent brine field rules are adopted. As proposed in subsection (d)(3)(C), an operator of a brine production well in the brine field subject to temporary field rules may request a hearing to adopt permanent field rules after the temporary rules have been effective for at least 12 months. The adoption of permanent brine field rules requires a hearing held after notice to operators within five miles of the brine discovery well. If permanent field rules are not adopted, temporary field rules expire after 18 months and the statewide field requirements of §3.82 apply to operations within the applicable brine field.

Proposed §3.82(d)(4) contains the required procedure for an operator of a brine production project that seeks an exception to the spacing, density, or acreage requirements in subsection (d). An exception to these requirements may be granted after a public

hearing held after notice to all persons described in proposed subsection (d)(4). Persons required to receive notice of a request for a spacing or density exception are specified in proposed subsection (d)(4)(B), and persons required to receive notice of a request for an exception to contiguity requirements are specified in proposed subsection (d)(4)(C). At the hearing on an exception, the applicant has the burden to establish an exception is necessary to prevent waste or protect correlative rights.

Proposed §3.82(e) contains the application requirements for a brine production project permit. Applications for a brine production project permit shall be submitted to the Director in compliance with proposed subsection (e). A brine production project permit application is similar to an application for an area permit, which is addressed in §3.46(k) of this title, relating to Fluid Injection into Productive Reservoirs. The applicant for a brine production project permit is not required to submit applications for individual production and injection well permits at the same time the applicant files the brine production project permit application. Rather, the applicant is required to submit the information required by proposed subsection (e)(3) and shall also submit an application for at least one injection well. Unless the permit states otherwise, the brine production project operator may operate additional brine production wells and Class V spent brine return injection wells as part of the brine production project after the brine production project permit is issued; however, the operator shall obtain permits for those wells prior to commencing operations. The requirements for obtaining a Class V spent brine return injection well permit are proposed in §3.82(e)(4).

Proposed subsection (e)(3) specifies the required contents of a brine production project permit application, including the estimated maximum number of brine production wells and Class V spent brine return injection wells that will be operated within the brine production project; the total number of acres included in the proposed brine production project area; the brine field from which the brine will be produced and spent brine reinjected; complete electric logs of representative brine production wells and the Class V spent brine return injection wells or complete electric logs of representative nearby wells; wellbore diagrams showing the completions that will be used for brine production wells and Class V spent brine return injection wells; information to characterize the brine field from which the brine will be produced and into which the spent brine will be reinjected; and information to characterize the proposed confining zone.

Proposed subsection (e)(3) also contains requirements for the permit application to include the proposed operating data; a letter from the Geologic Advisory Unit of the Oil and Gas Division of the Railroad Commission of Texas stating that the use of the brine field for the injection of spent brine will not endanger usable quality water or USDWs; and an accurate plat showing the entire extent of the area of review. Proposed subsection (e)(3)(M) contains the elements required to be included on the plat. For example, subsection (e)(3)(M)(ii) requires the plat to reflect the location, to the extent anticipated at the time of the application, of each well within the area of review that the applicant intends to use for the brine production project including each existing well that may be converted to brine production or Class V spent brine return injection, each well the applicant intends to drill for brine production, each well the applicant intends to drill for project monitoring, and each Class V spent brine return injection well.

In §3.82(e)(3)(N), the Commission proposes to require the applicant for a brine production project to provide an additional plat showing the outline of the brine production project area and the following: (1) the operators of tracts in the brine production project area and tracts within the area of review; (2) owners of all leases of record for tracts that have no designated operator in the brine production project area and within the area of review; (3) owners of record of unleased mineral interests within the brine field for tracts in the brine production project area and tracts within the area of review; and (4) surface owners of tracts in the brine production project area and within the area of review. The plat shall include a list of the names and addresses of all persons listed in subsection (e)(3)(N) or the applicant may list the names and addresses on a separate sheet attached to the plat. "Operator" is defined in proposed §3.82(b) as a person, acting for itself or as an agent for others and designated to the Commission as the one who has the primary responsibility for complying with its rules and regulations in any and all acts subject to the jurisdiction of the Commission. The applicant shall determine the names and addresses of the surface owners from the current county tax rolls or other reliable sources and shall identify the source of the list. The operators and other persons indicated on the plat are among the persons required to be notified of the permit application under proposed §3.82(f).

Additional contents required to be included in the permit are proposed in §3.82(e)(3)(O) through (e)(3)(T). Several of the provisions are modeled after existing Commission requirements for injection well permit applications. For example, proposed §3.82(e)(3)(P) requires a survey of information from the United States Geological Survey (USGS) regarding the locations of any historical seismic events within a circular area of 100 square miles centered around the proposed injection well location. This requirement is also found in §3.9 of this title (relating to Disposal Wells) and §3.46 of this title.

In proposed §3.82(e)(4), the Commission proposes requirements for Class V spent brine return injection well permits. An operator of a Class V spent brine return injection well shall file an application for an individual well permit prior to commencement of injection operations into any Class V spent brine return injection well within the brine production project area. The required contents of the application are proposed in §3.82(e)(4)(A) through (e)(4)(F).

In §3.82(e)(5), the Commission proposes to include criteria for exempted aquifers, and in proposed subsection (e)(6), the Commission requires all Class V spent brine return injection wells covered by a brine production project permit to be completed, operated, maintained, and plugged in accordance with the requirements of subsection (j) and the brine production project permit. Regarding exempted aquifers, the Commission adopts 40 CFR §144.7 and §146.4 by reference effective January 6, 2025, which is the anticipated effective date for the proposed new rule and amendments. The Commission will update this date upon adoption if necessary to reflect the actual effective date.

Proposed subsection (f) contains the notice requirements for a brine production project. Proposed §3.82(f)(1) requires a brine production project permit applicant to identify whether any portion of the area of review (AOR) encompasses an Environmental Justice (EJ) or Limited English-Speaking Household community using the most recent U.S. Census Bureau American Community Survey data. If the AOR includes an EJ or Limited English-Speaking Household community, the applicant shall conduct enhanced public outreach activities to these communities, including a public meeting. Other efforts to include EJ and Limited English-Speaking Household communities are required in proposed subsection (f)(1)(A) - (E).

An applicant for a brine production project permit is required to provide notice of its application to the persons identified in proposed subsection (f)(2). The first few categories of notice recipients match the persons identified on the plat required by proposed subsection (e)(3)(N). In addition, the applicant is required to notify the city clerk or other appropriate city official of a city for which any portion falls within the area of review, the county clerk of any county or counties for which any portion falls within the area of review, and any other person designated by the Director.

Proposed §3.82(f)(2)(B) requires the applicant to mail or deliver notice in a form approved by the Commission. Notice shall be provided after Commission staff determines the application is complete. In addition, the applicant is required to publish notice of the brine production project permit application in a form approved by the Commission in a newspaper of general circulation of any county or counties for which any portion falls within the area of review. The first notice shall be published at least 14 days before the protest deadline in the notice of application and the notice shall be published once each week for two consecutive weeks. The applicant shall file a publisher's affidavit or other evidence of publication with the permit application.

Proposed §3.82(f)(2)(C) specifies the information that the applicant must include in the notice. The required information includes a copy of the plat required by subsection (e)(3)(M) and a statement than an affected person may file a protest within 30 days of the date of the notice and an interested person may submit comments to the Commission within 30 days of the date of the notice.

Proposed §3.82(f)(2)(D) and (E) clarify the notice requirements for individual Class V spent brine return injection wells and brine production wells. Once an applicant complies with the notice required to obtain a brine production project permit and the permit has been issued, no notice shall be required when filing an application for an individual injection well permit for any Class V spent brine return injection well or brine production well covered by the brine production permit unless otherwise provided in the permit or unless the applicant requests an exception.

Proposed §3.82(f)(3) specifies that an affected person has 30 days to file a protest and an interested person has 30 days to submit written comments on the brine production project permit application. Proposed subsection (f)(4) outlines when the Commission will hold a hearing on the brine production project permit application. The Commission will hold a hearing when the Commission receives a written protest from an affected person within 30 days after notice of the application is given in accordance with subsection (f) of this section, when the Director denies the application and the operator requests a hearing within 30 days of the notice of administrative denial, when the Director issues the permit and the operator requests a hearing to contest certain permit conditions; or when the Director determines that a hearing is in the public interest. Notice of a hearing will be given at least 30 days before the hearing.

In proposed §3.82(g), the Commission outlines the process for review of brine production project permit applications, including procedures for determining whether the application is complete and notifying the applicant of any deficiencies in the application. The permit may be administratively approved by the Director if a hearing is not required to be held pursuant to proposed subsection (f)(4) and the applicant provides sufficient evidence to demonstrate that the brine production project will not endanger USDWs or human health or the environment.

Proposed subsection (g)(2) addresses amendments to a permit. If a permittee seeks to make changes to brine production project and the changes are substantial, such as changing the exterior boundaries of, or maximum number of wells authorized in, the brine production project area, then the changes cannot be made unless the permittee files an application to amend the permit. An application to amend is also required if the permittee seeks to alter permit conditions.

Proposed §3.82(h) addresses procedures for Commission action on a permit including modification, revocation and reissuance, and termination. Proposed paragraphs (h)(1) and (2) outline the changes that constitute cause for modification or revocation and reissuance compared to minor changes that can be made administratively. Proposed (h)(3) specifies the causes for Commission termination of a permit during its term or for denying a permit renewal application. The causes for termination include conditions such as the permittee fails to comply with any condition of the permit or §3.82; the permittee misrepresents a relevant fact; or the Commission determines that the permitted injection endangers human health or the environment.

Proposed §3.82(i) contains the standard permit conditions that will be included in a brine production project permit. In proposed §3.82(i)(1), the Commission requires a brine production project permittee to provide access to the project facilities and records to Commission staff members. Similarly, proposed §3.82(i)(2) states the Commission may make any tests on any well at any time necessary for regulation of wells under this section, and the operator of such wells shall comply with any directives of the Commission to make such tests in a proper manner.

Proposed subsections (i)(3) - (19) contain additional permit conditions on topics including maintenance of financial assurance; the permit term and requirement for the permit to be reviewed once every five years; permit transfers, renewals, and other actions; monitoring, records, and reporting; plugging; identification; and dikes or fire walls.

Proposed §3.82(j) contains additional standard permit conditions for Class V spent brine return injection wells. The permit conditions proposed in subsection (j) apply in addition to the conditions imposed in subsection (i). Importantly, the permit standards for Class V spent brine return injection wells prohibit operating a Class V spent brine return injection well in a manner that allows: (1) fluids to escape into USDWs from the brine field from which it was produced; (2) fluid to escape from the permitted brine field; or (3) the movement of fluids containing any contaminant into USDWs. If the permittee violates these conditions, the permittee is required to immediately cease injection operations.

Proposed subsection (j)(4) specifies drilling and construction requirements for Class V spent brine return injection wells. In addition to the casing and cementing requirements of §3.13, the operator of a Class V spent brine return injection well shall set and cement surface casing from at least 100 feet below the lowermost base of usable quality water to the surface, regardless of the total depth of the well; set and cement long string casing at a minimum from the top of the brine field to the surface, unless the Director approves an alternate completion for good cause; and determine the integrity of the cement by a cement bond log. For newly drilled wells, the operator shall drill a sufficient depth into the brine field to ensure that when the well is logged prior to setting the long string the operator will be able to identify the top of the brine field and verify that the fluid will be injected only into the brine field. The Commission shall be provided with an

opportunity to witness the setting and cementing of casing and running of cement bond logs. Thus, the operator is required to notify the appropriate Commission district office at least 15 days in advance of these activities.

Proposed subsection (j)(4)(D) requires the operator of the Class V spent brine return injection well to provide to the Commission a descriptive report interpreting the results of logs and tests conducted to verify the depth to the top of the brine field, adequacy of cement behind the casing strings, and injectivity and fracture pressure of the brine field. The report shall be prepared by a knowledgeable log analyst and submitted to the Director. Proposed subsection (j)(4)(E) and (F) require a Class V spent brine return injection well to be equipped with tubing and packer set within 100 feet of the top of the brine field and a pressure observation valve on the tubing and for each annulus. Proposed subsection (j)(4)(G) prohibits injection operations in a new Class V spent brine return injection well until the Director receives and reviews the completion report.

Proposed subsection (j)(5) contains the minimum permit conditions relating to how the Class V spent brine return injection well must be operated. All Class V spent brine return injection shall be into the same brine field from which the brine was extracted by the brine production wells. All injection shall be through tubing set on a packer. The packer shall be set within 100 feet of the top of the permitted injection interval unless the Director approves an exception. Except during well stimulation, injection pressure at the wellhead shall not exceed the maximum pressure calculated to assure that the injection pressure does not initiate new fractures or propagate existing fractures in the brine field. In no case may the injection pressure initiate fractures in the confining zone or cause the escape of injection or formation fluids from the brine field.

Proposed subsection (j)(5)(D) requires the operator to fill the annulus between the tubing and long string casing with a corrosion inhibiting fluid. All injection wells shall maintain an annulus pressure sufficient to indicate mechanical integrity unless the Director determines that such requirement might harm the integrity of the well or endanger USDWs. The annulus pressure shall be monitored by a pressure chart or digital pressure gauge. The operator shall provide the Director with a written report and explanation of any change in annulus pressure that would indicate a leak or lack of mechanical integrity within 15 days of detecting the change in pressure. An annulus pressure change exceeding 10% is an example of a change that indicates a leak or lack of mechanical integrity.

Proposed subsection (j)(5)(E) requires the operator to notify the appropriate Commission district office at least 48 hours prior to the beginning of a workover or corrective maintenance operations that involve the removal of the tubing or well stimulation. The operator must conduct a mechanical integrity test on the well after the workover if the packer is unseated during the workover.

The permit condition proposed in subsection (j)(6) specifies that, if necessary to prevent movement of fluid into USDWs, corrective action will be required for all known wells in the area of review that penetrate the top of the brine field for which the operator cannot demonstrate proper completion, plugging, or abandonment.

Section 3.82(j)(7) addresses proposed requirements for mechanical integrity. A Class V spent brine return injection well may not be used if it lacks mechanical integrity. The operator shall demonstrate the mechanical integrity of a Class V spent brine return injection well to the satisfaction of the Director. Proposed subsection (j)(7)(A) - (E) contain requirements for demonstrating mechanical integrity, including internal and external mechanical integrity. The Director may approve an alternate method for demonstrating mechanical integrity if the administrator of the EPA also approves the method.

Proposed subsection (j)(7)(G) and (H) outline the required timing and notice for mechanical integrity testing. Subsection (j)(7)(I) states that the permittee is required to file a complete record of the test, including a copy of the pressure record, with the Commission within 30 days after the test.

Proposed subsection (j)(7)(J) specifies permit conditions relating to wells that fail to demonstrate mechanical integrity. If the permittee or the Director finds that the well fails to demonstrate mechanical integrity during a test, fails to maintain mechanical integrity during operation, or that a loss of mechanical integrity is suspected during operation, the permittee shall halt injection immediately. The Director may allow continued injection if the permittee can establish continued injection will not endanger USDWs. The permittee shall orally report the failure of mechanical integrity to the Director within 24 hours from the time the permittee becomes aware of the failure, and the permittee shall include an anticipated date for a mechanical integrity demonstration. In addition, all wells that fail to pass a mechanical integrity test shall be repaired or plugged and abandoned within 90 days of the failure date unless the Director extends the 90-day timeline for good cause. The well is to be shut-in immediately after failure to pass the mechanical integrity test and shall remain shut-in until it passes a mechanical integrity test or is plugged and abandoned. Within 15 days of a failure of mechanical integrity, a written plan to restore mechanical integrity shall be submitted to the Director. The plan must be approved by the Director. The permittee shall not resume injection until the well demonstrates mechanical integrity.

In §3.82(j)(8) the Commission proposes permit conditions for Class V spent brine return injection wells relating to required monitoring, record-keeping, and reporting. Proposed subsection (j)(8) contains requirements for how long monitoring information shall be retained, the contents of the monitoring records, and reports that shall be made to the Commission, including reports of noncompliance that may endanger USDWs, human health, or the environment. Proposed subsection (j)(9) requires the permittee to provide the Commission notice 48 hours before performing any workover or corrective maintenance operations that involve the unseating of the packer or well stimulation. Subsection (j)(10) specifies that the Commission may establish additional permit conditions for Class V spent brine return injection wells on a case-by-case basis.

Proposed §3.82(k) describes the consequences for violations of §3.82. Any well drilled or operated in violation of §3.82 without a permit shall be plugged. In addition, violations of the requirements of §3.82 may subject the operator to penalties and remedies specified in the Texas Water Code, Chapter 27, and the Natural Resources Code, Title 3. A brine production well in violation of §3.82 may have its certificate of compliance revoked in the manner provided in subsections §3.73(d) - (g), (i) - (k) of this title (relating to Pipeline Connection; Cancellation of Certification of Compliance; Severance).

Proposed §3.82(l) clarifies that administrative actions taken pursuant to the provisions of §3.82 are subject to review by the commissioners. Proposed §3.82(m) clarifies references to the Code of Federal Regulations (CFR) within §3.82 and states where the federal regulations are available for review.

Finally, in §3.82(n) the Commission clarifies the proposed effective date for the section. The Commission will seek primacy from the United States Environmental Protection Agency so that the Commission may administer the Class V UIC program for spent brine return injection wells. The regulations in §3.82 pertaining to Class V spent brine return injection wells become effective upon EPA approval of the Commission's program. Until then, an operator of a brine production project must obtain a permit from the EPA to operate a Class V spent brine return injection well. All other regulations proposed in §3.82 become effective as provided in the Administrative Procedure Act, in Section 2001.001 et seq. of the Texas Government Code. The Commission anticipates the effective date of the proposed new rule and amendments will be January 6, 2025.

Leslie Savage, Chief Geologist, has determined that for each year of the first five years the new rule and amendments as proposed will be in effect, there will be minimal fiscal implications to the Commission as a result of enforcing or administering the amendments. Any costs associated with the amendments would be due to minor programming to update online systems. There will be no fiscal effect on local government.

Ms. Savage has determined that for the first five years the proposed new rule and amendments are in effect, the primary public benefit will be clarity regarding jurisdiction over brine production wells and Class V spent brine return injection wells in compliance with SB 1186.

Ms. Savage has determined that for each year of the first five years that the new rule and amendments will be in effect, there will be no economic costs for persons required to comply as a result of adoption of the proposed new rule and amendments. The proposed new rule and amendments merely provide a regulatory scheme for operations related to brine resources as required by the Legislature. There are forms, financial security, and fee requirements imposed if a person engages in activities regulated by the Commission. However, the proposed new rule does not impose these costs - the requirements apply to any activity under the Commission's jurisdiction.

The Commission has determined that the proposed new rule and amendments will not have an adverse economic effect on rural communities, small businesses or micro businesses. As noted above, there is no anticipated additional cost for any person required to comply with the proposed new rule and amendments. Therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

The Commission has also determined that the proposed new rule and amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the proposed new rule and amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the proposed new rule and amendments would be in effect, the proposed new rule and amendments would not create or eliminate any employee positions or require an increase or decrease in future legislative appropriations. The Commission has determined that the new program can be implemented with current resources. The proposed new rule would create a new government program and regulations as required by SB 1186, expand existing regulations to encompass this new resource, and will positively impact the state's economy. The proposed new rule and amendments would increase the number of individuals subject to the Commission's rules. Prior to SB 1186 it was unclear which rules applied to brine production projects. Because SB 1186 provided the Commission with authority to oversee such projects, those who wish to engage in a brine production project are now subject to the new requirements. The proposed new rule and amendments may increase fees paid to the agency - the Commission may receive more applications for P-5 Organization Reports, drilling permits, injection wells, exceptions, and corresponding fees from operators engaging in the activities regulated under proposed new §3.82.

Comments on the new rule and proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 12:00 noon on Monday, December 2, 2024. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to Texas Register publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules/. If you submit a comment and do not see the comment posted at this link within three business days of submittal, please call the Office of General Counsel at (512) 463-7149. The Commission has safeguards to prevent emailed comments from getting lost; however, your operating system's or email server's settings may delay or prevent receipt.

The Commission proposes the new rule and amendments pursuant to Senate Bill 1186 and Texas Water Code §27.036, which provide the Commission jurisdiction over brine mining and authorize the Commission to issue permits for brine production wells and injection wells used for brine mining, and also instruct the Commission to adopt rules necessary to administer and regulate brine mining; Texas Natural Resources Code §§81.051 and 81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, Chapter 102, which gives the Commission the authority to establish pooled units for the purpose of avoiding the drilling of unnecessary wells, protecting correlative rights, or preventing waste; and Texas Natural Resources Code §§85.201 - 85.202, which require the Commission to adopt and enforce rules and orders for the conservation and prevention of waste of oil and gas, and specifically for drilling of wells.

Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 85.201, 85.202 and Chapter 102; Texas Water Code §27.036.

Cross reference to statute: Texas Natural Resources Code Chapters 81, 85, and 102; Water Code Chapter 27.

§3.1. Organization Report; Retention of Records; Notice Requirements.

(a) Filing requirements.

(1) Except as provided under subsection (e) of this section, no organization, including any person, firm, partnership, joint stock association, corporation, or other organization, domestic or foreign, operating wholly or partially within this state, acting as principal or agent for another, for the purpose of performing operations within the jurisdiction of the Commission shall perform such operations without having on file with the Commission an approved organization report and financial security as required by Texas Natural Resources Code §§91.103 - 91.1091. Operations within the jurisdiction of the Commission include, but are not limited to, the following:

(A) drilling, operating, or producing any oil, gas, brine, geothermal resource, spent brine return injection, brine mining injection, fluid injection, or oil and gas waste disposal well;

(B) transporting, reclaiming, treating, processing, or refining crude oil, gas and products, brine resources, or geothermal resources and associated minerals;

(C) - (K) (No change.)

(2) - (10) (No change.)

(b) Record requirements. All entities who perform operations which are within the jurisdiction of the Commission shall keep books showing accurate records of the drilling, redrilling, or deepening of wells, the volumes of crude oil on hand at the end of each month, the volumes of oil, gas, brine, and geothermal resources produced and disposed of, together with records of such information on leases or property sold or transferred, and other information as required by Commission rules and regulations in connection with the performance of such operations, which books shall be kept open for the inspection of the Commission or its representatives, and shall report such information as required by the Commission to do so.

(c) - (d) (No change.)

(e) Issuance of permits to organizations without active organization reports.

(1) Notwithstanding contrary provisions of this section, the Commission or its delegate may issue a permit to an organization or individual that does not have an active organization report or does not ordinarily conduct [~~oil and gas~~] activities under the jurisdiction of the Commission when the issuance of such a permit is determined to be necessary to implement a compliance schedule, or to remedy circumstances or a violation of a Commission rule, order, license, permit, or certificate of compliance relating to safety or the prevention of pollution. For permits issued under this subsection, the Commission or its delegate may impose special conditions or terms not found in like permits issued pursuant to other Commission rules. Any organization or individual who requests such a permit shall file an organization report and any other required forms for record-keeping purposes only. The report or form shall contain all information ordinarily required to be submitted to the Commission or its delegate.

(2) This section shall not limit the Commission's authority to plug or to replug wells or to clean up pollution or unpermitted discharges of [~~oil and gas~~] waste under the jurisdiction of the Commission.

(f) - (g) (No change.)

(h) Pursuant to Texas Natural Resources Code, §91.706(b), if an operator uses or reports use of a well for production, injection, or disposal for which the operator's certificate of compliance has been canceled, the Commission or its delegate may refuse to renew the operator's organization report required by Texas Natural Resources Code, §91.142, until the operator pays the fee required by §3.78(b)(8) [~~§3.78(b)(9)~~] of this title (relating to Fees and Financial Security Requirements) and the Commission or its delegate issues the certificate of compliance required for that well.

§3.5. Application To Drill, Deepen, Reenter, or Plug Back.

(a) Requirements for spacing, density, and units. An application for a permit to drill, deepen, plug back, or reenter any oil well, gas well, brine production well, or geothermal resource well shall be made under the provisions of §§3.37, 3.38, 3.39, [~~and/or~~] 3.40, and/or 3.82 of this title (relating to Statewide Spacing Rule; Well Densities; Proration and Drilling Units: Contiguity of Acreage and Exception Thereto; [~~and~~] Assignment of Acreage to Pooled Development and Proration Units; and Brine Production Projects and Associated Brine Production Wells and Class V Spent Brine Return Injection Wells) (Statewide Rules 37, 38, 39, [~~and~~] 40, and 82), or as an exception thereto, or under special rules governing any particular oil, gas, brine, or geothermal resource field or as an exception thereto and filed with the commission on a form approved by the commission. An application must be accompanied by any relevant information, form, or certification required by the Railroad Commission or a commission representative necessary to determine compliance with this rule and state law.

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

(1) Application--Request by an organization made either on the prescribed form or electronically pursuant to procedures for electronic filings adopted by the commission for a permit to drill, deepen, plug back, or reenter any oil well, gas well, brine production well, or geothermal resource well.

(2) - (3) (No change.)

(c) - (d) (No change.)

(e) Exploratory and specialty wells. An application for any exploratory well or cathodic protection well that penetrates the base of the fresh water strata, fluid injection well, injection water source well, disposal well, brine production well, brine solution mining well, spent brine return injection well, or underground hydrocarbon storage well shall be made and filed with the commission on a form approved by the commission. Operations for drilling, deepening, plugging back, or reentering shall not be commenced until the permit has been granted by the commission. For an exploratory well, an exception to filing such form prior to commencing operations may be obtained if an application for a core hole test is filed with the commission.

(f) - (h) (No change.)

§3.7. Strata To Be Sealed Off.

Whenever hydrocarbon, brine or geothermal resource fluids are encountered in any well drilled for oil, gas, brine, or geothermal resources in this state, such fluid shall be confined in its original stratum until it can be produced and utilized without waste. Each such stratum shall be adequately protected from infiltrating waters. Wells may be drilled deeper after encountering a stratum bearing such fluids if such drilling shall be prosecuted with diligence and any such fluids be confined in its stratum and protected as aforesaid upon completion of the well. The commission will require each such stratum to be cased off and protected, if in its discretion it shall be reasonably necessary and proper to do so.

§3.12. Directional Survey Company Report.

(a) For each well drilled for oil, gas, brine, or geothermal resources for which a directional survey report is required by rule, regulation, or order, the surveying company shall prepare and file the following information. The information shall be certified by the person

having personal knowledge of the facts, by execution and dating of the data compiled:

(1) - (7) (No change.)

(b) (No change.)

§3.13. Casing, Cementing, Drilling, Well Control, and Completion Requirements.

(a) General. Operators shall comply with this section for any wells that will be spudded on or after January 1, 2014.

(1) (No change.)

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

(A) - (C) (No change.)

(D) Productive zone--Any stratum known to contain oil, gas, brine, or geothermal resources in commercial quantities in the area.

(E) - (P) (No change.)

(3) - (5) (No change.)

(6) Well control.

(A) (No change.)

(B) Well control equipment.

(i) (No change.)

(ii) For wells in areas with hydrogen sulfide, the operator shall comply with §3.36 of this title (relating to Oil, Gas, Brine, or Geothermal Resource Operation in Hydrogen Sulfide Areas).

(iii) - (x) (No change.)

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

(7) - (10) (No change.)

(b) - (d) (No change.)

§3.16. Log and Completion or Plugging Report.

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

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

(4) Well--A well drilled for any purpose related to exploration for or production or storage of oil or gas or brine or geothermal resources, including a well drilled for injection of fluids to enhance hydrocarbon recovery, injection of spent brine return fluids, disposal of produced fluids, disposal of waste from exploration or production activity, or brine mining.

(b) - (e) (No change.)

§3.17. Pressure on Bradenhead.

(a) (No change.)

(b) Any well showing pressure on the Bradenhead, or leaking gas, oil, brine, or geothermal resource between the surface and the production or oil string shall be tested in the following manner. The well shall be killed and pump pressure applied through the tubing head. Should the pressure gauge on the Bradenhead reflect the applied pressure, the casing shall be condemned and a new production or oil string shall be run and cemented. This method shall be used when the origin of the pressure cannot be determined otherwise.

§3.32. Gas Well Gas and Casinghead Gas Shall Be Utilized for Legal Purposes.

(a) - (d) (No change.)

(e) Gas Releases to be Burned in a Flare.

(1) (No change.)

(2) Gas releases authorized under this section must be managed in accordance with the provisions of §3.36 of this title (relating to Oil, Gas, Brine, or Geothermal Resource Operation in Hydrogen Sulfide Areas) when applicable.

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

(f) - (j) (No change.)

§3.36. Oil, Gas, Brine, or Geothermal Resource Operation in Hydrogen Sulfide Areas.

(a) Applicability. Each operator who conducts operations as described in paragraph (1) of this subsection shall be subject to this section and shall provide safeguards to protect the general public from the harmful effects of hydrogen sulfide. This section applies to both intentional and accidental releases of hydrogen sulfide.

(1) Operations including drilling, working over, producing, injecting, gathering, processing, transporting, and storage of hydrocarbon, brine, or geothermal fluids that are part of, or directly related to, field production, transportation, and handling of hydrocarbon, brine, or geothermal fluids that contain gas in the system which has hydrogen sulfide as a constituent of the gas, to the extent as specified in subsection (c) of this section, general provisions.

(2) (No change.)

(b) - (e) (No change.)

§3.73. Pipeline Connection; Cancellation of Certificate of Compliance; Severance.

(a) - (i) (No change.)

(j) Pursuant to Texas Natural Resources Code, §91.706(b), if an operator uses or reports use of a well for production, injection, or disposal for which the operator's certificate of compliance has been canceled, the Commission may refuse to renew the operator's organization report required by Texas Natural Resources Code, §91.142, until the operator pays the fee required pursuant to §3.78(b)(8) [~~§3.78(b)(9)~~] of this title (relating to Fees and Financial Security Requirements) and the Commission issues the certificate of compliance required for that well.

(k) (No change.)

§3.78. Fees and Financial Security Requirements.

(a) (No change.)

(b) Filing fees. The following filing fees are required to be paid to the Railroad Commission.

(1) - (7) (No change.)

[~~(8) With each application for a permit to discharge to surface water other than a permit for a discharge that meets national pollutant discharge elimination system (NPDES) requirements for agricultural or wildlife use, the applicant shall submit to the Commission a nonrefundable fee of $300.~~]

(8) [~~(9)~~] If a certificate of compliance for a well or a lease [~~an oil lease or gas well~~] has been canceled for violation of one or more Commission rules, the operator shall submit to the Commission a nonrefundable fee of $300 for each severance or seal order issued for the well or lease before the Commission may reissue the certificate

pursuant to §3.58 of this title (relating to Certificate of Compliance and Transportation Authority; Operator Reports) (Statewide Rule 58).

(9) [~~(10)~~] With each application for issuance, renewal, or material amendment of an oil and gas waste hauler's permit, the applicant shall submit to the Commission a nonrefundable fee of $100.

(10) [~~(11)~~] With each Natural Gas Policy Act (15 United States Code §§3301-3432) application, the applicant shall submit to the Commission a nonrefundable fee of $150.

(11) [~~(12)~~] Hazardous waste generation fee. A person who generates hazardous oil and gas waste, as that term is defined in §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste), shall pay to the Commission the fees specified in §3.98(z).

(12) [~~(13)~~] Inactive well extension fee.

(A) For each well identified by an operator in an application for a plugging extension based on the filing of an abeyance of plugging report on Commission Form W-3X, the operator must pay to the Commission a non-refundable fee of $100.

(B) For each well identified by an operator in an application for a plugging extension based on the filing of a fluid level or hydraulic pressure test that is not otherwise required to be filed by the Commission, the operator must pay to the Commission a non-refundable fee of $50.

(13) [~~(14)~~] Groundwater protection determination letters.

(A) With each individual request for a groundwater protection determination letter, the applicant shall submit to the Commission a nonrefundable fee of $100.

(B) With each individual application for an expedited letter of determination stating the total depth of surface casing required for a well in accordance with Texas Natural Resources Code, §91.0115(b), the applicant shall submit to the Commission a nonrefundable fee of $75, in addition to the fee required by subparagraph (A) of this paragraph.

(14) [~~(15)~~] An operator must make a check or money order for any of the aforementioned fees payable to the Railroad Commission of Texas. If the check accompanying an application is not honored upon presentment, the Commission or its delegate may suspend or revoke the permit issued on the basis of that application, the allowable assigned, the exception to a statewide rule granted on the basis of the application, the certificate of compliance reissued, or the Natural Gas Policy Act category determination made on the basis of the application.

(15) [~~(16)~~] If an operator submits a check that is not honored on presentment, the operator shall[~~, for a period of 24 months after the check was presented,~~] submit the payment [~~any payments~~] in the form of a credit card, cashier's check, or cash.

(c) - (l) (No change.)

(m) Effect of outstanding violations.

(1) Except as provided in paragraph (2) of this subsection, the Commission shall not accept an organization report or an application for a permit or approve a certificate of compliance for a well or a lease [~~an oil lease or gas well~~] submitted by an organization if:

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

(2) - (3) (No change.)

(n) (No change.)

§3.81. Class III Brine Mining Injection Wells.

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

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

(3) Brine mining injection well--A Class III UIC well used to inject fluid for the purpose of extracting brine by the solution of a subsurface salt formation. The term "brine mining injection well" does not include a well used to inject fluid for the purpose of leaching a cavern for the underground storage of hydrocarbons or the disposal of waste, or a well used to inject fluid for the purpose of extracting sulphur by the thermofluid mining process.

(4) - (11) (No change.)

(b) - (e) (No change.)

(f) Conditions applicable to all permits. The conditions specified in this subsection apply to all permits.

(1) - (17) (No change.)

(18) Plugging. Within one year after cessation of brine mining injection operations, the operator shall plug the well in accordance with §3.14(a) and (c) - (h) [~~(c)(h)~~] of this title (relating to Plugging) (Rule 14(a) and (c) - (h)). For good cause, the director may grant a reasonable extension of time in which to plug the well if the operator submits a proposal that describes actions or procedures to ensure that the well will not endanger fresh water during the period of the extension.

(g) - (l) (No change.)

§3.82. Brine Production Projects and Associated Brine Production Wells and Class V Spent Brine Return Injection Wells.

(a) Scope and purpose.

(1) This section contains the regulations for:

(A) brine production projects and the associated brine production wells for the extraction of elements, minerals, mineral ions, salts, or other useful substances, including, but not limited to, lithium, lithium ions, lithium chloride, halogens or halogen salts, from a subsurface formation but not including oil, gas, or any product of oil or gas, as defined by Section 85.001 of the Natural Resources Code, or fluid oil and gas waste, as defined by Section 122.001 of the Natural Resources Code; and

(B) Class V spent brine return injection wells used in association with brine production projects for the reinjection of the spent brine.

(2) This section applies regardless of whether the well was initially completed for the purpose of brine production or Class V spent brine return injection or was initially completed for another purpose and is converted for brine production or Class V spent brine return injection.

(3) The operator of a brine production project, including associated brine production wells and Class V spent brine return injection wells, shall comply with the requirements of this section as well as with all other applicable Commission rules and orders.

(4) Any pipelines, flowlines, storage, or any other brine containers at the brine production project shall be constructed, operated, and maintained such that they will not leak or cause an unauthorized discharge to surface or subsurface waters.

(5) This section does not apply to Class III brine mining injection wells regulated under §3.81 of this title (relating to Class III Brine Mining Injection Wells).

(6) This section does not apply to the injection of fluids that meet the definition of a hazardous waste under 40 CFR Part 261.

(7) Subsection (d) of this section establishes statewide field rules for brine production fields including assignment of acreage, well spacing, and density provisions to promote the regular development of brine resources in a manner that does not damage the reservoir.

(8) If a provision of this section conflicts with any provision or term of a Commission order or permit, the provision of such order or permit controls, provided that the provision satisfies the minimum requirements for EPA's Class V Underground Injection Control (UIC) program.

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

(1) Affected person--A person who, as a result of activity sought to be permitted, has suffered, or faces a substantial risk of suffering, concrete or actual injury or economic damage other than as a member of the general public. A competitor is not an affected person unless it has suffered, or faces a substantial risk of suffering, actual harm to its interest in real property or waste of substantial recoverable substances.

(2) Application--The Commission form for applying for a permit, including any additions, revisions or modifications to the forms, and any required attachments.

(3) Aquifer--A geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(4) Area of review (AOR)--The brine production project area plus a circumscribing area the width of which is one-quarter mile measured from the perimeter of the brine production project area.

(5) Brine--Saline water, whether contained in or removed from an aquifer, which may contain brine resources or other naturally-occurring substances. The term does not include brine produced as an incident to the production of oil and gas.

(6) Brine field--A formation or the correlative depth interval designated in the field designation or rules that contains brine resources.

(7) Brine production project--A project the purpose of which is the extraction of brine resources from a brine field. The term includes brine production wells, Class V spent brine return injection wells, monitoring wells, brine flowlines, and any equipment associated with the project.

(8) Brine production project area--The surface extent of the land assigned to a brine production project, as indicated on the plat required by subsection (e)(3)(N) of this section.

(9) Brine production project permit--A permit authorizing a brine production project issued by the Commission pursuant to this section.

(10) Brine production well--A well drilled or recompleted for the exploration or production of brine resources that is part of a brine production project.

(11) Brine resource--Elements, minerals, salts, or other useful substances dissolved or entrained in brine, including, but not limited to, lithium, lithium ions, lithium chloride, halogens, or other halogen salts, but not including oil, gas, or any product of oil or gas.

(12) Casing--A pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling to support the sides of the hole and prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole.

(13) Cementing--The operation whereby a cement slurry is pumped into a drilled hole and/or forced behind casing.

(14) Class V spent brine return injection well--A well into which brine produced by a brine production project is re-injected into the same brine field from which it was withdrawn after the brine resources have been extracted. The term does not include a Class I, II, III, IV, or VI UIC well.

(15) Code of Federal Regulations (CFR)--The codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

(16) Commission--The Railroad Commission of Texas acting through a majority of the Commissioners or through a Commission employee to whom the Commissioners have delegated authority.

(17) Confining zone--A geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above or below the brine field.

(18) Contaminant--Any physical, chemical, biological, or radiological substance or matter in water.

(19) Corrective action--Methods to assure that wells within the area of review do not serve as conduits for the movement of fluids from the brine field and into or between USDWs, including the use of corrosion resistant materials where appropriate.

(20) Director--The Director of the Oil and Gas Division of the Railroad Commission of Texas or the Director's delegate.

(21) Electric log--A density, sonic, or resistivity (except dip meter) log run over the entire wellbore.

(22) EPA--The United States Environmental Protection Agency.

(23) Exempted aquifer--An aquifer or its portion that meets the criteria in the definition of USDW but which has been exempted according to the procedures in 40 CFR §144.7.

(24) Fault--A surface or zone of rock fracture along which there has been displacement.

(25) Flow rate--The volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel.

(26) Fluid--Any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

(27) Formation--A body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

(28) Formation fluid--Fluid present in a formation under natural conditions as opposed to introduced fluids such as drilling mud.

(29) Fracture pressure--The pressure that, if applied to a subsurface formation, would cause that formation to physically fracture or result in initiation or propagation of fractures.

(30) Good faith claim--A factually supported claim based on a recognized legal theory to a continuing possessory right in an estate that includes the brine resources sought to be extracted through a brine production well.

(31) Injection well--A well into which fluids are being injected.

(32) Interested person--Any person who expresses an interest in an application, permit, or Class V spent brine return injection well.

(33) Limited English-speaking household--A household in which all members 14 years and older have at least some difficulty with English.

(34) Lithology--The description of rocks on the basis of their physical and chemical characteristics.

(35) Mechanical integrity--A Class V spent brine return injection well has mechanical integrity if:

(A) there is no significant leak in the casing, tubing, or packer (internal mechanical integrity); and

(B) there is no significant fluid movement into a USDW through channels adjacent to the injection well bore as a result of operation of the injection well (external mechanical integrity).

(36) Operator-- A person, acting for itself or as an agent for others and designated to the Commission as the one who has the primary responsibility for complying with its rules and regulations in any and all acts subject to the jurisdiction of the Commission.

(37) Owner--The owner of any facility or activity subject to regulation under the UIC program.

(38) Packer--A device lowered into a well to produce a fluid-tight seal.

(39) Person--A natural person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(40) Plugging--The act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

(41) Plugging record--A systematic listing of permanent or temporary abandonment of water, oil, gas, test, exploration and waste injection wells. The listing may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures.

(42) Pollution--The alteration of the physical, chemical, or biological quality of, or the contamination of, water that makes it harmful, detrimental, or injurious to humans, animal life, vegetation or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(43) Pressure--The total load or force per unit area acting on a surface.

(44) Schedule of compliance--A schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the applicable statutes and regulations.

(45) Spent brine--Brine produced from a brine production well from which brine resources have been extracted. Spent brine may include non-hazardous process water and other additives used to facilitate brine resource extraction or reinjection.

(46) Surface casing--The first string of well casing to be installed in the well.

(47) Total dissolved solids--The total dissolved (filterable) solids as determined by use of the method specified in 40 CFR part 136.

(48) Transmissive fault or fracture--A fault or fracture that has sufficient permeability and vertical extent to allow fluids to move beyond the confining zone.

(49) Underground injection--Well injection.

(50) UIC--Underground injection control.

(51) UIC Program--The Underground Injection Control program under Part C of the Safe Drinking Water Act, including an "approved State program" as defined in 40 CFR §144.3.

(52) Underground source of drinking water (USDW)-- An aquifer or its portion which is not an exempted aquifer and which:

(A) supplies any public water system; or

(B) contains a sufficient quantity of ground water to supply a public water system and either:

(i) currently supplies drinking water for human consumption; or

(ii) contains fewer than 10,000 milligrams per liter total dissolved solids.

(53) Well--A bored, drilled, or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension.

(54) Well injection--The subsurface emplacement of fluids through a well.

(55) Well plug--A watertight and gastight seal installed in a borehole or well to prevent movement of fluids.

(56) Workover--An operation in which a down-hole component of a well is repaired or the engineering design of the well is changed. Workovers include operations such as sidetracking, the addition of perforations within the permitted injection interval, and the addition of liners or patches. For the purposes of this section, workovers do not include well stimulation operations.

(c) General requirements.

(1) A brine production project and all associated brine production wells and Class V spent brine return injection wells shall be permitted in accordance with the requirements of this section. No person may construct or operate such wells without a permit under this section.

(2) Applications and reports shall be signed in accordance with this paragraph.

(A) Applications. All applications shall be signed as follows:

(i) for a corporation, by a responsible corporate officer. A responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or

(ii) for a partnership or sole proprietorship, by a general partner or the proprietor, respectively.

(B) Reports. All reports required by permits and other information requested by the Commission shall be signed by a person described in subparagraph (A) of this paragraph or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(i) the authorization is made in writing by a person described in subparagraph (A) of this paragraph;

(ii) the authorization specifies an individual or position having responsibility for the overall operation of the regulated facility; and

(iii) the authorization is submitted to the Commission before or together with any report of information signed by the authorized representative.

(C) Certification. Any person signing a document under subparagraph (A) or (B) of this paragraph shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or who are directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information."

(3) Operators of all Class V spent brine return injection wells shall re-inject spent brine into the brine field from which the brine was produced.

(4) All brine production wells and Class V spent brine return injection wells shall be drilled and completed or recompleted, operated, maintained, and plugged in accordance with the requirements of this section and the brine production project permit.

(5) The Commission shall assign each brine production project a Commission lease number. All brine project operators shall ascertain from the appropriate schedule the lease number assigned to each separate brine production project, and thereafter include on each Commission-required form or report the exact brine production project name and its assigned number as they appear on the current schedule for all leases.

(6) An applicant for or permittee of a brine production project and associated wells shall comply with the requirements of this chapter, including but not limited to:

(A) §3.1 of this title (relating to Organization Report; Retention of Records; Notice Requirements);

(B) §3.5 of this title (relating to Application To Drill, Deepen, Reenter, or Plug Back);

(C) §3.11 of this title (relating to Inclination and Directional Surveys Required);

(D) §3.12 of this title (relating to Directional Survey Company Report);

(E) §3.16 of this title (relating to Log and Completion or Plugging Reports)

(F) §3.17 of this title (relating to Pressure on Bradenhead)

(G) §3.18 of this title (relating to Mud Circulation Required);

(H) §3.19 of this title (relating to Density of Mud-Fluid);

(I) §3.36 of this title (relating to Oil, Gas, Brine, or Geothermal Resource Operation in Hydrogen Sulfide Areas); and

(J) §3.80 of this title (relating to Commission Oil and Gas Forms, Applications, and Filing Requirements).

(7) In addition to the requirements of §3.13 of this title (relating to Casing, Cementing, Drilling, Well Control, and Completion Requirements), all wells associated with a brine production project shall use casing and cement designed to withstand the anticipated pressurization and formation fluids that are capable of negatively impacting the integrity of casing and/or cement such that it presents a threat to USDWs or oil, gas, or geothermal resources.

(8) All operators of wells drilled and operated in association with a brine production project shall comply with the requirements of §3.14 of this title (relating to Plugging), §3.15 (relating to Surface Equipment Removal Requirements and Inactive Wells), and §3.35 (relating to Procedures for Identification and Control of Wellbores in Which Certain Logging Tools Have Been Abandoned), except that the operator shall plug all wells associated with a brine production project and remove all wastes, storage vessels, and equipment from the site within one year of cessation of brine production project operations.

(9) All operators of wells drilled and operated in association with a brine production project shall comply with the requirements of §3.78 of this title (relating to Fees and Financial Security Requirements), as the requirements are applicable to brine production projects, except that, prior to spudding, the operator shall provide financial security in an amount estimated to plug each well in the brine production project after cessation of brine production project operations. Notwithstanding the provisions of §3.78(i) of this title, for an operator of a brine production project who has satisfied its financial security requirements by filing a cash deposit, the Commission shall refund to the operator the amount estimated to plug each well following its plugging if the amount of the deposit remaining after the refund would be sufficient to plug all remaining wells in the brine production project.

(10) No person may knowingly make any false statement, representation, or certification in any application, report, record, or other document submitted or required to be maintained under this section or under any permit issued pursuant to this section, or falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this section or under any permit issued pursuant to this section.

(d) Spacing, acreage, density and field rules; exceptions.

(1) Spacing. All brine production wells and Class V spent brine return injection wells shall be completed within the brine production project area and no less than one-half mile from the boundary of the brine production project area and no less than one-half mile from any interest within the brine production project area that is not participating in the project, unless special field rules provide different spacing requirements or the applicant obtains an exception to this paragraph pursuant to paragraph (4) of this subsection.

(2) Acreage and density.

(A) An applicant for a brine production project permit shall designate and assign to the project acreage within the applicable brine field and indicate the total number of acres in the permit application required by subsection (e)(3) of this section. The minimum acreage is 1,280 acres per brine production well included in the brine production project unless special field rules provide different well density requirements or the applicant obtains an exception to this paragraph pursuant to paragraph (4) of this subsection.

(B) Upon completion of a brine production well in a brine production project area and filing the completion report with the Commission, the applicant may elect to file a plat assigning acreage in the brine production project area to the brine production well; however, the applicant is not required to assign acreage to an individual brine production well, provided the total number of acres assigned to the

brine production project area divided by the total number of brine production wells equals or exceeds 1,280 acres, unless special field rules provide different well density requirements or the applicant obtains an exception to the density requirements pursuant to paragraph (4) of this subsection.

(C) An applicant shall not assign more than 5,120 acres in a brine field to a brine production well unless special field rules provide for different limits.

(D) If the operator elects to file a plat assigning acreage to a brine production well, the two farthermost points of acreage assigned to the well shall not exceed 23,760 feet unless special field rules provide for a different limit, and the acreage assigned shall include all productive portions of the wellbore.

(E) Multiple assignment of the same acreage in a brine field to more than one brine production well is not permitted. However, this limitation shall not prevent the reformation of brine production projects so long as:

(i) no multiple assignment of acreage occurs; and

(ii) such reformation does not violate other regulations.

(F) The acreage included in a brine production project area shall consist of acreage for which the operator has a good faith claim to produce brine resources.

(i) Non-contiguous acreage included in the same brine production project area may not be separated by greater than the minimum spacing distance for wells provided by paragraph (1) of this subsection, as altered by any applicable special field rules.

(ii) An operator may obtain an exception to the contiguity requirements of clause (i) of this subparagraph pursuant to paragraph (4)(C) of this subsection.

(G) The acreage limits provided by this paragraph are the minimum and maximum amounts of acreage in a brine field that may be assigned to an individual well at the operator's election and shall not be construed as a limit on the sizes of either a brine production project area or a pooled unit for production of brine resources.

(3) Brine field designation and field rules.

(A) Application for new brine field designation. A new brine field designation may be made by the Commission after a hearing after notice to all operators of brine production wells within five miles of the brine discovery well. The applicant shall provide proper evidence proving that a well is completed in a new field.

(i) The applicant shall submit a legible area map, drawn to scale, which shows the following:

(I) all oil, gas, brine production, and abandoned wells within at least a five-mile radius of the brine well claimed to be a discovery well;

(II) the producing intervals of all wells identified in subclause (I) of this clause;

(III) all Commission-recognized fields within a two and one-half mile radius of the brine well claimed to be a discovery well identified by Commission-assigned field names, names of the producing formations, and approximate average depth of the producing interval;

(IV) the total depth of all wells identified in subclause (I) of this clause that penetrated the top of the proposed new field; and

(V) scale, legend, and name of person who prepared the map.

(ii) The applicant shall submit a list of the names and addresses of all operators of wells within five miles of the brine discovery well.

(iii) The applicant shall submit a complete electric log of the brine well. Any electric log filed shall be considered public information pursuant to §3.16 of this title.

(iv) The applicant shall submit a bottom-hole pressure for brine production wells submitted on the appropriate form. This bottom-hole pressure may be determined by a pressure build-up test, drill stem test, or wire-line formation tester. Calculations based on fluid level surveys or calculations made on flowing wells using shut-in wellhead pressures may be used if no test data is available.

(v) The applicant shall submit a subsurface structure map and/or cross sections, if separation is based on structural differences, including faulting and pinch-outs. The structure map shall show the contour of the top of the brine field and the lines of cross section. The cross sections shall be prepared from comparable electric logs (not tracings) with the wells, producing formation, and brine field identified. The engineer or geologist who prepared the map and cross section shall sign and seal them.

(vi) The applicant shall submit reservoir pressure measurements or calculations, if separation is based on pressure differentials.

(vii) The applicant shall submit core data, drillstem test data, cross sections of nearby wells, and/or production data estimating the fluid level, if separation is based on differences in fluid levels. The applicant shall obtain the fluid level data within 10 days of the potential test date.

(viii) The applicant shall submit evidence that demonstrates that the new brine field is effectively separated from any other brine field or oil or gas field previously shown to be commercially productive.

(B) Temporary brine field rules.

(i) The Commission will accept applications for temporary brine field rule hearings for brine fields after the first well has been completed in a brine field.

(ii) When requesting such hearings, the applicant shall furnish the Commission with a list of the names and addresses of all operators of wells within five miles of the brine discovery well.

(iii) At the hearing on the adoption of temporary brine field rules, the applicant bears the burden of establishing that each of the proposed temporary brine field rules is reasonably expected to protect freshwater resources, protect correlative rights, prevent waste of recoverable brine resources, and promote the production of additional brine resources in an orderly and efficient manner.

(iv) Temporary brine field rules shall remain effective until:

(I) 18 months after adoption; or

(II) permanent brine field rules are adopted.

(C) Permanent brine field rules.

(i) After temporary brine field rules have been effective in a brine field for at least 12 months, the operator of a brine production well in the brine field subject to temporary brine field rules or

the Commission may request a hearing to adopt permanent brine field rules for the brine field in which the operator's well is located.

(ii) An operator requesting a hearing to adopt permanent brine field rules shall furnish the Commission a list of all operators within five miles of the brine discovery well.

(iii) If permanent field rules are not adopted, temporary field rules adopted under subparagraph (B) of this paragraph expire after 18 months and the statewide field requirements of this section apply to operations within the applicable brine field.

(4) Exceptions to spacing, density, and contiguity requirements.

(A) An exception to paragraph (1) of this subsection or paragraph (2)(A) - (C) of this subsection may be granted after a public hearing held after notice to all persons described in subparagraph (B) of this paragraph. An exception to paragraph (2)(F) of this subsection may be granted after a public hearing held after notice to all persons described in subparagraph (C) of this paragraph. At a hearing on an exception, the burden shall be on the applicant to establish that an exception to this section is necessary either to prevent waste or to protect correlative rights.

(B) In addition to the notice required under subsection (f) of this section, an applicant seeking an exception to the spacing or density requirements shall file with its application the names and mailing addresses of the following persons for tracts within the minimum spacing distance for the proposed well and the brine field:

(i) the designated operator;

(ii) all lessees of record for tracts with no designated operator; and

(iii) all owners of record of unleased mineral interests.

(C) In addition to the notice required under subsection (f) of this section, an applicant seeking an exception to the contiguity requirements of paragraph (2)(F) of this subsection shall file with its application the names and mailing addresses of the following persons for tracts located between the non-contiguous portions of its proposed project area that are farther apart than the minimum spacing distance for wells in the brine field:

(i) the designated operator;

(ii) all lessees of record for tracts with no designated operator; and

(iii) all owners of record of unleased mineral interests.

(D) If, after diligent efforts, the applicant is unable to ascertain the name and address of one or more persons required by this paragraph to be notified, then the applicant shall notify such persons by publishing notice of the application in a form approved by the Commission. The applicant shall publish the notice once each week for two consecutive weeks in a newspaper of general circulation in the county or counties in which the brine production project well will be located. The first publication shall be published at least 14 days before the protest deadline in the notice of application.

(e) Brine production project permit application.

(1) Any person who proposes to operate a brine production project shall submit to the Director an application for a brine production project permit. The application shall be made under this section or under special field rules governing the particular brine field, or as an exception thereto, and filed with the Commission on a form approved by the Commission.

(2) An application for a brine production project permit shall be accompanied by an application for at least one injection well and shall include the information required by paragraph (3) of this subsection, as applicable. The applicant is not required to submit permit applications for the other individual brine production and Class V spent brine return injection wells at the time the applicant submits its application for a brine production project permit. Unless otherwise specified in the brine production project permit, once the brine production project permit has been issued, the operator may operate additional brine production wells and Class V spent brine return injection wells as part of the brine production project. The operator shall obtain permits for those wells prior to commencing operations. Requirements for obtaining a Class V spent brine return injection well permit are specified in paragraph (4) of this subsection. Notice in addition to the notice required for the brine production project by subsection (f) of this section is not required for the individual wells unless the operator requests an exception to the spacing, density, or acreage requirements or additional notice is required by the permit.

(3) An application for a brine production project permit shall comply with the requirements of this paragraph.

(A) The application shall include the name, mailing address, and physical location of the brine production project for which the application is submitted.

(B) The application shall include the applicant's name, mailing address, telephone number, P-5 Organization Report number, and a statement indicating whether the applicant operator is the owner of the facility.

(C) The application shall specify the proposed use or uses for the brine produced by the project.

(D) The application shall specify the estimated maximum number of brine production wells and Class V spent brine return injection wells that will be operated within the brine production project.

(E) The application shall designate the total number of acres included in the proposed brine production project area, which shall equal not less than 1,280 acres per brine production well unless special field rules provide otherwise.

(F) The application shall specify the brine field from which the brine will be produced and spent brine reinjected, including the top and bottom depths of the field throughout the area of review.

(G) The application shall include complete electric logs of representative brine production wells and Class V spent brine return injection wells or complete electric logs of representative nearby wells. On the logs, the applicant shall identify and indicate the depths of the geologic formations between the land surface and the top of the brine field.

(H) The application shall include wellbore diagrams showing the completions that will be used for brine production wells and Class V spent brine return injection wells, including casing and liner sizes and depths and a statement indicating that such wells will be drilled, cased, cemented, and completed in accordance with the requirements of §3.13 of this title as those requirements may be revised by this section. The statement shall also include information to demonstrate that the casing and cement used in the completion of each brine production well and each Class V spent brine return injection well is designed to withstand the anticipated pressurization and formation fluids that are capable of negatively impacting the integrity of casing and/or cement such that it presents a threat to

USDWs or oil, gas, or geothermal resources. The wellbore diagrams shall show the proposed arrangement of the downhole well equipment and specifications of the downhole well equipment. A single wellbore diagram may be submitted for multiple wells that have the same configuration, provided that each well with that type of configuration is identified on the wellbore diagram and the diagram identifies the deepest cement top for each string of casing among all the wells covered by that diagram.

(I) The application shall include information to characterize the brine field from which the brine will be produced and into which the spent brine will be reinjected, including the following:

(i) an isopach map showing thickness and areal extent of the brine field;

(ii) lithology, grain mineralogy, and matrix cementing of the brine field;

(iii) effective porosity of the brine field and the method used to determine effective porosity;

(iv) vertical and horizontal permeability of the brine field and the method used to determine permeability;

(v) the occurrence and extent of natural fractures and solution features within the brine production project;

(vi) chemical and physical characteristics of the fluids contained in the brine field that may potentially impact casing or cement;

(vii) the bottom hole temperature and pressure of the brine field;

(viii) formation fracture pressure of the brine field, the method used to determine fracture pressure and the expected direction of fracture propagation. Calculations demonstrating injection of spent brine into the proposed brine field shall not exceed the fracture pressure gradient and information showing injection into the brine field will not initiate fractures through the confining zone;

(ix) a description of the proposed well stimulation program, if applicable, including a description of the stimulation fluids, and a determination that the well stimulation will not compromise containment of the brine field;

(x) the vertical distance separating the top of the brine field from the base of the lowest USDW;

(xi) a demonstration, such as geologic maps and cross-sections, that the brine field into which the spent brine will be injected is the same formation from which the brine will be produced; and

(xii) any other information necessary to characterize the brine field.

(J) The application shall include information to characterize the proposed confining zone, including the following:

(i) the geological name and the top and bottom depths of the formation making up the confining zone;

(ii) an isopach map showing thickness and areal extent of the confining zone;

(iii) lithology, grain mineralogy, and matrix cementing of the confining zone;

(iv) the vertical distance separating the top of the confining zone from the base of the lowest USDW; and

(v) any other information necessary to characterize the confining zone.

(K) The application shall include the proposed operating data, including the following:

(i) the maximum daily brine production rate;

(ii) the maximum daily injection rate and maximum injection pressure; and

(iii) the proposed test procedure to be used to determine mechanical integrity of the Class V spent brine return injection wells.

(L) The application shall include a letter from the Geologic Advisory Unit of the Commission's Oil and Gas Division stating that the use of the brine field for the injection of spent brine will not endanger usable quality water or USDWs.

(M) The application shall include an accurate plat with surveys of a scale sufficient to legibly show the entire extent of the area of review. The plat shall include the following:

(i) the area of review outlined on the plat using either a heavy line or crosshatching;

(ii) the location, to the extent anticipated at the time of the application, of each well within the brine production project area that the applicant intends to use for the brine production project including each existing well that may be converted to brine production or Class V spent brine return injection, each well the applicant intends to drill for brine production, each well the applicant intends to drill for project monitoring, and each Class V spent brine return injection well. If the wells are horizontal or deviated wells, the plat shall include the surface location of the proposed drilling site, penetration point, perforated casing or open hole through which brine will be produced or reinjected, terminus location, and a line showing the distance in feet from the perimeter of the area of review to the nearest point of extraction or injection on the lateral leg of the horizontal well;

(iii) the type, location, and depth of all wells of public record within the area of review that penetrate the top of the brine field. The applicant shall include the following information with the map:

(I) a tabulation of the wells showing the dates the wells were drilled and the current status of the wells;

(II) completion records for all wells and plugging records for plugged and abandoned wells; and

(III) a corrective action plan for any known wells in the area of review that penetrate the brine field and that may allow fluid migration into USDWs from the brine field for which the applicant cannot demonstrate proper completion, plugging, or abandonment. The Director may approve a phased corrective action plan;

(iv) the geographic location information of the wells, including the Latitude/Longitude decimal degree coordinates in the WGS 84 coordinate system, a labeled scale bar, and indication of the northerly direction; and

(v) a certification by a person knowledgeable of the facts pertinent to the application that the plat is accurately drawn to scale and correctly reflects all pertinent and required data.

(N) The application shall include a plat showing:

(i) the outline of the brine production project area;

(ii) the operators of tracts in the brine production project area and tracts within the area of review;

(iii) owners of all leases of record for tracts that have no designated operator in the brine production project area and tracts within the area of review;

(iv) owners of record of unleased mineral interests within the brine field for tracts in the brine production project area and tracts within the area of review;

(v) surface owners of tracts in the brine production project area and within the area of review; and

(vi) the names and addresses of all persons listed in clause (ii) through (v) of this subparagraph. If the names and addresses of the persons in clause (ii) through (v) of this subparagraph cannot be included on the plat, the applicant shall include the names and addresses on a separate sheet attached to the plat. The applicant shall determine the names and addresses of the surface owners from the current county tax rolls or other reliable sources and shall identify the source of the list. If the Director determines that, after diligent efforts, the applicant has been unable to ascertain the name and address of one or more surface owners, the Director may waive the requirements of this subparagraph with respect to those surface owners.

(O) The application shall include a subsurface structure map and/or cross sections, including faulting and pinch-outs. The structure map shall show the contour of the top of the brine field and the lines of cross section. The cross sections shall be prepared from comparable electric logs (not tracings) and shall identify the wells, brine field, and any hydrocarbon reservoir.

(P) The application shall include a printed copy or screenshot showing the results of a survey of information from the United States Geological Survey (USGS) regarding the locations of any historical seismic events within a circular area of 100 square miles (a circle with a radius of 9.08 kilometers) centered around the proposed injection well location.

(Q) The application shall include a certification that the applicant has a good faith claim to produce the brine resources for the tracts included in the brine production project area.

(R) The application shall include a proposed plugging and abandonment plan.

(S) The applicant shall ensure that, if required under Texas Occupations Code, Chapter 1001, relating to Texas Engineering Practice Act, or Chapter 1002, relating to Texas Geoscientists Practice Act, respectively, the geologic and hydrologic evaluations required under this section are conducted by a licensed professional engineer or geoscientist who shall affix the appropriate seal on the resulting report of such evaluations.

(T) The application shall include any other information the Director may reasonably require to enable the Commission to determine whether to issue a permit for the brine production project, including the associated brine production wells and Class V spent brine return injection wells.

(4) Prior to commencement of injection operations into any Class V spent brine return injection well within the brine production project area, the operator shall file an application for an individual well permit with the Commission in Austin. The individual well permit application shall include the following:

(A) the well identification and, for a new well, a location plat;

(B) the location of any well drilled within one-quarter mile of the injection well after the date of application for the brine production project permit and the status of any well located within one-quarter mile of the injection well that has been abandoned since the date the brine production project permit was issued, including the plugging date if such well has been plugged;

(C) a description of the well configuration, including casing and liner sizes and setting depths, the type and amount of cement used to cement each casing string, depth of cement tops, and tubing and packer setting depths;

(D) a description of any additives used in the brine production project and reinjected with the spent brine into the Class V spent brine return well;

(E) an application fee in the amount of $100 per well; and

(F) any other information required by the brine production project permit.

(5) Criteria for exempted aquifers. An aquifer or a portion thereof which meets the criteria for an "underground source of drinking water" may be determined under 40 CFR §144.7 to be an "exempted aquifer" if it meets the criteria in paragraphs (a) through (c) of 40 CFR §146.4. The Commission adopts 40 CFR §144.7 and §146.4 by reference, effective January 6, 2025.

(6) All individual Class V spent brine return injection wells covered by a brine production project permit shall be completed, operated, maintained, and plugged in accordance with the requirements of subsection (j) of this section and the brine production project permit.

(f) Notice and hearing.

(1) Notice to certain communities. The applicant shall identify whether any portion of the AOR encompasses an Environmental Justice (EJ) or Limited English-Speaking Household community using the most recent U.S. Census Bureau American Community Survey data. If the AOR incudes an EJ or Limited English-Speaking Household community, the applicant shall conduct enhanced public outreach activities to these communities, including a public meeting. Efforts to include EJ and Limited English-Speaking Household communities in public involvement activities in such cases shall include:

(A) published meeting notice in English and the identified language (e.g., Spanish);

(B) comment forms posted on the applicant's webpage and available at the public meeting in English and the identified language;

(C) interpretation services accommodated upon request;

(D) English translation of any comments made during any comment period in the identified language; and

(E) to the extent possible, public meeting venues near public transportation.

(2) Notice. The applicant for a brine production project permit shall give notice of the application as follows.

(A) Persons to notify. The applicant for a brine production project permit shall notify:

(i) operators on tracts within the area of review;

(ii) owners of all leases of record for tracts that have no designated operator within the area of review;

(iii) owners of record of unleased mineral interests within the area of review and within the brine field;

(iv) all surface owners identified on the plat described in subsection (e)(3)(N)(ii) of this section;

(v) the city clerk or other appropriate city official of a city for which any portion falls within the area of review;

(vi) the county clerk of any county or counties for which any portion falls within the area of review; and

(vii) any other person designated by the Director.

(B) Method of notice.

(i) The applicant for a brine production project permit shall mail or deliver to persons listed in subparagraph (A) of this paragraph notice of the brine production project permit application in a form approved by the Commission. The applicant shall provide notice after staff determines than an application is complete pursuant to subsection (g)(1) of this section.

(ii) The applicant shall publish notice of the brine production project permit application in a form approved by the Commission. The applicant shall publish the notice once each week for two consecutive weeks in a newspaper of general circulation of any county or counties for which any portion falls within the area of review. The first notice shall be published at least 14 days before the protest deadline in the notice of application. The applicant shall file with the Commission a publisher's affidavit or other evidence of publication.

(C) Contents of notice. The notice shall be made using the form prescribed by the Commission, which shall include the following information:

(i) the county or counties within which the brine production project area of review is located;

(ii) a copy of the plat required by subsection (e)(3)(M) of this section;

(iii) the name of the brine field;

(iv) the depth to the top of the brine field;

(v) the proposed life of the brine production project; and

(vi) a statement that an affected person may file a protest within 30 days of the date of the notice and any interested person may submit comments to the Commission within 30 days of the date of the notice.

(D) Notice of Class V spent brine return injection wells. Once an applicant complies with the notice required to obtain a brine production project permit and the permit has been issued, no notice shall be required when filing an application for an individual injection well permit for any Class V spent brine return injection well covered by the brine production permit unless otherwise provided in the permit.

(E) Notice of brine production well. Once an applicant complies with the notice required to obtain a brine production permit and the permit has been issued, no notice shall be required when filing an application for an individual brine production well permit for any brine production well covered by the brine production permit unless otherwise provided in the permit or unless an exception is requested.

(3) Comments, protests, and requests for hearing. Notice of an application will allow at least 30 days for public comment. Beginning on the date of the notice, any affected person has 30 days to protest the application, and any interested person has 30 days to submit written comments.

(4) Hearings.

(A) The Commission shall hold a hearing when:

(i) the Commission receives a written protest from an affected person within 30 days after notice of the application is given in accordance with this subsection;

(ii) the Director denies the application and the operator requests a hearing within 30 days of the notice of administrative denial;

(iii) the Director issues the permit and the operator requests a hearing to contest certain permit conditions; or

(iv) the Director determines that a hearing is in the public interest.

(B) Notice of a hearing will be given at least 30 days before the hearing. The public comment period under paragraph (3) of this subsection will automatically be extended to the close of any hearing under this paragraph.

(C) At any hearing, the burden shall be on the applicant.

(D) After hearing, the administrative law judge and technical examiner shall recommend final Commission action.

(g) Commission action on permit applications.

(1) Permitting procedures.

(A) Initial permit application review. Upon receipt of an application for a permit, the Director will review the application for completeness. Within 30 days after receipt of the application, the Director will notify the applicant in writing whether the application is complete or deficient. A notice of deficiency will state the additional information necessary to complete the application, and a date for submitting this information. The application will be deemed withdrawn if the necessary information is not received by the specified date, unless the Director has extended this date upon request of the applicant. Upon timely receipt of the necessary information, the Director will notify the applicant that the application is complete. The Director will not begin processing a permit until the application is complete.

(B) Administrative action on application. When no timely protest is received from an affected person, the Director may administratively grant an application for a brine production project permit, including the associated wells, if the applicant provides sufficient evidence to demonstrate that the brine production project will not endanger USDWs or human health or the environment.

(2) Application for an amended permit. The permittee shall file an application to amend a brine production project permit if the permittee wishes to make substantial changes such as change the exterior boundaries of, or maximum number of wells authorized in, the brine production project area or alter permit conditions.

(3) Permit application denial. If the Director administratively denies a permit application, a notice of administrative denial will be mailed to the applicant. The applicant will have a right to a hearing on request. At any such hearing, the burden shall be on the applicant. After hearing, the administrative law judge and technical examiner shall recommend final Commission action.

(h) Modification, revocation and reissuance, and termination of permits. A permit may be modified, revoked and reissued, or terminated by the Commission either upon the written request of the operator or upon the Commission's initiative, but only for the reasons and under the conditions specified in this subsection. Except for minor modifications made under paragraph (2) of this subsection, the Commission will follow the applicable procedures in paragraph (1) of this subsection. In the case of a modification, the Commission may request additional in-

formation or an updated application. In the case of a revocation and reissuance, the Commission will require a new application. If a permit is modified, only the conditions subject to modification are reopened. The term of a permit may not be extended by modification. If a permit is revoked and reissued, the entire permit is reopened and subject to revision, and the permit is reissued for a new term.

(1) Modification, or revocation and reissuance. The following are causes for modification, or revocation and reissuance:

(A) when material and substantial alterations or additions to the facility occur after permit issuance and justify permit conditions that are different or absent in the existing permit;

(B) the Commission receives new information;

(C) the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued;

(D) the Commission determines good cause exists for modifying a compliance schedule, such as an act of God, strike, flood, materials shortage, or other event over which the operator has little or no control and for which there is no reasonably available remedy;

(E) cause exists for terminating a permit under paragraph (3) of this subsection, and the Commission determines that modification, or revocation and reissuance, is appropriate; or

(F) a transfer of the permit is proposed.

(2) Minor modifications. With the permittee's consent, the Director may make minor modifications to a permit administratively, without following the procedures of paragraph (1) of this subsection. Minor modifications may only:

(A) correct clerical or typographical errors, or clarify any description or provision in the permit, provided that the description or provision is not changed substantively;

(B) require more frequent monitoring or reporting;

(C) change construction requirements provided that any changes shall comply with the requirements of subsection (j)(4) of this section; or

(D) allow a transfer of the permit where the Director determines that no change in the permit is necessary other than a change in the name of the permittee, provided that a written agreement between the current permittee and the new permittee containing a specific data for the transfer of permit responsibility, coverage, and liability has been submitted to the Commission.

(3) Termination. The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(A) the permittee fails to comply with any condition of the permit or this section;

(B) the permittee fails to disclose fully all relevant facts in the permit application or during the permit issuance process, or misrepresents any relevant fact at any time;

(C) a material change of conditions occurs in the operation or completion of the well, or there are material changes in the information originally furnished; or

(D) the Commission determines that the permitted injection endangers human health or the environment, or that pollution of USDWs is occurring or is likely to occur as a result of the permitted injection.

(4) Duty to provide information. The permittee shall also furnish to the Commission, within a time specified by the Commission, any information that the Commission may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the Commission, upon request, copies of records required to be kept under the conditions of the permit.

(i) Permit conditions.

(1) Access by Commission. The permittee shall allow any member or employee of the Commission, on proper identification, to:

(A) enter upon the premises where a regulated activity is conducted or where records are kept under the conditions of the permit;

(B) have access to and copy, during reasonable working hours, any records required to be kept under the conditions of the permit;

(C) inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

(D) sample or monitor any substance or parameter for the purpose of assuring compliance with the permit or as otherwise authorized by the Texas Water Code, §27.071, or the Texas Natural Resources Code, §91.1012.

(2) Commission testing. The Commission may make any tests on any well at any time necessary for regulation of wells under this section, and the operator of such wells shall comply with any directives of the Commission to make such tests in a proper manner.

(3) Duty to comply. The permittee shall comply with all conditions of the permit. Any permit noncompliance is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application.

(4) Need to halt or reduce activity not a defense. It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(5) Duty to mitigate. The permittee shall take all reasonable steps to minimize and correct any adverse effect on the environment resulting from noncompliance with the permit.

(6) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control, and related appurtenances, that are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate permittee staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up and auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(7) Property rights. The permit does not convey any property rights of any sort, or any exclusive privilege. However, a valid permit is a property interest that may not be modified, suspended, or revoked without due process of law.

(8) Financial assurance. The permit shall require the permittee to maintain financial responsibility and resources to plug and abandon all brine mining production wells and Class V spent brine return injection wells and to remove all wastes, storage vessels, and equipment from the site within one year of cessation of brine production operations. The permittee shall show evidence of such financial

responsibility to the Director in accordance with the requirements of §3.78 of this title by submitting a cash deposit, performance bond, or letter of credit in a form prescribed by the Commission. Such bond or letter of credit shall be maintained until the well is plugged in accordance with paragraph (16) of this subsection.

(9) Duration. A permit issued under this section is effective for the duration of the brine production project. The Commission will review each permit issued pursuant to this section at least once every five years to determine whether just cause exists for modification, revocation and reissuance, or termination of the permit. The Commission may modify, revoke and reissue, or terminate a permit for just cause only after notice and opportunity for a hearing.

(10) Transfers. A brine production project permit is not transferable to any person except by modification, or revocation and reissuance of the permit to change the name of the permittee and incorporate other necessary requirements associated with the permittee name change.

(11) Permit renewal. Any person who has obtained a permit under this section and who wishes to continue to operate the brine production project and brine production wells after the permit expires shall file an application for a new permit at least 180 days before the existing permit expires, unless a later date has been authorized by the Director.

(12) Permit actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(13) Compliance with permit. All brine production wells and Class V spent brine return injection wells shall be drilled, converted, completed, operated, or maintained in accordance with the brine production project permit.

(14) Monitoring and records.

(A) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(B) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the permit application, for at least three years from the date of the sample, measurement, report, or application. This period may be extended by the Commission at any time.

(C) Records of monitoring information shall include the date, exact place, and time of the sampling or measurements; the individuals who performed the sampling or measurements; the dates analyses were performed; the individuals who performed the analyses; the analytical techniques or methods used; and the results of the analyses.

(15) Reporting and record retention.

(A) The permittee shall submit to the Director, within the time specified by the Director, any information that the Director may reasonably request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept under the conditions of the permit.

(B) The permittee shall retain records of all information required by the permit for at least five years from the date of commencement of brine production. This period may be extended by request of the Commission at any time.

(C) The permittee shall file a report of the volumes of brine, oil, and gas produced by each brine production well during the preceding month. The report shall be filed with the Commission by the 15th calendar day of the month following the period covered by the report.

(D) The permittee shall notify the Director at such times as the permit requires before conversion or abandonment of a well associated with a brine production project.

(E) The permittee shall report to the Commission any noncompliance, including any spills or leaks from brine receptacles or pipelines, that may cause waste or confiscation of property or endanger surface or subsurface water, human health or the environment.

(i) An oral report shall be made to the appropriate district office immediately after the permittee becomes aware of the noncompliance.

(ii) A written report shall be filed with the Director and the appropriate district office within five days of the time the permittee becomes aware of the noncompliance. The written report shall contain the following information:

(I) a description of the noncompliance and its cause;

(II) the period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

(III) steps planned or taken to reduce, eliminate, and prevent recurrence of the noncompliance.

(F) If the permittee becomes aware that it failed to submit any relevant facts or submitted incorrect information in a permit application or a report to the Commission, the permittee shall promptly submit the relevant facts or correct information.

(16) Plugging. The operator of a brine production project shall plug all wells associated with the brine production project in accordance with the provisions of §3.14 of this title, except that the well shall be plugged within one year after cessation of the brine production project. For good cause, the Director may grant a reasonable extension of time in which to plug the wells if the operator submits a proposal that describes actions or procedures to ensure that the wells will not endanger USDWs during the period of the extension.

(17) Identification. Each property that produces brine resources and each well associated with a brine production project and tank shall at all times be clearly identified as follows.

(A) A sign shall be posted at the principal entrance to each such property which shall show the name by which the property is commonly known and is carried on the records of the Commission, the name of the permittee, and the number of acres in the property.

(B) A sign shall be posted at each well site which shall show the name of the property, the name of the permittee, and the well number.

(C) A sign shall be posted at or painted on each tank that is located on or serving each property, which signs shall show, in addition to the information provided for in subparagraph (A) of this paragraph, the Commission lease number for the formation from which brine in the tank is produced.

(D) The signs and identification required by this section shall be in the English language, clearly legible, and in the case of the

signs required by subparagraphs (A), (B), and (C) of this paragraph shall be in letters and numbers at least one inch in height.

(18) Dikes or fire walls. Dikes or fire walls shall be erected and maintained around all permanent tanks, or battery of tanks, that are:

(A) within the corporate limits of any city, town, or village;

(B) closer than 500 feet to any highway or inhabited dwelling;

(C) closer than 1,000 feet to any school or church; or

(D) so located as to be deemed by the Commission to be an objectionable hazard.

(19) Additional conditions. The Commission reserves the right to include additional permit conditions if it determines the conditions are necessary to ensure compliance with the requirements in this section and to prevent waste, prevent the confiscation of property, or prevent pollution.

(j) Additional permit conditions for Class V spent brine return injection wells. In addition to the conditions in subsection (i) of this section, Class V spent brine return injection wells shall be subject to the following.

(1) Unauthorized injection prohibited. No person may operate a Class V spent brine return injection well without obtaining a permit from the Commission under this section. No person may begin constructing a new Class V spent brine return injection well until the Commission has issued a permit to drill, deepen, plug back, or reenter the well under §3.5 of this title and a permit to operate the injection well under this section.

(2) Injected fluid restricted to brine field. No person may operate a Class V spent brine return injection well in a manner that allows fluids to escape into USDWs from the brine field from which it was produced. If fluids from a Class V spent brine return injection well are migrating out of the brine field into USDWs, the permittee shall immediately cease injection operations in the well or wells most proximate to the location where fluids have been detected in USDWs and perform the necessary corrective action or plug the injection well.

(3) Permit standards. No person may operate a Class V spent brine return injection well in a manner that allows fluid to escape from the permitted brine field or the movement of fluids containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons. If injected fluids migrate into USDWs, or cause formation fluid to migrate into USDWs, the permittee shall immediately cease injection operations. All permits for Class V spent brine return injection wells issued under this section shall include the conditions required by this section and any other conditions reasonably necessary to prevent the pollution of USDWs.

(4) Construction requirements for Class V spent brine return injection wells. All Class V spent brine mining injection wells shall be drilled and completed or recompleted, operated, maintained, and plugged in accordance with the requirements of this section and the Class V spent brine return injection well permit.

(A) Permits shall specify drilling and construction requirements to assure that the injection operations shall not endanger USDWs. No changes to the construction of a well may be physically incorporated into the construction of the well prior to approval of the modifications by the Director.

(B) In addition to the casing and cementing requirements of §3.13 of this title, the operator shall:

(i) for all newly drilled Class V spent brine return injection wells, drill a sufficient depth into the brine field to ensure that when the well is logged prior to setting the long string the operator will be able to identify the top of the brine field and verify that the fluid will be injected only into the brine field;

(ii) set and cement surface casing from at least 100 feet below the lowermost base of usable quality water as defined by the Geologic Advisory Unit to the surface, regardless of the total depth of the well;

(iii) set and cement long string casing at a minimum from the top of the brine field to the surface unless the Director approves an alternate completion for good cause; and

(iv) determine the integrity of the cement by a cement bond log.

(C) In order to provide the Commission with an opportunity to witness the setting and cementing of the surface casing and production casing (long string) and running of cement bond logs, the operator shall provide at least 15 days' notice to the appropriate Commission district office.

(D) Appropriate logs and other tests shall be conducted during the drilling and construction of a Class V spent brine return injection well to verify the depth to the top of the brine field, adequacy of cement behind the casing strings, and injectivity and fracture pressure of the brine field. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. The logs and tests appropriate to each well shall be determined based on the depth, construction, and other characteristics of the well, the availability of similar data in the area, and the need for additional information that may arise as the construction of the well progresses.

(E) The well shall be equipped with tubing and packer set within 100 feet of the top of the brine field.

(F) The wellhead shall be equipped with a pressure observation valve on the tubing and for each annulus of the well.

(G) Injection operations may not begin in any new Class V spent brine return injection well until the operator has submitted a completion report to the Director, and the Director has reviewed the completion report and found the well to be in compliance with this section and the conditions of the permit.

(5) Operating requirements. Class V spent brine return injection well permits will prescribe operating requirements, which shall at a minimum specify the following.

(A) All Class V spent brine return injection shall be into the same brine field from which the brine was extracted by the brine production wells.

(B) All injection shall be through tubing set on a packer. The packer shall be set within 100 feet of the top of the permitted injection interval. The Director will consider granting exceptions to this requirement for good cause and when the proposed completion of the well would still result in the protection of underground sources of drinking water and confinement of injected fluids. For wells that are approved for casing injection, the operator shall perform a casing pressure test against a temporary packer/plug to demonstrate mechanical integrity of the long string casing.

(C) Except during well stimulation, injection pressure at the wellhead shall not exceed the maximum pressure calculated to assure that the injection pressure does not initiate new fractures or propagate existing fractures in the brine field and in no case may the injec-

tion pressure initiate fractures in the confining zone or cause the escape of injection or formation fluids from the brine field.

(D) The operator shall fill the annulus between the tubing and long string casing with a corrosion inhibiting fluid. All injection wells shall maintain an annulus pressure sufficient to indicate mechanical integrity unless the Director determines that such requirement might harm the integrity of the well or endanger USDWs. The annulus pressure shall be monitored by a pressure chart or digital pressure gauge. The operator shall provide the Director with a written report and explanation of any change in annulus pressure that would indicate a leak or lack of mechanical integrity, such as an annulus pressure change exceeding 10%, within 15 days of detecting the change in pressure. An unsatisfactory explanation may result in a requirement that the well be tested for mechanical integrity.

(E) For each workover of an injection well, the operator shall notify the appropriate Commission district office at least 48 hours prior to the beginning of the workover or corrective maintenance operations that involve the removal of the tubing or well stimulation, and a mechanical integrity test shall be run on the well after the workover is completed if the packer is unseated during the workover.

(6) Corrective action. For all known wells in the area of review that penetrate the top of the brine field for which the operator cannot demonstrate proper completion, plugging, or abandonment, the Director will require corrective action if necessary to prevent movement of fluid into USDWs. Corrective action may be phased, if a phased corrective action plan has been approved by the Director.

(7) Mechanical integrity of Class V spent brine return injection wells.

(A) Mechanical integrity required. No person may perform injection operations in a Class V spent brine return injection well that lacks mechanical integrity. A well has mechanical integrity if:

(i) there is no significant leak in the casing (internal mechanical integrity); and

(ii) there is no significant fluid movement into a USDW through vertical channels adjacent to the wellbore (external mechanical integrity).

(B) Mechanical integrity shall be demonstrated to the satisfaction of the Director. In conducting and evaluating the results of a mechanical integrity test, the operator and the Director shall apply procedures and standards generally accepted in the industry. In reporting the results of a mechanical integrity test, the operator shall include a description of the method and procedures used. In evaluating the results, the Director will review monitoring and other test data submitted since the previous mechanical integrity test.

(C) Internal mechanical integrity. The permittee shall provide for a demonstration of internal mechanical integrity of the wellhead, casing, tubing, and annular seal assembly if present, using either a pressure test at a surface pressure of not less than 100 psig above the maximum expected operating surface pressure of the well or an equivalent test approved by the Director. The permittee shall provide a recording device to record the pressures measured during a mechanical integrity test.

(D) External mechanical integrity. The permittee shall use one of the following methods to demonstrate the absence of significant fluid movement into USDWs through vertical channels adjacent to the Class V spent brine return injection wellbore.

(i) the results of a temperature or noise log; or

(ii) where the nature of the casing precludes the use of the logging techniques prescribed in clause (i) of this subparagraph, cementing records demonstrating the presence of adequate cement to prevent such movement.

(E) Alternate methods. The Director may allow the use of a method of demonstrating mechanical integrity other than the methods listed in subparagraphs (C) and (D) of this paragraph with the approval of the administrator of EPA obtained pursuant to 40 CFR §146.8(d).

(F) Calibration of pressure gauges. A permittee shall calibrate all pressure gauges used in mechanical integrity demonstrations according to the manufacturer's recommendations. A copy of the calibration certificate shall be submitted to the Director at the time of demonstration and every time the gauge is calibrated. A pressure gauge shall have a resolution so as to allow detection of at least one-half of the maximum allowable pressure change.

(G) Timing of mechanical integrity testing.

(i) Both internal and external mechanical integrity shall be demonstrated before injection operations begin.

(ii) Internal mechanical integrity shall be demonstrated annually thereafter and after any workover that involves the removal of the tubing.

(iii) External mechanical integrity shall be demonstrated every five years.

(iv) The Director may require mechanical integrity testing if the Director has reason to believe that the well lacks mechanical integrity.

(H) Notice of testing.

(i) The permittee shall notify the appropriate Commission district office orally at least 48 hours before performance of a mechanical integrity test.

(ii) The permittee shall notify the Director in writing within 15 days of a failed mechanical integrity test. The notice shall indicate the permittee's plans for performing corrective action and re-testing the well or plugging the well.

(I) Reporting of testing. The permittee shall file a complete record of the test with the Commission in Austin within 30 days after the test. A copy of the pressure record shall accompany the report. The report shall include evaluation of the test results by a person qualified to provide such an evaluation. Reports of mechanical integrity demonstrations using downhole logs shall be accompanied by an interpretation of the log by a person qualified to make such interpretations.

(J) Failure to demonstrate mechanical integrity.

(i) A well shall maintain mechanical integrity. If the permittee or the Director finds that the well fails to demonstrate mechanical integrity during a test, fails to maintain mechanical integrity during operation, or that a loss of mechanical integrity is suspected during operation, the permittee shall halt injection immediately unless the Director allows continued injection because the permittee establishes that injection can continue without endangering USDWs. Report of the failure of mechanical integrity shall be made orally to the Director within 24 hours from the time the permittee becomes aware of the failure, and shall include an anticipated date for a mechanical integrity demonstration.

(ii) All wells that fail to pass a mechanical integrity test shall be repaired or plugged and abandoned within 90 days of the failure date. The 90-day timeline may be extended by the Director for

good cause. The well is to be shut-in immediately after failure to pass the mechanical integrity test and shall remain shut-in until it passes a mechanical integrity test or is plugged and abandoned.

(iii) If injection has ceased as provided by clause (i) of this subparagraph, then the permittee shall not resume injection until the well demonstrates mechanical integrity. A written plan to restore mechanical integrity shall be submitted to the Director within 15 days of the failure of mechanical integrity. The plan shall include a schedule and description of corrective action and a schedule for re-testing or plugging the well. The plan shall be approved by the Director and the Director may witness any mechanical integrity demonstration.

(K) Testing deviations. The Commission will consider any deviations during testing that cannot be explained by factors such as temperature fluctuations or by the margin of error for the test used to determine mechanical integrity to be an indication of the possibility of a significant leak and/or the possibility of significant fluid movement into a formation containing a USDW through channels adjacent to the injection wellbore.

(8) Monitoring and records.

(A) Monitoring requirements. Permits shall specify the following monitoring requirements:

(i) the proper use, maintenance, and installation of monitoring equipment or methods;

(ii) the type, intervals, and frequency of monitoring sufficient to yield data representative of the monitored activity, including continuous monitoring when appropriate;

(iii) the reporting of monitoring results with a frequency dependent on the nature and effect of the monitored activity, but in no case less than annually; and

(iv) any samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(B) Record retention. The operator shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the permit application, for at least three years from the date of the sample, measurement, report, or application. This period may be extended by request of the Commission at any time.

(C) Monitoring record contents. Records of monitoring information shall include the date, exact place, and time of the sampling or measurements; the individuals who performed the sampling or measurements; the dates analyses were performed; the individuals who performed the analyses; the analytical techniques or methods used for the analyses; and the results of the analyses.

(D) Signatory requirements. All reports and other information submitted to the Commission shall be signed and certified in accordance with subsection (c)(2) of this section.

(E) Reporting requirements.

(i) The operator shall notify the Commission and obtain Commission approval in advance of any planned changes to the brine production project, including any physical alternation or addition to the project and any change that may result in non-compliance with permit conditions.

(ii) Monitoring results shall be reported at the intervals specified in the permit.

(iii) Reports of compliance or noncompliance with the requirements contained in any schedule of compliance shall be submitted no later than 30 days after each scheduled date.

(iv) The operator shall report to the Commission any noncompliance that may endanger USDWs, human health, or the environment.

(I) An oral report shall be made to the appropriate Commission district office immediately after the operator becomes aware of the noncompliance.

(II) A written report shall be filed with the Director within five days of the time the operator becomes aware of the noncompliance. The written report shall contain the following information:

(-a-) a description of the noncompliance and its cause;

(-b-) the period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

(-c-) steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

(v) Information that shall be reported under this subparagraph includes the following:

(I) any monitoring or any other information that indicates that any contaminant may endanger USDWs; and

(II) any noncompliance with a permit condition or malfunction of the injection system that may cause fluid migration into or between USDWs.

(F) Reporting errors. If the operator becomes aware that it failed to submit any relevant facts or report any noncompliance, or that it submitted incorrect information in a permit application or a report to the Director, then the operator shall promptly submit the relevant facts, report of noncompliance, or correct information as applicable. A report of noncompliance shall contain the information listed in subparagraph (E) of this paragraph.

(9) Notice of workovers. The operator shall notify the appropriate Commission district office at least 48 hours before performing any workover or corrective maintenance operations that involve the unseating of the packer or well stimulation.

(10) Additional conditions. The Commission may establish additional conditions on a case-by-case basis as required to provide for and assure compliance with the requirements specified in this section.

(k) Violations; penalties.

(1) Any well drilled or operated in violation of this section without a permit issued under this section shall be plugged.

(2) Violations of this section may subject the operator to penalties and remedies specified in the Texas Water Code, Chapter 27, and the Natural Resources Code, Title 3.

(3) The certificate of compliance for a brine production well may be revoked in the manner provided in subsections §3.73(d)-(g), (i)-(k) of this title (relating to Pipeline Connection; Cancellation of Certification of Compliance; Severance) for violations of this section.

(l) Commission review of administrative actions. Administrative actions performed by the Director or Commission staff pursuant to this section are subject to review by the commissioners.

(m) Federal regulations. All references to the CFR in this section are references to the 1987 edition of the Code. The following federal regulations are adopted by reference and can be obtained at the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78711: 40 CFR §§124.8(b), 124.10(c)(1)(viii), 124.10(d), and 146.8(d). Where the word "director" is used in the adopted federal regulations, it should be interpreted to mean "commission."

(n) Effective date. For the regulations pertaining to Class V spent brine return injection wells, this section becomes effective upon approval of the Commission's Class V Underground Injection Control (UIC) Program for spent brine return injection wells by the USEPA under the Safe Drinking Water Act, §1422 (42 United States Code §300h-1). For all other regulations, this section becomes effective as provided in Section 2001.001 et seq. of the Texas Government Code.

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

Filed with the Office of the Secretary of State on October 15, 2024.

TRD-202404850
Haley Cochran
Assistant General Counsel, Office of the General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 475-1295

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER L. MEDICAL ADVISORY BOARD

The Executive Commissioner of the Texas Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), proposes the repeal of §1.151, concerning Definitions, and §1.152, concerning Operation of the Medical Advisory Board (MAB); and new §1.151, concerning Definitions, and §1.152, concerning Operation of the Medical Advisory Board (MAB).

BACKGROUND AND PURPOSE

The purpose of the proposal is to update the definitions, content, and processes of the Medical Advisory Board (MAB) and clarify compensation for MAB members.

The proposed repeals and new §1.151 and §1.152 are necessary to comply with changes to Texas Health and Safety Code §§12.091 - 12.098, Texas Transportation Code §521.294, and 37 Texas Administrative Code §15.58; and reflect updates to MAB membership, operations, requirements, medical packet contents, and confidentiality provisions that have significantly changed.

SECTION-BY-SECTION SUMMARY

The proposed repeals and new rules provide clarity, consistency, plain language, and style throughout.

The proposed repeal of and new §1.151 update definitions.

The proposed repeal of and new §1.152 remove the purpose, appointment, and terms since they are addressed in MAB Bylaws. The proposed language describes the operation of the MAB, including membership; function; meeting requirements; medical packet requirements; confidentiality; and pertinent records, reports, and testimony relating to the medical condition of an applicant. The proposal also clarifies MAB member compensation.

FISCAL NOTE

Christy Havel Burton, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed. This repeal and replace does not increase or decrease the department's revenue stream. Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of $103,500 in fiscal year (FY) 2025, $103,500 in FY 2026, $103,500 in FY 2027, $103,500 in FY 2028, and $103,500 in FY 2029. The 88th Legislature, Regular Session, 2023, appropriated funds to the department for the purpose of increasing compensation for MAB members.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS 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 DSHS 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 DSHS;

(5) the proposed rules will not create a new regulation;

(6) the proposed rules will not expand, limit, or repeal 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

Christy Havel Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The 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 are necessary to protect the health, safety, and welfare of the residents of Texas, do not impose a cost on regulated persons, and are necessary to implement leg-

islation that does not specifically state that Section 2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Timothy Stevenson, DVM, Ph.D., Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rules are in effect, the public benefit will be the safe operation of a vehicle, or proper use and storage of a handgun based on recommendations made by the Medical Advisory Board and final determination by the Department of Public Safety.

Christy Havel Burton 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 amendments will not have an economic impact on drivers or people authorized to use and store a handgun.

TAKINGS IMPACT ASSESSMENT

DSHS has determined that the proposal does not restrict or limit an owner's right to the owner's 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 by mail to EMS/Trauma Systems Section, DSHS, Attn: Proposed Medical Advisory Board Rules, P.O. Box 149347, Mail Code 1876, Austin, Texas 78714-3247; or 1100 West 49th Street, Austin, Texas 78756; or email DSHSMAB@dshs.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 the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R080" in the subject line.

25 TAC §1.151, §1.152

STATUTORY AUTHORITY

The repeals are authorized by Texas Health and Safety Code Chapter 12, Subchapter H, which authorize the Executive Commissioner of Health and Human Services to adopt rules for the Medical Advisory Board; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of Health and Human Services to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 12 and 1001.

§1.151. Definitions.

§1.152. Operation of the Medical Advisory Board.

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

Filed with the Office of the Secretary of State on October 17, 2024.

TRD-202404871
Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 535-8538

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25 TAC §1.151, §1.152

STATUTORY AUTHORITY

The new sections are authorized by Texas Health and Safety Code Chapter 12, Subchapter H, which authorize the Executive Commissioner of Health and Human Services to adopt rules for the Medical Advisory Board; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of Health and Human Services to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 12 and 1001.

§1.151. Definitions.

The following words and terms, when used in this section, have the following meanings, unless the text indicates otherwise.

(1) Applicant--An individual referred by the Department of Public Safety to the Medical Advisory Board (MAB) for medical review to include applicants defined under Texas Health and Safety Code §12.092(2)(b)(1) and (2).

(2) Bylaws--Bylaws of the Medical Advisory Board.

(3) Commissioner--The commissioner of the Texas Department of State Health Services.

(4) Department of Public Safety (DPS)--Agency responsible for MAB referrals established under authority of 37 Texas Administrative Code Subchapter C, §15.58.

(5) Medical Advisory Board (MAB)--The body of physicians and optometrists licensed by the State of Texas and established by Texas Health and Safety Code §12.092. Each person on the MAB is a MAB member or "member." The MAB is administratively attached to the department.

(6) Medical Advisory Board Panel--A body of at least three MAB members assigned to review applicants and provide recommendations at the request of DPS. Additional members may be added as necessary to reach a consensus opinion.

(7) Medical Packet--Information provided to members on the MAB panel, including:

(A) medical conditions under review;

(B) other medical information or records provided by the applicant's health care providers about the medical conditions under review; and

(C) information provided by DPS, including Supplemental Medical History form, Medical Information Request form, and accident reports or other information about the medical conditions under review.

(8) Set--Group of medical packets prepared for a MAB panel to review.

(9) Texas Department of State Health Services (department)--Agency responsible for administering MAB activities under Texas Health and Safety Code Chapter 12, Subchapter H, Medical Advisory Board, §§12.091 - 12.098.

§1.152. Operation of the Medical Advisory Board.

(a) MAB Membership.

(1) The commissioner appoints MAB members from:

(A) persons licensed to practice medicine in Texas, including physicians who are board-certified in internal medicine, psychiatry, neurology, physical medicine, or ophthalmology and are jointly recommended by the department and the Texas Medical Association; and

(B) persons licensed to practice optometry in this state who are jointly recommended by the department and the Texas Optometric Association.

(2) Members may be recommended for dismissal, as described in the bylaws, for failure to perform in a professional manner, failure to attend meetings regularly, failure to review the minimum required number of cases, or missing two consecutive MAB board meetings without advanced notice to the chair.

(b) Function of the MAB. Upon a request for recommendation from DPS under 37 Texas Administrative Code §15.58, Medical Advisory Board Referrals; Texas Transportation Code Chapter 521, Subchapter N, General Provisions Relating To License Denial, Suspension, or Revocation; and Texas Government Code Chapter 411, Subchapter H, License to Carry A Handgun, the department must convene a MAB panel.

(1) Each MAB panel member must review the set of medical packets provided by the department within the time frame specified by the department.

(2) Upon completion of the applicant's packet review, each member must provide an independent opinion, in the form of a written recommendation, stating the member's opinion as to the ability of the applicant to safely operate a motor vehicle or to exercise sound judgment in the proper use and storage of a handgun, as appropriate. in the report the panel member may also make recommendations relating to DPS' subsequent action.

(3) The MAB panel recommendations or opinions are provided to DPS. The final decision to issue, renew, restrict, or revoke a driver's license or license to carry rests entirely with DPS.

(4) All members are expected to act in an impartial manner in their medical reviews. Any member unable to be impartial to any applicant before the MAB must declare this impartiality and may not participate in any MAB proceedings involving the applicant.

(5) MAB members are compensated for the review of a set of completed medical packets, and for each scheduled board or committee meeting attended.

(6) MAB members will convene at least every two years. The MAB complies with the requirements for open meetings under Texas Government Code Chapter 551.

(c) Medical Packet Requirements.

(1) The applicant must provide current medical information to the MAB pertinent to the medical conditions for which DPS requested the review and recommendation. Information must be provided within 90 days of the date MAB received the DPS request for recommendation by a licensed physician or, in the case of medical conditions impacting vision, by a licensed optometrist.

(2) Any licensed health care provider or facility who treated the applicant may provide information regarding the applicant's fitness to operate a motor vehicle safely or the ability to exercise sound judgment with respect to the proper use and storage of a handgun. Information completed or provided by a midlevel provider or an optometrist must be completed in accordance with Texas Occupations Code Chapters 157 and 351.

(3) The panel may require the applicant or license holder to undergo a medical or other examination at the applicant's or holder's expense. A person who conducts an examination under this subsection may be compelled to testify before the panel and in any subsequent proceedings under Texas Government Code Chapter 411, Subchapter H, or Texas Transportation Code Chapter 521, Subchapter N, as applicable, concerning the person's observations and findings.

(d) All records, reports, and testimony relating to the medical condition of an applicant:

(1) are for the confidential use of the MAB, a MAB panel, or DPS;

(2) are privileged information; and

(3) may not be disclosed to any person or used as evidence in a trial except as provided in (e) of this section.

(e) In a subsequent proceeding under Texas Government Code Chapter 411, Subchapter H, or Texas Transportation Code Chapter 521, Subchapter N, the department may provide a copy of the report of the MAB or MAB panel and the medical packet relating to an applicant to:

(1) DPS;

(2) the applicant; and

(3) the presiding officer at the license to carry or driver's license hearing.

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

Filed with the Office of the Secretary of State on October 17, 2024.

TRD-202404872
Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 535-8538

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CHAPTER 289. RADIATION CONTROL
SUBCHAPTER C. TEXAS REGULATIONS FOR CONTROL OF RADIATION
25 TAC §289.130

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §289.130, concerning the Radiation Advisory Board.

BACKGROUND AND PURPOSE

Senate Bill (S.B.) 1592, 88th Legislature, Regular Session, 2023, amends Title 5, Subtitle D, Chapter 401, Section 401.015(a), Health and Safety Code (HSC), requiring an addition of one new representative who is licensed by the Board of Veterinary Medical Examiners to the Radiation Advisory Board and changing the composition of the board from 18 to 19 representatives. Amendments include rearranging the rule to align with HHSC advisory board rule-drafting guidelines and adding requirements found in Texas HSC.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §289.130 replaces "department" with "DSHS," and removes "shall" throughout. Edits are made to update references to include statutory authority. Formatting edits are made to update numbering. Changes include expanded reporting requirements, details of voting members' industry representation, term limits, and limitation of representatives of the public. Other changes include corrections to grammar and updated language.

FISCAL NOTE

Christy Havel Burton, DSHS Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated $3,000 additional cost to state government as a result of enforcing and administering the rule as proposed. Enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rule is in effect is an estimated cost of $3,000 in fiscal year (FY) 2025, $3,000 in FY 2026, $3,000 in FY 2027, $3,000 in FY 2028, and $3,000 in FY 2029. The estimated cost accounts for travel reimbursement for the new member.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of DSHS employee positions;

(3) implementation of the proposed rule will not result in an assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to DSHS;

(5) the proposed rule will not create a new regulation;

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

(7) the proposed rule will not change the number of individuals subject to the rule; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Christy Havel Burton, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Dr. Timothy Stevenson, Associate Commissioner, Consumer Protection Division, has determined for each year of the first five years the rule is in effect, the public benefit anticipated as the result of amending the rule is to ensure the continued representation of individuals involved in radiation-related industries within Texas.

Christy Havel Burton, Chief Financial Officer, has also determined for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because most edits to the rule language are procedural updates, edits for clarity, and do not impose additional requirements to the registrant.

TAKINGS IMPACT ASSESSMENT

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

COSTS TO REGULATED PERSONS

PUBLIC COMMENT

Written comments on the proposal may be submitted to Radiation Section, Consumer Protection Division, DSHS, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347, or street address 1100 West 49th Street, Austin, Texas 78756; fax (512) 206-3793; or by email to CPDRuleComments@dshs.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) faxed or emailed before midnight on the last day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R057" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code Chapter 401 (the Texas Radiation Control Act), which provides for DSHS radiation control rules and regulatory program to be compatible with federal standards and regulations; §401.051, which provides the required authority to adopt rules and guidelines relating to the control of sources of radiation; §401.064, which provides for the authority to adopt rules related to inspection of x-ray equipment; §401.101, which provides for DSHS registration of facilities possessing sources of radiation; Chapter 401, Subchapter J, which authorizes enforcement of the Act; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and the administration of Texas Health and Safety Code Chapter 1001.

The amendment implements Texas Health and Safety Code Chapters 401 and 1001, and Texas Government Code Chapter 531.

§289.130. Radiation Advisory Board.

(a) Statutory authority. The Radiation Advisory Board (board) is established under Texas Health and Safety Code §401.015 and is subject to Texas Government Code Chapter 2110, concerning State Agency Advisory Committees. [~~The board. A Radiation Advisory Board shall be appointed under and governed by this section.~~]

[~~(1) The name of the board shall be the Radiation Advisory Board (board).~~]

[~~(2) The board is required to be established by Health and Safety Code, §401.015.~~]

[~~(b) Applicable law. The board is subject to the Government Code, Chapter 2110, concerning state agency advisory committees.~~]

(b) [~~(c)~~] Purpose. The board advises [~~The purpose of the board is to provide advice to~~] the Executive Commissioner [~~of the Texas Health and Human Services Commission (Executive Commissioner)~~], the Texas Department of State Health Services (DSHS), the Railroad Commission of Texas (RRC), [~~Services' (department) radiation program,~~] the Texas Commission on Environmental Quality (TCEQ), [~~the Railroad Commission of Texas,~~] and other state agencies concerning [~~entities in the area of~~] state radiation policies and programs.

(c) [~~(d)~~] Tasks. The board: [~~shall advise the Executive Commissioner in accordance with Health and Safety Code, §401.019.~~]

(1) reviews and evaluates state radiation policies and programs;

(2) makes recommendations and furnishes technical advice to DSHS, RRC, TCEQ, and other state agencies relating to development, use, and regulation of radiation sources;

(3) reviews proposed rules and guidelines of any state agency related to the regulation of sources of radiation and recommends changes in proposed or existing rules and guidelines relating to those matters;

(4) develops and implements policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board; and

(5) adopts bylaws to guide its operation.

(d) Reporting Requirements. By December 31 of each year, the board files an annual written report with the Executive Commissioner covering the meetings and activities in the preceding fiscal year. The report includes:

(1) a list of the meeting dates;

(2) the members' attendance records;

(3) a brief description of actions taken by the board;

(4) a description of how the board accomplished its tasks;

(5) a description of activities the board anticipates undertaking in the next fiscal year;

(6) recommended amendments to this section; and

(7) the costs related to the board, including the cost of DSHS staff time spent supporting the board's activities and the source of funds used to support the board's activities.

(e) Meetings.

(1) Open meetings. The board is not a "governmental body" as defined in the Open Meetings Act. However, to promote public participation, each board meeting is announced and conducted per the Open Meetings Act, Texas Government Code Chapter 551, except provisions allowing executive sessions.

(2) Frequency. The board meets quarterly on dates set by the board.

(A) A special meeting may be called by the chairperson or at least five members.

(B) Meetings are arranged and supported by DSHS staff.

(C) Members of the board will be given timely notice of each board meeting.

(3) Quorum. A simple majority of all members constitutes a quorum to transact official business. The board is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(4) Public comment. The agenda for each board meeting includes an item titled Public Comment, under which any person will be allowed to address the board on matters relating to board business. The chairperson may establish procedures for public comment, including a time limit on each comment.

(5) Documentation. A record must be kept of each board meeting.

[~~(e) Composition. The board shall be composed of 18 members appointed by the governor. The composition of the board shall include representatives from those areas as delineated in Health and Safety Code, §401.015.~~]

(f) Membership. [~~Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.~~]

(1) The board includes 19 members appointed by the Governor:

(A) one representative from industry who is trained in nuclear physics, science, or nuclear engineering;

(B) one representative from labor;

(C) one representative from agriculture;

(D) one representative from the insurance industry;

(E) one individual who is engaged in the use and application of nuclear physics in medicine and is certified by the American Board of Radiology or licensed by the Texas Medical Board under Chapter 602, Texas Occupations Code;

(F) one hospital administrator;

(G) one individual licensed by the Texas Medical Board who specializes in nuclear medicine;

(H) one individual licensed by the Texas Medical Board who specializes in pathology;

(I) one individual licensed by the Texas Medical Board who specializes in radiology;

(J) one representative from the nuclear utility industry;

(K) one representative from the radioactive waste industry;

(L) one representative from the petroleum industry;

(M) one health physicist certified by the American Board of Health Physics;

(N) one individual licensed by the State Board of Dental Examiners;

(O) one representative from the uranium mining industry;

(P) one individual licensed by the State Board of Veterinary Medical Examiners; and

(Q) three representatives of the public.

(2) [~~(1)~~] Members are [~~shall be~~] appointed for staggered terms so [~~that~~] the terms of an equal or almost equal [~~a substantial equivalent~~] number of members will expire at the end [~~discretion~~] of each term. Regardless of the term limit, a member serves until a replacement has been appointed. This ensures sufficient, appropriate representation [~~the governor~~].

(A) [~~(2)~~] If a vacancy occurs, the Governor will appoint an individual [~~a person shall be appointed by the governor~~] to serve the unexpired portion of the [~~that~~] term.

(B) The term of each member is six years, except the term may be less than six years as necessary to stagger terms. A member may apply to serve one additional term.

(C) An individual is not eligible to be appointed as a representative of the public on the advisory board if that individual or individual's spouse is:

(i) engaged in an occupation in the health care field; or

(ii) employed by, participates in the management of, or has a financial interest, other than as a consumer, in part of the nuclear utility industry or in a business entity or other organization that is licensed under Subchapter F or Subchapter G of this chapter.

(g) Officers. The Governor designates a member of the board as the chairperson to serve at the will of the Governor. The board elects from its members a vice-chairperson and secretary. [~~The board shall elect a chairman, vice-chairman and secretary at its first meeting after August 31st of each year.~~]

(1) The chairperson serves until the first quarterly meeting of the fiscal year of each even-numbered year. The vice-chairperson serves until the first quarterly meeting of the fiscal year of each odd-numbered year.

[~~(1) Each officer shall serve until the next regular election of officers.~~]

(2) A member serves no more than two consecutive terms as chairperson or vice-chairperson.

(3) [~~(2)~~] The chairperson presides over [~~chairman shall preside at~~] all board meetings [~~at which he or she is in attendance~~], calls [~~call~~] meetings as specified in [~~accordance with~~] this section, appoints [~~appoint~~] subcommittees of the board as necessary, and ensures accurate [~~cause proper~~] reports are [~~to be~~] made to the board. The chairperson [~~chairman~~] may serve as an ex-officio member of any subcommittee of the board.

[~~(3) The vice-chairman shall perform the duties of the chairman in case of the absence or disability of the chairman. In case the office of chairman becomes vacant, the vice-chairman will serve until a successor is elected to complete the unexpired portion of the term of the office of chairman.~~]

(4) The vice-chairperson performs the duties of the chairperson in the event of an absence or the disability of the chairperson. If the position of the chairperson becomes vacant, the vice-chairperson will serve until a successor is appointed to complete the unexpired portion of the chairperson's term.

(5) [~~(4)~~] A vacancy [~~which occurs~~] in the office [~~offices~~] of vice-chairperson [~~chairman, vice-chairman~~] or secretary is [~~may be~~] filled at the next board meeting.

[~~(h) Meetings. The board shall meet quarterly on dates set by the board to conduct board business.~~]

[~~(1) A special meeting may be called by the chairman or at least five members of the board.~~]

[~~(2) Meeting arrangements shall be made by department staff.~~]

[~~(3) The advisory board is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the board shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.~~]

[~~(4) Each member of the board shall be informed of a board meeting in a timely manner.~~]

[~~(5) A simple majority of the members of the board shall constitute a quorum for the purpose of transacting official business.~~]

[~~(6) The board is authorized to transact official business only when in a legally constituted meeting with quorum present.~~]

[~~(7) The agenda for each board meeting shall include an item entitled public comment under which any person will be allowed to address the board on matters relating to board business. The chairman may establish procedures for public comment, including a time limit on each comment.~~]

(h) [~~(i)~~] Attendance. Members must [~~shall~~] attend board meetings as scheduled. Members must [~~shall~~] attend and participate in meetings of subcommittees to which the members are [~~member is~~] assigned.

(1) A member must [~~shall~~] notify the chairperson [~~chairman~~] or appropriate DSHS [~~department~~] staff if the member [~~he or she~~] is unable to attend a scheduled meeting.

(2) A member may be removed from the board [~~It is grounds for removal from the board~~] if the [a] member cannot discharge [~~the member's~~] duties for a substantial part of the appointed term [~~for which the member is appointed~~] because of illness or disability[~~,~~] or if [~~is~~] absent from more than half of the board meetings during a calendar year without an excuse approved by a majority vote of the [~~advisory~~] board.

(3) The validity of a board [~~an~~] action [~~of the board~~] is not affected by the fact that it is taken when grounds [~~a ground~~] for removal of a member exist [~~exists~~].

[~~(j) Staff. Staff support for the board shall be provided by the department.~~]

(i) [~~(k)~~] Procedures. Robert's [~~Roberts~~] Rules of Order, Newly Revised, is [~~shall be~~] the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the board must be approved by a majority vote of the members present once a quorum is established.

(2) Each member may vote once during any call for votes [~~shall have one vote~~].

(3) A member may not authorize another individual to represent the member by proxy.

(4) The board makes [~~shall make~~] decisions in discharging [~~the discharge of its~~] duties without discrimination based on any individual's [~~person's~~] race, creed, sex [~~gender~~], religion, national origin, age, physical condition, or economic status.

(5) Minutes of each board meeting will [~~shall~~] be taken by DSHS [~~department~~] staff. A summary of the meeting is provided to each board member before the next meeting.

[~~(A) A summary of the meeting shall be provided to each member of the board within 30 days of each meeting.~~]

[~~(B) After approval by the board, the minutes shall be signed by the secretary.~~]

(j) [~~(l)~~] Subcommittees. The board may establish subcommittees [~~as necessary~~] to assist the board in carrying out its duties.

(1) The chairperson may [~~chairman shall~~] appoint members [~~of the board~~] to serve on subcommittees and to act as subcommittee chairpersons. The chairperson [~~chairman~~] may also appoint nonmembers of the board to serve on subcommittees as the need for additional expertise arises.

(2) Subcommittees must [~~shall~~] meet when called by the subcommittee chairperson or when [~~so~~] directed by the board.

(3) The [~~A~~] subcommittee chairperson makes [~~shall make~~] regular reports to the board at each board meeting or in interim written reports, as needed. The reports [~~shall~~] include an executive summary or minutes of each subcommittee meeting.

(k) [~~(m)~~] Statement by members.

(1) The Executive Commissioner, DSHS [~~the department~~], and the board are not [~~shall not be~~] bound in any way by any statement or action on the part of any [~~board~~] member except when a statement or action is in pursuit of specific instructions from the Executive Commissioner, DSHS [~~department~~], or board.

(2) The board and its members may [~~not~~] participate in legislative activity in the name of the Executive Commissioner or DSHS [~~the department except~~] with approval through the DSHS [~~department's~~] legislative process. Members may represent [~~Board members are not prohibited from representing~~] the board's decisions, themselves, or other entities in the legislative process.

(3) A [~~board~~] member must [~~should~~] not accept or solicit any benefit that might reasonably [~~tend to~~] influence the member in the discharge of the member's official duties.

(4) A [~~board~~] member must [~~should~~] not disclose confidential information acquired through [~~his or her~~] board membership.

(5) A [~~board~~] member should not knowingly solicit, accept, or agree to accept any benefit for exercising [~~having exercised~~] the member's official powers or duties in favor of another person.

(6) A [~~board~~] member with [~~who has~~] a personal or private interest in a matter pending before the board must [~~shall~~] publicly disclose the fact in a board meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the [~~board~~] member has a direct financial [~~pecuniary~~] interest in the matter but does not include the [~~board~~] member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

[~~(n) Reports to the department. The board shall file an annual written report with the Commissioner of the department or his designee.~~]

(l) [~~(o)~~] Reimbursement for expenses. A [~~In accordance with the requirements set forth in the Government Code, Chapter 2110, a board~~] member may receive reimbursement for the member's expenses incurred for each day the member engages in official board business as specified in Texas Government Code Chapter 2110.

(1) Compensatory per diem is not [~~No compensatory per diem shall be~~] paid to [~~board~~] members unless required by law, but members are [~~shall be~~] reimbursed for travel, meals, lodging, and incidental expenses to the extent permitted by the current General Appropriations Act. A member may be reimbursed for their travel to and from meetings if funds are appropriated and available and in accordance with the DSHS Travel Policy. [~~in accordance with the General Appropriations Act.~~]

(2) A [~~board~~] member who is an employee of a state agency, other than DSHS [~~the department~~], may not receive reimbursement for expenses from DSHS [~~the department~~] if the member [~~he or she~~] is reimbursed by that state agency.

(3) A nonmember of the board who is appointed to serve on a subcommittee may not receive reimbursement for expenses from DSHS [~~the department~~].

(4) Each member [~~who is~~] to be reimbursed for expenses must [~~shall~~] submit to staff the member's receipts for expenses and any required official forms within [~~no later than~~] 14 days after each board meeting.

(5) Requests for reimbursement of expenses must [~~shall~~] be made on official state travel vouchers prepared by DSHS [~~department~~] staff.

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

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

TRD-202404917
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 834-6655

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 259. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES (CLASS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §259.61, concerning Process for Enrollment of an Individ-

ual; §259.79, concerning Renewal and Revision of an IPC; §259.309, concerning Training of CMA Staff Persons and Volunteers; §259.317 concerning CMA: Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual; §259.357, concerning Training of DSA Staff Persons, Service Providers, and Volunteers; and §260.369, concerning DSA: Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual.

BACKGROUND AND PURPOSE

The purpose of this proposal is to implement Texas Human Resources Code §48.051(b-1), added by House Bill (H.B.) 4696, 88th Legislature, Regular Session, 2023. Section 48.051 requires a person, including an officer, employee, agent, contractor, or subcontractor of a home and community support services agency (HCSSA) licensed under Texas Health and Safety Code Chapter 142, who has cause to believe that an individual receiving services from the HCSSA, is being or has been subjected to abuse, neglect, or exploitation, to immediately report it to HHSC.

A direct service agency (DSA) in the CLASS Program must be licensed as a HCSSA and a CLASS case management agency (CMA) may be licensed as a HCSSA. To comply with Section 48.501, these proposed amendments change the current CLASS Program abuse, neglect, or exploitation (ANE) reporting requirement from the Texas Department of Family and Protective Services (DFPS) to HHSC. Transferring the function relating to the intake of reports of ANE from DFPS to HHSC creates a more streamlined process because HHSC is currently responsible for investigating these reports in the CLASS Program.

Therefore, the proposed amendments to these rules for CLASS CMAs and CLASS DSAs remove all references to DFPS, the DFPS Abuse Hotline toll-free telephone number, and the DFPS Abuse Hotline website and replaces them with references to HHSC, the HHSC toll-free telephone number, and the HHSC online Texas Unified Licensure Information Portal. The proposed amendment to §259.61 and §259.79 updates a rule reference.

FISCAL NOTE

Trey Wood, HHSC 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 not create a new regulation;

(6) the proposed rules will not expand, limit, or repeal 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 has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the amendments are merely codifying current procedures and there are no requirements to alter business processes.

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 are necessary to protect the health, safety, and welfare of the residents of Texas; 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

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public benefit will be improved oversight by creating a single point of contact for reports and investigations of ANE.

Trey Wood 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 amendments are merely codifying current procedures.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's 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 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 emailed to mcsrulespubliccomments@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 the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R072" in the subject line.

SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW

DIVISION 2. ENROLLMENT PROCESS, PERSON-CENTERED SERVICE PLANNING, AND REQUIREMENTS FOR HOME AND COMMUNITY-BASED SETTINGS

26 TAC §259.61

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; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendment implements subsection (b-1) to §48.051 of the Texas Human Resources Code, as added by H.B. 4696, 88th Legislature, Regular Session, 2023.

§259.61. Process for Enrollment of an Individual.

(a) After HHSC notifies a CMA, as described in §259.55(c) of this division (relating to Written Offer of CLASS Program Services), that an individual selected the CMA, the CMA must assign a case manager to perform the following functions as soon as possible, but no later than 14 calendar days after HHSC's notification:

(1) verify that the individual resides in the catchment area for which the individual's selected CMA and DSA have a contract;

(2) conduct an initial in-person visit in the individual's residence with the individual and LAR or actively involved person at a time convenient to the individual and LAR to:

(A) provide an oral and written explanation of the following to the individual and LAR or actively involved person:

(i) CLASS Program services, including TAS if the individual is receiving institutional services;

(ii) CFC services;

(iii) the mandatory participation requirements of an individual described in §259.103 of this chapter (relating to Mandatory Participation Requirements of an Individual);

(iv) the CDS option described in §259.71 of this division (relating to CDS Option);

(v) the right to request a fair hearing in accordance with §259.101 of this chapter (relating to Individual's Right to a Fair Hearing);

(vi) that the individual, LAR, or actively involved person may report an allegation of abuse, neglect, or exploitation to HHSC [~~DFPS~~] by calling the toll-free telephone number at 1-800-458-9858 [~~1-800-252-5400~~];

(vii) the process by which the individual, LAR, or actively involved person may file a complaint regarding case management as required by §52.117 of this title [~~40 TAC §49.309~~] (relating to Complaint Process);

(viii) that the HHSC Office of the Ombudsman toll-free telephone number at 1-877-787-8999 may be used to file a complaint regarding the CMA;

(ix) voter registration, if the individual is 18 years of age or older;

(x) that, while the individual is staying at a location outside the catchment area in which the individual resides but within the state of Texas for a period of no more than 60 consecutive days, the individual and LAR or actively involved person may request that the DSA provide:

(I) transportation as a habilitation activity, as described in §259.5(56)(B)(i)(IX) of this subchapter (relating to Definitions);

(II) out-of-home respite in a camp described in §259.361(b)(2)(D) of this chapter (relating to Respite and Dental Treatment);

(III) adaptive aids;

(IV) nursing; and

(V) CFC PAS/HAB;

(xi) the use of electronic visit verification, as required by 1 TAC Chapter 354, Subchapter O; and

(xii) how to contact the individual's case manager; and

(B) use the HHSC Understanding Program Eligibility - CLASS/DBMD form to provide an oral and written explanation to the individual or LAR, and obtain the individual's or LAR's signature and date on the form, to acknowledge understanding of:

(i) the eligibility requirements for:

(I) CLASS Program services, as described in §259.51(a) of this subchapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services);

(II) CFC services for individuals who do not receive MAO Medicaid, as described in §259.51(b) of this subchapter; and

(III) CFC services for individuals who receive MAO Medicaid, as described in §259.51(c) of this subchapter;

(ii) the reasons CLASS Program services and CFC services may be suspended, as described in §259.157 of this chapter (relating to Suspension of CLASS Program Services or CFC Services); and

(iii) that CLASS Program services and CFC services may be terminated as described in §§259.161, 259.163, 259.165, and 259.167 of this chapter (relating to Termination of CLASS Program Services and CFC Services With Advance Notice for Reasons Other Than Non-compliance with Mandatory Participation Requirements; Termination of CLASS Program Services and CFC Services With Advance Notice Because of Non-compliance With Mandatory Participation Requirements; Termination of CLASS Program Services and CFC Services Without Advance Notice for Reasons Other Than Behavior Causing Immediate Jeopardy; and Termination of CLASS Program Services and CFC Services Without Advance Notice Because of Behavior Causing Immediate Jeopardy); and

(C) educate the individual, LAR, and actively involved person about protecting the individual from abuse, neglect, and exploitation; and

(3) give the individual or LAR the HHSC Waiver Program Verification of Freedom of Choice form to document the individual's or LAR's choice regarding the CLASS Program or the ICF/IID Program.

(b) A CMA must:

(1) as soon as possible, but no later than two business days after the case manager's initial in-person visit required by subsection (a)(2) of this section:

(A) collect the information necessary for the CMA and DSA to process the individual's request for enrollment into the CLASS Program in accordance with the Community Living Assistance and Support Services Provider Manual; and

(B) provide the individual's selected DSA with the information collected in accordance with subparagraph (A) of this paragraph;

(2) assist the individual or LAR in completing and submitting an application for Medicaid financial eligibility, as required by §259.103(1) of this chapter; and

(3) ensure that the case manager documents in the individual's record the progress toward completing a Medicaid application and enrolling into the CLASS Program.

(c) If an individual or LAR does not submit a Medicaid application to HHSC within 30 calendar days after the case manager's initial in-person visit, as required by §259.103(1) of this chapter, but is making good faith efforts to complete the application, the CMA:

(1) may extend, in 30-calendar day increments, the time frame in which the application must be submitted to HHSC, except as provided in paragraph (2) of this subsection;

(2) must not grant an extension that results in a time period of more than 365 calendar days from the date of the case manager's initial in-person visit; and

(3) must ensure that the case manager documents each extension in the individual's record.

(d) If an individual or LAR does not submit a Medicaid application to HHSC within 30 calendar days after the case manager's initial in-person visit, as required by §259.103(1) of this chapter, and is not making good faith efforts to complete the application, a CMA must request, in writing, that HHSC withdraw the offer of enrollment made to the individual in accordance with §259.55(d)(2) of this division.

(e) If a DSA serving the catchment area in which an individual resides is not willing to provide CLASS Program services or CFC services to the individual because the DSA has determined that it cannot ensure the individual's health and safety, the CMA must provide to HHSC, in writing, the specific reasons the DSA has determined that it cannot ensure the individual's health and safety.

(f) During the initial in-person visit described in subsection (a)(1) of the section, the case manager must determine whether an individual meets the following criteria:

(1) the individual is being discharged from a nursing facility or an ICF/IID;

(2) the individual has not previously received TAS;

(3) the individual's proposed enrollment IPC will not include SFS; and

(4) the individual anticipates needing TAS.

(g) If a case manager determines that an individual meets the criteria described in subsection (f) of this section, the case manager must:

(1) provide the individual or LAR with a list of TAS providers in the catchment area in which the individual will reside;

(2) complete, with the individual or LAR, the HHSC Transition Assistance Services (TAS) Assessment and Authorization form found on the HHSC website in accordance with the form's instructions, which includes:

(A) identifying the items and services described in §272.5(e) of this title (relating to Service Description) that the individual needs;

(B) estimating the monetary amount for the items and services identified on the form, which must be within the service limit described in §259.73(a)(4) of this division (relating to Service Limits); and

(C) documenting the individual's or LAR's choice of TAS provider;

(3) submit the completed form to HHSC for authorization;

(4) if HHSC authorizes the form, send the form to the TAS provider chosen by the individual or LAR; and

(5) include TAS and the monetary amount authorized by HHSC on the individual's proposed enrollment IPC.

(h) A DSA must ensure that the following functions are performed during an in-person visit in the individual's residence at a time convenient to the individual and LAR as soon as possible, but no later than 14 calendar days after the CMA provides information to the DSA as required by subsection (b)(1)(B) of this section:

(1) a DSA staff person must:

(A) inform the individual and LAR or actively involved person, orally and in writing:

(i) that the individual, LAR, or actively involved person may report an allegation of abuse, neglect, or exploitation to HHSC [~~DFPS~~] by calling the toll-free telephone number at 1-800-458-9858 [~~1-800-252-5400~~];

(ii) the process by which the individual, LAR, or actively involved person may file a complaint regarding CLASS Program services or CFC services provided by the DSA as required by §52.117 of this title [~~40 TAC §49.309~~]; and

(iii) that the HHSC [~~Complaint and Incident Intake~~] toll-free telephone number at 1-800-458-9858 may be used to file a complaint regarding the DSA; and

(B) educate the individual and LAR or actively involved person about protecting the individual from abuse, neglect, and exploitation;

(2) an appropriate professional must complete an adaptive behavior screening assessment in accordance with the assessment instructions; and

(3) an RN, in accordance with the Community Living Assistance and Support Services Provider Manual, must complete:

(A) a nursing assessment, using the HHSC CLASS/DBMD Nursing Assessment form;

(B) the HHSC Related Conditions Eligibility Screening Instrument form; and

(C) the ID/RC Assessment.

(i) A DSA must:

(1) ensure that the primary diagnosis of the individual documented on the ID/RC Assessment is approved by a physician;

(2) submit the following documentation to HHSC for HHSC's determination of whether the individual meets the LOC VIII criteria required by §259.51(a)(2) of this subchapter:

(A) the completed adaptive behavior screening assessment;

(B) the completed HHSC Related Conditions Eligibility Screening Instrument form; and

(C) the completed ID/RC Assessment; and

(3) send the completed HHSC CLASS/DBMD Nursing Assessment form described in subsection (h)(3)(A) of this section to the CMA.

(j) In accordance with §259.63(a)(1) of this division (relating to Determination by HHSC of Whether an Individual Meets LOC VIII Criteria), HHSC reviews the documentation described in subsection (i)(2) of this section.

(k) If a DSA receives written notice from HHSC in accordance with §259.63(c)(1) of this division that an individual meets the LOC VIII criteria, the DSA must notify the individual's CMA of HHSC's decision as soon as possible, but no later than one business day after receiving the notice from HHSC.

(l) If HHSC determines that an individual does not meet the LOC VIII criteria, HHSC sends written notice of the denial of the individual's request for enrollment into the CLASS Program:

(1) to the individual or LAR in accordance with §259.153(b) of this chapter (relating to Denial of a Request for Enrollment into the CLASS Program); and

(2) to the individual's DSA and CMA in accordance with §259.63(d) of this division.

(m) If a CMA receives notice from a DSA, as described in subsection (k) of this section, that HHSC determined that an individual meets the LOC VIII criteria, the case manager must:

(1) ensure that the service planning team meets in person or by videoconferencing to develop:

(A) a proposed enrollment IPC, a PAS/HAB plan, IPPs, and an HHSC IPP Addendum form for the individual in accordance with §259.65 of this division (relating to Development of an Enrollment IPC); and

(B) an individual transportation plan, if transportation as a habilitation activity or as an adaptive aid is included on the proposed enrollment IPC; and

(2) submit the documents described in paragraph (1) of this subsection to HHSC for review in accordance with §259.65 of this division.

(n) HHSC reviews a proposed enrollment IPC in accordance with §259.69 of this division (relating to HHSC's Review of a Proposed Enrollment IPC) to determine if:

(1) the proposed enrollment IPC has an IPC cost at or below the amount in §259.51(a)(4) of this subchapter; and

(2) the CLASS Program services and CFC services specified in the proposed enrollment IPC meet the requirements described in §259.65(a)(1)(E)(iii) or (iv) and §259.65(b) of this division.

(o) A CMA and DSA must not provide a CLASS Program service or CFC service to an individual before HHSC notifies the CMA, in accordance with §259.69(c)(1) of this division, that the individual's request for enrollment into the CLASS Program has been approved. If a CMA or DSA provides CLASS Program services or CFC services to an individual before the effective date of the individual's enrollment IPC authorized by HHSC, HHSC does not reimburse the CMA or DSA for those services.

(p) If HHSC notifies a CMA in accordance with §259.69(c)(1) of this division that an individual's request for enrollment is approved:

(1) the CMA must ensure the case manager complies with §259.69(c)(2) of this division; and

(2) the CMA and DSA must comply with §259.69(g) of this division.

(q) If HHSC notifies a CMA in accordance with §259.69(e) of this division that an individual's request for enrollment into the CLASS Program is approved, but action is being taken by HHSC to deny a CLASS Program service or CFC service and modify the proposed enrollment IPC:

(1) the CMA must comply with §259.69(f) of this division; and

(2) the CMA and DSA must comply with §259.69(g) of this division.

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

Filed with the Office of the Secretary of State on October 18, 2024.

TRD-202404903
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 438-2910

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DIVISION 3. REVIEWS

26 TAC §259.79

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; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendment implements subsection (b-1) to §48.051 of the Texas Human Resources Code, as added by H.B. 4696, 88th Legislature, Regular Session, 2023.

§259.79. Renewal and Revision of an IPC.

(a) Beginning the effective date of an individual's IPC, as determined by §259.65(g) of this subchapter (relating to Development of an Enrollment IPC) or §259.77(b) of this division (relating to Renewal IPC and Requirement for Authorization to Continue Services), a case manager must, in accordance with the *Community Living Assistance and Support Services Provider Manual*:

(1) meet with the individual and LAR in person to conduct an IPP service review meeting at a time and place convenient to the individual and LAR; and

(2) at least once during an IPC period, conduct an IPP service review meeting in person with the individual and LAR in the individual's residence.

(b) During an IPP service review meeting described in subsection (a) of this section, a case manager must:

(1) review the individual's progress toward achieving the goals and outcomes as described on the IPP for each service listed on the individual's IPC;

(2) if the individual's IPC includes nursing or CFC PAS/HAB, and any of those services are not identified on the IPC as critical to meeting the individual's health and safety, discuss with the individual or LAR whether the service may now be critical to the individual's health and safety;

(3) if a service backup plan has been implemented, discuss the implementation of the service backup plan with the individual or LAR to determine whether or not the plan was effective;

(4) if the case manager determines that a service may now be critical to the individual's health and safety, as described in paragraph (2) of this subsection, or that the service backup plan was ineffective, as described in paragraph (3) of this subsection, document the determination for discussion at a service planning team meeting convened in accordance with subsection (c) or (d) of this section;

(5) complete the HHSC IPP Service Review form in accordance with the *Community Living Assistance and Support Services Provider Manual*; and

(6) ensure the individual or LAR signs and dates the HHSC IPP Service Review form.

(c) No more than 90 calendar days before the end of an individual's current IPC period, the case manager must convene a service planning team meeting in person or by videoconferencing in which:

(1) the service planning team:

(A) reviews the HHSC CLASS/DBMD Nursing Assessment form completed by an RN as described in §259.75(a)(1)(B) of this division (relating to Annual Review by HHSC of Whether an Individual Meets LOC VIII Criteria);

(B) addresses any information included in Addendum E of the HHSC CLASS/DBMD Nursing Assessment form, Recommendations/Coordination of Care, to ensure the individual's needs are met;

(C) documents on the HHSC CLASS/DBMD Coordination of Care form how the information in Addendum E of the HHSC CLASS/DBMD Nursing Assessment form was addressed;

(D) develops a proposed renewal IPC that:

(i) documents each CLASS Program service and CFC service, other than CFC support management, to be provided to the individual;

(ii) specifies the number of units of each CLASS Program service and CFC service, other than CFC support management, to be provided to the individual;

(iii) for each CLASS Program service:

(I) is within the service limit described in §259.73 of this subchapter (relating to Service Limits);

(II) if an adaptive aid, meets the requirements in Subchapter F, Division 1, of this chapter (relating to Adaptive Aids); and

(III) if a minor home modification, meets the requirements in Subchapter F, Division 2, of this chapter (relating to Minor Home Modifications);

(iv) for CFC ERS, meets the requirements in Subchapter F, Division 3, of this chapter (relating to CFC ERS);

(v) states if the individual will receive CFC support management;

(vi) describes any other service or support to be provided to the individual through sources other than CLASS Program services or CFC services;

(vii) if the proposed renewal IPC includes nursing or CFC PAS/HAB, identifies whether the service is critical to the individual's health and safety, as required by §259.89(a)(2) of this subchapter (relating to Service Backup Plans);

(viii) if the individual chooses to receive services through the CDS option, identifies:

(I) the name of the individual's FMSA; and

(II) the type and estimated units of each CLASS Program service and CFC service provided through the CDS option;

(E) develops a renewal IPP for each CLASS Program service and CFC service listed on the proposed renewal IPC, other than CFC support management, as required by §259.67 of this subchapter (relating to Development of IPPs);

(F) develops a new HHSC IPP Addendum form;

(G) develops a new PAS/HAB plan based on review of the information obtained from assessments conducted and observations made by a DSA as required by §259.61(h)(2) and (3) of this subchapter;

(H) if the proposed renewal IPC identifies nursing or CFC PAS/HAB as critical, develops or revises a service backup plan for the service in accordance with §259.89 of this subchapter; and

(I) if transportation as a habilitation activity or as an adaptive aid is included on the proposed renewal IPC, develops a new individual transportation plan;

(2) the case manager:

(A) provides an oral and written explanation of the following to an individual and LAR or actively involved person:

(i) CLASS Program services;

(ii) CFC services;

(iii) the mandatory participation requirements described in §259.103 of this chapter (relating to Mandatory Participation Requirements of an Individual);

(iv) the CDS option described in §259.71 of this subchapter (relating to CDS Option);

(v) the right to request a fair hearing in accordance with §259.101 of this chapter (relating to Individual's Right to a Fair Hearing);

(vi) that the individual, LAR, or actively involved person may report an allegation of abuse, neglect, or exploitation to HHSC [~~DFPS~~] by calling the toll-free telephone number at 1-800-458-9858 [~~1-800-252-5400~~];

(vii) the process by which the individual, LAR, or actively involved person may file a complaint regarding case management as described in §52.117 of this title [~~40 TAC §49.309~~] (relating to Complaint Process);

(viii) that the HHSC Office of the Ombudsman toll-free telephone number at 1-877-787-8999 may be used to file a complaint regarding the CMA;

(ix) voter registration, if the individual is 18 years of age or older; and

(x) how to contact the individual's case manager;

(B) provides an oral explanation to the individual and to the LAR or actively involved person that the individual, LAR, actively involved person may request:

(i) that the individual transfer to a different CMA, DSA, or FMSA at any time while enrolled in the CLASS Program;

(ii) that the DSA provide transportation as a habilitation activity, out-of-home respite in a camp described in §259.361(b)(2)(D) of this chapter (relating to Respite and Dental Treatment), adaptive aids, nursing, or CFC PAS/HAB while the individual is temporarily staying at a location outside the catchment area in which the individual resides but within the state of Texas for a period of no more than 60 consecutive days; and

(iii) that the DSA provide transportation as a habilitation activity, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB as described in clause (ii) of this subparagraph more than once during an IPC period;

(C) uses the HHSC Understanding Program Eligibility - CLASS/DBMD form to provide an oral and written explanation to the individual or LAR, and obtain the individual's or LAR's signature and date on the form, to acknowledge understanding of the following:

(i) the eligibility requirements for:

(I) CLASS Program services, as described in §259.51(a) of this subchapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services);

(II) CFC services for to individuals who do not receive MAO Medicaid, as described in §259.51(b) of this subchapter; and

(III) CFC services for individuals who receive MAO Medicaid, as described in §259.51(c) of this subchapter; and

(ii) that CLASS Program services or CFC services may be terminated as described in §§259.161, 259.163, 259.165, and 259.167 of this chapter (relating to Termination of CLASS Program Services and CFC Services With Advance Notice for Reasons Other Than Non-compliance with Mandatory Participation Requirements; Termination of CLASS Program Services and CFC Services With Advance Notice Because of Non-compliance With Mandatory Participation Requirements; Termination of CLASS Program Services and CFC Services Without Advance Notice for Reasons Other Than Behavior Causing Immediate Jeopardy; and Termination of CLASS Program Services and CFC Services Without Advance Notice Because of Behavior Causing Immediate Jeopardy);

(D) gives the individual and the LAR or actively involved person a written list of CMAs and DSAs serving the catchment area in which the individual resides;

(E) has the individual or LAR select a CMA and DSA by completing an HHSC Selection Determination form as described in the Community Living Assistance and Support Services Provider Manual;

(F) educates the individual, LAR, and actively involved person about protecting the individual from abuse, neglect, and exploitation; and

(G) documents that the case manager complied with subparagraphs (A) - (F) of this paragraph; and

(3) a DSA staff person:

(A) provides an oral and written explanation of the following to the individual and LAR or actively involved person:

(i) that the individual, LAR, or actively involved person may report an allegation of abuse, neglect, or exploitation to HHSC [~~DFPS~~] by calling the toll-free telephone number at 1-800-458-9858 [~~1-800-252-5400~~];

(ii) the process by which the individual, LAR, or actively involved person may file a complaint regarding CLASS Program services or CFC services provided by the DSA as required by §52.117 of this title [~~40 TAC §49.309~~];

(iii) that the HHSC [~~Complaint and Incident Intake~~] toll-free telephone number at 1-800-458-9858 may be used to file a complaint; and

(iv) how to contact the DSA;

(B) educates the individual, LAR, and actively involved person about protecting the individual from abuse, neglect, and exploitation; and

(C) documents that the staff person complied with subparagraphs (A) and (B) of this paragraph.

(d) Except as provided in subsection (e) of this section, no later than five business days after becoming aware that an individual's need for a CLASS Program service or CFC service changes, the case manager must:

(1) convene a service planning team meeting in person or by videoconferencing in which the service planning team:

(A) develops a proposed revised IPC;

(B) if the proposed revised IPC includes nursing or CFC PAS/HAB:

(i) identifies whether the service is critical to the individual's health and safety, as required by §259.89(a)(2) of this subchapter; and

(ii) develops a new or revised service backup plan for the service in accordance with §259.89 of this subchapter;

(C) if the IPC is revised because the individual wants to receive a service through the CDS option, identifies on the proposed revised IPC:

(i) the name of the individual's FMSA; and

(ii) the type and estimated units of each CLASS Program service and CFC service the individual wants to receive through the CDS option;

(D) develops any revised IPPs;

(E) if the individual's needs have substantially changed, develops a revised HHSC IPP Addendum form;

(F) if the IPC needs to be revised to add CFC PAS/HAB or change the amount of CFC PAS/HAB, develops a new or revised PAS/HAB plan; and

(G) if transportation as a habilitation activity or as an adaptive aid is included on the proposed revised IPC, develops a new or revised individual transportation plan; and

(2) if the individual may need cognitive rehabilitation therapy, assist the individual to obtain an assessment as required by §259.311(h) of this chapter (relating to CMA Service Delivery).

(e) If an individual receiving CFC PAS/HAB or the LAR requests CFC support management during an IPC year, the case manager must revise the IPC, as described in the *Community Living Assistance and Support Services Provider Manual.*

(f) A case manager must:

(1) ensure that a proposed renewal IPC or proposed revised IPC developed in accordance with subsection (c) or (d) of this section meets the requirements described in §259.65(a)(1)(E)(iii) or (iv) and §259.65(b) of this subchapter; and

(2) ensure that a renewal IPP or revised IPP, developed in accordance with subsection (c) or (d) of this section, is reviewed, signed, and dated as evidence of agreement by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA.

(g) If an individual or LAR, case manager, and DSA agree on the type and amount of services to be included in a proposed renewal IPC or proposed revised IPC developed in accordance with subsection (c) or (d) of this section, the case manager must:

(1) ensure that the proposed renewal IPC or proposed revised IPC is reviewed, signed, and dated as evidence of agreement by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA;

(2) for a proposed renewal IPC, at least 30 calendar days before the end of the individual's IPC period:

(A) submit to HHSC for its review:

(i) the signed proposed renewal IPC;

(ii) the signed renewal IPPs;

(iii) the new HHSC IPP Addendum form;

(iv) the new PAS/HAB plan;

(v) the completed HHSC CLASS/DBMD Nursing Assessment form provided by the DSA in accordance with §259.75(a)(3) of this division;

(vi) the ID/RC Assessment authorized by HHSC;

(vii) the HHSC Non-Waiver Services form;

(viii) Choice Lists for the CLASS Program;

(ix) a service backup plan, if required by subsection (c)(1)(H) of this section;

(x) the new individual transportation plan, if required by subsection (c)(1)(I) of this section;

(xi) the HHSC Request for Adaptive Aids, Medical Supplies, Minor Home Modifications or Dental Services/Sedation form, if required by:

(I) §259.255 of this chapter (relating to Requirements for Authorization to Purchase an Adaptive Aid Costing Less Than $500);

(II) §259.257 of this chapter (relating to Requirements for Authorization to Purchase an Adaptive Aid Costing $500 or More);

(III) §259.275 of this chapter (relating to Requirements for Authorization to Purchase a Minor Home Modification); and

(IV) §259.361 of this chapter;

(xii) the HHSC Specifications for Adaptive Aids/Medical Supplies/Minor Home Modifications form, if required by:

(I) §259.257 of this chapter; and

(II) §259.275 of this chapter;

(xiii) denial documentation from non-waiver resources, if any; and

(xiv) if a skilled or a specialized therapy, the HHSC Therapy Justifications - Attachment to IPP form;

(B) send the DSA a copy of:

(i) the signed proposed renewal IPC;

(ii) the signed renewal IPPs;

(iii) the new HHSC IPP Addendum form;

(iv) the new PAS/HAB plan, if required by subsection (c)(1)(G) of this section;

(v) a service backup plan, if required by subsection (c)(1)(H) of this section; and

(vi) the new individual transportation plan, if required by subsection (c)(1)(I) of this section; and

(C) if the renewal IPC includes a service through the CDS option, send the FMSA a copy of:

(i) the signed proposed renewal IPC;

(ii) the signed renewal IPPs;

(iii) the new HHSC IPP Addendum form;

(iv) the new PAS/HAB plan, if required by subsection (c)(1)(G) of this section;

(v) a service backup plan, if required by subsection (c)(1)(H) of this section; and

(vi) the new individual transportation plan, if required by subsection (c)(1)(I) of this section; and

(3) for a proposed revised IPC, at least 30 calendar days before the effective date of the proposed revised IPC determined by the service planning team:

(A) submit to HHSC for its review:

(i) the signed proposed revised IPC;

(ii) the signed revised IPPs;

(iii) the revised HHSC IPP Addendum form, if required by subsection (d)(1)(E) of this section;

(iv) the HHSC Non-Waiver Services form;

(v) the completed HHSC CLASS/DBMD Nursing Assessment form;

(vi) a new or revised service backup plan, if required by subsection (d)(1)(B)(ii) of this section;

(vii) the new or revised PAS/HAB plan, if required by subsection (d)(1)(F) of this section;

(viii) the new or revised individual transportation plan, if required by subsection (d)(1)(G) of this section;

(ix) an HHSC Request for Adaptive Aids, Medical Supplies, Minor Home Modifications or Dental Services/Sedation form, if required by:

(I) §259.255 of this chapter;

(II) §259.257 of this chapter;

(III) §259.275 of this chapter; and

(IV) §259.361 of this chapter;

(x) an HHSC Specifications for Adaptive Aids/Medical Supplies/Minor Home Modifications form, if required by:

(I) §259.257 of this chapter; and

(II) §259.275 of this chapter;

(xi) denial documentation from non-waiver resources, if any; and

(xii) if a skilled or specialized therapy, the HHSC Therapy Justifications - Attachment to IPP form;

(B) send the DSA a copy of:

(i) the signed proposed revised IPC;

(ii) the signed revised IPPs;

(iii) the revised HHSC IPP Addendum form, if required by subsection (d)(1)(E) of this section;

(iv) the new or revised service backup plan, if required by subsection (d)(1)(B)(ii) of this section;

(v) the new or revised PAS/HAB plan, if required by subsection (d)(1)(F) of this section; and

(vi) the new or revised individual transportation plan, if required by subsection (d)(1)(G) of this section; and

(C) if the revised IPC includes a service through the CDS option, send the FMSA a copy of:

(i) the signed proposed revised IPC;

(ii) the signed revised IPPs;

(iii) the revised HHSC IPP Addendum form, if required by subsection (d)(1)(E) of this section;

(iv) the new or revised service backup plan, if required by subsection (d)(1)(B)(ii) of this section;

(v) the new or revised PAS/HAB plan, if required by subsection (d)(1)(F) of this section; and

(vi) the new or revised individual transportation plan, if required by subsection (d)(1)(G) of this section.

(h) If an individual or LAR requests a CLASS Program service or a CFC service that the case manager or DSA has determined does not meet the requirements described in §259.65(a)(1)(E)(iii) or (iv) or §259.65(b) of this subchapter, the CMA must, in accordance with the *Community Living Assistance and Support Services Provider Manual*, send the individual or LAR written notice of the denial or proposed reduction of the requested CLASS Program service, copying the DSA and, if applicable, the FMSA.

(i) If a CMA is required to send a written notice of the denial or proposed reduction of a CLASS Program service or CFC service, as described in subsection (h) of this section, the CMA must:

(1) at least 30 calendar days before the end of the IPC period, submit to HHSC for its review:

(A) a proposed renewal IPC or proposed revised IPC that includes the type and amount of CLASS Program services or CFC services in dispute and not in dispute, and is signed and dated by:

(i) the individual or LAR;

(ii) the case manager; and

(iii) the DSA;

(B) the renewal IPPs;

(C) the new or revised HHSC IPP Addendum form;

(D) the new or revised PAS/HAB plan, if required by subsection (c)(1)(G) or (d)(1)(F) of this section; and

(E) the new or revised individual transportation plan, if required by subsection (c)(1)(I) or (d)(1)(G) of this section; and

(2) if the individual receives a service through the CDS option, send the FMSA a copy of the documents submitted to HHSC in accordance with paragraph (1) of this subsection.

(j) At HHSC's request, a CMA must submit additional documentation supporting a proposed renewal IPC or proposed revised IPC submitted to HHSC no later than 10 calendar days after the date of HHSC's request.

(k) If HHSC determines that a proposed renewal IPC or proposed revised IPC has an IPC cost at or below the amount in §259.51(a)(4) of this subchapter and the CLASS Program services and CFC services specified in the IPC meet the requirements described in §259.65(a)(1)(E)(iii) or (iv) and §259.65(b) of this subchapter:

(1) HHSC notifies the individual's CMA, in writing, that the renewal IPC or revised IPC is authorized;

(2) the CMA must send a copy of the authorized renewal or revised IPC to the DSA and, if the individual receives a service though the CDS option, to the FMSA; and

(3) the CMA and the DSA must:

(A) electronically access MESAV to determine if the information on the renewal or revised IPC is consistent with the information in MESAV;

(B) if the information on the renewal or revised IPC is inconsistent with the information in MESAV, notify HHSC of the inconsistency; and

(C) initiate CLASS Program services and CFC services for the individual in accordance with the individual's renewal or revised IPC no later than seven calendar days after the CMA receives HHSC's notification.

(l) If an individual's IPC period expires before HHSC approves a proposed renewal IPC:

(1) a CMA and DSA must continue to provide services to the individual until HHSC authorizes the proposed renewal IPC to ensure continuity of care and prevent the individual's health and welfare from being jeopardized; and

(2) if HHSC authorizes the proposed renewal IPC as described in subsection (k)(1) of this section, HHSC will reimburse the CMA and DSA for services provided, as required by paragraph (1) of this subsection, for a period of not more than 180 calendar days before the date HHSC receives the documentation described in subsection (i)(2) of this section from the DSA.

(m) The process by which an individual's CLASS Program services or CFC services are terminated or denied based on HHSC's review of a proposed renewal IPC or proposed revised IPC is described in §259.83(c) - (e) of this division (relating to Utilization Review of an IPC by HHSC).

(n) The IPC period of a revised IPC is the same IPC period as the enrollment IPC or renewal IPC being revised.

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) 438-2910

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SUBCHAPTER G. ADDITIONAL CMA REQUIREMENTS

26 TAC §259.309, §259.317

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; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendments implement subsection (b-1) to §48.051 of the Texas Human Resources Code, as added by H.B. 4696, 88th Legislature, Regular Session, 2023.

§259.309. Training of CMA Staff Persons and Volunteers.

(a) A CMA must ensure that:

(1) a CMA staff person completes training as described in the *Community Living Assistance and Support Services Provider Manual*;

(2) a CMA staff person completes training on the CLASS Program and CFC, including the requirements of this chapter and the CLASS Program services and CFC services described in §259.7 of this chapter (relating to Description of the CLASS Program and CFC Option); and

(3) a case manager completes a comprehensive non-introductory person-centered service planning training developed or approved by HHSC within six months after the case manager's date of hire.

(b) A CMA must:

(1) ensure that each CMA staff person and volunteer:

(A) is trained on and knowledgeable of:

(i) acts that constitute abuse, neglect, and exploitation;

(ii) signs and symptoms of abuse, neglect, and exploitation; and

(iii) methods to prevent abuse, neglect, and exploitation;

(B) is instructed to report to HHSC [~~DFPS~~] immediately, but not later than 24 hours, after having knowledge or suspicion that an individual has been or is being abused, neglected, or exploited, by:

(i) calling the HHSC [~~DFPS Abuse Hotline~~] toll-free telephone number, 1-800-458-9858 [~~1-800-252-5400~~]; or

(ii) using the HHSC online Texas Unified Licensure Information Portal [~~DFPS Abuse Hotline website~~]; and

(C) is provided with the instructions described in subparagraph (B) of this paragraph in writing;

(2) conduct the activities described in paragraph (1)(A) - (C) of this subsection:

(A) within one year after the person's most recent training on abuse, neglect, and exploitation and annually thereafter, if the CMA staff person or volunteer was hired before July 1, 2019; or

(B) before assuming job duties and annually thereafter, if the CMA staff person or volunteer is hired on or after July 1, 2019; and

(3) document:

(A) the name of the person who received the training required by this subsection;

(B) the date the training was conducted; and

(C) the name of the person or organization who conducted the training.

§259.317. CMA: Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual.

If a CMA, staff person, volunteer, or controlling person of the CMA knows or suspects an individual is being or has been abused, neglected, or exploited, the CMA must report or ensure that the person with knowledge or suspicion reports the allegation of abuse, neglect, or exploitation to HHSC [~~DFPS~~] immediately, but not later than 24 hours after having knowledge or suspicion, by:

(1) calling the HHSC [~~DFPS Abuse Hotline~~] toll-free telephone number, 1-800-458-9858 [~~1-800-252-5400~~]; or

(2) using the HHSC online Texas Unified Licensure Information Portal [~~DFPS Abuse Hotline website~~].

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

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Karen Ray
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SUBCHAPTER H. ADDITIONAL DSA REQUIREMENTS

26 TAC §259.357, §259.369

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; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendments implement subsection (b-1) to §48.051 of the Texas Human Resources Code, as added by H.B. 4696, 88th Legislature, Regular Session, 2023.

§259.357. Training of DSA Staff Persons, Service Providers, and Volunteers.

(a) A DSA must ensure that:

(1) a DSA staff person who has direct contact with an individual completes training described in the *Community Living Assistance and Support Services Provider Manual*; and

(2) a DSA staff person whose duties include participating as a member of a service planning team completes HHSC's web-based Introductory Training within six months after assuming this duty.

(b) A DSA must ensure that, before providing services to an individual:

(1) a service provider of transportation as a habilitation activity completes:

(A) two hours of orientation covering the following:

(i) an overview of related conditions; and

(ii) an explanation of commonly performed tasks regarding habilitation;

(B) training in cardiopulmonary resuscitation and choking prevention that includes an in-person evaluation by a qualified instructor of the service provider's ability to perform these actions; and

(C) training necessary to meet the needs and characteristics of the individual to whom the service provider is assigned, in accordance with the *Community Living Assistance and Support Services Provider Manual*, with training to occur in the individual's home with full participation from the individual, if possible; and

(2) a service provider of CFC PAS/HAB completes:

(A) two hours of orientation covering the following:

(i) an overview of related conditions; and

(ii) an explanation of commonly performed CFC PAS/HAB activities;

(B) training in cardiopulmonary resuscitation and choking prevention that includes an in-person evaluation by a qualified instructor of the service provider's ability to perform these actions; and

(C) training in the CFC PAS/HAB activities necessary to meet the needs and characteristics of the individual to whom the service provider is assigned, in accordance with the *Community Living Assistance and Support Services Provider Manual*, with training to occur in the individual's home with full participation from the individual, if possible.

(c) A DSA must, if requested by an individual or LAR:

(1) allow the individual or LAR to train a CFC PAS/HAB service provider in the specific assistance needed by the individual and to have the service provider perform CFC PAS/HAB in a manner that comports with the individual's personal, cultural, or religious preferences; and

(2) ensure that a CFC PAS/HAB service provider attends training by HHSC so the service provider meets any additional qualifications desired by the individual or LAR.

(d) The supervisor of a service provider of transportation as a habilitation activity or CFC PAS/HAB must, in accordance with the *Community Living Assistance and Support Services Provider Manual*, evaluate the performance of the service provider, in person, to ensure the needs of the individual are being met. The evaluation must occur annually.

(e) A DSA must:

(1) ensure that each service provider, staff person, and volunteer of the DSA:

(A) is trained on and knowledgeable of:

(i) acts that constitute abuse, neglect, and exploitation of an individual;

(ii) signs and symptoms of abuse, neglect, and exploitation; and

(iii) methods to prevent abuse, neglect, and exploitation;

(B) is instructed to report to HHSC [~~DFPS~~] immediately, but not later than 24 hours, after having knowledge or suspicion that an individual has been or is being abused, neglected, or exploited, by:

(i) calling the HHSC [~~DFPS Abuse Hotline~~] toll-free telephone number, 1-800-458-9858 [~~1-800-252-5400~~]; or

(ii) using the HHSC online Texas Unified Licensure Information Portal [~~DFPS Abuse Hotline website~~]; and

(C) is provided with the instructions described in subparagraph (B) of this paragraph in writing;

(2) conduct the activities described in paragraph (1) of this subsection:

(A) within one year after the person's most recent training on abuse, neglect, and exploitation and annually thereafter, if the service provider, staff person, or volunteer of the DSA was hired before July 1, 2019; or

(B) before assuming job duties and annually thereafter, if the service provider, staff person, or volunteer of the DSA is hired on or after July 1, 2019; and

(3) document:

(A) the name of the person who received the training required by this subsection;

(B) the date the training was conducted or completed; and

(C) except for the training described in subsection (a)(2) of this section, the name of the person who conducted the training.

§259.369. DSA: Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual.

If a DSA, service provider, staff person, volunteer, or controlling person knows or suspects that an individual is being or has been abused, neglected, or exploited, the DSA must report or ensure that the person with knowledge or suspicion reports the allegation of abuse, neglect, or exploitation to HHSC [~~DFPS~~] immediately, but not later than 24 hours after having knowledge or suspicion, by:

(1) calling the HHSC [~~DFPS Abuse Hotline~~] toll-free telephone number, 1-800-458-9858 [~~1-800-252-5400~~]; or

(2) using the HHSC online Texas Unified Licensure Information Portal [~~DFPS Abuse Hotline website~~].

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

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Karen Ray
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CHAPTER 260. DEAF BLIND WITH MULTIPLE DISABILITIES (DBMD) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to Texas Administrative Code rules §260.61, concerning Process for Enrollment of an Individual; and §260.219, concerning Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual.

BACKGROUND AND PURPOSE

The purpose of this proposal is to implement Texas Human Resources Code §48.051(b-1), added by House Bill (H.B.) 4696, 88th Legislature, Regular Session, 2023. Section 48.051 requires a person, including an officer, employee, agent, contractor, or subcontractor of a home and community support services agency (HCSSA) licensed under Texas Health and Safety Code Chapter 142, who has cause to believe that an individual receiving services from the HCSSA, is being or has been subjected to abuse, neglect, or exploitation, to immediately report it to HHSC.

A program provider in the Deaf Blind Multiple Disabilities (DBMD) Program must be licensed as a HCSSA. To comply with Section 48.501, these proposed amendments change the current DBMD Program abuse, neglect, or exploitation (ANE) reporting requirement from the Texas Department of Family and Protective Services (DFPS) to HHSC. Transferring the function relating to the intake of reports of ANE from DFPS to HHSC creates a more streamlined process because HHSC is currently responsible for investigating these reports in the DBMD Program.

Therefore, the proposed amendments to these rules remove all references to DFPS, the DFPS Abuse Hotline toll-free telephone number, and the DFPS Abuse Hotline website and replaces them with references to HHSC, the HHSC toll-free telephone number, and the HHSC online Texas Unified Licensure Information Portal. The proposed amendment to §260.61 updates a rule reference.

FISCAL NOTE

Trey Wood, HHSC 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 not create a new regulation;

(6) the proposed rules will not expand, limit, or repeal 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 has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the amendments are merely codifying current procedures and there are no requirements to alter business processes.

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 are necessary to protect the health, safety, and welfare of the residents of Texas; 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

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public benefit will be improved oversight by creating a single point of contact for reports and investigations of ANE.

Trey Wood 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 amendments are merely codifying current procedures.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's 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 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 emailed to mcsrulespubliccomments@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 the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R073" in the subject line.

SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW
DIVISION 2. ENROLLMENT PROCESS, PERSON-CENTERED PLANNING, AND REQUIREMENTS FOR SERVICE SETTINGS

26 TAC §260.61

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; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendment implements subsection (b-1) to §48.051 of the Texas Human Resources Code, as added by H.B. 4696, 88th Legislature, Regular Session, 2023.

§260.61. Process for Enrollment of an Individual.

(a) After HHSC notifies a program provider, as described in §260.55(d) of this division (relating to Written Offer of Enrollment in the DBMD Program), that an individual selected the program provider, the program provider must assign a case manager to the individual.

(b) A program provider must ensure that the assigned case manager contacts the individual or LAR by telephone, videoconferencing, or in person in the individual's residence as soon as possible but no later than five business days after the program provider receives the HHSC notification. During this initial contact, the case manager must:

(1) verify that the individual resides in a county for which the program provider has a contract;

(2) determine if the individual is currently enrolled in Medicaid;

(3) determine if the individual is currently enrolled in another waiver program or receiving a service that may not be received if the individual is enrolled in the DBMD Program, as identified in the Mutually Exclusive Services table in Appendix V of the *Deaf Blind with Multiple Disabilities Program Manual* available on the HHSC website; and

(4) schedule an initial in-person visit to be held in the individual's residence with the individual and LAR or actively involved person at a time convenient to the individual and LAR and no later than 30 calendar days after the program provider receives the HHSC notification.

(c) During an initial in-person visit in an individual's residence at a time convenient to the individual and LAR, a case manager:

(1) must provide an oral and written explanation to the individual or LAR:

(A) of the DBMD Program services described in §260.7(c) of this chapter (relating to Description of the DBMD Program and CFC), including TAS if the individual is receiving institutional services;

(B) of the CFC services described in §260.7(e) of this chapter;

(C) of the individual's rights and responsibilities:

(i) as described in §260.111 of this subchapter (relating to Individual's Right to a Fair Hearing); and

(ii) as described in §260.113 of this subchapter (relating to Mandatory Participation Requirements of an Individual);

(D) the process by which the individual, LAR, or actively involved person may file a complaint regarding a program provider as required by §52.117 of this title [~~40 TAC §49.309~~] (relating to Complaint Process);

(E) that the HHSC [~~Complaint and Incident Intake~~] toll-free telephone number at 1-800-458-9858 may be used to file a complaint regarding the program provider;

(F) of the CDS option described in §260.71 of this division (relating to CDS Option);

(G) of voter registration, if the individual is 18 years of age or older;

(H) of how to contact the program provider, the case manager, and the RN;

(I) that while the individual is staying at a location outside the contracted service delivery area but within the state of Texas for a period of no more than 60 consecutive days, the individual and LAR or actively involved person may request that the program provider provide:

(i) transportation as a residential habilitation activity, as described in §260.343(b)(1)(A)(ii)(I) of this chapter (relating to Day Habilitation, Residential Habilitation, and CFC PAS/HAB);

(ii) case management;

(iii) nursing;

(iv) out-of-home respite in a camp described in §260.353 of this chapter (relating to Respite);

(v) adaptive aids;

(vi) intervener services; or

(vii) CFC PAS/HAB;

(J) of the use of electronic visit verification, as required by 1 TAC Chapter 354, Subchapter O; and

(K) that the individual, LAR, or actively involved person may report an allegation of abuse, neglect, or exploitation to HHSC [~~DFPS~~] by calling the toll-free telephone number at 1-800-458-9858 [~~1-800-252-5400~~];

(2) must educate the individual, LAR, and actively involved person about protecting the individual from abuse, neglect, and exploitation;

(3) must use the HHSC Understanding Program Eligibility - CLASS/DBMD form to provide an oral and written explanation to the individual or LAR, and obtain the individual's or LAR's signature and date on the form, to acknowledge understanding of:

(A) the eligibility requirements for:

(i) DBMD Program services, as described in §260.51(a) of this subchapter (relating to Eligibility Criteria for DBMD Program Services and CFC Services);

(ii) CFC services for individuals who do not receive MAO Medicaid, as described in §260.51(b) of this subchapter; and

(iii) CFC services for individuals who receive MAO Medicaid, as described in §260.51(c) of this subchapter;

(B) the reasons DBMD Program services and CFC services may be suspended, as described in §260.85 of this chapter (relating to Suspension of DBMD Program Services and CFC Services); and

(C) the reasons DBMD Program services and CFC services may be terminated as described in §§260.89, 260.101, 260.103, and 260.105 of this chapter (relating to Termination of DBMD Program Services and CFC Services With Advance Notice Due to Ineligibility or Leave from the State, Termination of DBMD Program Services and CFC Services With Advance Notice Due to Non-compliance with Mandatory Participation Requirements, Termination of DBMD Program Services and CFC Services Without Advance Notice for Reasons Other Than Behavior Causing Immediate Jeopardy, and Termination of DBMD Program Services and CFC Services Without Advance Notice Due to Behavior Causing Immediate Jeopardy);

(4) must complete an ID/RC Assessment;

(5) must give the individual or LAR the HHSC Verification of Freedom of Choice form to document the individual's or LAR's choice regarding the DBMD Program or the ICF/IID Program;

(6) may complete an adaptive behavior screening assessment or ensure an appropriate professional described in the assessment instructions completes the adaptive behavior screening assessment;

(7) may complete a Related Conditions Eligibility Screening Instrument or ensure an RN completes a Related Conditions Eligibility Screening Instrument; and

(8) may ensure an RN completes a nursing assessment using the HHSC CLASS/DBMD Nursing Assessment form.

(d) If an assessment described in subsection (c)(6) - (8) of this section is not completed during the initial in-person visit in the individual's residence, a case manager must ensure that the assessment is completed in person as soon as possible but no later than 10 business days after the date of the initial in-person visit.

(e) If an individual is Medicaid eligible, is receiving institutional services, and anticipates needing TAS, a case manager must determine whether the individual meets the following criteria:

(1) the individual is being discharged from a nursing facility or an ICF/IID;

(2) the individual has not previously received TAS;

(3) the individual's proposed enrollment IPC will not include licensed assisted living or licensed home health assisted living; and

(4) the individual anticipates needing TAS.

(f) If a case manager determines that an individual meets the criteria described in subsection (e) of this section, the case manager must:

(1) provide the individual or LAR with a list of TAS providers in the service delivery area in which the individual will reside;

(2) complete, with the individual or LAR, the HHSC Transition Assistance Services (TAS) Assessment and Authorization form in accordance with the form's instructions, which includes:

(A) identifying the items and services as described in §272.5(e) of this title (relating to Service Description) that the individual needs;

(B) estimating the monetary amount for the items and services identified on the form, which must be within the service limit described in §272.5(d) of this title; and

(C) documenting the individual's or LAR's choice of TAS provider;

(3) submit the completed form to HHSC for authorization;

(4) if HHSC authorizes the form, send the form to the TAS provider chosen by the individual or LAR; and

(5) include TAS and the monetary amount authorized by HHSC on the individual's proposed enrollment IPC.

(g) Before an individual enrolls in the DBMD Program, a case manager must inform the individual or LAR that the individual may reside in the individual's own home or family home or may receive a DBMD residential service described in §260.351 of this chapter (relating to Residential Services).

(h) A program provider must:

(1) gather and maintain the information necessary to process an individual's request for enrollment in the DBMD Program using forms prescribed by HHSC in the *Deaf Blind with Multiple Disabilities Program Manual;*

(2) assist an individual who does not have Medicaid financial eligibility or the individual's LAR to:

(A) complete an application for Medicaid financial eligibility; and

(B) submit the completed application to HHSC as soon as possible but no later than 30 calendar days after the case manager's initial in-person visit in the individual's residence;

(3) document in an individual's record any problems or barriers the individual or LAR encounters that may inhibit progress towards completing:

(A) the application for Medicaid financial eligibility; and

(B) enrollment in the DBMD Program; and

(4) assist the individual or LAR to overcome problems or barriers documented as described in paragraph (3) of this subsection.

(i) If an individual or LAR does not submit a completed Medicaid application to HHSC as described in subsection (h)(2)(B) of this section as a result of problems or barriers documented in accordance with subsection (h)(3) of this section, but is making progress in collecting the documentation necessary to complete the application, the program provider:

(1) may extend, in 30-calendar day increments, the time frame in which the application must be submitted to HHSC, except as provided in paragraph (2) of this subsection;

(2) must not grant an extension that results in a time period of more than 365 calendar days from the date of the case manager's initial in-person visit in the individual's residence;

(3) must ensure that the case manager documents the rationale for each extension in the individual's record; and

(4) must notify a DBMD program specialist, in writing, if the individual or LAR:

(A) does not submit a completed Medicaid application to HHSC no later than 365 calendar days after the date of the case manager's initial in-person visit in the individual's residence; or

(B) does not cooperate with the case manager in completing the enrollment process described in this section.

(j) A program provider must ensure that:

(1) the related conditions documented on the ID/RC Assessment for the individual are on the HHSC Approved Diagnostic Codes for Persons with Related Conditions list contained in the *Deaf Blind with Multiple Disabilities Program Manual;*

(2) the ID/RC Assessment is submitted to a physician for review; and

(3) if the individual or LAR requests dental services, other than an initial dental exam, a dentist completes the HHSC Prior Authorization for Dental Services form as required by §260.339 of this chapter (related to Dental Treatment).

(k) Not more than 10 business days after a program provider receives a signed and dated ID/RC Assessment from a physician establishing that an individual meets the requirements described in §260.51(a)(2) and (3) of this subchapter, the case manager must:

(1) convene a service planning team meeting; and

(2) ensure that the individual's service planning team:

(A) reviews the HHSC CLASS/DBMD Nursing Assessment form completed by an RN;

(B) reviews Addendum E of the HHSC CLASS/DBMD Nursing Assessment form, Recommendations/Coordination of Care, to address any information included in Addendum E to ensure the individual's needs are met;

(C) documents on the HHSC CLASS/DBMD Coordination of Care form how the information in Addendum E was addressed;

(D) reviews the completed ID/RC assessment signed and dated by a physician;

(E) reviews the adaptive behavior screening assessment;

(F) reviews the HHSC Related Conditions Eligibility Screening Instrument form;

(G) reviews the completed HHSC Prior Authorization for Dental Services form, if required by §260.339 of this chapter;

(H) completes an enrollment IPP in accordance with §260.65 of this division (relating to Development of an Enrollment IPP);

(I) completes a proposed enrollment IPC in accordance with §260.67 of this division (relating to Development of a Proposed Enrollment IPC); and

(J) if the enrollment IPP and the proposed enrollment IPC include:

(i) transportation provided as a residential habilitation activity or as an adaptive aid, develops an individual transportation plan; or

(ii) nursing, intervener services, or CFC PAS/HAB, develops a service backup plan if required by §260.213 of this chapter (relating to Service Backup Plans).

(l) As soon as possible but no later than 10 business days after an individual's service planning team completes an individual's enrollment IPP and proposed enrollment IPC, as described in subsection (k)(2) of this section, the case manager must:

(1) submit the following documents, completed according to form instructions, to HHSC for review:

(A) the proposed enrollment IPC;

(B) the ID/RC Assessment signed by a physician;

(C) the enrollment IPP;

(D) the PAS/HAB plan;

(E) the adaptive behavior screening assessment;

(F) the HHSC Related Conditions Eligibility Screening Instrument form;

(G) the HHSC DBMD Summary of Services Delivered form that documents pre-assessment services with supporting documentation;

(H) the HHSC Verification of Freedom of Choice form;

(I) the HHSC Non-Waiver Services form;

(J) the HHSC Documentation of Provider Choice form;

(K) the HHSC CLASS/DBMD Nursing Assessment form;

(L) the HHSC Prior Authorization for Dental Services form, if required by §260.339 of this chapter;

(M) the HHSC Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form, if required by:

(i) §260.303 of this chapter (relating to Requirements for ~~For~~] Authorization to Purchase or Lease an Adaptive Aid);

(ii) §260.317 of this chapter (relating to Requesting Authorization to Purchase a Minor Home Modification that Costs Less than $1,000); or

(iii) §260.319 of this chapter (relating to Requesting Authorization to Purchase a Minor Home Modification that Costs $1,000 or More);

(N) the HHSC Provider Agency Model Service Backup Plan form, if required by §260.213 of this chapter;

(O) the HHSC Specialized Nursing Certification form, if required by §260.347 of this chapter (relating to Nursing);

(P) if a non-waiver resource is identified on the HHSC Non-Waiver Services form:

(i) documentation to demonstrate that a service comparable to a DBMD Program service available from the non-waiver resource has been exhausted; or

(ii) documentation to explain why a service comparable to a DBMD Program service offered by the non-waiver resource is not provided to the individual by the non-waiver resource;

(Q) the HHSC Transition Assistance Services (TAS) Assessment and Authorization form, if required by subsection (f)(2) of this section; and

(R) the individual transportation plan, if required by subsection (k)(2)(J)(i) of this section; and

(2) if the individual will receive a service through the CDS option, send a copy of the proposed enrollment IPC, the enrollment IPP, and, if completed, the individual transportation plan to the FMSA.

(m) No later than five business days after receiving a written notice from HHSC approving or denying an individual's request for enrollment, the program provider must notify the individual or LAR of HHSC's decision. If HHSC:

(1) approves the request for enrollment, the program provider must initiate DBMD Program services and CFC services as described on the IPC; or

(2) denies the request for enrollment, the program provider must send the individual or LAR a copy of HHSC's written notice of denial.

(n) A program provider must not provide a DBMD Program service or CFC service to an individual before HHSC notifies the program provider, in accordance with §260.69(d)(1) of this division (relating to HHSC's Review of Request for Enrollment), that the individual's request for enrollment into the DBMD Program has been approved. If a program provider provides a DBMD Program service or CFC service to an individual before the effective date of the individual's enrollment IPC authorized by HHSC, HHSC does not reimburse the program provider for those services.

(o) If HHSC notifies a program provider that an individual's request for enrollment is approved, the case manager must comply with §260.69(d)(2) of this subchapter.

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: December 1, 2024
For further information, please call: (512) 438-2910

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SUBCHAPTER D. ADDITIONAL PROGRAM PROVIDER PROVISIONS

26 TAC §260.219

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; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendment implements subsection (b-1) to §48.051 of the Texas Human Resources Code, as added by H.B. 4696, 88th Legislature, Regular Session, 2023.

§260.219. Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual.

If a program provider, service provider, staff person, volunteer, or controlling person knows or suspects that an individual is being or has been abused, neglected, or exploited, the program provider must report or ensure that the person with knowledge or suspicion reports the allegation of abuse, neglect, or exploitation:

(1) for an individual receiving licensed assisted living, in accordance with Chapter 553 of this title (relating to Licensing Standards for Assisted Living Facilities); or

(2) for an individual who is not receiving licensed assisted living, to HHSC [~~DFPS~~] immediately, but not later than 24 hours, after having knowledge or suspicion by:

(A) calling the HHSC [~~DFPS~~] Abuse Hotline toll-free telephone number, 1-800-458-9858 [~~1-800-252-5400~~]; or

(B) using the HHSC online Texas Unified Licensure Information Portal [~~DFPS Abuse Hotline website~~].

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

Filed with the Office of the Secretary of State on October 18, 2024.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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CHAPTER 364. PRIMARY HEALTH CARE SERVICES PROGRAM

SUBCHAPTER D. CLEARINGHOUSE FOR PRIMARY CARE PROVIDERS SEEKING COLLABORATIVE PRACTICE

26 TAC §§364.51, 364.53, 364.55, 364.57

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Subchapter D, concerning Clearinghouse for Primary Care Providers Seeking Collaborative Practice consisting of §364.51, concerning Purpose and Authority; §364.53, concerning Definitions; §364.55, concerning Provider Registration; and §364.57, concerning Duties of the Department.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove rules which are no longer necessary. These rules applied to a Department of State Health Services (DSHS) program regarding a clearinghouse for primary care providers seeking collaborative practice. Texas Health and Safety Code §105.007, which covered the clearinghouse, was repealed by Senate Bill 970, 87th Legislature, Regular Session, 2021. Because this statute was repealed, these rules are no longer needed. Removing unnecessary and outdated rules will increase clarity in the Texas Administrative Code (TAC).

SECTION-BY-SECTION SUMMARY

The proposed repeal of §364.51, §364.53, §364.55, and §364.57 deletes obsolete rules in 26 TAC, Part 1, Chapter 364, Subchapter D.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the repeals will be in effect, enforcing or administering the repeals 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 repeals will be in effect:

(1) the proposed repeals will not create or eliminate a government program;

(2) implementation of the proposed repeals will not affect the number of HHSC employee positions;

(3) implementation of the proposed repeals will result in no assumed change in future legislative appropriations;

(4) the proposed repeals will not affect fees paid to HHSC;

(5) the proposed repeals will not create a new regulation;

(6) the proposed repeals will repeal existing regulations;

(7) the proposed repeals will not change the number of individuals subject to the rules; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood, HHSC Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals 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 repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the repeals 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 rule.

PUBLIC BENEFIT AND COSTS

Crystal Starkey, Deputy Executive Commissioner for Family Health Services, has determined that for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

Trey Wood has also determined that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the repeal does not change any current requirements.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's 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 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 email to FHSPublicComments@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 the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R077" in the subject line.

STATUTORY AUTHORITY

The repeals 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, and Senate Bill 970 (87th Legislature, Regular Session, 2021), which repealed Texas Health and Safety Code §105.007, the corresponding statutory authority for 26 TAC, Part 1, Chapter 364, Subchapter D.

The repeals affect Texas Government Code §531.0055.

§364.51. Purpose and Authority.

§364.53. Definitions.

§364.55. Provider Registration.

§364.57. Duties of 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 October 17, 2024.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (737) 867-7585

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 353. INTRODUCTORY PROVISIONS

SUBCHAPTER G. TEXAS GEOGRAPHIC [~~NATURAL RESOURCES~~] INFORMATION OFFICE (TxGIO) [~~SYSTEM (TNRIS)~~]

31 TAC §§353.100 - 353.103

The Texas Water Development Board (TWDB) proposes an amendment to 31 Texas Administrative Code (TAC) §§353.100 - 353.103.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The TWDB proposes to amend various sections of 31 TAC Chapter 353, Subchapter G in order to implement House Bill (HB) 2489 passed during the 88th Texas Legislative Session. HB 2489 renamed the "Texas Natural Resources Information Office (TNRIS)" to the "Texas Geographic Information Office (TxGIO)." The purpose of this bill was to better reflect the core mission and concept of the office, which these proposed rules would implement. The proposed changes amend the header for Subchapter G and text throughout the subchapter to reflect the new name.

Additionally, the TWDB proposes to make various changes to update terminology and procedures to match current agency and industry practice. The TWDB also proposes to make non-substantive changes for grammatical or clarity purposes.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

The header to Subchapter G is redesignated as "Texas Geographic Information Office (TxGIO)" to reflect the name change from HB 2489.

Section 353.100. Partnerships with Value-Added Service Providers.

Terminology throughout this rule is updated from "Texas Natural Resources Information System" or "TNRIS" to "Texas Geographic Information Office" or "TxGIO." The TWDB also proposes to amend the language related to establishing value-added partnerships and the associated written agreements to align with agency practice. The TWDB proposes to add detail in rule related to these partnerships, as required by Texas Water Code §16.021(b). The changes also include non-substantive grammatical changes.

Section 353.101. Other Partnerships.

Terminology throughout this rule is updated from "TNRIS" to "TxGIO."

Section 353.102. Definitions.

Terminology throughout this rule is updated from "Texas Natural Resources Information System" or "TNRIS" to "Texas Geographic Information Office" or "TxGIO."

The TWDB proposes to replace the definition of "High priority imagery and datasets (HPIDS)" with a new definition for "Strategic Mapping (StratMap) datasets" to align with the current agency and industry naming convention and practice. The TWDB proposes to add a definition for "Texas Geographic Information Office" in order to establish "TxGIO" as the abbreviation and to clarify that this same entity was formerly known as "Texas Natural Resources Information System" or "TNRIS." Finally, the TWDB proposes to amend the definition of "State Agency" to include those institutions of higher education that qualify as state agencies under the rule. The changes also include non-substantive grammatical changes.

Section 353.103. State Agency Geographic Information Standards.

Terminology throughout this rule is updated from "Texas Natural Resources Information System" or "TNRIS" to "Texas Geographic Information Office" or "TxGIO." Additionally, terminology is updated from "HPIDS datasets" to "StratMap datasets" to reflect the newly defined terms. The changes also include non-substantive grammatical changes.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state or local governments because the rule does not change any substantive requirements of other entities. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules. As discussed in the fiscal note for HB 2489, it is assumed that any costs associated with the name change for TxGIO can be absorbed using existing resources.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation (HB 2489 (88R)).

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies requirements for TxGIO partnerships and better reflects the core mission and concept of the office, which could lead to additional funding opportunities. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as involvement with TxGIO is voluntary and the changes are imposed by statute.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or 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 intent of the rulemaking is to clarify requirements for TxGIO partnerships and better reflect the core mission and concept of the office.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §16.021. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify requirements for TxGIO partnerships and better reflect the core mission and concept of the office. The proposed rule would substantially advance this stated purpose by aligning terminology and procedure with agency practice and by implementing HB 2489 (88R).

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that houses the Texas Geographic Information Office.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule establishes procedures and information related to the Texas Geographic Information Office. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st

day following publication in the *Texas Register.* Include "Chapter 353" in the subject line of any comments submitted.

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §16.021.

This rulemaking affects Texas Water Code, Chapter 16.

§353.100. Partnerships with Value-Added Service Providers.

(a) The executive administrator will [~~shall~~] identify value-added services that relate to the goals and responsibilities of the Texas Geographic Information Office (TxGIO) [~~Texas Natural Resources Information System (TNRIS)~~]. For those services identified, the executive administrator may enter partnerships with service providers [~~to post their contact information on the TNRIS web site~~].

[~~(b) Entities that provide services identified by the executive administrator shall request the partnership in writing. The written request shall include:~~]

[~~(1) the name and address of the entity and a contact person;~~]

[~~(2) the services performed by the entity;~~]

[~~(3) the number of years the entity has performed those services; and~~]

[~~(4) the internet address the entity would like the board to use as a hyperlink.~~]

(b) [~~(c)~~] The executive administrator will [~~shall~~] determine if the entity submitting a written request to form a partnership is an entity that provides services identified in subsection (a) of this section. If so, the executive administrator may [~~shall~~] enter a written agreement with the entity to form a partnership [~~post its name, contact information, and hyperlink on the TNRIS web site. The written agreement shall only be for one year but is renewable upon request~~].

(c) [~~(d)~~] The executive administrator must [~~shall~~] develop and implement, with board approval, a charge schedule for entities entering partnerships with the executive administrator [~~to post their information on the TNRIS web site. At least once every two years, the executive administrator shall review and obtain board approval of the charge schedule~~]. Monies collected from entities entering partnerships with the executive administrator must [~~shall~~] be used to improve access to TxGIO [~~TNRIS~~] information.

(d) The written agreement must be consistent with the agency's contracting policies and procedures and ethics policy.

(e) Partnerships may include:

(1) those with non-profit organizations to enhance services such as event collaboration and funding, data and service delivery, grant and charitable funding opportunities, resource sharing, advocacy, and emergency response; and

(2) those with for-profit companies for data acquisition, software development, software purchase, geospatial support and services, data storage, infrastructure development, and emergency response.

§353.101. Other Partnerships.

The board may authorize the executive administrator to enter other partnerships, on behalf of TxGIO [~~TNRIS~~] in order to:

(1) accept gifts and grants for TxGIO [~~TNRIS~~] through a nonprofit corporation. The acceptance of any gift or grant will be in compliance with Subchapter F of this chapter[~~,~~] (relating to The Relationship Between the Board and Donors); and

(2) accept volunteer labor.

§353.102. Definitions.

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

(1) [~~(2)~~] Geographic dataset--Digital data that [~~which~~] illustrate and describe some characteristic of the earth's surface or a region near the earth's surface. A geographic dataset employs a defined, earth-based coordinate system that [~~which~~] allows its use in a geographic information system. For the purposes of this rule, geospatial has the same meaning as geographic.

(2) [~~(3)~~] Geographic dataset enhancement--Substantial alteration of a geographic dataset that [~~which~~] increases its usefulness through the addition or modification of attribute (tabular) data fields, improvements in spatial accuracy, or extension of geographic coverage.

(3) [~~(1)~~] Geographic information system (GIS)--A system of computer hardware, software, and procedures used to store, analyze, and display geographic data and related tabular data in a geographic context to solve complex planning and management problems in a wide variety of applications.

(4) Geospatial metadata--A description of the characteristics of a geographic dataset recorded in a standard format. Characteristics include data content, quality, purpose, condition, format, spatial coordinate system, availability, etc. The Federal Geographic Data Committee has defined a formal content standard for digital geospatial metadata for use by federal agencies.

(5) GIS map product--A geographic representation, in paper or electronic format, displaying features from one or more geographic datasets. Small scale images that are clearly intended only for graphic illustration within a larger publication are not considered to be GIS map products.

[~~(6) High priority imagery and datasets (HPIDS)--HPIDS are geographic datasets identified by the state Geographic Information Officer as high priority for acquisition or enhancement, developed or acquired by state agencies, and intended for sharing and integration into a single statewide compilation.~~]

(6) [~~(7)~~] State Agency--A department, commission, board, office, council, authority, or other agency, including [~~other than~~] an institution of higher education, in the executive or judicial branch of state government, that is created by the constitution or a statute of this state.

(7) [~~(8)~~] State Geographic Information Officer (GIO)--The official coordinating, establishing, supporting, and monitoring geographic information technology in Texas pursuant to Water Code §16.021(c). The GIO serves as deputy executive administrator [~~director~~] of the Texas Geographic Information Office (TxGIO) [~~Texas Natural Resources Information System (TNRIS)~~] within the Texas Water Development Board.

(8) Strategic Mapping (StratMap) datasets--Geographic datasets identified by the state Geographic Information Officer as high priority for acquisition or enhancement, developed or acquired by state agencies, including institutions of higher education, or other Texas government entities, and intended for sharing and integration into a single statewide compilation.

(9) Texas Geographic Information Office--TxGIO, formerly known as Texas Natural Resources Information System (TNRIS).

§353.103. State Agency Geographic Information Standards.

(a) Applicability. All users and developers of geographic datasets and geographic information systems in state agencies must comply with the technical standards specified in this section. Activities conducted by a registered professional land surveyor while engaged in the practice of professional surveying, as defined in the Professional Land Surveying Practices Act (Texas Occupations Code, Chapter 1071) are exempt from these standards.

(b) Implementation guidance. Pursuant to Water Code §16.021(c), the GIO provides guidance to the Executive Administrator of the Texas Water Development Board and to the Department of Information Resources (the department). The guidance provided by the GIO to the department relates to technology standards developed by the department for geographic datasets pursuant to Water Code §16.021(e)(4).

(c) Geographic Information Standards.

(1) Geographic dataset acquisition and development.

(A) Standard. An agency planning to acquire, develop, or enhance a geographic dataset that may correspond to a StratMap [~~an HPIDS~~] dataset must [~~shall~~] coordinate such activity with the GIO to determine potential use of the StratMap contracts [~~HPIDS master contract~~].

(B) Procurement of public domain geographic datasets. An agency that procures a copy of a federal or other public domain geographic dataset must [~~shall~~] make the dataset available to TxGIO [~~the Texas Natural Resources Information System (TNRIS)~~]. TxGIO [~~TNRIS~~] will make these datasets available to other agencies, institutions of higher education, and to the public.

(2) Geographic dataset exchange: Data format. An agency that originates or adds data content to a non-proprietary geographic dataset and distributes the dataset to another state agency, institution of higher education, or the public must make the dataset available in at least one digital format that is recognized by the most commonly used geographic information systems. This requirement does not preclude the agency from offering the dataset in other data formats. The GIO provides guidance on acceptable formats for data exchange.

(3) Geographic dataset documentation.

(A) Preparation. An agency must [~~shall~~] prepare documentation for each geographic dataset that it both:

(i) originates and/or adds data content to; and

(ii) distributes as a standard product to another state agency, institution of higher education, or the public.

(B) Statement of Purpose. Documentation must include a statement of the purpose or intended use of the dataset and a disclaimer warning against unintended uses of the dataset. If an agency is aware of specific inappropriate uses of the dataset that some users may be inclined to make, the dataset disclaimer must specifically warn against those uses.

(C) Format. This documentation must be in a geospatial metadata format specified by the GIO.

(D) Delivery. In responding to a request for a geographic dataset, an agency must [~~shall~~] provide the requestor a copy of the documentation.

(4) GIS map product disclaimer. Any map product, in paper or electronic format, produced using geographic information system technology and intended for official use and/or distribution outside the agency, must include a disclaimer statement advising against inappropriate use. If the nature of the map product is such that a user could incorrectly consider it to be a survey product, the disclaimer must clearly state that the map is not a survey product.

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

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

TRD-202404932
Alexis Lorick
Assistant General Counsel
Texas Water Development Board
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 463-2776

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 89. ADVISORY COMMITTEES

40 TAC §§89.1 - 89.3, 89.5

The Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, and all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with now repealed Texas Government Code §531.0201 and §531.02011. Pursuant to §531.0011, references to DADS regarding functions transferred under now repealed §531.0201 and §531.02011 are now references to HHSC. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1.

Therefore, the Executive Commissioner of HHSC proposes the repeal of Chapter 89, §89.1, concerning Definitions, §89.2, concerning Authorization and General Provisions, §89.3, concerning Aging and Disability Resource Center Advisory Committee, and §89.5, concerning Foster Grandparent Program Advisory Councils.

BACKGROUND AND PURPOSE

The purpose of the proposal is to remove unnecessary rules from the Texas Administrative Code. Senate Bill (S.B.) 200, 84th Legislature, Regular Session, 2015, transferred the Aging and Disability Resource Center and Foster Grandparent Program advisory committees to HHSC.

The rules related to the Aging and Disability Resource Center Advisory Committee and the Foster Grandparent Program Advisory Councils are being repealed because there is either no statutory requirement for the committees or the purpose of the committees are being met in other ways.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §89.1 deletes the rule because definitions for HHSC advisory committees exist in 1 TAC §351.801.

The proposed repeal of §89.2 deletes the rule because the authorization and general provisions for HHSC advisory committees exist in 1 TAC §351.801.

The proposed repeal of §89.3 deletes the rule because there is no statutory requirement for the committee and the purpose of the committee is being met in other ways.

The proposed repeal of §89.5 deletes the rule because there is no statutory requirement for the committee and the purpose of the committee is being met in other ways.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the repeals will be in effect, enforcing or administering the repeals do 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 repeals will be in effect:

(1) the proposed repeals will not create or eliminate a government program;

(2) implementation of the proposed repeals will not affect the number of HHSC employee positions;

(3) implementation of the proposed repeals will result in no assumed change in future legislative appropriations;

(4) the proposed repeals will not affect fees paid to HHSC;

(5) the proposed repeals will not create a new regulation;

(6) the proposed repeals will repeal existing regulations;

(7) the proposed repeals will not change the number of individuals subject to the rules; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules will be repealed.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because these repeals do not impose a cost on regulated persons and the repeals are necessary to implement legislation that does not specifically state that Section §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Haley Turner, Deputy Executive Commissioner of Community Services, has determined that for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the Texas Administrative Code.

Trey Wood has also determined for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the repeals abolish two advisory committees and do not impose any new requirements.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's 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 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 emailed to HHSRulesCoordinationOffice@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 the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R022" in the subject line.

STATUTORY AUTHORITY

The repeals 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, Texas Government Code Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees.

The repeals affect Texas Government Code §531.0055, Chapter 2110, and Texas Government Code §523.0201.

§89.1. Definitions.

§89.2. Authorization and General Provisions.

§89.3. Aging and Disability Resource Center Advisory Committee.

§89.5. Foster Grandparent Program Advisory Councils.

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

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

TRD-202404918
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: December 1, 2024
For further information, please call: (512) 840-8536

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ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER D. FORMS FOR CHILD SUPPORT ENFORCEMENT

1 TAC §55.119

The Office of the Attorney General (OAG) Child Support Division adopts an amendment to 1 TAC §55.119(a) which updates the OMB form number for a Notice of Lien. The rule is adopted without changes to the proposed text as published for comment in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5455) and will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

This rule updates the OMB form number for the federal Notice of Lien form from Form OMB 0970-0153 to Form OMB 0970-152.

SECTION SUMMARY

Section 55.119(a) is amended to change the OMB form number referenced in the code from Form OMB 0970-0153 to Form OMB 0970-0152.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Ruth Anne Thornton, Director of Child Support (IV-D Director), has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

PUBLIC BENEFIT AND COST

Ms. Thornton has also determined that for each year of the first five years the amendment is in effect, the public will benefit by having the correct form cited in the code. This code references the OAG website which provides a link to the Notice of Lien OMB# 0970-0152 and reference to 1 TAC §55.119(a). In addition, for each year of the first five-year period the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the adopted rule.

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

Ms. Thornton has determined there will not be an effect on small businesses, micro-businesses, and rural communities required to comply with the amendment as adopted. Therefore, no regulatory flexibility analysis is required under Texas Government Code § 2006.002.

LOCAL EMPLOYMENT OR ECONOMY IMPACT

Ms. Thornton has determined that the adopted amendment does not have an impact on local employment or economies. Therefore, no local employment or economy impact statement is required under Texas Government Code § 2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with Texas Government Code § 2001.0221, the OAG has prepared the following government growth impact statement. During the first five years the adopted rule would be in effect, it:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create new regulations;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

The rule proposal was published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5455). The OAG did not receive any comments from interested parties on the rule proposal during the 30-day public comment period.

STATUTORY AUTHORITY

The amendment is adopted under Texas Family Code §§ 231.001, 231.003. Section 231.001 designates the OAG as the state's Title IV-D agency. Section 231.003 authorizes the Title IV-D agency by rule to promulgate forms and procedures for the implementation of Title IV-D services. Texas Family Code §

157.313 provides the contents of child lien, except as provided by subsection (e) which states a notice of lien may be in the form authorized by federal law or regulation. This amendment correctly identifies the authorized federal form for a notice of lien.

CROSS-REFERENCE TO STATUTE

The amendment conforms to statutory requirements and supplements Texas Family Code § 157.313(e) as authorized by Texas Family Code §§ 231.001, 231.003.

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

Filed with the Office of the Secretary of State on October 16, 2024.

TRD-202404865
Justin Gordon
General Counsel
Office of the Attorney General
Effective date: November 5, 2024
Proposal publication date: July 26, 2024
For further information, please call: (800) 252-8014

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B. ADVISORY COMMITTEES

DIVISION 1. COMMITTEES

1 TAC §351.815

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §351.815, concerning the Policy Council for Children and Families.

Section 351.815 is adopted with changes to the proposal text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5218). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The Policy Council for Children and Families (PCCF) was established by the HHSC Executive Commissioner under the authority of Texas Government Code §531.012. This statute requires the HHSC Executive Commissioner to establish and maintain advisory committees, establish rules for the operation of advisory committees, and for advisory committees to provide recommendations to the HHSC Executive Commissioner and the Texas Legislature.

The PCCF advises the HHSC Executive Commissioner and Health and Human Services system agencies (HHS agencies) to improve the coordination, quality, efficiency, and outcomes of services provided to children and the families of children with disabilities and special health care needs, including mental health needs, through the state's health, education, and human services systems. Members meet approximately four times a year in Austin.

Section 351.815 is set to expire on December 31, 2024, which will abolish the PCCF. The amendment extends the committee by four years to December 31, 2028, and update existing membership categories for one voting and one ex-officio member. Other edits align the rule with current HHSC advisory committee rulemaking guidelines.

COMMENTS

The 31-day comment period ended August 19, 2024.

During this period, HHSC received a comment regarding the proposed rule from one commenter. A summary of the comment relating to §351.815 and HHSC's response follow.

Comment: One commenter requested that HHSC: (1) add an entirely new PCCF membership category to represent an educator working with pre-kindergarten to senior year in high school (PK-12) children to ensure that educational challenges and the needs of children with disabilities are fully considered in policy development; (2) integrate School Health and Related Services (SHARS) policy and policy discussions as one of the highest priorities for PCCF, including creating a new SHARS subgroup or subcommittee within PCCF; and (3) ensure that the specific voices of a SHARS vendor, an association with SHARS expertise, a SHARS provider from each approved SHARS service and a parent of a child that participates in SHARS, as well as a small, midsize and large school district are included in PCCF.

Response: HHSC declines to make the requested changes. The PCCF is already at its statutory maximum membership under Texas Government Code Chapter 2110, and cannot include additional members at this time. Other proposed actions are outside the scope of this limited rule project. The PCCF regularly considers SHARS and other programs, activities, and services for children with disabilities provided through the education system.

HHSC revised §351.815 to update a Texas Government Code citation from Section 531.012 to §523.0201 to implement H.B. 4611, 88th Legislature, Regular Session, 2023, which makes non-substantive revisions to the Texas Government Code that make the statute more accessible, understandable, and usable.

STATUTORY AUTHORITY

The amendment is 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 Government Code §531.012, which authorizes the Executive Commissioner to establish advisory committees by rule.

§351.815. Policy Council for Children and Families.

(a) Statutory authority. The Policy Council for Children and Families (PCCF) is established in accordance with Texas Government Code §523.0201 and is subject to §351.801 of this division (relating to Authority and General Provisions).

(b) Purpose. The PCCF works to improve the coordination, quality, efficiency, and outcomes of services provided to children with disabilities and their families through the state's health, education, and human services systems.

(c) Tasks. The PCCF performs the following tasks:

(1) studies and makes recommendations to improve coordination between the state's health, education, and human services sys-

tems to ensure that children with disabilities and their families have access to high quality services;

(2) studies and makes recommendations to improve long-term services and supports, including community-based supports for children with special health and mental health care needs, as well as children with disabilities and their families receiving protective services from the state;

(3) studies and makes recommendations regarding emerging issues affecting the quality and availability of services available to children with disabilities and their families;

(4) studies and makes recommendations to better align resources with the service needs of children with disabilities and their families;

(5) studies and makes recommendations to ensure that the needs of children with autism spectrum disorder and their families are addressed, and that all available resources are coordinated to meet those needs;

(6) makes recommendations regarding the implementation and improvement of the STAR Kids managed care program;

(7) performs other tasks consistent with its purpose as requested by the HHSC Executive Commissioner; and

(8) adopts bylaws to guide the operation of the committee.

(d) Reporting requirements.

(1) Not later than December 31 of each year, the PCCF files a written report with the HHSC Executive Commissioner covering the meetings and activities in the immediately preceding fiscal year. The report includes:

(A) a list of the meeting dates;

(B) the members' attendance records;

(C) a brief description of actions taken by the PCCF;

(D) a description of how the PCCF accomplished its tasks;

(E) a summary of the status of any PCCF recommendations to HHSC;

(F) a description of activities the PCCF anticipates undertaking in the next fiscal year;

(G) recommended amendments to this section; and

(H) the costs related to the PCCF, including the cost of HHSC staff time spent supporting the PCCF's activities and the source of funds used to support the PCCF's activities.

(2) Not later than November 1 of each even-numbered year, the PCCF submits a written report to the HHSC Executive Commissioner and Texas Legislature that:

(A) describes current gaps and barriers to the provision of services to children with disabilities and their families through the state's health and human services system; and

(B) provides recommendations consistent with the PCCF's purposes.

(e) Meetings.

(1) Open Meetings. The PCCF complies with the requirements for open meetings under Texas Government Code Chapter 551, as if it were a governmental body.

(2) Frequency. The PCCF will meet at least twice each year.

(3) Quorum. Thirteen members constitutes a quorum.

(f) Membership.

(1) The PCCF is composed of 24 members, with 19 voting members and five ex officio members appointed by the HHSC Executive Commissioner. In selecting the voting members, the HHSC Executive Commissioner considers the applicants' qualifications, background, and interest in serving. The membership comprises:

(A) eleven voting members from families with a child under the age of 26 with a disability, including:

(i) at least one adolescent or young adult under the age of 26 with a disability receiving services from the health and human services system;

(ii) at least one member of a family of a child with mental health care needs; and

(iii) at least one member of a family of a child with autism spectrum disorder;

(B) eight professional voting members, one each to represent the following types of organizations or areas of expertise:

(i) a faith-based organization;

(ii) an organization that is an advocate for children with disabilities;

(iii) a physician providing services to children with complex needs;

(iv) an individual with expertise providing mental health services to children with disabilities;

(v) an organization providing services to children with disabilities and their families;

(vi) an organization providing community services;

(vii) an organization or professional that advocates for or provides services or resources to children and the families of children with autism spectrum disorder; and

(viii) one individual with expertise or experience providing cross-system, holistic support for children and the families of children with disabilities;

(C) five non-voting, ex officio members, one from each of the following state programs and agencies or their successors, as nominated by the represented agency, and appointed by the HHSC Executive Commissioner:

(i) HHSC Medicaid and CHIP Services;

(ii) HHSC Community Services Division;

(iii) Texas Council for Developmental Disabilities;

(iv) Texas Department of Family and Protective Services; and

(v) Texas Department of State Health Services.

(2) Members appointed under paragraphs (1)(A) and (1)(B) of this subsection serve staggered terms so that the terms of approximately one-quarter of these members' terms expire on December 31 of each year. Regardless of the term limit, a member serves until his or her replacement has been appointed. This ensures sufficient, appropriate representation.

(3) If a vacancy occurs, the HHSC Executive Commissioner will appoint a person to serve the unexpired portion of that term.

(4) Except as may be necessary to stagger terms, the term of each member is four years. A member may apply to serve one additional term. This paragraph does not apply to members serving under paragraph (1)(C).

(g) Officers. The PCCF selects a chair and vice chair of the PCCF from among its members.

(1) The chair and vice chair of the PCCF will serve a term of two years, with the chair serving until December 31 of each odd-numbered year and the vice chair serving until December 31 of each even-numbered year.

(2) A member may serve up to two consecutive terms as chair or vice chair.

(h) Required Training. Each member must complete all training on relevant statutes and rules, including this section and §351.801 of this division (relating to Authority and General Provisions); Texas Government Code §523.0201; Texas Government Code Chapters 551, 552, and 2110; the HHS Ethics Policy; the Advisory Committee Member Code of Conduct; and other relevant HHS policies. HHSC will provide the training.

(i) Travel Reimbursement. To the extent permitted by the current General Appropriations Act, a member of the committee who receives services from HHSC or is a family member of a client may be reimbursed for their travel to and from meetings if funds are appropriated and available and in accordance with the HHSC Travel Policy. Other committee members are not reimbursed for travel to and from committee meetings.

(j) Date of abolition. The PCCF is abolished, and this section expires on December 31, 2028.

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

Filed with the Office of the Secretary of State on October 17, 2024.

TRD-202404890
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 6, 2024
Proposal publication date: July 19, 2024
For further information, please call: (512) 438-5046

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER L. LOCAL FUNDS MONITORING

1 TAC §§355.8701 - 355.8705, 355.8707

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.8701, concerning Purpose; §355.8702, concerning Definitions; §355.8703, concerning Applicability; §355.8704, concerning Reporting and Monitoring; §355.8705, concerning Post-Determination Review; and §355.8707, concerning Notification Requirements for the Creation of a Local Provider Participation Fund (LPPF).

Sections 355.8701 - 355.8705 and §355.8707 are adopted without changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5858). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to add and modify definitions and enhance clarity, consistency, and specificity of the rules. The amendments also reflect best practices learned after the completion of two Local Funding reporting periods and is based on an internal review of Local Funding's current processes.

COMMENTS

The 31-day comment period ended September 9, 2024. During this period, HHSC did not receive any comments regarding these rules.

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; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Human Resources Code §32.031(d), which authorizes the Executive Commissioner to pursue the use of local funds as part of the state share under the Medicaid program as provided by federal law and regulation; and Texas Health and Safety Code §300.0154 and §300A.0154, which require the Executive Commissioner of HHSC to adopt rules relating to LPPF reporting.

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

Filed with the Office of the Secretary of State on October 17, 2024.

TRD-202404896
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 6, 2024
Proposal publication date: August 9, 2024
For further information, please call: (737) 867-7877

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CHAPTER 375. REFUGEE CASH ASSISTANCE AND MEDICAL ASSISTANCE PROGRAMS

The Texas Health and Human Services Commission (HHSC) adopts the repeal of Subchapter A, concerning Program Purpose and Scope, comprising of §§375.101 - §375.103; Subchapter B, concerning Contractor Requirements for the Refugee Cash Assistance Program (RCA), comprising of §§375.201, 375.203, 375.205, 375.207, 375.209, 375.211, 375.213, 375.215, 375.217, 375.219, 375.221; Subchapter C, concerning Program Administration for the Refugee Cash Assistance Program (RCA), comprising of §§375.301, 375.303, 375.305, 375.307, 375.309, 375.311, 375.313, 375.315, 375.317, 375.319, 375.321, 375.323, 375.325, 375.327, 375.329, 375.331, 375.333, 375.335, 375.337, 375.339, 375.341, 375.343, 375.345, 375.347, 375.349, 375.351, 375.353; Subchapter

D, concerning Refugee Cash Assistance Participant Requirements, comprising of §§375.401, 375.403, 375.405, 375.407, 375.409, 375.411, 375.413, 375.415, 375.417, 375.419; Subchapter E, concerning Refugee Medical Assistance, comprising of §§375.501, 375.503, 375.505, 375.507, 375.509, 375.511, 375.513, 375.515, 375.517, 375.519, 375.521, 375.523, 375.525, 375.527, 375.529, 375.531; Subchapter F, concerning Modified Adjusted Gross Income Methodology, comprising of §§375.601, 375.603, 375.605, 375.607, 375.609, 375.611, 375.613, 375.615, and an amendment to §375.701 in Subchapter G, concerning Local Resettlement Agency Requirements, in Title 1, Part 15, Chapter 375, concerning Refugee Cash Assistance and Medical Assistance Programs.

The sections are adopted without changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5226). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the adoption is to remove rules which are no longer necessary and to update a rule that is required by statute. On September 30, 2016, the State of Texas withdrew from the administration of federally funded refugee services and benefits program effective January 31, 2017, following refusal by the federal Office of Refugee Resettlement to unconditionally approve Texas' amended state refugee plan. Texas Government Code §531.0411 requires rules regarding refugee resettlement program; therefore, §375.701 will be retained and updated.

COMMENTS

The 31-day comment period ended August 19, 2024.

During this period, HHSC did not receive any comments regarding the proposed rules.

SUBCHAPTER A. PROGRAM PURPOSE AND SCOPE

1 TAC §§375.101 - 375.103

STATUTORY AUTHORITY

The repeals 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 Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

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

Filed with the Office of the Secretary of State on October 17, 2024.

TRD-202404873
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 6, 2024
Proposal publication date: July 19, 2024
For further information, please call: (737) 867-7585

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SUBCHAPTER B. CONTRACTOR REQUIREMENTS FOR THE REFUGEE CASH ASSISTANCE PROGRAM (RCA)

1 TAC §§375.201, 375.203, 375.205, 375.207, 375.209, 375.211, 375.213, 375.215, 375.217, 375.219, 375.221

STATUTORY AUTHORITY

The repeals 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 Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

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

Filed with the Office of the Secretary of State on October 17, 2024.

TRD-202404874
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 6, 2024
Proposal publication date: July 19, 2024
For further information, please call: (737) 867-7585

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SUBCHAPTER C. PROGRAM ADMINISTRATION FOR THE REFUGEE CASH ASSISTANCE PROGRAM (RCA)

1 TAC §§375.301, 375.303, 375.305, 375.307, 375.309, 375.311, 375.313, 375.315, 375.317, 375.319, 375.321, 375.323, 375.325, 375.327, 375.329, 375.331, 375.333, 375.335, 375.337, 375.339, 375.341, 375.343, 375.345, 375.347, 375.349, 375.351, 375.353

STATUTORY AUTHORITY

The repeals 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 Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

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

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TRD-202404875

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (737) 867-7585

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SUBCHAPTER D. REFUGEE CASH ASSISTANCE PARTICIPANT REQUIREMENTS

1 TAC §§375.401, 375.403, 375.405, 375.407, 375.409, 375.411, 375.413, 375.415, 375.417, 375.419

STATUTORY AUTHORITY

The repeals 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 Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

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

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For further information, please call: (737) 867-7585

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SUBCHAPTER E. REFUGEE MEDICAL ASSISTANCE

1 TAC §§375.501, 375.503, 375.505, 375.507, 375.509, 375.511, 375.513, 375.515, 375.517, 375.519, 375.521, 375.523, 375.525, 375.527, 375.529, 375.531

STATUTORY AUTHORITY

The repeals 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 Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

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

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Karen Ray
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SUBCHAPTER F. MODIFIED ADJUSTED GROSS INCOME METHODOLOGY

1 TAC §§375.601, 375.603, 375.605, 375.607, 375.609, 375.611, 375.613, 375.615

STATUTORY AUTHORITY

The repeals 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 Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

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

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Karen Ray
Chief Counsel
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SUBCHAPTER G. LOCAL RESETTLEMENT AGENCY REQUIREMENTS

1 TAC §375.701

STATUTORY AUTHORITY

The amendment is 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 Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

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

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (737) 867-7585

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CHAPTER 376. REFUGEE SOCIAL SERVICES

The Texas Health and Human Services Commission (HHSC) adopts the repeal of Subchapter A, concerning Purpose and Scope, comprising of §§376.101 - 376.104; Subchapter B, concerning Contractor Requirements, comprising of §§376.201, 376.203, 376.205, 376.207, 376.209, 376.211, 376.213, 376.215, 376.217, §376.219, 376.221, 376.223, 376.225, 376.227, 376.229, 376.231, 376.233, 376.235, 376.237; Subchapter C, concerning General Program Administration, comprising of §§376.301, 376.303, 376.305, 376.307, 376.309, 376.311, 376.313, 376.315, 376.317, 376.319, 376.321, 376.323, 376.325, 376.327, 376.329, 376.331, 376.333; Subchapter D, concerning Employment Services: Refugee Social Services (RSS), comprising of §§376.401, 376.403, 376.405, 376.407, 376.409, 376.411, 376.413, 376.415, 376.417, 376.419, 376.421, 376.423, §376.425, 376.427; Subchapter E, concerning Employment Services: Refugee Cash Assistance (RCA), comprising of §§376.501, 376.503, 376.505, 376.507, 376.509, 376.511, 376.513, 376.515, 376.517, 376.519; Subchapter F, concerning English as a Second Language (ESL) Services, comprising of §§376.601 and 376.602; Subchapter G, concerning Other Employability Services, comprising of §§376.701, 376.703, 376.705, 376.707, 376.709, 376.711, 376.713, 376.715, 376.717, 376.719, 376.721; Subchapter H, concerning Targeted Assistance Grant (TAG) Services, comprising of §§376.801 - 376.806; Subchapter I, concerning Unaccompanied Refugee Minor (URM) Program, comprising of §§376.901 - 376.907; and an amendment to §376.1001 in Subchapter J, concerning Local Resettlement Agency Requirements, in Title 1, Chapter 376, concerning Refugee Social Services.

The sections are adopted without changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5231). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the adoption is to remove rules which are no longer necessary and to update a rule that is required by statute. On September 30, 2016, the State of Texas withdrew from the administration of federally funded refugee services and benefits program effective January 31, 2017, following refusal by the federal Office of Refugee Resettlement to unconditionally approve Texas' amended state refugee plan. Texas Government Code §531.0411 requires rules regarding refugee resettlement program; therefore, §376.1001 will be retained and updated.

COMMENTS

The 31-day comment period ended August 19, 2024.

During this period, HHSC did not receive any comments regarding the proposed rules.

SUBCHAPTER A. PURPOSE AND SCOPE

1 TAC §§376.101 - 376.104

STATUTORY AUTHORITY

The repeals 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 Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

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

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (737) 867-7585

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SUBCHAPTER B. CONTRACTOR REQUIREMENTS

1 TAC §§376.201, 376.203, 376.205, 376.207, 376.209, 376.211, 376.213, 376.215, 376.217, 376.219, 376.221, 376.223, 376.225, 376.227, 376.229, 376.231, 376.233, 376.235, 376.237

STATUTORY AUTHORITY

The repeals 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 Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

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

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Karen Ray
Chief Counsel
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For further information, please call: (737) 867-7585

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SUBCHAPTER C. GENERAL PROGRAM ADMINISTRATION

1 TAC §§376.301, 376.303, 376.305, 376.307, 376.309, 376.311, 376.313, 376.315, 376.317, 376.319, 376.321, 376.323, 376.325, 376.327, 376.329, 376.331, 376.333

STATUTORY AUTHORITY

The repeals 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 Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

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

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Karen Ray
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SUBCHAPTER D. EMPLOYMENT SERVICES: REFUGEE SOCIAL SERVICES (RSS)

1 TAC §§376.401, 376.403, 376.405, 376.407, 376.409, 376.411, 376.413, 376.415, 376.417, 376.419, 376.421, 376.423, 376.425, 376.427

STATUTORY AUTHORITY

The repeals 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 Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

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

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Karen Ray
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SUBCHAPTER E. EMPLOYMENT SERVICES: REFUGEE CASH ASSISTANCE (RCA)

1 TAC §§376.501, 376.503, 376.505, 376.507, 376.509, 376.511, 376.513, 376.515, 376.517, 376.519

STATUTORY AUTHORITY

The repeals 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 Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

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

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Karen Ray
Chief Counsel
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SUBCHAPTER F. ENGLISH AS A SECOND LANGUAGE (ESL) SERVICES

1 TAC §376.601, §376.602

STATUTORY AUTHORITY

The repeals 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 Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

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

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Karen Ray
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For further information, please call: (737) 867-7585

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SUBCHAPTER G. OTHER EMPLOYABILITY SERVICES

1 TAC §§376.701, 376.703, 376.705, 376.707, 376.709, 376.711, 376.713, 376.715, 376.717, 376.719, 376.721

STATUTORY AUTHORITY

The repeals 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 Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

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

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SUBCHAPTER H. TARGETED ASSISTANCE GRANT (TAG) SERVICES

1 TAC §§376.801 - 376.806

STATUTORY AUTHORITY

The repeals 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 Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

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

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Karen Ray
Chief Counsel
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SUBCHAPTER I. UNACCOMPANIED REFUGEE MINOR (URM) PROGRAM

1 TAC §§376.901 - 376.907

STATUTORY AUTHORITY

The repeals 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 Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

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

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SUBCHAPTER J. LOCAL RESETTLEMENT AGENCY REQUIREMENTS

1 TAC §376.1001

STATUTORY AUTHORITY

The amendment is 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 Government Code §531.0411, which requires the Executive Commissioner of HHSC to adopt rules regarding refugee resettlement.

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

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 67. STATE REVIEW AND APPROVAL OF INSTRUCTIONAL MATERIALS
SUBCHAPTER B. STATE REVIEW AND APPROVAL
19 TAC §67.43

The State Board of Education (SBOE) adopts new §67.43, concerning state review and approval of instructional materials. The new section is adopted with changes to the proposed text as published in the August 2, 2024 issue of the *Texas Register* (49 TexReg 5616) and will be republished. The new section addresses the removal of a set of instructional materials from the lists of approved and rejected instructional materials outlined in Texas Education Code (TEC), §31.022.

REASONED JUSTIFICATION: TEC, Chapter 31, addresses instructional materials in public education and permits the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials. House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, significantly revised TEC, Chapter 31, including several provisions under SBOE authority. HB 1605 also added a new provision to TEC, Chapter 48, to provide additional funding to school districts and charter schools that adopt and implement SBOE-approved materials. In addition, the bill added requirements related to adoption of essential knowledge and skills in TEC, Chapter 28.

At the January-February meeting, the SBOE approved 19 TAC Chapter 67, State Review and Approval of Instructional Materials, Subchapter B, State Review and Approval, §67.21, Proclamations, Public Notice, and Requests for Instructional Materials for Review; §67.23, Requirements for Publisher Participation in Instructional Materials Review and Approval (IMRA); and §67.25, Consideration and Approval of Instructional Materials by the State Board of Education, and Subchapter D, Duties of Publishers and Manufacturers, §67.81, Instructional Materials Contracts, and §67.83, Publisher Parent Portal, for second reading and final adoption. At that time, the board expressed a desire to clarify the rules related to the list of approved instructional materials outlined in TEC, §31.022.

Adopted new §67.43 clarifies the conditions under which the SBOE could remove instructional materials from the list of approved instructional materials as well as the list of rejected instructional materials. The new section also outlines the timeline for these decisions and their impact on school district procurement.

The SBOE approved the new section for first reading and filing authorization at its June 28, 2024 meeting and for second reading and final adoption at its September 13, 2024 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the new section for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2025-2026 school year. The earlier effective date will allow for clarification to districts and publishers regarding the conditions under which the SBOE could remove instructional materials from the list of approved instructional materials and the use of the entitlements outlined in TEC, §48.307 or §48.308, related to materials removed from the approved instructional materials list. The effective date is 20 days after filing as adopted with the *Texas Register.*

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began August 2, 2024, and ended at 5:00 p.m. on September 3, 2024. The SBOE also provided an opportunity for registered oral and written comments at its September 2024 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment. A Texas parent commented in support of new 19 TAC Chapter 67.

Response. The SBOE agrees.

Comment. A Texas parent asked that the SBOE approve the curriculum being reviewed related to IMRA without amendments.

Response. This comment is outside the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §31.003(a), which permits the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; and TEC, §31.022, as amended by House Bill 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to review instructional materials that have been provided to the board by the Texas Education Agency under TEC, §31.023.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §31.003(a) and §31.022, as amended by House Bill 1605, 88th Texas Legislature, Regular Session, 2023.

§67.43. Lists of Approved and Rejected Instructional Materials.

(a) The list of approved instructional materials shall be maintained by the State Board of Education (SBOE).

(b) The SBOE may remove instructional materials from the list of approved instructional materials if:

(1) the Texas Essential Knowledge and Skills (TEKS), Texas Prekindergarten Guidelines (TPG), or applicable English Language Proficiency Standards (ELPS) intended to be covered by the material are revised or a publisher revises the material without the approval of the SBOE in accordance with Texas Education Code (TEC), §31.022(c);

(2) the instructional materials, through a finding of the SBOE, are not compliant with the parent portal standards in §67.83 of this title (relating to Publisher Parent Portal); or

(3) the instructional materials violate any provisions of TEC, Chapter 31.

(c) A publisher of the specific instructional material shall be provided a minimum of 30 days' notice of the proposed removal. A representative of the publisher of the specific instructional material shall be given the opportunity to address the SBOE at the meeting where the SBOE is considering removing that publisher's product from the list of approved materials.

(d) If instructional materials are removed from the list of approved instructional materials, school districts and open-enrollment charter schools may not apply the entitlements outlined in TEC, §48.307 or §48.308, to future purchases or subscriptions of the removed instructional materials.

(e) A school district or an open-enrollment charter school that selects subscription-based instructional materials from the list of approved instructional materials approved under TEC, §31.022 and §31.023, may cancel the subscription and subscribe to a new

instructional material on the list of approved instructional materials before the end of the state contract period under TEC, §31.026, if:

(1) the district or charter school has used the instructional material for at least one school year and the Texas Education Agency (TEA) approves the change based on a written request to TEA by the district or charter school that specifies the reasons for changing the instructional material used by the district or charter school; or

(2) the SBOE removes the instructional material to which the district or charter school is subscribed from the list of approved instructional materials.

(f) The SBOE shall maintain the list of rejected instructional materials.

(g) Instructional materials shall be removed from the list of rejected instructional materials if a publisher submits a revised set of instructional materials for review through the process required by TEC, §31.022 and §31.023, and the SBOE places the revised instructional materials on the list of approved instructional materials.

(h) The SBOE may remove instructional materials from the list of rejected instructional materials if a publisher submits a revised set of instructional materials for review through the process required by TEC, §31.023 and §31.022, and the SBOE takes no action before the end of the calendar year.

(i) This section applies to instructional materials approved by the SBOE after January 1, 2024.

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

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

TRD-202404930
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: November 10, 2024
Proposal publication date: August 2, 2024
For further information, please call: (512) 475-1497

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CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER C. OTHER PROVISIONS

19 TAC §74.27

The State Board of Education (SBOE) adopts an amendment to §74.27, concerning innovative courses and programs. The amendment is adopted without changes to the proposed text as published in the August 2, 2024 issue of the *Texas Register* (49 TexReg 5618) and will not be republished. The adopted amendment corrects the criteria for innovative courses to be considered for sunset to align with the language approved by the SBOE in November 2023.

REASONED JUSTIFICATION: After the SBOE adopted new rules concerning graduation requirements, the previously approved experimental courses were phased out as of August 31, 1998. Following the adoption of the Texas Essential Knowledge and Skills (TEKS), school districts now submit requests for innovative course approval for courses that do not have TEKS. The process outlined in §74.27 provides authority for the SBOE to approve innovative courses. Each year, Texas Education Agency (TEA) provides the opportunity for school districts and other entities to submit applications for proposed innovative courses. TEA staff works with applicants to fine tune their applications, which are then submitted to the Committee on Instruction for consideration.

At the June 2023 meeting, the Committee on Instruction discussed an amendment to §74.27 to add a provision for the sunset of innovative courses that meet certain criteria. The board approved for first reading and filing authorization the proposed amendment to §74.27 at its August-September 2023 meeting. At the November 2023 SBOE meeting, the board approved for second reading and final adoption the proposed amendment to §74.27, which included as a criterion for consideration for sunset a provision that a course must have been approved for at least three years and meet at least one additional criterion. When TEA staff filed the rule as adopted with the *Texas Register*, the filing did not include the provision that a course must have been approved for at least three years and meet at least one additional criterion to be considered for sunset. The amendment became effective February 18, 2024.

In order to correct the error made by TEA, the adopted amendment corrects the criteria for innovative courses to be considered for sunset to align with the language approved by the SBOE in November 2023.

The SBOE approved the amendment for first reading and filing authorization at its June 28, 2024 meeting and for second reading and final adoption at its September 13, 2024 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2025-2026 school year. The earlier effective date will correct an error prior to the 2025-2026 school year. The effective date is 20 days after filing as adopted with the *Texas Register.*

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began August 2, 2024, and ended at 5:00 p.m. on September 3, 2024. The SBOE also provided an opportunity for registered oral and written comments at its September 2024 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment. One administrator requested that the State of Texas Assessments of Academic Readiness (STAAR®) and Texas English Language Proficiency Assessment System (TELPAS) requirements be removed from 19 TAC §74.14(b) for emergent bilingual students to earn a performance acknowledgement in bilingualism and biliteracy.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One administrator expressed support for the proposed amendment to §74.27(a)(9) because it is consistent with criteria for the sunset of innovative courses that the SBOE approved at the November 2023 SBOE meeting.

Response. The SBOE agrees and took action to adopt the amendment to §74.27(a)(9) as proposed.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §28.002(f), which authorizes local school

districts to offer courses in addition to those in the required curriculum for local credit and requires the State Board of Education to be flexible in approving a course for credit for high school graduation.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §28.002(f).

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: November 10, 2024
Proposal publication date: August 2, 2024
For further information, please call: (512) 475-1497

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CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS

19 TAC §§89.1035, 89.1053, 89.1070

The Texas Education Agency (TEA) adopts amendments to §§89.1035, 89.1053, and 89.1070, concerning clarification of provisions in federal regulations and state law. Section 89.1035 is adopted without changes to the proposed text as published in the July 19, 2024 issue of the *Texas Register* (49 TexReg 5242) and will not be republished. Sections 89.1053 and 89.1070 are adopted with changes to the proposed text as published in the July 19, 2024 issue of the *Texas Register* (49 TexReg 5242) and will be republished. The adopted amendment to §89.1053 implement Senate Bill (SB) 133, 88th Texas Legislature, Regular Session, 2023. The adopted amendments to §89.1035 and §89.1070 clarify graduation requirements for students receiving special education and related services as well as remove outdated language.

REASONED JUSTIFICATION: Section 89.1035 addresses age ranges for student eligibility for special education and related services. The adopted amendment updates cross references and terminology to align with changes adopted in §89.1070.

Section 89.1053 addresses procedures for the use of restraint and time-out for students receiving special education and related services. SB 133, 88th Texas Legislature, Regular Session, 2023, modified Texas Education Code (TEC), §37.0021, to prohibit a peace officer or school security personnel from restraining or using a chemical irritant spray or Taser on a student enrolled in Grade 5 or below unless the student poses a serious risk of harm to the student or another person. The adopted amendment adds new §89.1053(l) to address the requirements of SB 133.

Based on public comment, §89.1053(m) was modified at adoption for clarity to remove the exception clause that was initially proposed, as the exception of subsection (k) is already addressed in subsection (m), and the inclusion of subsection (l) may extend the applicability of the rule farther than what TEC, §37.0021, intended.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began July 19, 2024, and ended August 19, 2024, and included public hearings on July 30 and 31, 2024. Following is a summary of the public comments received and agency responses.

§89.1035, Age Ranges for Student Eligibility

Comment: The Texas School for the Blind and Visually Impaired (TSBVI) requested an amendment to §89.1035(b) to add that transition services and instruction in any remaining areas of the expanded core curriculum (ECC) be provided to students with visual impairments prior to termination of eligibility.

Response: This comment is outside the scope of rulemaking. The commenter mentions that part of the rationale behind this requested change is that sometimes students need more time in special education to work on certain ECC areas even though they have met all other graduation requirements and that adult services are not always equipped to provide the intensity of the services that are necessary. While TEA can assist with technical assistance around the issue, the requested change itself is outside the scope of rulemaking and will not be made at this time.

§89.1053, Procedures for Use of Restraint and Time-Out

Comment: The Texas Council of Administrators of Special Education (TCASE) requested an amendment to §89.1053(m) to include "school security personnel" in addition to "peace officers" for alignment.

Response: The agency disagrees. TEA does not have authority to add this category of personnel to the rule since it is based on a very specific statutory requirement.

Comment: Disability Rights Texas (DRTx), the Autism Society of Texas (AST), the Arc of Texas, and Coalition of Texans with Disabilities (CTD) commented in support of new §89.1053(l) for incorporating statutory provisions of SB 133, 88th Texas Legislature, Regular Session, 2023, into the rule.

Response: The agency agrees.

Comment: DRTx, AST, CTD, and the Arc of Texas requested an amendment to §89.1053(b)(2) to remove a reference to mechanical devices in the definition of restraint for alignment.

Response: The agency disagrees with making this amendment at this time but will gather a group of stakeholders to discuss any changes in this area made by the legislature during the next legislative session.

Comment: DRTx, AST, CTD, and the Arc of Texas requested changes to §89.1053(d) to clarify provisions for training with a goal to prevent and mitigate the utilization rate of restraints against students with disabilities.

Response: The agency disagrees with making this amendment at this time but will gather a group of stakeholders to discuss any changes in this area made by the legislature during the next legislative session.

Comment: An individual commented that the proposed amendment to §89.1053 is not consistent with Texas Education Code, § 37.0021, in that the proposed rule amendment seems to imply that subsection (l) applies to all peace officers, not just those employed by a school district or who are not school resource officers.

Response: The agency agrees and has modified §89.1053(m) at adoption to remove the exception clause that was initially proposed, as the inclusion of that exception may extend the applicability of the rule farther than what TEC, §37.0021, intended.

Comment: An individual requested guidance from TEA on whether a peace officer may, pursuant to department policy, handcuff a student who is at least 10 years old (and in Grade 5 or below) and has been arrested for a criminal offense.

Response: This comment is outside the scope of the proposed rulemaking, but the agency will consider whether technical assistance such as this is authorized by statute.

Comment: An individual requested an amendment to TEC, §37.0021, for clarification and alignment.

Response: This comment is outside the scope of the proposed rulemaking because, as the commenter noted, amendments to the TEC require action by the Texas Legislature.

§89.1070, Graduation Requirements

Comment: TSBVI requested an amendment to §89.1070 to add that an admission, review, and dismissal (ARD) committee would need to determine if a student with a visual impairment has received sufficient instruction in the ECC areas or that an adult service agency is able to meet the individual's needs prior to terminating a student's eligibility based on graduation. TSBVI mentioned that sometimes students need more time in special education to work on certain ECC areas, even though they have met all other graduation requirements, and that adult services are not always equipped to provide the intensity of the services that are necessary.

Response: While TEA can assist with technical assistance around this issue, the requested change is outside the scope of the proposed rulemaking.

Comment: An individual commented that the intent of the requirement for an evaluation under proposed §89.1070(f)(2) needs to be clarified. The commenter further inquired about what is expected if an evaluation is less than three years old.

Response: The agency provides the following clarification. This is not a new requirement, as it has been part of the rule previously in §89.1070(g). The text closely mirrors the requirement listed in 34 Code of Federal Regulations (CFR) §300.305(e) regarding evaluations before a change in eligibility. The text from 34 CFR §300.305(e) first states that a local education agency must evaluate a child with a disability before determining the child is no longer a child with a disability, with the exception that if a student is graduating under a regular diploma (in the rule text, this is described under subsection (b)(1)), or if the student is exceeding age eligibility, an evaluation is not required. Thus, the rule text in proposed §89.1070(f) mirrors this same concept. In terms of what the expectation is if an evaluation is less than three years old, the agency notes that 34 CFR §300.305(e) refers to an evaluation in accordance with 34 CFR §§300.304-300.311. The provisions under 34 CFR §§300.304-300.306 include evaluation procedures, additional requirements for evaluations and reevaluations, and determination of eligibility, and §§300.307-300.311 refer to specific learning disability procedures. Note that 34 CFR §300.305 specifically references the review of existing evaluation data (REED) process that is involved in an initial or a re-evaluation.

Comment: An individual requested an amendment to §89.1070(h) and (j) to remove the reference to subsection (b)(2) and an amendment to subsection (b)(2) to restrict a student from being able to return to high school.

Response: The agency disagrees. The agency notes that the commenter stated that graduation under §89.1070(b)(2) would be the same as a general education student utilizing an individual graduation committee to graduate. This is not accurate, as the standards under §89.1070(b)(1) would include that situation. Subsection (b)(2) refers to the circumstance in which an ARD committee is determining that satisfactory performance on end-of-course assessments, beyond what is required for general education students, is not necessary.

Comment: TCASE requested an amendment to §89.1070(c)(3) to replace "necessary" with "required" for alignment.

Response: The agency agrees that a change is warranted for consistency and has revised §89.1070(c)(3) to replace the word "necessary" with "required."

Comment: An individual questioned why references to the Texas Administrative Code (TAC) chapters addressing the Texas Essential Knowledge and Skills (TEKS) were proposed for deletion from §89.1070(b)(3) and stated that we should have the same expectations for all students.

Response: The agency disagrees that this text was deleted. The text was moved to reference the authority to modify content and curriculum expectations in this circumstance, but those modifications must still be in alignment with the TAC chapters related to the TEKS.

Comment: TCASE requested an amendment to §89.1070(b)(3)(C) to add "paid or unpaid" in front of employment.

Response: The agency disagrees that a change is necessary. The ARD committee will determine this in accordance with a student's transition plan, and the agency will abide by the references described by the Office of Special Education Programs when answering postsecondary outcomes for the State Performance Plan/Annual Performance Report.

Comment: An individual requested clarification on the proposed amendment to repeal §89.1070(b)(3)(D) and whether proposed §89.1070(e) is taking the place of that former subsection.

Response: The agency provides the following clarification. If a student is unable to reach the credit, curriculum, and assessment requirements (even with the allowed modifications and authority to not require passage on state end-of-course assessments) and the student has reached maximum age eligibility, §89.1070(e) will apply, regardless of whether the student meets one of the criteria in §89.1070(b)(3)(A), (B), or (C). Changes to data collection instructions will be addressed by the agency.

Comment: TCASE requested an amendment to §89.1070(g) to clarify the requirement for school districts to include written recommendations from adult service agencies in the summary to the child "if available."

Response: The agency disagrees. The text has been in the rule for several years, and the text already states "if available," thereby meeting the same intent as TCASE is requesting.

Comment: An individual commented that proposed §89.1070(f)(1) and (2) will require a significant amount of paperwork.

Response: The agency disagrees, as the requirements in §89.1070(f)(1) and (2) have been in rule for many years and were relocated from subsection (g). Subsections (f)(1) and (2) are requirements of the Individuals with Disabilities Education Act.

Commented: An individual commented that all students who achieve progress through their individualized education program and are assessed by state of Texas assessments should be provided the opportunity to graduate even if it takes them longer.

Response: This comment is outside the scope of rulemaking; however, the agency provides the following clarification. Students are allowed to attend school through age 21 in certain circumstances, in accordance with §89.1070 and §89.1035.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code, §28.025, which establishes requirements related to high school graduation and academic achievement records; TEC, §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.003, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for conducting a full individual and initial evaluation for a student for purposes of special education services; TEC, §29.005, which establishes criteria for developing a student's individualized education program prior to a student enrolling in a special education program; TEC, §30.081, which establishes the legislative intent concerning regional day schools for the deaf; TEC, §37.0021, which establishes criteria for the use of confinement, restraint, seclusion, and time-out; TEC, §37.0023, which establishes criteria for prohibited aversive behavior techniques; TEC, §39.023, which establishes criteria for the agency to develop criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science; TEC, §48.003, which establishes criteria for student eligibility to the benefits of the Foundation School Program; TEC, §48.102, which establishes criteria for school districts to receive an annual allotment for students in a special education program; Texas Government Code, §392.002, which establishes the use of person first respectful language required by the legislature and the Texas Legislative Council; 34 Code of Federal Regulations (CFR), §300.8, which defines terms regarding a child with a disability; 34 CFR, §300.100, which establishes eligibility criteria for a state to receive assistance; 34 CFR, §300.101, which defines the requirement for all children residing in the state between the ages of 3-21 to have a free appropriate public education (FAPE) available; 34 CFR, §300.102, which establishes criteria for limitation-exception to FAPE for certain ages; 34 CFR, §300.149, which establishes the state education agency's responsibility for general supervision; 34 CFR, §300.305, which establishes criteria for additional requirements for evaluations and reevaluations; 34 CFR, §300.306, which establishes criteria for determination of eligibility; 34 CFR, §300.307, which establishes the criteria for determining specific learning disabilities; 34 CFR, §300.308, which establishes criteria for additional group members in determining whether a child is suspected of having a specific learning disability as defined in 34 CFR, §300.8; 34 CFR, §300.309, which establishes criteria for determining the existence of a specific learning disability; 34 CFR, §300.310, which establishes criteria for observation to document the child's academic performance and behavior in the areas of difficulty; 34 CFR, §300.311, which establishes criteria for specific documentation for the eligibility determination; 34 CFR, §300.320, which defines the requirements for an individualized education program (IEP); 34 CFR, §300.323, which establishes the timeframe for when IEPs must be in effect; and 34 CFR, §300.600, which establishes criteria for state monitoring and enforcement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§28.025, 29.001, 29.003, 29.004, 29.005, 30.081, 37.0021, 37.0023, 39.023, 48.003, and 48.102; Texas Government Code, §392.002; and 34 Code of Federal Regulations, §§300.8, 300.100, 300.101, 300.102, 300.149, 300.305, 300.306, 300.307, 300.308, 300.309, 300.310, 300.311, 300.320, 300.323, and 300.600.

§89.1053. Procedures for Use of Restraint and Time-Out.

(a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), §300.324(a)(2)(i), school districts and charter schools must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat with dignity and respect all students, including students with disabilities who receive special education services under TEC, Chapter 29, Subchapter A.

(b) Definitions.

(1) Emergency means a situation in which a student's behavior poses a threat of:

(A) imminent, serious physical harm to the student or others; or

(B) imminent, serious property destruction.

(2) Restraint means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body.

(3) Time-out means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

(A) that is not locked; and

(B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

(c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations.

(1) Restraint must be limited to the use of such reasonable force as is necessary to address the emergency.

(2) Restraint must be discontinued at the point at which the emergency no longer exists.

(3) Restraint must be implemented in such a way as to protect the health and safety of the student and others.

(4) Restraint must not deprive the student of basic human necessities.

(d) Training on use of restraint. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.

(1) A core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.

(2) Personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.

(3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.

(4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

(e) Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors must implement the following documentation requirements.

(1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.

(2) On the day restraint is utilized, a good faith effort must be made to verbally notify the parent(s) regarding the use of restraint.

(3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.

(4) Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the admission, review, and dismissal (ARD) committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavior improvement plan or a behavioral intervention plan.

(5) Written notification must be provided to the student's parent(s) or person standing in parental relation to the student for each use of restraint, and documentation of each restraint must be placed in the student's special education eligibility folder. The written notification of each restraint must include the following:

(A) name of the student;

(B) name of the individual administering the restraint;

(C) date of the restraint and the time the restraint began and ended;

(D) location of the restraint;

(E) nature of the restraint;

(F) a description of the activity in which the student was engaged immediately preceding the use of restraint;

(G) the behavior of the student that prompted the restraint;

(H) the efforts made to de-escalate the situation and any alternatives to restraint that were attempted;

(I) observation of the student at the end of the restraint;

(J) information documenting parent contact and notification; and

(K) one of the following:

(i) if the student has a behavior improvement plan or behavioral intervention plan, whether the behavior improvement plan or behavioral intervention plan may need to be revised as a result of the behavior that led to the restraint and, if so, identification of the staff member responsible for scheduling an ARD committee meeting to discuss any potential revisions; or

(ii) if the student does not have a behavior improvement plan or a behavioral intervention plan, information on the procedure for the student's parent or person standing in parental relation to the student to request an ARD committee meeting to discuss the possibility of conducting a functional behavioral assessment of the student and developing a plan for the student.

(f) Clarification regarding restraint. The provisions adopted under this section do not apply to the use of physical force or a mechanical device that does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced in subsection (b)(2) of this section does not include:

(1) physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;

(2) limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort;

(3) limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the individualized education program (IEP) as required by 34 CFR, §300.324(a)(2)(i), to promote student learning and reduce and/or prevent the need for ongoing intervention; or

(4) seat belts and other safety equipment used to secure students during transportation.

(g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(3) of this section with the following limitations.

(1) Physical force or threat of physical force must not be used to place a student in time-out.

(2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or behavior improvement plan or behavioral intervention plan if it is utilized on a recurrent basis to increase or decrease a targeted behavior.

(3) Use of time-out must not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

(h) Training on use of time-out. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.

(1) General or special education personnel who implement time-out based on requirements established in a student's IEP and/or behavior improvement plan or behavioral intervention plan must be trained in the use of time-out.

(2) Newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or

behavior improvement plan or behavioral intervention plan must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.

(3) Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

(4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.

(i) Documentation on use of time-out. Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP and/or behavior improvement plan or behavioral intervention plan. If a student has a behavior improvement plan or behavioral intervention plan, the school district must document each use of time-out prompted by a behavior of the student specified in the student's behavior improvement plan or behavioral intervention plan, including a description of the behavior that prompted the time-out. The ARD committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

(j) Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.

(k) Data reporting. With the exception of actions covered by subsection (f) of this section, data regarding the use of restraint must be electronically reported to the Texas Education Agency (TEA) in accordance with reporting standards specified by TEA.

(l) Restrictions on peace officers and security personnel. In accordance with TEC, §37.0021(j), a peace officer performing law enforcement duties or school security personnel performing security-related duties on school property or at a school-sponsored or school-related activity must not restrain or use a chemical irritant spray or Taser on a student enrolled in Grade 5 or below, unless the student poses a serious risk of harm to the student or another person.

(m) Provisions applicable to peace officers. The provisions adopted under this section apply to a peace officer only if the peace officer is employed or commissioned by the school district or provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the school district and a local law enforcement agency, except that the data reporting requirements in subsection (k) of this section apply to the use of restraint by any peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity.

(n) The provisions adopted under this section do not apply to:

(1) juvenile probation, detention, or corrections personnel; or

(2) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

§89.1070. Graduation Requirements.

(a) Graduation under subsection (b)(1) of this section or reaching maximum age eligibility described by §89.1035 of this title (relating to Age Ranges for Student Eligibility) terminates a student's eligibility for special education services under this subchapter and Part B of the Individuals with Disabilities Education Act and entitlement to the benefits of the Foundation School Program, as provided in Texas Education Code (TEC), §48.003(a).

(b) A student who receives special education services may graduate and be awarded a diploma if the student meets one of the following conditions.

(1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title; satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title (relating to Foundation High School Program) applicable to students in general education; and demonstrated satisfactory performance as established for students in general education in TEC, Chapters 28 and 39, on the required end-of-course assessment instruments, which could include meeting the requirements of subsection (d) of this section.

(2) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title; the student has satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title applicable to students in general education; and the student's admission, review, and dismissal (ARD) committee has determined that satisfactory performance, beyond what would otherwise be required in subsections (b)(1) and (d) of this section, on the required end-of-course assessment instruments is not required for graduation.

(3) The student has satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title through courses, one or more of which contain modified curriculum that is aligned to the standards applicable to students in general education; demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title in accordance with modified content and curriculum expectations established in the student's individualized education program (IEP); and demonstrated satisfactory performance on the required end-of-course assessment instruments, unless the student's ARD committee has determined that satisfactory performance on the required end-of-course assessment instruments is not required for graduation. The student must also successfully complete the student's IEP and meet one of the following conditions:

(A) consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district;

(B) consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district; or

(C) the student has access to services or other supports that are not within the legal responsibility of public education, including employment or postsecondary education established through transition planning.

(c) A student receiving special education services may earn an endorsement under §74.13 of this title (relating to Endorsements) if the student:

(1) satisfactorily completes the requirements for graduation under the Foundation High School Program specified in §74.12 of this title as well as the additional credit requirements in mathemat-

ics, science, and elective courses as specified in §74.13(e) of this title with or without modified curriculum;

(2) satisfactorily completes the courses required for the endorsement under §74.13(f) of this title without any modified curriculum or with modification of the curriculum, provided that the curriculum, as modified, is sufficiently rigorous as determined by the student's ARD committee; and

(3) performs satisfactorily as established in TEC, Chapter 39, on the required end-of-course assessment instruments unless the student's ARD committee determines that satisfactory performance is not required.

(d) A student receiving special education services classified in Grade 11 or 12 who has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments is eligible to receive a diploma under subsection (b)(1) of this section.

(e) A student who has reached maximum age eligibility in accordance with §89.1035 of this title without meeting the credit, curriculum, and assessment requirements specified in subsection (b) of this section is not eligible to receive a diploma but may receive a certificate of attendance as described in TEC, §28.025(f).

(f) A summary of academic achievement and functional performance must be provided prior to exit from public school for students who meet one of the following conditions:

(1) a student who has met requirements for graduation specified by subsection (b)(1) of this section or who has exceeded the maximum age eligibility as described by §89.1035 of this title; or

(2) a student who has met requirements for graduation specified in subsection (b)(2) or (b)(3)(A), (B), or (C) of this section. Additionally, a student meeting this condition is entitled to an evaluation as described in 34 Code of Federal Regulations (CFR), §300.305(e)(1).

(g) The summary of performance described by subsection (f) of this section must include recommendations on how to assist the student in meeting the student's postsecondary goals, as required by 34 CFR, §300.305(e)(3). This summary must also consider, as appropriate, the views of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals.

(h) Students who meet graduation requirements under subsection (b)(2) or (b)(3)(A), (B), or (C) of this section and who will continue enrollment in public school to receive special education services aligned to their transition plan will be provided the summary of performance described in subsections (f) and (g) of this section upon exit from the public school system. These students are entitled to participate in commencement ceremonies and receive a certificate of attendance after completing four years of high school, as specified by TEC, §28.025(f).

(i) Employability and self-help skills referenced under subsection (b)(3) of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.

(j) For students who graduate and receive a diploma according to subsections (b)(2) or (b)(3)(A), (B), or (C) of this section, the ARD committee must determine needed special education services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.

(k) For purposes of this section, modified curriculum and modified content refer to any reduction of the amount or complexity of the required knowledge and skills in Chapters 110-117, 126-128, and 130 of this title. Substitutions that are specifically authorized in statute or rule must not be considered modified curriculum or modified content.

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

Filed with the Office of the Secretary of State on October 18, 2024.

TRD-202404911
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Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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DIVISION 7. DISPUTE RESOLUTION

19 TAC §89.1196, §89.1197

The Texas Education Agency (TEA) adopts amendments to §89.1196 and §89.1197, concerning special education services dispute resolution. The amendments are adopted with changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5482) and will be republished. The adopted amendments clarify procedures for individualized education program (IEP) facilitation and add language allowing TEA to delegate certain duties and responsibilities.

REASONED JUSTIFICATION: Section 89.1196 addresses the requirement in Texas Education Code, §29.019, to develop rules associated with IEP facilitation that public education agencies may choose to use as an alternative dispute resolution method. The amendment to subsection (a) describes the purpose of IEP facilitation and changes the term "trained" to "qualified" in the description of facilitators who assist admission, review, and dismissal (ARD) committees.

Based on public comment, the agency has clarified in subsection (c) that the subsection is referring to qualified facilitators.

Section 89.1197 addresses procedures for state IEP facilitation when the ARD committee is in dispute with a parent of a student with a disability. New subsection (b) clarifies that TEA may delegate duties and responsibilities to an education service center (ESC) to maximize efficiency. Subsections are re-lettered throughout the rule as a result of this addition. Deletion of subsection (e)(6), re-lettered as subsection (f)(6), removes language prohibiting the use of IEP facilitation if the issue in dispute is part of a special education complaint, as the agency has determined that facilitation may actually be helpful in resolving these situations.

Based on public comment, the agency has modified subsection (f)(3) to reference that the request for facilitation must be *received* by TEA within 10 calendar days of the ARD committee meeting that ended in disagreement, rather than be *filed* within 10 calendar days.

Based on public comment, the agency has deleted provisions that would have prohibited the use of the state IEP facilitation when the dispute was related to a manifestation determination or determination of alternative educational setting, or when the parties were involved in mediation.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began July 26, 2024, and ended August 26, 2024, and included public hearings on August 21 and 22, 2024. Following is a summary of the public comments received and agency responses.

§89.1196, Individualized Education Program Facilitation

Comment: An individual requested clarification on the application process and the legal criteria for being an IEP facilitator.

Response: This comment is outside the scope of rulemaking, as §89.1196 is about districts providing IEP facilitation, not TEA.

Comment: An individual commented in support of the role of a facilitator but asked that it be mandatory for a school district to honor the request for IEP facilitation from a parent.

Response: The agency disagrees; this would require a statutory change.

Comment: The Texas Council of Administrators of Special Education (TCASE) requested an amendment to subsection (c) to add "qualified" in front of facilitator before describing the minimum requirements.

Response: The agency agrees that clarification may be helpful and has updated §89.1196(c) at adoption to use the phrase "qualified facilitator."

§89.1197, State Individualized Education Program Facilitation

Comment: An individual requested an amendment to subsection (f) to state that the request for IEP facilitation must be received by TEA within 10 calendar days.

Response: The agency agrees that the clarification would be helpful and has modified §89.1197(f) at adoption to state that that the request for facilitation must be *received* by TEA within 10 calendar days of the ARD committee meeting that ended in disagreement, rather than be *filed* within 10 calendar days.

Comment: Five individuals and TCASE disagreed and/or requested clarification on the proposed amendment to subsection (b) allowing ESCs as designated IEP facilitators. The commenters stated concerns with limited staffing, rapport with school districts, and ESCs being non-regulatory educational facilities.

Response: The agency disagrees and provides the following clarification. The amendment in §89.1197(b) does not allow ESC staff to serve as facilitators. It specifically refers to the TEA's duties and specifies that TEA may delegate its duties to an ESC. Subsection (b) specifically states that, where TEA is listed in subsections §89.1197(c)-(p), TEA could delegate that duty to an ESC where not otherwise prohibited by law.

Comment: An individual commented that subsections (f)(4) and (5), which state that IEP facilitation would not being available if a dispute is related to a manifestation determination or interim alternative educational setting, or when the parties are involved in mediation, should be deleted, as these are not mandatory prohibitions by law and hinder accessibility of the program.

Response: The agency agrees and has deleted §89.1197(f)(4) and (5) at adoption.

Comment: TCASE commented in support of the proposed amendment to subsection (f)(6).

Response: The agency agrees.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.019, which establishes IEP facilitation as an alternative dispute resolution method that districts may choose to use; and TEC, §29.020, which establishes the state's IEP facilitation project.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§29.001, 29.019, and 29.020.

§89.1196. Individualized Education Program Facilitation.

(a) For the purpose of this section and Texas Education Code, §29.019, individualized education program (IEP) facilitation refers to a method of alternative dispute resolution that may be used to avoid a potential dispute between a public education agency and a parent of a student with a disability. IEP facilitation involves the use of a qualified facilitator to assist an admission, review, and dismissal (ARD) committee in developing an IEP for a student with a disability. The facilitator uses facilitation techniques to help the committee members communicate and collaborate effectively. While public education agencies are not required to offer IEP facilitation as an alternative dispute resolution method, the Texas Education Agency (TEA) encourages the use of IEP facilitation as described in this section.

(b) A public education agency is not prohibited from incorporating elements of IEP facilitation into ARD committee meetings that are conducted without the assistance of a facilitator as described in this section. For example, a public education agency may provide training on communication skills, conflict management, or meeting effectiveness to individuals who participate in ARD committee meetings to enhance collaboration and efficiency in those meetings.

(c) A public education agency that chooses to offer IEP facilitation under this section may determine whether to use independent contractors, employees, or other qualified individuals as facilitators. At a minimum, an individual who serves as a qualified facilitator must:

(1) have demonstrated knowledge of federal and state requirements relating to the provision of special education and related services to students with disabilities;

(2) have demonstrated knowledge of and experience with the ARD committee meeting process;

(3) have completed 18 hours of training in IEP facilitation, consensus building, and/or conflict resolution; and

(4) complete continuing education as determined by the public education agency.

(d) A public education agency that chooses to offer IEP facilitation under this section must ensure that:

(1) participation is voluntary on the part of the parties;

(2) the facilitation is provided at no cost to parents; and

(3) the process is not used to deny or delay the right to pursue a special education complaint, mediation, or a due process hearing in accordance with Part B of the Individuals with Disabilities Education Act (IDEA) and this division.

(e) A public education agency that chooses to offer IEP facilitation under this section must develop written policies and procedures that include:

(1) the procedures for requesting facilitation;

(2) facilitator qualifications, including whether facilitators are independent contractors, employees, or other qualified individuals;

(3) the process for assigning a facilitator;

(4) the continuing education requirements for facilitators; and

(5) a method for evaluating the effectiveness of the facilitation services and the individual facilitators.

(f) A public education agency that chooses to offer IEP facilitation under this section must provide parents with information about the process, including a description of the procedures for requesting IEP facilitation and information related to facilitator qualifications. This information must be included when a copy of the procedural safeguards notice under 34 Code of Federal Regulations (CFR), §300.504 is provided to parents, although this information may be provided as a separate document and may be provided in a written or electronic format.

(g) A facilitator under this section must not be a member of the student's ARD committee, must not have any decision-making authority over the committee, and must remain impartial to the topics under discussion. The facilitator must assist with the overall organization and conduct of the ARD committee meeting by:

(1) assisting the committee in establishing an agenda and setting the time allotted for the meeting;

(2) assisting the committee in establishing a set of guidelines for the meeting;

(3) guiding the discussion and keeping the focus on developing a mutually agreed upon IEP for the student;

(4) ensuring that each committee member has an opportunity to participate;

(5) helping to resolve disagreements that arise; and

(6) helping to keep the ARD committee on task so that the meeting purposes can be accomplished within the time allotted for the meeting.

(h) Promptly after being assigned to facilitate an ARD committee meeting, or within a timeline established under the public education agency's procedures, the facilitator must contact the parents and public education agency representative to clarify the issues, gather necessary information, and explain the IEP facilitation process.

(i) A public education agency that chooses to offer IEP facilitation under this section must ensure that facilitators protect the confidentiality of personally identifiable information about the student and comply with the requirements in the Family Educational Rights and Privacy Act regulations, 34 CFR, Part 99, relating to the disclosure and redisclosure of personally identifiable information from a student's education record.

(j) TEA will develop information regarding IEP facilitation as an alternative dispute resolution method, and such information will be available upon request from TEA and on the TEA website.

§89.1197. State Individualized Education Program Facilitation.

(a) In accordance with Texas Education Code, §29.020, the Texas Education Agency (TEA) will establish a program that provides independent individualized education program (IEP) facilitators.

(b) For purposes of this section, where TEA is referenced in subsections (c)-(p) of this section and where not otherwise prohibited by law, TEA may delegate duties and responsibilities to an education service center (ESC) when it is determined to be the most efficient way to implement the program.

(c) For the purpose of this section, IEP facilitation has the same general meaning as described in §89.1196(a) of this title (relating to Individualized Education Program Facilitation), except that state IEP facilitation is used when the admission, review, and dismissal (ARD) committee is in dispute about decisions relating to the provision of a free and appropriate public education to a student with a disability and the facilitator is an independent facilitator provided by TEA.

(d) A request for IEP facilitation under this section must be filed by completing a form developed by TEA that is available upon request from TEA and on the TEA website. The form must be filed with TEA by one of the parties by electronic mail, mail, hand-delivery, or facsimile.

(e) IEP facilitation under this section must be voluntary on the part of the parties and provided at no cost to the parties.

(f) In order for TEA to provide an independent facilitator, the following conditions must be met.

(1) The required form must be completed and signed by both parties.

(2) The dispute must relate to an ARD committee meeting in which mutual agreement about one or more of the required elements of the IEP was not reached and the parties have agreed to recess and reconvene the meeting in accordance with §89.1055(o) of this title (relating to Individualized Education Program).

(3) The request for IEP facilitation must be received by TEA within 10 calendar days of the ARD committee meeting that ended in disagreement, and a facilitator must be available on the date set for reconvening the meeting.

(4) The same parties must not have participated in IEP facilitation concerning the same student under this section within the same school year of the filing of the current request for IEP facilitation.

(g) Within five business days of receipt of a request for an IEP facilitation under this section, TEA will determine whether the conditions in subsections (d)-(f) of this section have been met and will notify the parties of its determination and the assignment of the independent facilitator, if applicable.

(h) Notwithstanding subsections (c)-(f) of this section, if a special education due process hearing or complaint decision requires a public education agency to provide an independent facilitator to assist with an ARD committee meeting, the public education agency may request that TEA assign an independent facilitator. Within five business days of receipt of a written request for IEP facilitation under this subsection, TEA will notify the parties of its decision to assign or not assign an independent facilitator. If TEA declines the request to assign an independent facilitator, the public education agency must provide an independent facilitator at its own expense.

(i) TEA's decision not to provide an independent facilitator is final and not subject to review or appeal.

(j) The independent facilitator assignment may be made based on a combination of factors, including, but not limited to, geographic location and availability. Once assigned, the independent facilitator must promptly contact the parties to clarify the issues, gather necessary information, and explain the IEP facilitation process.

(k) TEA will use a competitive solicitation method to seek independent facilitation services, and the contracts with independent facilitators will be developed and managed in accordance with TEA's contracting practices and procedures.

(l) At a minimum, an individual who serves as an independent facilitator under this section:

(1) must have demonstrated knowledge of federal and state requirements relating to the provision of special education and related services to students with disabilities;

(2) must have demonstrated knowledge of and experience with the ARD committee meeting process;

(3) must have completed 18 hours or more of training in IEP facilitation, consensus building, and/or conflict resolution as specified in TEA's competitive solicitation;

(4) must complete continuing education as determined by TEA;

(5) may not be an employee of TEA or the public education agency that the student attends; and

(6) may not have a personal or professional interest that conflicts with his or her impartiality.

(m) An individual is not an employee of TEA solely because the individual is paid by TEA to serve as an independent facilitator.

(n) An independent facilitator must not be a member of the student's ARD committee, must not have any decision-making authority, and must remain impartial to the topics under discussion. The independent facilitator must assist with the overall organization and conduct of the ARD committee meeting by:

(1) assisting the committee in establishing an agenda and setting the time allotted for the meeting;

(2) assisting the committee in establishing a set of guidelines for the meeting;

(3) guiding the discussion and keeping the focus on developing a mutually agreed upon IEP for the student;

(4) ensuring that each committee member has an opportunity to participate;

(5) helping to resolve disagreements that arise; and

(6) helping to keep the ARD committee on task so that the meeting purposes can be accomplished within the time allotted for the meeting.

(o) An independent facilitator must protect the confidentiality of personally identifiable information about the student and comply with the requirements in the Family Educational Rights and Privacy Act regulations, 34 CFR, Part 99, relating to the disclosure and redisclosure of personally identifiable information from a student's education record.

(p) TEA will develop surveys to evaluate the IEP facilitation program and the independent facilitators and will request that parties who participate in the program complete the surveys.

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

Filed with the Office of the Secretary of State on October 16, 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

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CHAPTER 103. HEALTH AND SAFETY
SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING GENERAL PROVISIONS FOR HEALTH AND SAFETY

19 TAC §103.1103

The Texas Education Agency adopts new §103.1103, concerning opioid antagonist medication requirements in schools. The new section is adopted without changes to the proposed text as published in the April 19, 2024 issue of the *Texas Register* (49 TexReg 2380) and will not be republished. The new section implements Senate Bill (SB) 629, 88th Texas Legislature, Regular Session, 2023, and adopts by reference the rules of the executive commissioner of the Texas Health and Human Services Commission.

REASONED JUSTIFICATION: SB 629, 88th Texas Legislature, Regular Session, 2023, established that each school district adopt and implement a policy regarding the maintenance, administration, and disposal of opioid antagonists at each campus in the district that serves students in Grades 6-12. Districts may adopt and implement such a policy at each campus in the district, including campuses serving students in a grade level below Grade 6. An open-enrollment charter school or private school may adopt and implement a policy regarding the maintenance, administration, and disposal of opioid antagonists. If a school adopts a policy, the school is permitted to apply the policy only at campuses serving students in Grades 6-12 or at each campus, including campuses serving students in a grade level below Grade 6.

The executive commissioner of the Health and Human Services Commission must, in consultation with the commissioner of education, adopt rules regarding the maintenance, administration, and disposal of opioid antagonists at a school campus subject to a policy. The rules must establish the process for checking the inventory of opioid antagonists at regular intervals for expiration and replacement and include the amount of training required for school personnel and school volunteers to administer an opioid antagonist.

Schools with a policy on the administration of opioid antagonists must be required to report certain information no later than the tenth business day after the date a school personnel member or a school volunteer administers an opioid antagonist.

Each school district, open-enrollment charter school, and private school that adopts a policy regarding the maintenance, administration, and disposal of opioid antagonists is responsible for training school personnel and school volunteers in the administration of an opioid antagonist. Training must include information on recognizing the signs and symptoms of an opioid-related drug overdose; administering an opioid antagonist; implementing emergency procedures, if necessary, after administering an

opioid antagonist; and properly disposing of used or expired opioid antagonists. Training must be provided in a formal training session or through online education. Each school district, open-enrollment charter school, or private school that adopts a policy must maintain records on the required training.

The commissioner of education and the executive commissioner of the Health and Human Services Commission must jointly adopt rules necessary to implement Texas Education Code (TEC), Chapter 38, Subchapter E-1. The new rule, therefore, adopts by reference the rules of the executive commissioner of the Texas Health and Human Services Commission implementing the provisions of TEC, §38.222.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began April 19, 2024, and ended May 20, 2024. No public comments were received.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §38.222, as added by Senate Bill (SB) 629, 88th Texas Legislature, Regular Session, 2023, which requires each school district to adopt and implement a policy regarding the maintenance, administration, and disposal of opioid antagonists at each campus that serves students in Grades 6-12 and allows each school district to adopt and implement the policy at each campus in the district that serves students in a grade level below Grade 6. The statute also allows each open-enrollment charter school or private school to adopt and implement a policy regarding the maintenance, administration, and disposal of opioid antagonists at each campus; and TEC, §38.228, as added by SB 629, 88th Texas Legislature, Regular Session, 2023, requires the commissioner of education and the executive commissioner of the Health and Human Services Commission to jointly adopt rules regarding the maintenance, administration, and disposal of opioid antagonists.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §38.222 and §38.228, as added by Senate Bill 629, 88th Texas 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.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

The commissioner of insurance adopts amendments to 28 TAC §§7.1901, 7.1902, and 7.1904 - 7.1915. The commissioner also adopts new §7.1916 and §7.1917. The new and amended sections concern licensing requirements for multiple employer welfare arrangements (MEWAs). The commissioner also adopts the repeal of §7.1903.

Sections 7.1901, 7.1908, 7.1909, 7.1911, and 7.1913 - 7.1916 and the repeal of 7.1903 are adopted without changes to the proposed text published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2968). These sections will not be republished. Sections 7.1902, 7.1904 - 7.1907, 7.1910, and 7.1912 are adopted with changes to the proposed text. These sections were revised in response to public comments. TDI revised §7.1917 to clarify that the entire section applies only to a MEWA that offers or seeks to offer a comprehensive health benefit plan. These sections will be republished.

REASONED JUSTIFICATION. Amendments to §§7.1901, 7.1902, and 7.1904 - 7.1915, and new §7.1916 and §7.1917 are necessary to implement House Bill 290, 88th Legislature, 2023, and Insurance Code Chapter 846. Insurance Code §846.0035 as added by HB 290 creates a new path for MEWAs. The path treats a MEWA, under certain conditions and as determined by the commissioner, as though it were an insurer, the individuals covered as though they were insured, and the benefits provided as though through an insurance policy.

Under new Insurance Code §846.0035, all new MEWAs that apply for an initial certificate of authority on or after January 1, 2024, and existing MEWAs that elect to comply with the new section are subject to the new provisions.

New Insurance Code §846.0035(b) and (c) outline the Insurance Code provisions a MEWA is subject to when it:

- provides a comprehensive health benefit plan, as determined by the commissioner; or

- provides a comprehensive health benefit plan that is structured in the manner of a preferred provider benefit plan (PPO) or an exclusive provider benefit plan (EPO) as defined in Insurance Code §1301.001, as determined by the commissioner.

The new and amended sections clarify which plans or coverages constitute a "comprehensive health benefit plan" for the purposes of Insurance Code §846.0035(b) and what information a MEWA must provide to TDI to demonstrate compliance when the MEWA will provide a comprehensive health benefit plan under Insurance Code §846.0035. A MEWA that provides a comprehensive health benefit plan that is structured in the manner of a PPO or EPO must comply with the requirements in Insurance Code Chapters 1301 and 1467, and the rules that implement those provisions.

HB 290 also requires a MEWA that applies for a certificate of authority to demonstrate, as determined by the commissioner, that the arrangement is in compliance with all applicable federal and state laws. HB 290 expands who may organize and participate in a MEWA under Insurance Code Chapter 846, including permitting the MEWA to be organized on the basis of employer location rather than industry, permitting a MEWA under certain circumstances when it has been in existence for at least two years, and permitting working owner members in the MEWA. These HB 290 provisions providing flexibility are somewhat similar to a federal rule on association health plans (AHPs) that was adopted in 2018 at 29 CFR §2510.3-5 but was repealed soon after the TDI rule was proposed. *See* 89 Federal Register

34127 (April 30, 2024). Because of that repeal, it will be more difficult for a MEWA licensed under the HB 290 flexibility provisions to be able to demonstrate federal compliance.

Under current federal law, following the repeal of the 2018 federal AHP rule, a MEWA that does not qualify as a bona fide employer association plan is not considered a single group employee welfare benefit plan under the Employee Retirement Income Security Act of 1974 (ERISA) (29 United States Code §1001 et seq.). If the MEWA is not considered a single group employee welfare benefit plan under ERISA, each participating employer will be seen as sponsoring its own employee welfare benefit plan. The MEWA must demonstrate that each plan meets federal requirements for individual, small, or large group health benefit plans, as applicable. The previous requirement in §7.1904 allowed a statement by the applicant certifying compliance. The adopted sections clarify the minimum information required when a MEWA seeks to demonstrate compliance with federal law. TDI will review the submitted information to determine whether the MEWA has sufficiently demonstrated compliance with state and federal law.

In addition to the new and amended sections that implement HB 290, the rule also removes the requirement that MEWAs file the specific forms adopted by reference in §7.1903. Section 7.1903 is repealed because the elements of the forms are integrated into amendments to §§7.1904, 7.1906, and 7.1912. The previously adopted forms will remain on TDI's website at www.tdi.texas.gov/forms for use as a reference and resource for compliance. MEWAs must provide the required information under Insurance Code Chapter 846 and 28 TAC Chapter 7, Subchapter S, and may continue--but are not required--to use the TDI forms for compliance.

Nonsubstantive amendments are adopted to reflect current agency drafting style and plain language preferences, including (1) updating statutory references to reflect Insurance Code recodification; (2) adding or amending Insurance Code section titles and citations; (3) updating TDI contact information, including website addresses; and (4) correcting and revising punctuation, capitalization, and grammar.

Specifically, amendments to multiple sections include the replacement of "which" with "that," "prior to" with "before," "shall" with "must" or another context-appropriate word, and "multiple-employer welfare arrangement" with "multiple employer welfare arrangement" or "MEWA" for consistency with usage in the Insurance Code. These amendments, along with other nonsubstantive amendments discussed in the following paragraphs, reflect current agency drafting style, adhere to plain-language practices, and promote consistency in TDI rule text.

The repeal of §7.1903 is necessary to implement Insurance Code Chapter 846, Subchapters B and D. The repeal removes the forms that were previously adopted by reference for use in the regulation of MEWAs and integrates the required information into rule text, as discussed in a previous paragraph.

TDI received comments on an informal working draft that requested input on specific implementation questions. TDI posted the draft on its website on August 22, 2023, and considered those comments when drafting the proposal.

Descriptions of the sections' adopted amendments and repeal follow.

Section 7.1901. The amendments to §7.1901 replace "these sections apply" with "this subchapter applies," "these sections do" with "this subchapter does," and "Chapter 3, Subchapter I, concerning the licensing and regulation of such arrangements" with "Chapter 846, concerning Multiple Employer Welfare Arrangements." Other amendments to punctuation and grammar are adopted for consistency with agency drafting style and plain language preferences.

Nonsubstantive amendments also restructure subsection (b) and amend punctuation to create two separate paragraphs for plain language and ease of reading.

Section 7.1902. The amendments to §7.1902 reflect the enactment of HB 290 by adding a definition of "comprehensive health benefit plan." A comprehensive health benefit plan is defined as any health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness. The definition specifies which plans or coverage do not constitute comprehensive health benefit plans for the purposes of HB 290 and is based on exclusions in Insurance Code §846.001(3).

The amendments also define "department" as the "Texas Department of Insurance" and redesignate the paragraphs throughout the section to reflect the addition of new definitions.

As proposed, former §7.1902(2), now redesignated as §7.1902(4), expanded the definition of "employee welfare benefit plan" to include a MEWA on the basis of the location of the employers' principal places of business as permitted under Insurance Code §846.0035 and §846.053(b)(2). As adopted, the definition of "employee welfare benefit plan" cites to the definition in Insurance Code §846.001(2), which assigns the meaning in Section 3(1) of ERISA (29 United States Code §1002(1)) to the term. This change ensures that the rule is consistent with both Insurance Code Chapter 846 and federal law following the repeal of the federal AHP rule and provides flexibility should federal law change in the future.

The amendments to redesignated paragraph (5) remove "describes an entity which" and "the" before "Insurance Code," and replace "Article 3.95-4" with "§846.201," and "§7.1908" with "§7.1909."

Section 7.1903. Section 7.1903 is repealed because the requirements in the forms have been added to the text of §§7.1904, 7.1906, and 7.1912. The forms will remain accessible as a reference and resource on TDI's website at www.tdi.texas.gov/forms. Companies and MEWAs must provide the required information under Insurance Code Chapter 846 and 28 TAC Chapter 7, Subchapter S, and may continue--but are not required--to use the TDI forms for compliance.

Section 7.1904. The amendments to §7.1904 remove former subsection (a) regarding which entities must file an application for initial certificate of authority because it is no longer necessary and redesignate part of former subsection (b) as a new subsection (a). New (a) requires a MEWA to submit a complete application for an initial certificate of authority to the commissioner and authorizes the MEWA to use forms available on TDI's website at www.tdi.texas.gov/forms as a resource to comply.

Amendments to new subsection (b) clarify the information needed for an application for an initial certificate of authority to be considered complete and add new paragraphs (1) - (4) to incorporate information previously contained in the forms listed in §7.1903.

New subsection (b)(1) includes the information from TDI Form FIN300, concerning the application for and reservation of a

MEWA's name. As adopted, paragraphs (1)(C) and (1)(D) are changed in response to comment to specify that the MEWA must list every state where the MEWA is licensed to do business, "whether the MEWA is fully insured or not," and paragraph (1)(D) is changed to add "or license" for consistency with paragraph (1)(C).

New subsection (b)(2) includes the information from TDI Forms FIN374, FIN375, and FIN376, including MEWA-specific information and information about the officers, directors, and trustees. Under subsection (b)(2), a MEWA applicant must submit a notarized affidavit signed by the president, secretary, and treasurer, or the trustees, and must include a declaration that the affiant knows of no reason under the Texas Insurance Code as to why the MEWA is not entitled to an initial certificate of authority. To correct an error made in the proposal, paragraph (2)(C) as adopted removes an errant "the" from the notation of "{MEWA Name}" in a required form so it matches other form requirements in the section.

New subsection (b)(3) requires a MEWA to submit a biographical affidavit for each trustee, officer, director, or administrator of the MEWA and include certain identifying information and contact information contained in TDI Form FIN311. As adopted, subsection (b)(3)(F) is modified in response to comment to clarify that the affiant must provide "any previous or current" ownership or control of entities involved in the business of insurance.

New subsection (b)(4) requires the affiant to designate the commissioner of insurance as the MEWA's resident agent for purposes of service of process. A MEWA may use TDI Form FIN377 to comply with this requirement but is not required to do so. The remaining paragraphs in subsection (b) are redesignated to reflect the addition of subsection (b)(1) - (4). As adopted, subsection (b)(11) is changed in response to comment to replace the word "employer" with the word "employee" and to clarify that fidelity bonds issued in the name of the MEWA must also protect against acts of fraud and dishonesty by those with access to funds held on behalf of individual employer plans, for MEWAs that are not bona fide associations or groups under ERISA.

The amendments to new subsection (b) also add to or amend redesignated paragraphs (13), (16), (18), and (19) to implement HB 290.

Redesignated subsection (b)(13) is revised to clarify that, subject to Insurance Code §846.157(b), an actuarial opinion must be provided and prepared according to the specified requirements. In response to comment, the rule text is changed to clarify that an actuary preparing an opinion must not have a relationship with the MEWA or its affiliates because such relationships may create a conflict of interest. As adopted, subsection (b)(13) now states that the actuary preparing the opinion must not be "an employee of the MEWA's employer-members, an affiliate of the MEWA, or an affiliate of the MEWA's employer-members, or an employee of an affiliate of the MEWA."

The adopted language is an expansion of redesignated subsection (b)(13), which prohibited only the MEWA employment relationship. The actuarial opinion must include the recommended amount of cash reserves the MEWA should maintain, among other things. To implement HB 290, an amendment to subsection (b)(13) clarifies that a MEWA that provides a comprehensive health benefit plan under Insurance Code §846.0035 must also comply with reserve requirements in Insurance Code Chapter 421. As adopted, subsection (b)(13) is changed in response to comment to clarify that a MEWA that provides a comprehensive health benefit plan must comply with reserve requirements in both Insurance Code Chapter 421 and §846.154. A clarifying change is also made to state that all MEWAs must comply with the recommended amount of reserves under Insurance Code §846.154. Former subsection (b)(13), which addressed the certification that an applicant could provide to attest to compliance with all applicable provisions of ERISA, is removed.

New subsection (b)(16) states that a MEWA that is formed under Insurance Code §846.053(b)(2) must provide documentation to TDI to demonstrate compliance.

Under new subsection (b)(18), an applicant must provide documentation, as determined by the commissioner, that demonstrates that the MEWA is in compliance with all applicable federal and state laws. The documents that will demonstrate compliance include:

- a list of and access to all ERISA reports for the last five years filed with the United States Department of Labor;

- if the MEWA is an employee welfare benefit plan, an advisory opinion from the United States Department of Labor that is not more than 3 years old for certain MEWA structures or an opinion from an attorney attesting to the structure of the MEWA; and

- for each plan sponsored by the applicant, an opinion from an attorney attesting that the plan is in compliance with federal and state laws.

New subsection (b)(19) implements HB 290 by requiring a MEWA that will provide a comprehensive health benefit plan under Insurance Code §846.0035 to provide additional information in accordance with proposed new §7.1917.

The amendments remove unnecessary introductory text before lists throughout the section. For example, the words "described in paragraphs (1) - (13) of this subsection" are removed so the statement is simplified to "In order to be considered complete, the application must contain the following items." Similar changes, made throughout the section, are intended to increase readability of the requirements.

The amendments revise the statement "any such licenses held should be specified by type" in subsection (b)(8)(E) to say "the applicant must specify any such licenses by type" to increase readability; remove "which provides," "the summary plan description shall," and "or"; and add "proposed" throughout for consistency with drafting in the section, "and" after subsection (b)(9)(A) to reflect that it is part of a list, and "the" at the beginning of clauses in subsection (b)(9)(B), as appropriate.

Amendments also replace "should" with "must," "with components and characteristics" with "that is," "non-renewal" with "nonrenewal," "non-participation" with "nonparticipation," "in conformity with" with "according to," "third party" with "third-party," "company's" with "third-party administrator's," and "management's" with "MEWA's."

Section 7.1905. The amendments to §7.1905 clarify that employers in a MEWA may either be members of an association or group of five or more businesses within the same trade or industry or be formed under Insurance Code §846.053(b)(2), which requires the employers to each have a principal place of business in the same region that does not exceed the boundaries of the state or metropolitan statistical area designated by the United States Office of Management and Budget.

The amendments also clarify that the requirement that an association be in existence for at least two years before engaging

in any activities related to the provision of employer health benefits does not apply to MEWAs formed under Insurance Code §846.0035. The amendments also clarify which reserve requirements a MEWA must comply with, depending on whether the MEWA is formed under Insurance Code §846.0035.

As adopted, subsections (a)(10) and (a)(11) are changed in response to comment to replace the term "or" with "and" to clarify that all MEWAs are required to comply with the reserve requirements in Insurance Code §846.154 and that MEWAs that provide comprehensive health benefit plans must also comply with Insurance Code Chapter 421.

The amendments also add subsection (a)(16) to clarify that a MEWA that will provide a comprehensive health benefit plan must submit documentation as specified in §7.1917 that adequately demonstrates compliance with applicable requirements before the commissioner will issue an initial certificate of authority.

The amendments remove the safe harbor provision in subsection (a) that provided that a MEWA that timely filed notice for an initial and final certificate of authority would not be denied a certificate based on the fact that it engaged in the business of insurance in Texas on an unauthorized basis prior to September 1, 1993, because this provision is no longer necessary.

Nonsubstantive amendments restructure multiple paragraphs in the section and redesignate paragraphs and subparagraphs throughout to reflect the amendments. The bulk of paragraph (1) is broken into two subparagraphs for ease in reading and to include the second pathway created by HB 290. In addition, introductory text before lists throughout the section is amended. For example, the introductory text in redesignated subsection (a)(15) that reads "set out in subparagraphs (A) - (D) of this paragraph, as follows" now reads "in the following."

Amendments to redesignated subsection (a)(15)(D) clarify that a MEWA must provide TDI's website in addition to the toll-free telephone number for consistency with 28 TAC §1.601 and remove the reference to the "Texas Department of Insurance consumer services division." The requirements in 28 TAC §1.601 implement provisions of the Insurance Code, including Insurance Code §521.005, which a MEWA must comply with under Insurance Code §846.003(b)(12).

Additional nonsubstantive amendments remove "to"; add "in"; and replace "transact" with "engage in," "shall have the power to" with "may," "shall be" with "is," "which may be necessary" with "necessary," "third party" with "third-party," "providing not less than," with "that provides," "days" with "days'," "non-renewal" with "nonrenewal," "current" with "preceding," "Texas Department of Insurance consumer services division" with "department," and, in the section title, "Temporary" with "Initial."

Section 7.1906. An amendment to §7.1906(a) provides that applicants for a final certificate of authority may use MEWA forms on TDI's website at www.tdi.texas.gov/forms as a resource when complying with the section requirements. An amendment also designates part of subsection (a) as new subsection (b) and redesignates former subsection (b) as subsection (c).

An amendment also adds new paragraph (5) to the text that makes up new subsection (b), inserting a requirement currently found in forms required in §7.1903. This amendment requires that the application for a final certificate of authority include a notarized statement that affirms that the affiant knows of no reason under the Texas Insurance Code as to why the MEWA is not entitled to a final certificate of authority.

As adopted, redesignated subsection (c) is changed in response to comment to clarify that the MEWA must demonstrate compliance with the requirements in Insurance Code Chapter 846, the requirements in these rules, and "other applicable Insurance Code provisions" before the commissioner will issue a final certificate of authority.

Other amendments replace "which sets forth a description of" with "that describes," "Article 3.95-8" and "Chapter 3, Subchapter I" with "Chapter 846," and "which" with "whose."

Section 7.1907. Amendments to §7.1907 provide additional information about requesting an extension of an initial certificate of authority and the timelines for TDI's review of filed applications for a final certificate of authority. Existing subsection (b) is removed, and existing subsection (c) is redesignated as new subsection (b). The contents of existing subsection (b) are incorporated into new subsection (f), as discussed in a later paragraph.

The text of redesignated subsection (b) is clarified to provide that if an applicant submits a written request for a hearing within 30 days after the notice of refusal to grant a final certificate of authority is sent, revocation of the initial certificate of authority will be temporarily stayed.

New subsection (c) clarifies that a MEWA's initial certificate of authority will not expire during TDI's review of a timely filed application for a final certificate of authority.

New subsection (d) provides that when a timely filed application is incomplete and a MEWA fails to respond to a notice of deficiency within the timelines in new subsection (e), a MEWA's initial certificate of authority will expire five days after the date the response was due or on the one-year anniversary following the issuance of the initial certificate of authority, whichever is later.

New subsection (e) establishes the timeframe for a timely response to a notice of deficiency. A response to a notice of deficiency is timely if it provides all the information requested by TDI in writing within the timeframes listed. As proposed, subsection (e)(3) classified a response to a notice of deficiency as timely if it was received "as otherwise agreed to by the department." As adopted, subsection (e)(3) is changed in response to comment to state that a response to a notice of deficiency will be considered timely if the response provides all information requested by TDI in writing "within a reasonable time period as agreed to by the department based on the MEWA's circumstances."

New subsection (f) incorporates requirements removed with the deletion of existing subsection (b) and additional new text provides that the request to extend the initial certificate of authority must occur before the end of the one-year term, must be in writing, and must explain in detail the basis for an extension. Subsection (f) also clarifies that only one extension will be granted under the subsection. As adopted, subsection (f) is changed in response to comment to clarify that the initial certificate of authority may be extended on a determination that the MEWA is likely to meet the requirements of the subchapter "within the granted extension period."

Section 7.1908. Amendments to §7.1908 reduce the fee for filing an annual audited financial statement and actuarial opinion to $0. The filing fees for the initial and final certificate of authority are retained to cover the administrative cost to review the filings. The fee for an appointment of the commissioner of insurance as the

agent for service of process remains $50 because this amount is statutorily required under Insurance Code §846.059(c).

Section 7.1909. Amendments to §7.1909 remove "in paragraphs (1) - (3) of this subsection" in subsection (a) and replace "pursuant to the provisions of" with "under" and "optical" with "vision." A citation to the United States Code is also revised to remove italicized formatting.

Section 7.1910. Amendments to §7.1910 clarify in subsection (a)(4) that a MEWA must provide TDI's website in addition to the toll-free telephone number for consistency with 28 TAC §1.601 and remove the reference to the "Texas Department of Insurance consumer services division." The requirements in §1.601 implement provisions of the Insurance Code, including Insurance Code §521.005, which a MEWA must comply with under Insurance Code §846.003(b)(12). As adopted, subsection (a) is changed in response to comment to clarify that the required notice is "in addition to any other notices required by law." Several nonsubstantive amendments for consistency with current agency drafting style and plain language preferences are also made.

Section 7.1911. Amendments to §7.1911 clarify that a MEWA must complete a name application form, as described in §7.1904(b)(1), to transact business in Texas. The amendments also remove "no" at the beginning of subsection (a) and replace "shall" with "may not" to reflect the removal of "no," which is consistent with current agency drafting style and plain language preferences to remove "shall."

In addition, amendments include replacing "any other" with "another."

Section 7.1912. Amendments to §7.1912 clarify that a MEWA that provides a comprehensive health benefit plan under Insurance Code §846.0035 must comply with reserve requirements in Insurance Code Chapter 421. In response to comment, the rule text is changed to clarify that an actuary preparing an opinion must not have a relationship with the MEWA or its affiliates because such relationships may create a conflict of interest. Subsection (a)(2) is changed from the proposal to state that the actuary preparing the opinion must not be "an employee of the MEWA's employer-members, an affiliate of the MEWA, or an affiliate of the MEWA's employer-member, or an employee of an affiliate of the MEWA." As proposed, subsection (a)(2)(B) outlined the reserve requirements for MEWAs that provide a comprehensive health benefit plan and MEWAs that do not provide a comprehensive health benefit plan. As adopted, subsection (a)(2)(B) is changed in response to comment to clarify that all MEWAs must comply with the reserve requirements in Insurance Code §846.154, and that a MEWA that provides a comprehensive health benefit plan must also comply with Insurance Code Chapter 421.

New subsection (e) requires a MEWA to file updated information when a material change occurs to documents previously provided in the application for the initial or final certificate of authority, which includes information previously listed in TDI Form FIN378. Form FIN378 requires a MEWA to file updated plan documents when changes occur. To ensure that TDI has the most accurate information, a MEWA must provide updated information within 30 days of the material change. MEWAs may continue to use Form FIN378, which is available on TDI's website at www.tdi.texas.gov/forms, as a resource to comply.

Amendments also replace "these sections" with "this subchapter." Several nonsubstantive changes for consistency with current agency drafting style and plain language preferences are also made.

Section 7.1913. Amendments to §7.1913 clarify that a MEWA that will provide a comprehensive health benefit plan that is structured in the manner of a preferred provider benefit plan or exclusive provider benefit plan under Insurance Code §1301.001 must comply with the examination requirements in Insurance Code §1301.0056.

The amendments also replace the citation to Insurance Code Article 1.16 with recodified citations in Insurance Code Chapter 401, Subchapter D, and the corresponding titles and add a citation to Insurance Code §1301.0056.

Section 7.1914. Amendments to §7.1914 add "required" and replace "shall respectively have such" with "may exercise the" and "such" with "the."

Section 7.1915. Amendments to §7.1915 replace citations to Insurance Code Article 3.95-13 and Chapter 3, Subchapter I, with the recodified citations to Insurance Code §846.003 and Insurance Code Chapter 846, respectively. Amendments also add the section titles to both updated citations.

Section 7.1916. New §7.1916 states how a MEWA that was issued a certificate of authority before January 1, 2024, may elect to be subject to certain Insurance Code provisions under Insurance Code §846.0035. To make the election, a MEWA must complete and submit a statement signed and dated by an authorized officer, director, or trustee electing to be bound by additional provisions under Insurance Code §846.0035. The MEWA may use the forms accessible on TDI's website at www.tdi.texas.gov/forms as a resource to comply with the filing requirements.

In addition to the statement electing to be bound by additional provisions under Insurance Code §846.0035, the MEWA must submit documentation demonstrating that it is in compliance with all applicable federal and state laws including, at a minimum:

- a list of and access to all ERISA reports for the last five years filed with the United States Department of Labor;

- a copy of its Federal Form 5500 for the past five years, or since the MEWA's inception, whichever is shorter;

- if the MEWA is an employee welfare benefit plan, an advisory opinion from the United States Department of Labor that is not more than 3 years old, for certain MEWA structures, or an opinion from an attorney attesting to the structure of the MEWA; and

- for each plan sponsored by the MEWA, an opinion from an attorney attesting to the fact that the plan is in compliance with federal and state laws.

A MEWA that will provide a comprehensive health benefit plan under Insurance Code §846.0035 must also comply with new §7.1917.

Section 7.1917. New §7.1917 applies only to a MEWA that intends to provide a comprehensive health benefit plan under Insurance Code §846.0035. If a MEWA intends to provide a comprehensive health benefit plan, the MEWA must submit a form to TDI that includes a statement declaring the MEWA's intention to provide a comprehensive health benefit plan as defined in §7.1902.

In addition, a MEWA must submit a detailed compliance plan to address the additional requirements under Insurance Code §846.0035(b). If a MEWA provides a comprehensive health ben-

efit plan that is structured in the manner of a preferred provider benefit plan or an exclusive provider benefit plan under Insurance Code §1301.001, then the MEWA must submit a detailed compliance plan to address the requirements under Insurance Code §846.0035(c), in addition to those requirements in Insurance Code §846.0035(b). A MEWA may use forms accessible on TDI's website at www.tdi.texas.gov/forms as a resource to comply with the requirements of the section.

New §7.1917 also requires an opinion from an attorney attesting that each comprehensive health benefit plan sponsored by the applicant is in compliance with all applicable federal and state laws. Specifically, the opinion must adequately explain how each plan complies with the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.) and the Patient Protection and Affordable Care Act (42 United States Code §18001 et seq.). The opinion must explain how each plan will comply with federal requirements applicable to large group, small group, or individual markets.

As adopted, subsection (a) is changed to clarify that the section only applies to a MEWA that offers or seeks to offer a comprehensive health benefit plan. Because this change is made, the text of subsection (b) as proposed is changed to remove the introductory phrase "If a MEWA will provide a comprehensive health benefit plan."

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on June 3, 2024.

Commenters: TDI received written comments from three commenters. Commenters in support of the proposal were the Texas Dental Association. Commenters in support of the proposal with changes were the Texas Medical Association and the Texas Professional Service Providers Benefits Trust. No commenters spoke on the proposal at a public hearing held on May 23, 2024.

General Comments.

Comment. A commenter expresses support of the proposal and the passage of HB 290. The commenter states that HB 290 authorizes TDI to approve a MEWA that offers a comprehensive health benefit plan, which will allow Texas small businesses and self-employed individuals to obtain affordable comprehensive health benefit coverage.

Agency Response. TDI appreciates the commenter's support.

Comment. A commenter asks TDI to explain its rationale for allowing a person applying for an initial certificate of authority on or after January 1, 2024, to be considered a "MEWA to which Insurance Code §846.0035 applies" when Insurance Code §846.0035(a) states that it only applies to (1) a MEWA that "was issued" (i.e., already received) an initial certificate of authority on or after January 1, 2024, or (2) a MEWA that existed before 2024 and elects for it to apply.

Agency Response. TDI reads Insurance Code §846.0035 as applying to new MEWAs on or after January 1, 2024, and to pre-2024 MEWAs that make the election. This reading is supported by the House Research Organization's bill analysis, which states that "requirements in the bill would apply to MEWAs issued a certificate of authority on or after January 1, 2024, *or* to those that chose to comply with the requirements in the bill as prescribed by the insurance commissioner" (emphasis added; *see* www.hro.house.texas.gov/pdf/ba88r/hb0290.pdf). There is no evidence that the bill was intended to not apply to new MEWAs after January 1, 2024, or that those new MEWAs would need to elect to be bound to Insurance Code §846.0035. To the contrary, the legislation was clearly attempting to increase the ability of MEWAs to obtain licensure and provide health coverage in Texas. Because of this, TDI disagrees with the commenter's interpretation and declines to make a change.

Comments on §7.1902. Definitions.

Comment. One commenter expresses concern about the definition for "comprehensive health benefit plan" proposed in §7.1902(2). The commenter notes that, from an operational standpoint, the definition as proposed departs from the underlying statutory directive and has a potential for unintended consequences. The commenter states that "comprehensive health benefit plans" are generally understood as major medical health insurance and can include a wide range of services and medical costs, such as preventative services and services to treat illnesses. The commenter also notes that there is not a clear distinction between "comprehensive health benefit plan" and other "health benefit plans" offered by MEWAs. The commenter requests clarification from TDI on what plans would fall outside the definition of "comprehensive health benefit plan" while still being a "health benefit plan" that a MEWA may provide under Insurance Code Chapter 846.

Agency Response. TDI declines to make a change to the definition of "comprehensive health benefit plan" as proposed. TDI agrees with the commenter that a comprehensive health benefit plan is generally understood to mean major medical health insurance and notes that other stakeholders indicated the same in response to TDI's informal request for information posted on TDI's website on August 22, 2023. The proposed definition of "comprehensive health benefit plan" was drafted by stating the exclusions, which is consistent with how the Insurance Code defines other health plans or insurance policies.

As the commenter notes, the definition incorporates the meaning of "health benefit plan" and the associated exclusions under Insurance Code §846.001. This incorporation aligns with both state and federal law. Because of this alignment with federal law, a plan that falls within the definition of health benefit plan will almost always be subject to federal essential health benefit and annual and lifetime limit restrictions under 45 CFR §147.126, forcing it to be somewhat comprehensive. To prevent unintended consequences and to reflect the variable nature of "major medical health insurance," TDI declines to create overly prescriptive requirements. A comprehensive health benefit plan may include a number of different benefit types, coverages, and levels or tiers. TDI anticipates reviewing a MEWA's health benefit plan filing like it does filings submitted by other Texas carriers to determine whether the proposed coverage is "comprehensive."

TDI will monitor this issue and encourages stakeholders to submit formal complaints if operational issues arise that can be addressed through future rulemaking or other agency action.

Comment. One commenter raises concern about §7.1902(4) as proposed, which broadens the definition of "employee welfare benefit plan" to include a MEWA when each of the employers have a principal place of business in the same region that does not exceed the boundaries of this state or the boundaries of a metropolitan statistical area designated by the United States Office of Management and Budget. The commenter notes that the recent United States Department of Labor (DOL) action that formally rescinded the rule titled "Definition of 'Employer' - Association Health Plans" reinstated the longstanding guidance that the

DOL uses to determine whether an employer group or association is a bona fide group or association. The commenter states that an employee welfare benefit plan must meet specific federal requirements in order to meet the federal definition of "employee welfare benefit plan" and that the proposed definition expanding the scope may result in confusion and noncompliance. The commenter suggests that, if TDI retains this definition, the term "in the same region" be specifically defined and reproposed so that stakeholders have an opportunity to provide comments on the definition.

Agency Response. TDI agrees, in part, and has modified the definition of "employee welfare benefit plan" to remove the reference to principal place of business in the same region. As adopted, §7.1902(4) assigns the term the meaning under Section 3(1) of ERISA, which is consistent with Insurance Code §846.001(2). The definition of "employee welfare benefit plan" as adopted also removes the previous plan requirements because those specific plan requirements are addressed throughout §7.1904. Removing the plan requirements in the definition section is not intended to change the requirement that a plan be established for a particular purpose; clearly set out the rights, privileges, obligations, and duties of employers, employees, and beneficiaries; and plainly describe certain plan information required by federal law.

TDI declines to define "in the same region" at this time or to repropose this rulemaking. Given the recent changes in federal law, it is unclear how many MEWAs will be able to offer coverage compliant with federal law where the only commonality between employers is geographic. It is also unclear in what ways geography could be used by a MEWA to unfairly exclude employers. TDI will continue to monitor the issue to determine whether additional rulemaking may be necessary in the future.

Comment. One commenter states that HB 290 authorized working owners to participate in a MEWA as an employer and an employee. The commenter requests confirmation that, because TDI declined to address working owners in the proposed definition of MEWA in §7.1902(5), no additional clarification is needed under HB 290. Another commenter notes that, although HB 290 authorizes sole proprietors (i.e., working owners) without common law employees to qualify as an employer and as an employee, the proposed rule is broader than federal law, regulation, or guidance. This commenter states that a working owner may be considered an employer for purposes of the MEWA definition in Section 3(40) of ERISA (29 United States Code §1002(40)), but not for purposes of the definition of "employee welfare benefit plan" under Section 3(1) of ERISA (29 United States Code §1002(1)).

Agency Response. HB 290 authorizes working owners, also known as "sole proprietors," to qualify as both an employer and as an employee of the trade or industry for the purposes of MEWA formation and structure. One reason this was not addressed in the rule is because no clarification of the statute is needed, and it is not necessary to repeat the statute in rule. Additionally, HB 290 requires all MEWAs to comply with both state and federal law. The federal rules that broadened the definition of "employer" under ERISA were rescinded on April 30, 2024, and the Department of Labor signaled a return to pre-2018 AHP Rule guidance, which requires certain criteria to be met before the association is deemed a bona fide association. TDI agrees that current federal law does not authorize working owners to qualify as an employer and an employee for purposes of ERISA's definition of "employee welfare benefit plan" under Section 3(1) of ERISA (29 United States Code §1002(1)). Under current federal law, working owners as defined in Insurance Code §846.0035(d-1) are not eligible employers for purposes of creating or participating in a bona fide association or group under ERISA.

TDI recognizes that federal law may change to authorize expanded eligibility, similar to the 2018 AHP rules that were recently rescinded. TDI will continue to monitor federal law for amendments that broaden the employers that may participate in a bona fide association but will apply HB 290 as written by requiring MEWAs to comply with current federal law.

Comments on §7.1904. Application for Initial Certificate of Authority.

Comment. One commenter notes that the rule text in §7.1904(b)(1)(C) and (D) is incongruent because the rule text fails to include the term "license" in §7.1904(b)(1)(D). The commenter also suggests modifying the rule text in both subparagraphs to clarify that the MEWA must report the list of states where it "is otherwise authorized to do business in that state" whether it is fully insured or not.

Agency Response. TDI declines to add the statement "otherwise authorized to do business in that state" in §7.1904(b)(1)(C) or §7.1904(b)(1)(D), as it may inadvertently broaden the reporting requirements to include inapplicable businesses. However, TDI agrees to modify the rule text in those sections to add the requirement that a MEWA must report every state where the MEWA is licensed or has a certificate of authority, "whether the MEWA is fully insured or not." All plan- and non-plan MEWAs must complete and file the Federal Form M-1 annual report with the Employee Benefits Security Administration of the United States Department of Labor, including reporting all of the states where the MEWA is operating and whether the entity is fully insured in that state. Because MEWAs must already compile this information, the additional reporting requirement in Texas should not impose a cost to MEWAs to comply. In response to this comment, TDI has also modified the rule text in §7.1904(b)(1)(D) to add "license" to the list for consistency with §7.1904(b)(1)(C).

Comment. One commenter suggests clarifying §7.1904(b)(3)(F) by adding that each trustee, officer, director, or administrator must include "any previous or current" ownership or control of entities involved in the business of insurance when the person completes the biographical affidavit required in a MEWA application.

Agency Response. TDI agrees with the commenter's suggested changes and has modified the rule text to add the suggested language in §7.1904(b)(3)(F). To hasten application review time, MEWAs may continue to use TDI Form FIN311, available on TDI's forms website at www.tdi.texas.gov/forms to comply with §7.1904(b)(3).

Comment. One commenter recommends adding language in §7.1904(b)(11) that clarifies that, for MEWAs that are not bona fide associations or groups under ERISA, the fidelity bond issued in the name of the MEWA must also protect against acts of fraud or dishonesty by those "with access to funds held by the MEWA on behalf of separate employee welfare benefit plans established or maintained by the MEWA's employer-members." The commenter also notes a mistake in §7.1904(b)(11) where the term "employer" was used in error.

Agency Response. TDI agrees with the commenter's suggested changes and has modified the rule text to add similar language as recommended by the commenter and to fix the noted error.

Comment. One commenter recommends that TDI investigate whether the $500,000 cap on a fidelity bond is appropriate for MEWAs that fund multiple individual ERISA-covered employee welfare benefit plans.

Agency Response. TDI declines to make a change to the rule text as proposed, as it is outside the scope of this rulemaking. TDI, however, will monitor this issue to ensure that the $500,000 cap on the fidelity bond is appropriate for the types of MEWAs referenced by the commenter.

Comment. One commenter suggests broadening the employee-employer relationships listed in §7.1904(b)(13) that are prohibited between an actuary and the MEWA. The commenter proposes clarifying that an actuary may not prepare an actuarial opinion if the actuary is an employee of the MEWA's employer-members, an affiliate of the MEWA or its employer-members, or an employee of an affiliate of the MEWA.

Agency Response. TDI agrees to change the rule text in §7.1904(b)(13) and §7.1912(a)(2) to expand the employee-employer relationships that are prohibited. As adopted, the rule text adds the language as suggested by the commenter in §7.1904(b)(13) and §7.1912(a)(2).

Comment. One commenter states that Insurance Code §846.0035(b), which requires MEWAs that provide a comprehensive health benefit plan to comply with the Insurance Code Chapter 421, does not prohibit the application of Insurance Code §846.154 in addition to the requirements in Insurance Code Chapter 421. This commenter recommends that TDI modify §7.1904(b)(13)(B) to require MEWAs subject to Insurance Code §846.0035(b) to comply with reserve requirements in both Insurance Code §846.154 and Insurance Code Chapter 421.

Agency Response. TDI agrees that MEWAs that provide a comprehensive health benefit plan must comply with the reserve requirements in both Insurance Code Chapter 421 and §846.154. Insurance Code Chapter 421 requires an insurer in Texas to maintain reserves in an amount estimated in the aggregate based on certain loss or claims data for which the insurer may be liable. Under Insurance Code §846.154, the amount of cash reserves recommended under Insurance Code §846.153(c)(2) may not be less than the greater of (I) 20% of the total contributions in the preceding plan year or (II) 20% of the total estimated contributions for the current plan year. Section 846.154 also states the standards for calculating the cash reserves required under Insurance Code Chapter 846. Insurance Code Chapter 421 and §846.154 may be read consistently and, as a result, a MEWA must comply with both provisions.

In response to this comment, TDI has modified the rule text in multiple sections to clarify that both Insurance Code Chapter 421 and §846.154 apply to MEWAs under Insurance Code §846.0035. In §7.1904(b)(13)(B)(i) and (ii) and §7.1912(a)(2)(B)(i) and (ii), TDI has modified the rule text to state that all MEWAs must comply with the reserve requirements in Insurance Code §846.154 and that MEWAs that provide a comprehensive health benefit plan must also comply with Insurance Code Chapter 421, in addition to those requirements in Insurance Code §846.154. TDI has also modified §7.1905(a)(10) and (11) to replace "or" with "and" between Insurance Code §846.154 and Insurance Code Chapter 421 to clarify that these MEWAs must comply with both requirements.

Comment. One commenter requests clarification on whether MEWAs that provide comprehensive health benefit plans under HB 290 must comply with 28 TAC §7.402, which requires certain carriers to file electronic versions of risk-based capital (RBC) reports and supplemental RBC forms with the National Association of Insurance Commissioners (NAIC). The commenter states that the reporting requirements under §7.402 should not apply because a MEWA is not an insurance company and does not file those documents with the NAIC. The commenter suggests that a MEWA could instead file the documents required under §7.402 with TDI directly.

Agency Response. TDI understands that MEWAs generally do not file the RBC reports and forms required under 28 TAC §7.402 with the NAIC. At this time, TDI will not require a MEWA to file the documentation required under §7.402 with TDI. However, a MEWA may file this or similar documentation with TDI if it so chooses. TDI will continue to monitor this issue to determine whether this or similar information is needed and will take appropriate action as necessary.

Comments on §7.1906. Application for Final Certificate of Authority.

Comment. One commenter suggests adding language in §7.1906(c) to clarify that a MEWA must comply with "any Insurance Code chapter provisions that apply to a MEWA that provides a comprehensive health benefit plan under Insurance Code §846.0035" before the commissioner will issue a final certificate of authority.

Agency Response. TDI agrees with the commenter and has changed the rule text as proposed in §7.1906(c) to clarify that the commissioner will issue a final certificate of authority to a MEWA only after examination, investigation, and determination that the requirements of Insurance Code Chapter 846, other applicable Insurance Code provisions, and the rules in Chapter 7, Subchapter S have been met.

Comments on §7.1907. Denial of Final Certificate of Authority and Extension of Initial Certificate of Authority.

Comment. One commenter expresses concern about the proposed language in §7.1907(e) that authorizes TDI to extend the deadline to correct a deficiency "as otherwise agreed to by the department." The commenter states that TDI lacks statutory authority for such an open-ended extension of the deadline and recommends TDI either remove §7.1907(e)(3) from the adoption order or cap the potential extension at not more than 40 days after the date the notice of deficiency is received.

Agency Response. TDI disagrees with the commenter's statement that TDI lacks statutory authority to work with a MEWA to ensure filed applications are complete, but has modified the rule text to clarify that TDI will consider a response to a notice of deficiency timely if the MEWA responds with all the information requested "within a reasonable time period as agreed to by the department based on the MEWA's circumstances." Under Insurance Code §846.056, a MEWA must apply for a final certificate of authority before the one-year term of the initial certificate of authority ends. TDI has found that providing flexibility in the timeframes for MEWAs to submit requested information to TDI is sometimes useful and believes that it has the authority to agree to reasonable extensions of time.

Comment. One commenter states that §7.1907(f) as proposed improperly expands Insurance Code §846.055 by allowing the extension of the initial certificate of authority to be made "at

the discretion of the commissioner on a determination that the MEWA is likely to meet the requirements of this subchapter within one year." The commenter suggests modifications to §7.1907(f) to more closely reflect Insurance Code §846.055 by removing the reference to commissioner discretion and adding clarification that the MEWA compliance with the subchapter must be based on the commissioner's determination that compliance will occur within the granted extension period.

Agency Response. TDI disagrees that §7.1907(f) as proposed improperly expands Insurance Code §846.055 because it permits the commissioner to extend the term of an initial certificate of authority for a period not to exceed one year if the commissioner determines that the MEWA is likely to meet the requirements for a final certificate of authority within that period. For clarity and consistency with Insurance Code §846.055, TDI has modified §7.1907(f) by deleting the statement "within one year" as proposed, and replaced it with the phrase "within the granted extension period" as suggested by the commenter.

Comments on §7.1910. Required Notice to Participants.

Comment. One commenter states that §7.1910(a) as proposed lists notices that a MEWA must provide to any employee covered by an employee welfare benefit plan in connection with the MEWA. The commenter notes that these notices are only required to be provided to a participating employee or former employee covered by the plan, appearing to suggest that the notices should also go to all plan participants. The commenter also notes that the rule does not reference the provision of any other notices required by the Insurance Code.

Agency Response. TDI declines to extend the notice requirement to all plan participants as the scope currently tracks the notice requirement of Insurance Code §846.254. TDI agrees that the rule is not intended to imply that other notices may not also be required. Accordingly, language has been added to clarify that the notices required in §7.1910 are in addition to any other notices required by law. TDI will monitor this issue to determine whether additional agency action is warranted.

Comment. One commenter recommends requiring a MEWA to provide standardized consumer disclosures regarding the comprehensive or non-comprehensive nature of the plan to lessen the potential consumer confusion related to the differences in covered benefits. The commenter suggests including specific disclosures that notify the consumer about such issues as covered benefits, preexisting-condition exclusions, and cost-sharing provisions under the specific plan.

Agency Response. While drafting the proposal, TDI considered requiring a consumer disclosure that outlined the differences in comprehensive health benefit plans and non-comprehensive health benefit plans. TDI declined to propose this requirement and declines to make this change in the adoption order because staff concluded that the requirement would be redundant. A MEWA is already subject to federal disclosure requirements under 29 United States Code §1022, 29 CFR §2520, and 45 CFR §147.200, as applicable. For example, a MEWA offering a group health plan (as defined in 45 CFR §146.145) must provide a summary plan description to participants and beneficiaries that includes information about coverage for drugs and medical tests, devices, and procedures; cost-sharing provisions; and other information about the plan. TDI will enforce this under §7.1904(b)(9) and (b)(19). It must also provide a summary of benefits and coverage that includes a description of the coverage, including cost-sharing. MEWA group health plans may not exclude preexisting conditions under 45 CFR §147.108. A MEWA offering a product other than a group health plan will generally have to meet the definition of an excepted benefit under 45 CFR §146.145 and will be required to provide different disclosures. For example, fixed indemnity products must provide the disclosure required by 45 CFR §146.145. Other than fixed indemnity, excepted benefit product coverages are so limited that TDI believes they will rarely be confused with comprehensive health plans.

Comment on §7.1917. Comprehensive Health Benefit Plan.

Comment. One commenter states that HB 290 expressly requires the commissioner to determine whether a plan provided by a MEWA is a "comprehensive health benefit plan." The commenter states that §7.1917 as proposed is insufficient to meet the statutory obligations under HB 290, which requires that the commissioner determine whether a plan is a "comprehensive health benefit plan." The commenter reasons that, because §7.1917 only authorizes the commissioner to review the sufficiency of the filing under §7.1917, if the commissioner determines that the filing is complete, the commissioner will have "determined" the plan is a comprehensive health benefit plan. The commenter recommends that TDI modify the rules in §7.1902 and §7.1917 to clarify that the commissioner must make the determination that a plan is a "comprehensive health benefit plan" under HB 290. The commenter also recommends that TDI describe the factors or processes the commissioner will use in making this determination.

Agency Response. TDI disagrees with the commenter's interpretation of HB 290 and declines to make the change to the rule text. TDI will review each MEWA filing according to its standard practice of reviewing plan or policy documents to determine whether all of the discrete federal and state requirements are met.

Comment. One commenter requests clarification on compliance requirements when a MEWA uses an admitted insurance carrier in Texas for its network, claims processing, and care management. The commenter asks whether TDI will automatically deem a MEWA in compliance with the requirements under Insurance Code §846.0035 if the admitted insurance carrier is in compliance with those requirements and has filed as such. Alternatively, the commenter asks whether the MEWA could file that the MEWA is using an admitted carrier and provide a letter from the carrier that indicates compliance with the provisions in Insurance Code §846.0035.

Agency Response. TDI expects MEWAs to comply with the reporting requirements in Insurance Code Chapter 846 and other provisions in the Insurance Code, as applicable, as well as the requirements in Chapter 7, Subchapter S. MEWAs are responsible for ensuring compliance with all the applicable requirements. A MEWA may work with a third-party administrator according to Insurance Code §846.303. If a MEWA has contracted with a third-party administrator that has previously made filings with TDI, the MEWA is encouraged to provide documentation that references the most recent filings for the applicable services being used by the MEWA. This information will help TDI expedite its review.

SUBCHAPTER S. MULTIPLE EMPLOYER WELFARE ARRANGEMENTS REQUIREMENTS FOR OBTAINING AND MAINTAINING CERTIFICATE OF AUTHORIZATION

STATUTORY AUTHORITY. The commissioner adopts amendments to 28 TAC §§7.1901, 7.1902, and 7.1904 - 7.1915, and new §7.1916 and §7.1917 under Insurance Code §§846.0035(a), 846.0035(b), 846.0035(c), 846.005(a), 846.052(b)(5), 1301.007, 1451.254, 1467.003, 4201.003, and 36.001.

Insurance Code §846.0035(a) authorizes the commissioner to prescribe the manner by which a MEWA may elect to be bound by Insurance Code §846.0035.

Insurance Code §846.0035(b) authorizes the commissioner to determine when a MEWA provides a comprehensive health benefit plan and is subject to additional requirements.

Insurance Code §846.0035(c) authorizes the commissioner to determine whether a MEWA is structured in the manner of a preferred provider benefit plan or an exclusive provider benefit plan.

Insurance Code §846.005(a) provides that the commissioner may, on notice and opportunity for all interested persons to be heard, adopt rules and issue orders reasonably necessary to augment and implement Insurance Code Chapter 846.

Insurance Code §846.052(b)(5) authorizes the commissioner to determine whether a MEWA has demonstrated that it is in compliance with all applicable federal and state laws.

Insurance Code §1301.007 directs the commissioner to adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to Texas residents.

Insurance Code §1451.254 directs the commissioner to adopt rules necessary to implement Insurance Code Chapter 1451, Subchapter F.

Insurance Code §1467.003 directs the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §4201.003 authorizes the commissioner to adopt rules to implement Insurance Code Chapter 4201.

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

§7.1902. Definitions.

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

(1) Business plan--The comprehensive, detailed plan by which the multiple employer welfare arrangement conducts or proposes to conduct its business.

(2) Comprehensive health benefit plan--Any health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness. The term does not include:

(A) accident-only or disability income insurance coverage, or a combination of accident-only and disability income insurance coverage;

(B) credit-only insurance coverage;

(C) disability insurance;

(D) coverage for a specified disease or illness;

(E) Medicare services under a federal contract;

(F) Medicare supplement and Medicare Select policies regulated in accordance with federal law;

(G) long-term care coverage or benefits, nursing home care coverage or benefits, home health care coverage or benefits, community-based care coverage or benefits, or any combination of those coverages or benefits;

(H) coverage that provides limited-scope dental or vision benefits;

(I) coverage provided by a single service health maintenance organization;

(J) workers' compensation insurance coverage or similar insurance coverage;

(K) coverage provided through a jointly managed trust authorized under 29 United States Code §141 et seq. that contains a plan of benefits for employees that is negotiated in a collective bargaining agreement governing wages, hours, and working conditions of the employees that is authorized under 29 United States Code §157;

(L) hospital indemnity or other fixed indemnity insurance coverage;

(M) reinsurance contracts issued on a stop-loss, quota-share, or similar basis;

(N) short-term major medical contracts;

(O) liability insurance coverage, including general liability insurance coverage and automobile liability insurance coverage;

(P) coverage issued as a supplement to liability insurance coverage;

(Q) automobile medical payment insurance coverage;

(R) coverage for on-site medical clinics;

(S) coverage that provides other limited benefits specified by federal regulations; or

(T) other coverage that is:

(i) similar to the coverage described by subparagraphs (A) - (S) of this paragraph under which benefits for medical care are secondary or incidental to other coverage benefits; and

(ii) specified in federal regulations.

(3) Department--Texas Department of Insurance.

(4) Employee welfare benefit plan--Has the meaning assigned by Insurance Code §846.001, concerning Definitions.

(5) Multiple employer welfare arrangement--An employee welfare benefit plan, or any other arrangement that is established or maintained for the purpose of offering or providing any benefit described in Insurance Code §846.201, and restated in §7.1909 of this title (relating to Benefits Allowed To Be Provided by Multiple Employer Welfare Arrangements), to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, provided that the arrangement meets either or both of the following criteria:

(A) one or more of the employer members in the multiple employer welfare arrangement is either domiciled in this state or has its principal headquarters or principal administrative office in this state; or

(B) the multiple employer welfare arrangement solicits an employer that is domiciled in this state or has its principal headquarters or principal administrative office in this state.

§7.1904. Application for Initial Certificate of Authority.

(a) Any person seeking to establish a multiple employer welfare arrangement (MEWA) that is not fully insured, as that term is defined in Insurance Code §846.002(a), concerning Applicability of Chapter, must submit a complete application for initial certificate of authority to the commissioner and may use the MEWA forms accessible on the department's website at www.tdi.texas.gov/forms as a resource to comply.

(b) In order to be considered complete, the application must contain the following items:

(1) a name application form signed and dated by an authorized representative of the applicant that includes:

(A) the name of the MEWA; the physical address where the MEWA is incorporated; contact information, including telephone number and email address; and title or relationship of each organizer to the proposed MEWA, along with the same information about any affiliated organizations;

(B) a statement that the applicant is seeking to reserve a name as a MEWA and whether the purpose of the application is to change the name of an existing MEWA, form a new MEWA, or seek to be admitted to the State of Texas as a foreign MEWA;

(C) a list of all the states where the MEWA holds a certificate of authority or license, whether the MEWA is fully insured or not; and

(D) a list of all the states where the MEWA holds a certificate of authority or license under an assumed name, whether the MEWA is fully insured or not;

(2) a notarized affidavit signed by the president, secretary, and treasurer, or all of the trustees, that contains:

(A) information about the MEWA, including:

(i) the MEWA's full name;

(ii) the physical address of the MEWA's home office;

(iii) the employer identification number;

(iv) the point of contact's name and contact information; and

(v) the association's seal, if applying as an association. If not applying as an association, a notation that the affiant is a group of employers;

(B) information about the officers, directors, and trustees, as applicable, including:

(i) the full name, social security number, and appointment or election date of the president, secretary, and treasurer; and

(ii) the full name, social security number, and appointment or election date of any other directors or trustees; and

(C) a statement that affirms the following: "We hereby apply for an initial Certificate of Authority authorizing {MEWA name} to act as a Multiple Employer Welfare Arrangement in the State of Texas for a period of twelve (12) months. We know of no reason under the provisions of the Texas Insurance Code why {MEWA name} is not entitled to such a Certificate of Authority";

(3) a biographical affidavit that is completed and filed for each trustee, officer, director, or administrator of the MEWA that includes the following information:

(A) the affiant's current legal name and any names the individual may have used in the past, social security number, date of birth, citizenship(s), and current mailing addresses, phone numbers, and email addresses;

(B) the name and address of the MEWA;

(C) the affiant's current or proposed position or title at the MEWA;

(D) information regarding the affiant's education, memberships in professional organizations, and any professional, occupational, or vocational licenses held (current and past), including a statement whether any were refused, suspended, or revoked in the last 10 years;

(E) the affiant's employment history for the previous 10 years; and

(F) the affiant's fidelity bond coverage history, criminal history, any bankruptcy history, lawsuit history in the past five years, and any previous or current ownership or control of entities involved in the business of insurance, including a statement whether any became insolvent or were placed under supervision or in receivership, rehabilitation, liquidation, or conservatorship, or had their certificate of authority suspended or revoked;

(4) a notarized service of process form signed by the president and secretary or the trustees that designates the commissioner as the MEWA's resident agent for purposes of service of process and includes the following:

(A) the mailing address of the MEWA;

(B) a statement substantially similar to the following: "{MEWA Name} hereby appoints the commissioner of insurance, located at 1601 Congress Ave., Austin, Texas 78701, as its resident agent for service of process under Texas Insurance Code Section 846.059. All process or pleadings in any civil suit or action against {MEWA Name} may be served on the commissioner as though served on {MEWA Name} directly. {MEWA Name} waives all claims of error by reason of this appointment and admits or agrees that this appointment of the commissioner of insurance as its resident agent for service of process will be taken and held as valid and sufficient as though served directly on {MEWA Name}. This appointment will continue for as long as any liability remains outstanding against {MEWA Name} pertaining to any such matters."; and

(C) the MEWA's seal, as applicable;

(5) a certified copy of the articles of incorporation, if applicable;

(6) a certified copy of the bylaws, constitution, or rules or regulations establishing and operating the MEWA;

(7) trust agreements created in connection with the MEWA, which must be signed by all trustees;

(8) a welfare benefit plan document, including documentation or instruments describing the rights and obligations of employers, employees, and beneficiaries with respect to the MEWA;

(9) a summary plan description, consistent with 29 United States Code §1022, that:

(A) is written in a manner calculated to be understood by the average plan participant and is sufficiently accurate and com-

prehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan; and

(B) contains the following information:

(i) the name and type of administration of the plan;

(ii) the name and address of the administrator;

(iii) the names and addresses of any trustee or trustees if they are persons different from the administrator;

(iv) the plan requirements with respect to eligibility for participation and benefits;

(v) a description of provisions relating to nonforfeitable benefits if any are included in the plan;

(vi) a description of circumstances that may result in disqualification, ineligibility, or denial or loss of benefits;

(vii) the source of financing of the plan;

(viii) the identity of any organization through which benefits are provided;

(ix) the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis;

(x) the procedures to be followed in presenting claims for benefits under the plan;

(xi) remedies available under the plan for the redress of claims that are denied in whole or in part; and

(xii) a statement of guaranty fund nonparticipation, if applicable, in the same form as set out for insurers and health maintenance organizations in §1.1001 of this title (relating to Disclosure of Guaranty Fund Nonparticipation);

(10) financial statements, including:

(A) a current financial statement. If the MEWA is already in business, the financial statement must include an annual balance sheet and income statement, developed on generally accepted accounting principles, for the past five years, or since the inception of the MEWA, whichever time period is shorter;

(B) a projected balance sheet for a minimum of three years on a quarterly basis, including assumptions used in producing projections. The projected balance sheet must be developed according to generally accepted accounting principles;

(C) a projected income statement, providing income forecasts for a minimum interval of three years, detailed on a quarterly basis. The projected income statement must be developed according to generally accepted accounting principles;

(D) a projected cash flow analysis on a quarterly basis, for a minimum of three years. Line by line documentation of anticipated cash inflow and outflow by specific account type must be submitted;

(E) a statement of the proposed initial cash and cash reserves summary. This statement must include all items of funding, including but not limited to loan receipts, loan repayments, and stock sales. The statement must include a description of the source and terms of the funding; and

(F) if an existing MEWA, a copy of its Federal Form 5500 for the past five years, or since the inception of the MEWA, whichever time period is shorter;

(11) a copy of the fidelity bond issued in the name of the MEWA protecting against acts of fraud and dishonesty by its trustees, directors, officers, employees, administrator, or other individuals responsible for servicing the employee welfare benefit plan, including, for MEWAs that are not bona fide associations or groups under ERISA, those individuals with access to funds held by the MEWA on behalf of separate employee welfare benefit plans established or maintained by the MEWA's employer-members. Such bond must be in an amount equal to the greater of 10% of the premiums and contributions received by the MEWA, or 10% of the benefits paid, during the preceding calendar year, with a minimum of $10,000 and a maximum of $500,000. No additional bond will be required of a third-party administrator licensed to engage in business in this state;

(12) a business plan that includes the following six major areas.

(A) Current or proposed operations must be outlined with information by the applicant identifying the number of employers in the group currently participating or proposed to participate in the MEWA. The outline must also include the number of participating units. To the extent such information is available, it also must include the number of dependents covered or to be covered by the MEWA. A specific list of the benefits being provided or proposed to be provided must also be included.

(B) Specific information about individuals providing or proposed to provide management services is required. The applicant must indicate whether each trustee is an owner, partner, officer, or director, and/or employee of a participating employer or is committed to participate in the MEWA. In addition, the applicant must provide the name and address of the employer represented by each trustee and by each officer and provide the association of the trustee or officer with such employer. The applicant must list the individuals responsible for managing or handling funds or assets of the MEWA.

(C) With respect to administration of the present or proposed plan, the applicant must give the names and qualifications of individuals or the third-party administrator responsible for or proposed to be responsible for servicing the program of the MEWA. If a third-party administrator is to service the plan, a copy of the third-party administrator's Texas license must be attached. In addition, a copy of the agreement between the MEWA and the third-party administrator must be submitted, signed by the third-party administrator and trustees or directors of the MEWA.

(D) The applicant must provide documentation that the MEWA has provided or will provide a sufficient number of competent persons to service its program in the areas of claims adjusting and underwriting. The applicant must also describe the present or proposed plan to service billings, claims, and underwriting. The criteria for underwriting must be actuarially justified.

(E) The applicant must provide a specific outline and description of the MEWA's marketing efforts. The applicant must list the names of all persons directly employed or proposed to be employed by the arrangement who solicit participants or adjust claims, indicating the qualifications and credentials of such individuals and whether such persons hold any license issued by the department. The applicant must specify any such licenses by type.

(F) The applicant must provide documentation showing that a procedure has been established for handling claims for benefits in the event of dissolution of the MEWA;

(13) subject to Insurance Code §846.157(b), concerning Renewal of Certificate; Additional Actuarial Review, an actuarial opinion prepared by an actuary who is not an employee of the MEWA,

an employee of the MEWA's employer-members, an affiliate of the MEWA, or an affiliate of the MEWA's employer-members, or an employee of an affiliate of the MEWA; and who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 United States Code §1241 and §1242). The actuarial opinion must include the following:

(A) a description of the actuarial soundness of the MEWA, including any recommended actions that the MEWA should take to improve its actuarial soundness;

(B) the recommended amount of cash reserves the MEWA should maintain.

(i) For all MEWAs, the recommended amount may not be less than the greater of 20% of the total contributions in the preceding plan year or 20% of the total estimated contributions for the current plan year; cash reserves must be calculated with proper actuarial regard for known claims, paid and outstanding, a history of incurred but not reported claims, claims handling expenses, unearned premium, an estimate for bad debts, a trend factor, and a margin for error (cash reserves required by Insurance Code §846.154, concerning Cash Reserve Requirements, must be maintained in cash or federally guaranteed obligations of less than five-year maturity that have a fixed or recoverable principal amount, or such other investments as the commissioner may authorize by rule); and

(ii) For a MEWA that provides a comprehensive health benefit plan under Insurance Code §846.0035, concerning Applicability of Certain Laws to Associations Providing Health Benefits, the MEWA must also comply with Insurance Code Chapter 421, concerning Reserves in General.

(C) the recommended level of specific and aggregate stop-loss insurance the MEWA should maintain;

(14) if the MEWA is in existence at the time of its application, annual reports meeting the substantive requirements of 29 United States Code §1023 and §1024 must be filed. To the extent that such annual reporting requirements are not otherwise met by existing MEWAs when complying with other provisions of this subchapter, a filing under this paragraph must be made, and must include, at a minimum:

(A) the administrator's report of essential information for the most recent year ending, detailing the size and nature of the plan, and the number of participating employees in the plan;

(B) the statement from any insurance company, insurance service, or other similar organization that sells or guarantees plan benefits. The statement must detail:

(i) the premium rate or subscription charge and the total of such premiums or subscription charges in relation to the approximate number of persons covered by each class of benefits; and

(ii) the total amount of premiums received, approximate number of persons covered by each class of benefits, and total claims paid by such company, service, and other organization; and

(C) the published summary plan description and annual report to participants and beneficiaries of the plan;

(15) documentation indicating that the MEWA has applications from not less than five employers and will provide similar benefits for not less than 200 separate participating employees, and that the annual gross premiums of or contributions to the plan will be not less than $20,000 for a vision-benefit-only plan, $75,000 for a dental-benefits-only plan, and $200,000 for all other plans;

(16) for a MEWA that is formed according to Insurance Code §846.053(b)(2), concerning Eligibility Requirements for Initial Certificate of Authority, documentation demonstrating that the employers in the MEWA applicant each have a principal place of business in the same region that does not exceed the boundaries of this state or the boundaries of a metropolitan statistical area designated by the United States Office of Management and Budget;

(17) documentation that the MEWA possesses a written commitment, binder, or policy for stop-loss insurance issued by an insurer authorized to do business in this state that provides:

(A) at least 30 days' notice to the commissioner of any cancellation or nonrenewal of coverage; and

(B) both specific and aggregate coverage with an aggregate retention of no more than 125% of the amount of expected claims for the subsequent plan year and the specific retention amount determined by the actuarial report required by Insurance Code §846.153, concerning Required Filings, and paragraph (13) of this subsection;

(18) documentation demonstrating that the MEWA is in compliance with all applicable federal and state laws, including, at a minimum, the following:

(A) for all plans sponsored by the applicant, whether operating in Texas or in any other state, a list of and access to all reports for the last five years filed with the United States Department of Labor in compliance with the Employee Retirement Income Security Act of 1974, 29 United States Code §§1021(g), 1023, and 1024;

(B) if the MEWA is an employee welfare benefit plan for purposes of the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.), either:

(i) an advisory opinion from the United States Department of Labor that is no more than three years old recognizing the employer group or association as a bona fide employer association or group if the relevant MEWA structure addressed by the advisory opinion has not changed and will not change after licensure; or

(ii) an opinion from an attorney attesting that the employer group or association as it will be structured after licensure qualifies as a bona fide employer association or group for purposes of the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.). An attorney attestation must adequately explain how and why the employer group or association meets all of the factors to be a bona fide employer association or group, based on the facts and circumstances of the employer group's or association's governance and operations during the 12 months immediately preceding submission of the application, and on how the MEWA will be structured after licensure, with explicit references to relevant language drawn from the employer group's or association's bylaws, trust agreement, or other organizational documents, which must be submitted to the department with the attorney's attestation; and

(C) for each plan that will be provided by the applicant, an opinion from an attorney attesting to the fact that the plan is in compliance with all applicable federal and state laws. The opinion must adequately explain how each plan complies with the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.) and the Patient Protection and Affordable Care Act (42 United States Code §18001 et seq.), including how each plan complies with federal requirements applicable to large group, small group, or individual markets, as applicable; and

(19) if the MEWA will provide a comprehensive health benefit plan, the MEWA must provide additional information in ac-

cordance with §7.1917 of this title, concerning Comprehensive Health Benefit Plans.

(c) On finding of good cause, the commissioner may order an actuarial review of a MEWA in addition to the actuarial opinion required by Insurance Code §846.153. The cost of any such additional actuarial review must be paid by the MEWA.

(d) Upon application of a MEWA, the commissioner may waive or reduce the requirement for aggregate stop-loss coverage and the amount of reserves required by Insurance Code §846.154, if it is determined that the interests of the participating employers and employees are adequately protected.

§7.1905. Commissioner Review of Application; Issuance of Initial Certificate of Authority.

(a) The commissioner will promptly review the documentation submitted by the applicant and may conduct any necessary investigation and examine under oath any persons interested in or connected with the multiple employer welfare arrangement (MEWA). Within 60 days of the filing of a completed application, the commissioner will issue an initial certificate of authority, which is a temporary certificate of authority for a term of one year, to the MEWA, provided that all of the following conditions have been met:

(1) the employers in the MEWA:

(A) are members of an association or group of five or more businesses that are the same trade or industry, including closely related businesses that provide support, services, or supplies primarily to that trade or industry; or

(B) for a MEWA that is formed based under Insurance Code §846.053(b)(2), concerning Eligibility Requirements for Initial Certificate of Authority, each has a principal place of business in the same region that does not exceed the boundaries of this state or the boundaries of a metropolitan statistical area designated by the United States Office of Management and Budget;

(2) if the applicant is an association, that the association in the MEWA is engaged in substantial activity for its members other than sponsorship of an employee welfare benefit plan;

(3) if the applicant is an association and Insurance Code §846.0035, concerning Applicability of Certain Laws to Association Providing Health Benefits, does not apply to the MEWA, that the association in the MEWA has been in existence for a period of not less than two years before engaging in any activities relating to the provision of employer health benefits to its members;

(4) the employee welfare plan of the association or group in the MEWA is controlled and sponsored directly by participating employers, participating employees, or both;

(5) the association or group of employers in the MEWA is a not-for-profit organization;

(6) the MEWA has within its own organization adequate facilities and competent personnel, as determined by the commissioner, to service the employee benefit plan or has contracted with a third-party administrator that holds a current certificate of authority to engage in business in the State of Texas;

(7) the MEWA has applications from not less than five employers and will provide similar benefits for not less than 200 separate participating employees, and the annual gross premiums or contributions to the plan will be not less than $20,000 for a plan that provides only vision benefits, $75,000 for a plan that provides only dental benefits, and $200,000 for all other plans;

(8) the MEWA possesses a written commitment, binder, or policy for stop-loss insurance issued by an insurer that has a certificate of authority to engage in business in the State of Texas that provides:

(A) at least 30 days' notice to the commissioner of any cancellation or nonrenewal of coverage;

(B) both specific and aggregate coverage with an aggregate retention of no more than 125% of the amount of expected claims for the next plan year and a specific retention amount annually determined by the actuarial report required by Insurance Code §846.153(a)(2), concerning Required Filings, and verified by the signature of the actuary who prepared the report; and

(C) both the specific and aggregate coverage will require all claims to be submitted within 90 days after the claim is incurred and provide a 12-month claims incurred period and a 15-month paid claims period for each policy year;

(9) the contributions must be set to fund at least 100% of the aggregate retention plus all other costs of the MEWA;

(10) if the reserves required by Insurance Code §846.154, concerning Cash Reserve Requirements, exceed the greater of 40% of the total contributions for the preceding plan year or 40% of the total contributions expected for the current plan year, the contributions may be reduced to fund less than 100% of the aggregate retention plus all other costs of the MEWA, but in no event less than the level of contributions necessary to fund the minimum reserves required under Insurance Code §846.154, and Insurance Code Chapter 421, concerning Reserves in General, for comprehensive health benefit plans;

(11) the minimum reserves required by Insurance Code §846.154, and Insurance Code Chapter 421 for comprehensive health benefit plans have been established or will be established before the final certificate of authority is issued;

(12) the MEWA has established a procedure for handling claims for benefits in the event of dissolution of the MEWA;

(13) the MEWA has obtained the required fidelity bond;

(14) the MEWA has submitted its plan document or any instrument describing the rights and obligations of the employers, employees, and beneficiaries with respect to the MEWA;

(15) the MEWA has submitted a summary plan description and has filed for review any notifications such as an identification card, policy, or contract, in connection with the employee welfare benefit plan. These notifications include any of the disclosures in the following:

(A) that individuals covered by the plan are only partially insured;

(B) that in the event the plan or the MEWA does not ultimately pay medical expenses that are eligible for payment under the plan for any reason, the participating employer or its participating employee covered by the plan may be liable for those expenses;

(C) that, if applicable, the plan does not participate in the guaranty fund; such disclosure must be provided in the same notice format required of insurers and health maintenance organizations in §1.1001 of this title (relating to Disclosure of Guaranty Fund Nonparticipation); and

(D) the toll-free telephone number and website for the department as required under Insurance Code §521.005, concerning Notice to Accompany Policy; and

(16) for a MEWA that will provide a comprehensive health benefit plan, the MEWA has submitted documentation that adequately

demonstrates compliance with applicable requirements, as specified in §7.1917 of this title (relating to Comprehensive Health Benefit Plans).

(b) Unless excepted by statute, a MEWA may commence doing business in this state only after it receives its initial certificate of authority.

(c) The MEWA must appoint the commissioner of insurance as its registered agent for service of process, by filing the form as described in §7.1904(b)(4) of this title (relating to Application for Initial Certificate of Authority).

§7.1906. Application for Final Certificate of Authority.

(a) A multiple employer welfare arrangement (MEWA) that has received its initial certificate of authority must apply for a final certificate of authority no later than one year after the issuance of its initial certificate of authority. The MEWA must submit a complete application for final certificate of authority to the commissioner and may use the MEWA forms accessible on the department's website at www.tdi.texas.gov/forms as a resource to comply.

(b) The application must include only the following information:

(1) the names and addresses of:

(A) the association or group of employers sponsoring the MEWA;

(B) as applicable, the members of the board of trustees or directors of the MEWA; and

(C) at least five employers, if the arrangement is not an association, whose information will be retained by the commissioner as confidential;

(2) evidence that the fidelity bond requirements have been met;

(3) copies of all plan documents and agreements with service providers, which will be retained by the commissioner as confidential. (Indicate on what pages the specific benefits are listed);

(4) a funding report containing:

(A) a statement certified by the board of trustees or directors, as applicable, and an actuarial opinion that all applicable requirements of Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, have been met;

(B) an actuarial opinion that describes the extent to which contributions or premium rates:

(i) are not excessive;

(ii) are not unfairly discriminatory; and

(iii) are adequate to provide for the payment of all obligations and the maintenance of required cash reserves and surplus of the MEWA;

(C) a certified statement of the current value of the assets and liabilities accumulated by the MEWA (unless the application for final certificate of authority is filed 90 days or later following the close of the fiscal year for the MEWA, in which case the financial statement must be an audited statement), and a projection of the assets, liabilities, income, and expenses of the MEWA for the next 12-month period and that reflects that the MEWA has maintained adequate cash reserves; and

(D) a statement of the costs of coverage to be charged, including an itemization of amounts for administration, reserves, and other expenses associated with operation of the MEWA; and

(5) a notarized statement signed by an authorized director, officer, or trustee that affirms the following: "I know of no reason under the provisions of the Texas Insurance Code why {MEWA Name} is not entitled to a final certificate of authority."

(c) After examination, investigation, and determination that all the requirements of Insurance Code Chapter 846, other applicable Insurance Code provisions, and this subchapter have been met, the commissioner will issue a final certificate of authority to the MEWA.

§7.1907. Denial of Final Certificate of Authority and Extension of Initial Certificate of Authority.

(a) If the commissioner refuses to grant a final certificate of authority to an applicant that fails to meet the requirements of §7.1906 of this title (relating to Application for Final Certificate of Authority), notice of refusal will be in writing. Such notice will set forth the basis for the refusal, and constitutes 30 days' advance notice of revocation of the initial certificate of authority.

(b) If the applicant submits a written request for a hearing within 30 days after the notice of refusal to grant a final certificate of authority is sent, revocation of the initial certificate of authority will be temporarily stayed. The commissioner will promptly conduct a hearing in which the applicant will be given an opportunity to show compliance with the requirements of this subchapter.

(c) The term of the multiple employer welfare arrangement's (MEWA's) initial certificate of authority does not expire during the department's review of a timely filed application for a final certificate of authority.

(d) If a timely filed application is not complete, the MEWA must timely respond to a notice of deficiency from the department. If a MEWA fails to timely respond to a notice of deficiency, the MEWA's initial certificate of authority expires five days after the date the response was due or on the one-year anniversary of the date that the MEWA's initial certificate of authority was issued, whichever occurs later.

(e) A response to a notice of deficiency is timely if the response provides all information requested by the department and is made in writing:

(1) not later than the 15th day after the date the notice of deficiency is received;

(2) not later than the 25th day if the department receives written notice from the MEWA that additional time is required to respond to the inquiry; or

(3) within a reasonable time period as agreed to by the department based on the MEWA's circumstances.

(f) Before the end of the one-year term of its initial certificate of authority, a MEWA may request an extension of its initial certificate of authority. The request must be in writing and must explain in detail the basis for an extension. The initial certificate of authority may be extended for up to one year at the discretion of the commissioner on a determination that the MEWA is likely to meet the requirements of this subchapter within the granted extension period. No more than one extension of the initial certificate of authority will be granted, regardless of the length of time for which an extension was granted under this subsection.

§7.1910. Required Notice to Participants.

(a) In addition to any other notices required by law, a multiple employer welfare arrangement (MEWA), in connection with an employee welfare benefit plan, must provide to each participating employee or former employee covered by the plan a written notice at the

time the coverage of such participating employee or former employee becomes effective. The written notice must contain, at a minimum, the following:

(1) that individuals covered by the plan are only partially insured;

(2) that in the event the plan or the MEWA does not ultimately pay medical expenses that are eligible for payment under the plan for any reason, the participating employer or its participating employee covered by the plan may be liable for those expenses;

(3) that, if applicable, the plan does not participate in the guaranty fund; such disclosure must be provided in the same notice format required of insurers and health maintenance organizations in §1.1001 of this title (relating to Disclosure of Guaranty Fund Nonparticipation);

(4) the toll-free telephone number and website for the department as required under Insurance Code §521.005, concerning Notice to Accompany Policy; and

(5) that a copy of the summary plan description may be obtained from the plan administrator, employer, or trustee, as applicable.

(b) The notice must also briefly explain the types of information in the summary plan description.

§7.1912. Filings by Multiple Employer Welfare Arrangements; Report of Cash Reserves; Approval by Commissioner; Additional Actuarial Review.

(a) Each multiple employer welfare arrangement (MEWA) transacting business in this state must file annually with the commissioner statements and reports described as follows:

(1) within 90 days of the end of the MEWA's fiscal year, financial statements audited by a certified public accountant; and

(2) within 90 days of the end of the MEWA's fiscal year, an actuarial opinion prepared and certified by an actuary who is not an employee of the MEWA, an employee of the MEWA's employer-members, an affiliate of the MEWA, or an affiliate of the MEWA's employer-member, or an employee of an affiliate of the MEWA; and who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 United States Code §1241 and §1242). The actuarial opinion must include:

(A) a description of the actuarial soundness of the MEWA, including any recommended actions that the MEWA should take to improve its actuarial soundness;

(B) the recommended amount of cash reserves the MEWA should maintain, as follows:

(i) for all MEWAs, the recommended amount may not be less than the greater of 20% of the total contributions in the preceding plan year or 20% of the total estimated contributions for the current plan year; and

(ii) for a MEWA that provides a comprehensive health benefit plan under Insurance Code §846.0035, concerning Applicability of Certain Laws to Associations Providing Health Benefits, the MEWA must also comply with Insurance Code Chapter 421, concerning Reserves in General;

(C) a calculation of cash reserves with proper actuarial regard for known claims, paid and outstanding, a history of incurred by not reported claims, claims handling expenses, unearned premium, an estimate for bad debts, a trend factor, and a margin for error; and

(D) the recommended level of specific and aggregate stop-loss insurance the MEWA should maintain.

(b) The cash reserves required by Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, and this subchapter must be maintained in cash or federally guaranteed obligations of less than five-year maturity that have a fixed or recoverable principal amount or such other investments as the commissioner has authorized by rule.

(c) The commissioner will review the statements and reports required by subsection (a) of this section. The commissioner will automatically renew a MEWA's certificate of authority unless the commissioner finds that the MEWA does not meet the requirements of Insurance Code Chapter 846, and this subchapter.

(d) On a finding of good cause, the commissioner may order an actuarial review of a MEWA in addition to the actuarial opinion required by Insurance Code §846.153(a)(2), concerning Required Filings. The cost of any such additional actuarial review must be paid by the MEWA.

(e) A MEWA must file updated information within 30 days when a material change occurs to information provided in the application for an initial or final certificate of authority according to the requirements of Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, and this subchapter.

§7.1917. Comprehensive Health Benefit Plans.

(a) This section applies only to a multiple employer welfare arrangement (MEWA) that offers or seeks to offer a comprehensive health benefit plan and that:

(1) was issued an initial certificate of authority under §846.054, concerning Issuance of Initial Certificate of Authority, on or after January 1, 2024; or

(2) elects to be bound by Insurance Code §846.0035, concerning Applicability of Certain Laws to Association Providing Health Benefits, under §7.1916 of this title (relating to Election for the Application of Certain Laws).

(b) The MEWA must submit a form signed and dated by an authorized officer or trustee to the department that includes the following:

(1) a statement that is substantially similar to the following: "This document is being submitted in accordance with 28 Texas Administrative Code §7.1917. {MEWA Name} will provide a comprehensive health benefit plan as defined by 28 Texas Administrative Code §7.1902"; and

(2) if the comprehensive health benefit plan is not structured as a preferred provider benefit plan or an exclusive provider benefit plan as defined in Insurance Code §1301.001, concerning Definitions, a description of the health care provider and benefit structure of the plan and an explanation of how it does not qualify as a preferred provider benefit plan or an exclusive provider benefit plan.

(c) In addition to the form required in subsection (b) of this section, the MEWA must submit the following:

(1) a detailed compliance plan addressing the following requirements:

(A) Insurance Code Chapter 421, concerning Reserves in General;

(B) Insurance Code Chapter 422, concerning Asset Protection Act;

(C) Insurance Code Chapter 1451, Subchapter C, concerning Selection of Practitioners; Subchapter F, concerning Access to Obstetrical or Gynecological Care; and Subchapter K, concerning Health Care Provider Directories; and

(D) Insurance Code Chapter 4201, concerning Utilization Review Agents;

(2) if the MEWA provides a comprehensive health benefit plan that is structured in the manner of a preferred provider benefit plan or an exclusive provider benefit plan as defined in Insurance Code §1301.001, concerning Definitions, a detailed compliance plan addressing the following requirements:

(A) Insurance Code Chapter 1301, concerning Preferred Provider Plans; and

(B) Insurance Code Chapter 1467, concerning Out-of-Network Claim Dispute Resolution; and

(3) for each comprehensive health benefit plan that will be sponsored by the MEWA, an opinion from an attorney attesting to the fact that the plan is in compliance with all applicable federal and state laws. The opinion must adequately explain how each plan complies with the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.) and the Patient Protection and Affordable Care Act (42 United States Code §18001 et seq.), including how each plan complies with federal requirements applicable to large group, small group, or individual markets, as applicable.

(d) A MEWA may use the MEWA forms accessible on the department's website at www.tdi.texas.gov/forms as a resource to comply with the requirements in subsections (b) and (c) of this section.

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

Filed with the Office of the Secretary of State on October 17, 2024.

TRD-202404899
Jessica Barta
General Counsel
Texas Department of Insurance
Effective date: November 6, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 676-6555

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SUBCHAPTER S. MULTIPLE-EMPLOYER WELFARE ARRANGEMENTS REQUIREMENTS FOR OBTAINING AND MAINTAINING CERTIFICATE OF AUTHORIZATION

28 TAC §7.1903

STATUTORY AUTHORITY. The commissioner adopts the repeal of §7.1903 under Insurance Code §846.005(a) and §36.001.

Insurance Code §846.005(a) provides that the commissioner may, on notice and opportunity for all interested persons to be heard, adopt rules and issue orders reasonably necessary to augment and implement Insurance Code Chapter 846.

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

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

Filed with the Office of the Secretary of State on October 17, 2024.

TRD-202404898
Jessica Barta
General Counsel
Texas Department of Insurance
Effective date: November 6, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 676-6555

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.36

The General Land Office (GLO) adopts 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), with changes to the text of the Rule. The GLO adopts amendments to subsection 15.36(d) and new section 15.36(e) to certify the amendments to the Plan as consistent with state law.

The rule amendment was published in the June 7, 2024, issue of the *Texas Register* (49 TexReg 4021) and will be republished.

Copies of the City's Plan can be obtained by contacting the City of Galveston Department of Development Services at 3015 Market St, Galveston, Texas 77550, or the GLO's Archives and Records Division, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, (512) 463-5277.

BACKGROUND AND JUSTIFICATION

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, which included 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 (RUA) 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 and Parking Plan in Appendix A, and modifications to the Beach Access Maps in Exhibit C. The document submitted to the GLO by the

City included proposed changes to the Plan previously adopted in City Ordinance Numbers 23-030, 23-038, 23-039, and 23-071.

Some, but not all of the changes were later formally adopted as amendments to the City's Plan by City Council on October 2, 2024 in Ordinance No. 24-059, with changes in response to public comments. The amended Plan formally adopted by City Council did not include the reduction of the RUA by 1,000 linear feet, the addition of the new ADA-only vehicular beach area at AP 2, or the additional vehicular beach area at AP 6.

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 regarding the BUF increase are now fully certified as consistent with state law. During the time its Plan was conditionally certified, the City continued to restore 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.

ANALYSIS OF PLAN AMENDMENTS AND GLO'S AMENDMENT TO 31 TAC §15.36.

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61) and the Texas Administrative Code (31 TAC §§15.3, 15.7, and 15.8), a local government with jurisdiction over Gulf Coast beaches must submit any amendments to its Plan or Beach User Fee Plan (BUF Plan) to the GLO for certification. If appropriate, the GLO will certify that the Plan or BUF Plan is consistent with state law by amendment of a rule, as authorized in Texas Natural Resources Code (TNRC) §§61.011(d)(5) and 61.015(b). 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).

The amendments to the City's Plan include a variance from 31 TAC §15.6(f) that allows 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 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. The City has indicated that the variance would allow for a proposed development on a single property to be constructed with appropriate stormwater detention in compliance with City stormwater detention criteria, which mandates one-acre-foot-per-acre in areas where detention is necessary. This equates to essentially one foot of water storage depth across the entire tract that is required to be stored on site while the receiving infrastructure drains out prior to site discharge. For the single property where the variance will apply, all site drainage will be required to be designed to collect under the building with sufficient depth that requires structurally adequate means of containing and storing that volume and water height. Fibercrete is unable to withstand lateral forces that a detention volume of this quantity would have on the structure and surrounding soil. 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.

The City also indicated that the proposed development will include a public beach access walkway and the addition of twenty-seven (27) public beach access parking spaces, which will enhance public beach access in this area.

In adopting 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 positive impact of a robust and effective stormwater detention system that minimizes impacts to the beach and dune system.

In addition to the variance, the amendments allow vehicles to be prohibited 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 1/2 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. The City

has committed to providing the required beach access signage at this access point before vehicular prohibitions occur and will also conduct quarterly inspections of the signage and replace it as needed. The construction of the public parking lot and pedestrian access pathway to the beach are required to be authorized by a beachfront construction certificate and dune protection permit issued by the City, constructed and available to the public, 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 manage and maintain the off-beach parking and pedestrian access pathway in good condition for the beach to remain closed to vehicular traffic. The City is required to maintain the off-beach parking and pedestrian access pathway in perpetuity as long as the vehicular beach restriction remains in place, or the City must restore vehicular access to the beach.

The proposed amendments included a reduction to the size of the Restricted Use Area (RUA) at AP 1(C) by 1,000 linear feet and authorized a new ADA-only vehicular beach area at AP 2 and added additional vehicular beach areas at AP 6 and AP 13. The 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. In response to public comments, the City has removed any proposed amendments to their Plan related to the reduction of the RUA by 1,000 linear feet, the addition of the new ADA-only vehicular beach area at AP 2 in Stewart Beach, and the additional vehicular beach area at AP 6 in their formal approval of the amended Plan. Therefore, in regard to the RUA, the City's Plan will remain unchanged.

The proposed Plan amendments still include the addition of a new 350-foot section of 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 existing required off-beach parking lot with a minimum of 273 spaces at this access point.

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 specifies in the amended Plan that 143 parking spaces are available at AP 1(C) and also made 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 incorporated 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 Plan amendments 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) 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) 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 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 free parking area at Stewart Beach must remain accessible year-round and include signage that easily identifies the area.

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 amendments described above, the GLO fully certifies the amendments to the Plan that were published in the February 26, 2021 edition of the *Texas Register.* The 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 Plan amendments also 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 an additional 300 spaces to accommodate for the required 266 spaces, bringing the total number of parking spaces in the free parking area to 600 spaces, which includes the 50 spaces added to the free parking area to accommodate the deficit of parking for APs 1(A), 1(B) and 1(C) as described above in reference to City Ordinance No. 11-037. 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 Plan amendments 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 lo-

cation 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 Plan amendments 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 determined during the compliance process. 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.

RESPONSE TO PUBLIC COMMENTS

During the 30-day public comment period, at least 25 commenters requested a public hearing, which required the GLO conduct a public hearing pursuant to Texas Government Code §2001.029. The public hearing was originally scheduled for July 16, 2024, at 823 Rosenberg, 2nd Floor, Galveston, Texas, and the public comment period was extended until the conclusion of the public hearing. Notice of the public hearing and the public comment period extension was provided in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5197). Due to Hurricane Beryl, the public hearing was postponed to August 6, 2024, at 823 Rosenberg, 2nd Floor, Galveston, Texas, and the public comment period was extended to 11:59 PM August 6th. Notice of the public hearing and public comment period extension was posted in the July 26th issue of the *Texas Register* (49 TexReg 5577) and on the City of Galveston's website and social media pages.

The GLO received 379 comments during the public comment period. Comments were received by residents and visitors of the City of Galveston, state of Texas and nationwide, and from groups such as the Surfrider Foundation Galveston Chapter and Texas Conservation Alliance. A majority of the comments objected to the proposed amendments, specifically the use of reinforced concrete in the area within 200 feet from the line of vegetation, the prohibition of vehicles from the beach access at Access Point 7 - Sunny Beach Subdivision and reducing the size of the Restricted Use Area at Access Point 1(C) by 1,000 linear feet.

243 commenters expressed concerns that the proposed amendments were intended to appease private developers and prioritize their economic gain over public beach access, and 40 commenters stated that the amendments were not in the best interest of the public. One commenter stated that City staff made statements that hotel developers would not proceed with construction unless the RUA in front of the proposed development was removed, and the beach was pedestrian-only. Pursuant to the Dune Protection Act (TNRC § 63), Open Beaches Act (TNRC § 61), and 31 TAC Chapter 15, local governments have the authority to amend their beach access and dune protection plans at their discretion as long as the amendments comply with TNRC §§ 61 and 63, and the GLO's Beach/Dune Rules (31 TAC § 15). The GLO does not have jurisdiction over the reasons why a local government may propose to remove vehicular beach access, as long as the appropriate parking, signage and perpendicular beach access are provided according to the presumptive beach access criteria in 31 TAC §15.7. GLO has reviewed the City's proposals and found that they comply with state rules. No change was made in response to these comments.

232 commenters stated that the Plan amendments do not meet the requirement of Texas laws protecting and prioritizing public beach access, including the Texas Open Beaches Act and The Texas Constitution, Article 1 Section 33. A person representing the Surfrider Foundation Galveston Chapter also expressed concerns that private development proposal adjacent to the public beach often result in public access being relocated to off-beach parking areas and that vehicular access and on-beach parking may eventually be eliminated on many Galveston beaches, which does not align with the intent of the OBA and the Texas Constitution. The GLO disagrees with the comments that the proposed Plan amendments do not meet the requirements of Texas laws. Under The Texas Constitution, Article 1, Section 33(c), the legislature may enact laws to protect the right of the public to access and use a public beach and to protect the public beach easement from interference and encroachments. TNRC §61.022(b) allows a local government to regulate vehicular traffic as long as such regulation is consistent with the OBA and 31 TAC Chapter 15. The procedures set forth in 31 TAC §15.7 provide that a local government, upon certification by the GLO following notice-and-comment rulemaking, can prohibit vehicular traffic on areas of the beach as long as the public's access to and use of the public beach is preserved or enhanced according to the presumptive criteria in 31 TAC §15.7(h). The criteria in 31 TAC §15.7(h)(1) are 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 1/2 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.

Prohibition of Vehicular Beach Access at Access Point 7

The following comments were provided specifically in response to the proposed prohibition of vehicular beach access at Access Point 7 - Sunny Beach Subdivision.

Sixty-two (62) commenters, mostly property owners in Beachside Village, were in support of the proposed Plan amendment and of the prohibition of vehicular beach access at Access Point 7 - Sunny Beach Subdivision. Some commenters support the prohibition of vehicular beach access at Access Point 7 due to concerns for safety and environmental damage caused by vehicular beach access.

One commenter expressed support for limiting how beachgoers access the beach and said that the City is not limiting use of the beaches, just access to them. The GLO disagrees with this comment because the City's Plan preserves the public's right to access and use the public beach through the availability of off-beach parking with pedestrian access in accordance with the requirements for preserving access in 31 TAC §15.7(h).

Three commenters stated that the proposed closure seems like a plan to limit public beach access and create private beaches, and one commenter stated that private property owners are not at liberty to restrict beach access or to cause beach access to be restricted to the public. Another commenter stated that the ability to use a vehicle on a beach is valued by both residents and tourists and sets Texas apart from other states. The GLO agrees that vehicular beach access is unique and valued, and that private property owners do not have the authority to restrict

public access to the public beach. However, local governments have the ability to regulate vehicular beach traffic under 31 TAC §15.7 as long as such regulation is consistent with the OBA and Beach/Dune Rules. The GLO disagrees with the comments that the proposed closure is a plan to create private beaches because the City's Plan preserves and enhances the public's right to access and use the public beach through the availability of off-beach parking with pedestrian access.

One commenter stated that vehicular access adjacent to the beach provides the public with an opportunity to transport people and gear to the beach, and the proposed off-beach parking and drop-off point at Access Point 7 will not facilitate this same ease of access and is inconsistent with 31 TAC §15.7(h). Multiple commenters also stated that the proposal to replace public parking on the beach with an off-beach parking lot 700 feet from the beach fails to meet the legal requirements, was too far away, and that the parking spaces in the off-beach parking lot at Access Point 7 are too small. Other commenters also stated that the plan to restrict vehicular access at Access Point 7 does not preserve or enhance beach access, violates the Open Beaches Act, and will impact hundreds to thousands of beachgoers. The GLO disagrees with the comments that the proposed amendments do not preserve or enhance beach access and violate the OBA. The OBA (TNRC §61.022(c)) allows a local government to regulate vehicular traffic as long as such regulation is consistent with the OBA and the Beach/Dune Rules. The OBA (TNRC §61.011(d)(3)) also authorized the commissioner to promulgate rules regarding local government prohibitions of vehicular traffic on public beaches, provision of off-beach parking, and other minimum measures needed to mitigate for any adverse effect on public access and dune areas. The procedures set forth in 31 TAC §15.7 provide that a local government, upon certification by the GLO following notice-and-comment rulemaking, can prohibit vehicular traffic on areas of the beach as long as the public's access to and use of the public beach is preserved or enhanced according to the presumptive criteria in 31 TAC §15.7(h).

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 1/2 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 (92) public parking spaces (including seven ADA parking spaces) are proposed for the parking lot, exceeding the 87 required parking spaces, and the ingress/egress access way is less than 1/2 mile from each adjacent access point. In addition, 330 feet of overflow parallel parking (16 parking spaces, seven 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.

During the permitting process for the parking areas, the City will assess that the parking lot meets any applicable requirements. The City stated that they follow vehicular engineering standards outlined in the Institute of Transportation Engineering's Transportation Handbook to determine the appropriate size of parking spaces, and the City ensures standards to the best of its ability by containing information in City Ordinances and Land Development Regulations.

One commenter expressed concerns that prohibiting vehicular access from the beach at Access Point 7 will create an access impediment to people with disabilities and other individuals who wish to access the water with non-motorized watercraft. However, the availability of a 100-foot-wide turnaround on the beach at the seaward end of 8 Mile Road will allow beachgoers to drop off beach gear, non-motorized watercraft, fishing equipment, and people with mobility concerns, and the City included this in their proposal to further accommodate access for people with disabilities and beachgoers launching non-motorized watercraft or fishing., In addition, the off-beach parking area includes seven ADA spaces and the overflow parallel parking includes an additional seven ADA spaces. In addition to these accommodations for persons with mobility concerns, the proposed modification to beach access meets the presumptive criteria for preserving beach access in 31 TAC §15.7(h)(1).

Removal of 1,000 linear feet from the RUA

Numerous comments were received specifically in response to the proposed reduction of the size of the Restricted Use Area (RUA) at Access Point 1(C) by 1,000 linear feet and the addition of an ADA-only use area at Access Point 2 and additional vehicular beach access areas at Access Point 6 and Access Point 13. These comments are summarized below and do not require a response since the City is no longer proposing to reduce the RUA at AP 1(C) by 1,000 linear feet or to add an ADA-only use area at AP 2 or an additional vehicular beach access area at AP 6. As the City is removing the proposed sections referenced above from their proposed Plan amendments, the GLO does not need to respond to each comment solely related to those proposed amendments.

Forty-one (41) commenters expressed concerns that the 500 feet of new vehicular beach access being added to Pocket Park 1 would be open to all vehicles and would not be restricted to only vehicles operating under restricted uses. Several commenters stated that people with disabilities would be losing their vehicular access and that the proposed changes would restrict access to areas crucial for people with disabilities or pose an undue burden for people with disabilities. Another commenter stated that the proposal violated 31 TAC §15.8(k) as the plan failed to establish, preserve, and enhance access for persons with disabilities and contravened the Texas Accessibility Guidelines.

One commenter requested that an additional 500 linear feet of access be added to the proposed ADA-only vehicular access area at Stewart Beach in addition to what was proposed to maintain a continuous and accessible beachfront for persons with disabilities. One commenter stated that their husband is disabled, and that AP 1(C) is the only access point they've been using and expressed concerns about being able to access other areas. One commenter asked the GLO to consider if the proposed amendments include any potential violations to the Americans with Disabilities Act (ADA).

Several commenters expressed concerns about the lack of ADA accessible amenities at Pocket Park 1 not being an adequate substitute for the accessible amenities (mobi-mats, beach wheelchairs, and restrooms) located at Stewart Beach adjacent to the RUA. One commenter also expressed concerns about the lack of new amenities provided by the City at Pocket Park 1. One commenter stated that they spoke to over 300 people who indicated that off-beach parking and a mat would not replace on-beach access for persons with disabilities.

One commenter stated that existing beach users are aware of the location of the RUA and that it is easily accessed by road. Another commenter stated that the addition of vehicular areas at Stewart Beach and Pocket Park 1 without clear signage or improvements does not enhance beach access.

Several commenters expressed concerns regarding the flooding, erosion, and soft sand within the area where the ADA-only vehicular beach area would be located at AP 2. One commenter stated that the area is located near channeled runoff from the Seawall and is often underwater at high tide. Another commenter stated that locating the ADA parking area in an area subject to flooding would result in reduced days of the year for access.

Several commenters expressed concerns about the reasoning behind splitting up the RUA and stated that it seems like a plan to force local beachgoers further away from developed areas or privatize the beach. One commenter stated that there is not any available public parking behind the current RUA.

Forty-two (42) commenters expressed concerns that the 500 feet of proposed ADA-only vehicular beach area at Access Point 2 - Stewart Beach would not allow people who are fishing or launching motorized personal watercraft. Three commenters also emphasized the importance of the RUA as a safe area for unloading equipment associated with water sports or fishing, and another commenter expressed concerns about people that are fishing or launching non-motorized watercraft merging with other beachgoers as a potential safety risk.

Several commenters stated that police reports do not show any incidents involving vehicles and pedestrians at the RUA within the past five years, and that the City's proposal to reduce the linear footage of the RUA was based on biased surveys. Another commenter said the City stated that the RUA is being reduced because beach users are driving on and destroying dunes, there are safety concerns with pedestrians, and off-beach parking and mats can replace access for persons with disabilities. The commenter further stated that this stretch of beach is one of the safest due to its location adjacent to Stewart Beach and East Beach and close proximity to medical support facilities.

One commenter provided information regarding the usage of the RUA according to Park Board visitor logs from March 2022 to May 2023 and stated that over a period of 62 logged days, 688 vehicles accessed the RUA, which consisted of 97 disabled veterans, 547 people with disabilities, 357 people fishing, and 25 people launching non-motorized watercraft. This commenter also stated that on Memorial Day in 2023, approximately 300 people used the RUA while only 160 beach goers visited the pedestrian-only beach between Stewart Beach and East Beach Park.

One commenter stated that the GLO's August 4, 2023 letter to the City said that the entire linear footage of the RUA must be preserved and/or relocated to another area of east beach to ensure continued access for persons with disabilities, saltwater fisherman, and launching of non-motorized personal watercraft. The commenter asked the GLO to stand by this prior response, and to explain how the GLO's stance may have changed.

One commenter presented a photograph of dunes with apparent damage from vehicular traffic and stated that the photograph was taken at the entrance to the Grand Preserve where golf carts drive over the dunes. Under 31 TAC §15.7(h)(5)(B), in areas where vehicles are prohibited from driving on and along the beach, golf carts must also be prohibited. Golf carts are only authorized to drive on the beach in the RUA if they are for an authorized restricted use or show an ADA placard. Any damages to dunes without a permit issued by the local government are a violation of the Dune Protection Act. According to the City, the Police Department and Marshall's office routinely patrol this area to ensure all vehicles within the RUA are operating under one of the allowable restricted uses. Violations of the DPA or the RUA should be immediately reported to the police department.

One commenter referenced the terms of the judgement issued on June 5, 1964, in the matter of Galveston East Beach, Inc. v State of Texas (Cast Number 97,893, in the District Court of Galveston County, Texas 10th Judicial District)(the "1964 Judgement"), and stated that the 1964 Judgement includes standards for this area of beach that may be superior to and take precedence over certain conflicting or limiting provisions in the City's Plan and ordinances. The commenter stated that the 1964 Judgement fully protects vehicular traffic, which is being restricted in this area, and that the 1964 Judgement predates and could be superior to the TAC provisions allowing the restrictions. The commenter requested the GLO revisit the implications of the 1964 Judgement and suggested the City's Plan be modified to eliminate any provisions contrary to the Judgement and to include certain provisions of the Judgement not currently included within the Plan.

The commenter also stated that camping and boating are both fully protected in the 1964 Judgement and objected to their restrictions through other City ordinances.

Variance for the use of reinforced concrete

One commenter, in support of the exemption, stated that the purpose of the variance is to create a uniform set of rules that will apply to the entire property, since reinforced concrete is already allowable in the half of the site behind the seawall. GLO made no change in response to this comment.

The following comments were provided in response to the proposed 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.

Numerous commenters stated that this is the fastest eroding beachfront on Galveston Island and adding concrete further threatens this beach and will cause or accelerate erosion rates at this property and adjacent properties, and 232 commenters suggested that the development footprint could be decreased instead of locating the development in an area subject to exacerbated erosion. Several commenters expressed concerns that the variance will allow another large complex structure to be built on a highly sensitive, eroding beach, where erosion is exacerbated by the end of the seawall. Two commenters also expressed concerns about the variance negatively impacting nearby beach nourishment projects. The GLO agrees with commenters that the area of beach where the exemption would apply has the highest erosion rate on Galveston Island based on the data from the Bureau of Economic Geology. However, GLO notes that the exemption included in the City's Plan only allows a variance from 31 TAC §15.6(f) to allow reinforced concrete instead of fibercrete in an eroding area within 200 feet of the line of vegetation under certain limited conditions. The TAC currently allows development within 200 feet of the line of vegetation; only the type of material (reinforced vs. unreinforced concrete) to be placed under the footprint of the structure is being considered with this variance.

Four commenters referenced the City of Galveston's 2011 Comprehensive Plan, which states that most of Galveston's beachfront shoreline west of Stewart Beach is eroding at rates of 5-10 feet per year on average. The commenters suggested that the City respond proactively and ensure future development is sustainable and resilient and said that adding concrete in this area does not seem sustainable or resilient, which are the stated goals of the City. Another commenter suggested that the City consider if the proposed exemption is sustainable given the impacts of sea level rise and climate change on beach erosion, high tides, and flooding in Galveston. Several commenters expressed concerns about this variance setting a precedent for allowing large high-rises to continue spreading westward and for future developer requests for these types of variances. GLO shared these comments with the City and they relayed that all ordinances and resolutions were reviewed and approved by City Council members and all applicable City departments. Any future proposed variances will be evaluated individually by the GLO in accordance with the requirements of 31 TAC §15.3(o)(5).

Several commenters questioned the reasoning behind the City proposing this variance. Two commenters stated that it doesn't seem equitable to make an exception for one developer and to overlook the good of the public to benefit one individual. Another commenter questioned deviating from the existing Plan for one property when the rules and regulations of the TAC are written to protect natural resources and protect public health. The GLO has no involvement in determining why a local government may propose to amend their beach access plan, but instead is required to determine if the amendment proposed by the City is consistent with state law.

Twelve commenters stated that the GLO is required to protect the public beach from erosion and adverse effects on public access by regulating beachfront construction and expressed concerns about the proposed variance being contrary to the stated purposes of the Beach/Dune Rule and TNRC §§ 61 and 63. One commenter stated that the proposed exemption is inconsistent with TNRC §61.011(d)(2) which mandates that the Commissioner will promulgate rules for the protection of the public easement from erosion or reduction caused by development or other activities on adjacent land and beach cleanup and maintenance. The GLO has determined that the proposed variance meets the requirements of state rules since the City provided a reasoned justification in writing in accordance with 31 TAC §15.3(o)(5) demonstrating that the variance is equal to or more protective of the goals and policies in 31 TAC §15.1. In adopting 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 positive impact of a robust and effective stormwater detention system that minimizes impacts to the beach and dune system. In addition, 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.

Two commenters also stated that the proposed exemption is unreasonable and inconsistent with TNRC §61.011(c), which provides that the commissioner shall strictly and vigorously enforce the prohibition against encroachments on and interferences with the public beach easement, and that the proposed exemption will knowingly cause a loss of public resources for short-term private benefit. The GLO disagrees with the commenters since the proposed variance does not allow or authorize an encroachment or interference with the public beach easement.

One commenter stated that the proposed stormwater detention measures at the site are insufficient as mitigation, as it will not stop or slow the continued erosion caused by storm surge, wave runup, or sea level rise from the Gulf. In the City's reasoned justification for the proposed variance, the stated purpose of the stormwater detention system was not to stop or slow erosion caused by the Gulf, but rather to detain and redirect the flow of stormwater runoff away from the beach to protect the dune and beach profile. According to the City's formal Plan amendment submission dated June 16, 2023, the use of fibercrete would not be structurally sufficient to adhere to the stormwater detention requirements for a multi-story building. The City's June 16th submission further states that the site is being required to collect, detain, and redirect stormwater at a volume of one acre foot per acre, which is a requirement under City of Galveston stormwater detention criteria.

Numerous commenters expressed concerns about a storm washing reinforced concrete onto the public beach and threatening public access and safety. Two commenters also expressed concerns about taxpayers needing to pay for cleanup costs when the concrete ends up on the public beach. Under TNRC §61.067, it is the duty of the GLO to clear debris from a public beach located in an area where there is a declared disaster if the debris is the result of the event that is the subject of the disaster declaration. In addition, the amendments include a special concrete maintenance fee to be used to help pay for the clean-up of concrete from the public beach near the property, should the need arise.

Two commenters stated that a storm could damage the entire building and wash it onto the beach, and one commenter expressed concerns about erosional structural damage to any development authorized under the exemption and subsequent seawall damage. One commenter stated that concrete could end up as debris on the road, making it hard for residents to access their homes after a storm. One commenter provided a photograph of the Riviera Condominiums, and stated that its concrete foundation has been compromised and that they anticipate this being a similar issue if another development is constructed in a highly eroding area. One commenter stated that when structural development is located in eroding areas and the structure fails, it negatively impacts beach habitat and recreational public beach resources, which are preserved in the public trust for all Texans. The commenter also stated that erosion will impact the proposed development during its economic lifespan, resulting in encroachment towards the Gulf, loss of the public beach seaward of the development and structural failure of the proposed concrete. The GLO agrees that construction in eroding areas is more vulnerable and has a greater potential to negatively impact the beach and dune system. Under TNRC §33.067 and 31 TAC §15.17, local governments were required to develop Erosion Response Plans to reduce public expenditures for erosion and storm damage losses to public and private property. All construction within city limits must adhere to the building set-back line requirements under the City's Erosion Response Plan, which were implemented to help mitigate storm damage due to erosion. The proposed variance does not change where development can be located in eroding areas. Rather, it allows a different type of material (reinforced concrete instead of unreinforced fibercrete) to be used within 200 feet of the line of vegetation under certain limited circumstances.

Nine commenters, including the Texas Conservation Alliance, stated that this stretch of beach is important habitat for Galveston's genetically unique ghost wolves, along with other area wildlife, and expressed concerns that allowing variances such as this will further threaten wildlife access to this habitat. Another commenter stated that the proposed variance will rob sea turtles of their right to life, safe haven, and nesting sites. The Beach Dune rules do not include provisions for habitat protections for endangered species or other species of concern.

One commenter stated that the area to which the exemption would apply is located in a high hazard area according to the National Flood Insurance Program (NFIP), and that construction in high hazard areas is guided by the International Building Code (IBC), and the City adopted the IBC as its construction standard in 2023. According to the commenter, the IBC requires concrete slabs used for parking, floors of enclosures, landings, decks and walkways to be structurally independent of buildings, not more than 4 inches thick, with no turned-down edges, no reinforcing, isolated from pilings and columns, and with control or construction joints spaced no more than 4 feet apart. Alternatively, slabs must be self-supporting capable of remaining intact under flood conditions. The commenter expressed concerns that the proposed variance from 31 TAC §15.6(f) is also a variance from IBC construction standards and that engineering safety implications are being neglected with this proposed exception. According to the City, structures located within a VE Special Flood Hazard Area are evaluated by both the City of Galveston's Coastal Resources Division and Building Division to ensure that the construction is compliant with all FEMA regulations and the City of Galveston's flood zone ordinances. The City has stated that the Building Division will ensure all applicable IBC requirements contained in city ordinances are met by issuing appropriate building permits and conducting required inspections.

One commenter expressed concerns that the proposed variance from 31 TAC §15.6(f) will potentially result in a substantial increase in flood insurance rates for island property owners. Under 31 TAC §15.6(e)(2), a local government is required to inform the GLO and FEMA regional representative before it issues any variance from FEMA regulations or allows an activity done in variance of FEMA's regulations found in Volume 44 of the Code of Federal Regulations, Parts 59-77, as variances may affect a local government's participation in the National Flood Insurance Program. In the City's formal Plan amendment submission dated November 22, 2023, the City stated that the City's Floodplain Manager has determined that the requested variance from 31 TAC §15.6(f) would not be a variance of the regulations found in Volume 44 CFR, Parts 59-77 and that the proposal is not in conflict with the Galveston Flood Plan Management ordinance.

Miscellaneous Public Comments

Additional comments received during the public comment period are summarized below.

40 commenters stated that the City of Galveston did not hold its traditional public comment period for this amendment. According to the City, the amendment requests were taken in front of the Galveston City Council on April 27, 2023, May 13, 2023, May 25, 2023, October 27, 2023, March 21, 2024 and October 2, 2024, and in front of the Planning Commission on October 3, 2023 and March 5, 2024. The City stated that the Planning Commission and City Council meetings provided an opportunity for public comments, which ensured compliance with the Texas Open Meetings Act.

One commenter stated that the free parking area at Access Point 2 - Stewart Beach is inaccessible due to the surrounding drainage feature and that there is a lack of signage and formal parking. Another commenter stated that the free parking area is routinely flooded and that beachgoers are unable to park without getting stuck. The GLO requested the City respond directly to these comments and according to the City, a footpath is present across the drainage channel south of the Stewart Beach free parking area and signage is currently in place identifying the free parking area. The City is required to maintain the parking areas and signage identifying the parking areas included in the City's beach access plan by conducting regular inspections and taking corrective action as agreed to in the Compliance Maintenance Plan provided to the GLO on February 8, 2023. According to the Compliance Maintenance Plan, the City will conduct an on-site verification of public signage and ensure access points and parking areas are in place and effectively providing access, and will attempt to implement any necessary corrective actions and replace any missing signage within 90 days of the inspections report. The GLO will monitor compliance with the Plan.

Some comments did not directly relate to this rulemaking, and no changes were made in response to these comments. One commenter suggested using signs warning of rattlesnakes in the dunes. Another commenter asked if the elimination of seasonal access between Access Points 33 and 34 and if the elimination of vehicular access at Access Point 33 was included in the proposed Plan amendment. The proposed amendments do not include any changes to vehicular beach access at Access Points 33 and 34. No changes were made in response to these comments.

One commenter asked if beach user fee revenues are used to maintain the beach, such as trash pickup, or if they only cover the expenses for added amenities and improvements. Under 31 TAC §15.8, local governments may only charge beach user fees in exchange for providing beach-related services, which is defined in 31 TAC §15.2(10) as including sanitation and litter control and beach maintenance.

One commenter stated that charging fees to access restricted areas at Stewart Beach raises questions about compliance with beach access plan, and that public beaches are meant to be open and accessible without fees. This comment is not directly related to this rulemaking as a new beach user fee is not proposed. Under 31 TAC §15.8, local governments may charge beach user fees in exchange for providing beach-related services if the local government has a state approved dune protection and beach access plan that includes a beach user fee plan. The City's Plan includes an approved beach user fee plan, and the City is allowed to charge beach user fees in accordance with their Plan.

One commenter stated that the closure of facilities on the seawall during daylight hours in the summer inconveniences beach users and that there is a lack of tangible improvements on the seawall despite increased fees, aside from installed lighted bollards. This comment is not directly related to this rulemaking as the operating hours of beach facilities is not included in the City's Plan and the proposed amendments do include a change to the City's beach user fee plan.

STATUTORY AUTHORITY

The amendments are adopted 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 which was 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. Apffel Park, Dellanera Park, and Pocket Parks Nos. 1-3.

(d) The General Land Office 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 City Ordinance No. 24-059 dated October 2, 2024. The amendments include a variance for the use of reinforced concrete, prohibit vehicular access at Access Point 7, add additional vehicular beach access area at Access Point 13 and update the Beach Access and Parking Plan in Appendix A and Beach Access Maps in Exhibit C.

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

Filed with the Office of the Secretary of State on October 18, 2024.

TRD-202404915
Jennifer Jones
Chief Clerk and Deputy Land Commissioner
General Land Office
Effective date: November 7, 2024
Proposal publication date: June 7, 2024
For further information, please call: (512) 475-1859

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 150. MEMORANDUM OF UNDERSTANDING AND BOARD POLICY STATEMENTS

SUBCHAPTER A. PUBLISHED POLICIES OF THE BOARD

37 TAC §150.55, §150.56

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 150, Memorandum of Understanding and Board Policy Statements. The amendments are adopted without change to the proposed text as published in the September 6, 2024 issue of the *Texas Register* (49 TexReg 6977). The amendments are adopted to address grammatical changes and sentence structure for uniformity and consistency throughout the rules. The text of the rules will not be republished.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under Texas Government Code, Title 5. Open Government, Subtitle B, Ethics, Chapter 572 and Section 508.0441. Subtitle B, Ethics, Chapter 572, is the ethics policy of this state for state officers or state employees. Section 508.0441 requires the Board to implement a policy under which a Board member or Parole Commissioner should disqualify himself or herself on parole or mandatory supervision decisions. Section 508.035, Government Code, designates the presiding officer to establish policies and procedures to further the efficient administration of the business of the board.

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

Filed with the Office of the Secretary of State on October 18, 2024.

TRD-202404909
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: November 7, 2024
Proposal publication date: September 6, 2024
For further information, please call: (512) 406-5478

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Texas

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 State Health Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 404, Protection of Clients and Staff--Mental Health Services, Subchapter E, Rights of Persons Receiving Mental Health Services, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 320, Rights of Individuals, Subchapter A, Rights of Individuals Receiving Mental Health Services.

The rules will be transferred in the Texas Administrative Code effective November 29, 2024.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 404, Subchapter E

TRD-202404891

Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 404, Protection of Clients and Staff--Mental Health Services, Subchapter E, Rights of Persons Receiving Mental Health Services, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 320, Rights of Individuals, Subchapter A, Rights of Individuals Receiving Mental Health Services.

The rules will be transferred in the Texas Administrative Code effective November 29, 2024.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 404, Subchapter E

TRD-202404892

Figure: 25 TAC Chapter 404, Subchapter E

Current Rules **Title 25. Health Services** **Part 1. Department of State Health Services** **Chapter 404. Protection of Clients and Staff--Mental Health Services** **Subchapter E. Rights of Persons Receiving Mental Health Services**	**Move to** **Title 26. Health and Human Services** **Part 1. Health and Human Services Commission** **Chapter 320. Rights of Individuals** **Subchapter A. Rights of Individuals Receiving Mental Health Services**
§404.151. Purpose.	§320.1. Purpose.
§404.152. Application.	§320.3. Application.
§404.153. Definitions.	§320.5. Definitions.
§404.154. Rights of All Persons Receiving Mental Health Services.	§320.7. Rights of All Individuals Receiving Mental Health Services.
§404.155. Rights of Persons Receiving Residential Mental Health Services.	§320.9. Rights of Individuals Receiving Residential Mental Health Services.
§404.156. Additional Rights of Persons Receiving Residential Mental Health Services at Department Facilities.	§320.11. Additional Rights of Individuals Receiving Residential Mental Health Services at Health and Human Services Commission Facilities.
§404.157. Rights of Persons Voluntarily Admitted to Inpatient Services.	§320.13. Rights of Individuals Voluntarily Admitted to Inpatient Services.
§404.158. Rights of Persons Apprehended for Emergency Detention for Inpatient Mental Health Services (Other Than for Chemical Dependency).	§320.15. Rights of Individuals Apprehended for Emergency Detention for Inpatient Mental Health Services Other Than for Substance Use.
§404.159. Rights of Persons Apprehended for Emergency Detention for Inpatient Chemical Dependency Services.	§320.17. Rights of Individuals Apprehended for Emergency Detention for Inpatient Substance Use Services.
§404.160. Special Rights of Minors Receiving Inpatient Mental Health Services.	§320.19. Special Rights of Minors Receiving Inpatient Mental Health Services.
§404.161. Rights Handbooks for Persons Receiving Mental Health Services at Department Facilities, Community Centers, and Psychiatric Hospitals Operated by Community Centers.	§320.21. Rights Handbooks for Indviduals Receiving Mental Health Services at Health and Human Services Commission Facilities, Community Centers, and Psychiatric Hospitals Operated by Community Centers.
§404.162. Patient's Bill of Rights, Teen's Bill of Rights, and Children's Bill of Rights for Individuals Receiving Mental Health Services at Psychiatric Hospitals Not Operated by a Community Center.	§320.23. Bill of Rights for Individuals Receiving Mental Health Services at Psychiatric Hospitals Not Operated by a Community Center.
§404.163. Communication of Rights to Individuals Receiving Mental Health Services.	§320.25. Communication of Rights to Individuals Receiving Mental Health Services.

§404.164. Rights Protection Officer at Department Facilities and Community Centers.	§320.27. Rights Protection Officer at Health and Human Services Commission Facilities and Community Centers.
§404.165. Staff Training in Rights of Persons Receiving Mental Health Services.	§320.29. Staff Training in Rights of Individuals Receiving Mental Health Services.
§404.166. Restriction of Rights as Part of Non-Emergency Behavioral Interventions.	§320.31. Restriction of Rights as Part of Non-Emergency Behavioral Interventions.
§404.167. Restriction of Rights as Part of Emergency Behavioral Interventions: Restraint and Seclusion.	§320.33. Restriction of Rights as Part of Emergency Behavioral Interventions: Restraint and Seclusion.

Department of State Health Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rule in Texas Administrative Code, Title 25, Part 1, Chapter 411, State Mental Health Authority Responsibilities, Subchapter B, Interagency Agreements, §411.63, Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities that is related to these transferred functions, is being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 300, State Authority Responsibilities, Subchapter B, Interagency Agreements, §300.101, Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities.

The rule will be transferred in the Texas Administrative Code effective November 29, 2024.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 411, Subchapter B

TRD-202404893

Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rule in Texas Administrative Code, Title 25, Part 1, Chapter 411, State Mental Health Authority Responsibilities, Subchapter B, Interagency Agreements, §411.63, Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities that is related to these transferred functions, is being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 300, State Authority Responsibilities, Subchapter B, Interagency Agreements, §300.101, Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities.

The rule will be transferred in the Texas Administrative Code effective November 29, 2024.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 411, Subchapter B

TRD-202404894

Figure: 25 TAC Chapter 411, Subchapter B

Current Rules **Title 25. Health Services** **Part 1. Department Of State Health Services** **Chapter 411. State Mental Health Authority Responsibilities**	**Move to** **Title 26. Health and Human Services** **Part 1. Health and Human Services Commission** **Chapter 300. State Authority Responsibilities**
Subchapter B. Interagency Agreements	**Subchapter B. Interagency Agreements**
§411.63. Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities.	§300.101. Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities.

The Alamo
The Rio Grande
Houston Convention
Republic of TEXAS

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 State Board of Public Accountancy

Title 22, Part 22

Notice of Intention to Review

The Texas State Board of Public Accountancy will review and consider for re-adoption, revision or repeal Title 22 Texas Administrative Code, Part 22, Chapters 501, 502, 505, 507, 509, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 523, 525, 526 and 527.

This review is conducted pursuant to Section 2001.039 of the Government Code.

In conducting its review, the Board will determine whether the reasons for the rule continue to exist. The rule review will also determine whether the rule is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Board.

Any comments pertaining to this notice of intention may be submitted within the next 120 days to the General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Drive, Suite 380, Austin, Texas 78752. Any proposed changes to the rules as a result of this review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

The consideration of each rule section will not necessarily be taken in the order as listed below.

Chapter 501 - Rules of Professional Conduct

Chapter 502 - Peer Assistance

Chapter 505 - The Board

Chapter 507 - Employees of the Board

Chapter 509 - Rulemaking Procedures

Chapter 511 - Eligibility

Chapter 512 - Certification by Reciprocity

Chapter 513 - Registration

Chapter 514 - Certification as a CPA

Chapter 515 - Licenses

Chapter 516 - Military Service Members, Spouses and Veterans

Chapter 517 - Practice by Certain Out of State Firms and Individuals

Chapter 518 - Unauthorized Practice of Public Accountancy

Chapter 519 - Practice and Procedure

Chapter 520 - Provisions for the Accounting Students Scholarship Program

Chapter 521 - Fee Schedule

Chapter 523 - Continuing Professional Education

Chapter 525 - Criminal Background Investigations

Chapter 526 - Board Opinions

Chapter 527 - Peer Review

TRD-202404924
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Filed: October 21, 2024

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Texas Juvenile Justice Department

Title 37, Part 11

In accordance with §2001.039, Government Code, the Texas Juvenile Justice Department (TJJD) proposes the review of Title 37, Texas Administrative Code, Chapters 341, Juvenile Probation Department General Standards; 345, Juvenile Justice Professional Code of Ethics for Certified Officers; 349, General Administrative Standards; 350, Investigating Abuse, Neglect, Exploitation, Death and Serious Incidents; and 358, Identifying, Reporting, and Investigating Abuse, Neglect, Exploitation, Death, and Serious Incidents.

An assessment will be made by TJJD to determine whether the reasons for adopting or readopting the standards in the given chapters continue to exist and whether the standards reflect current legal and policy considerations and current TJJD procedure.

Comments on the review may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

TRD-202404870
Jana L. Jones
General Counsel
Texas Juvenile Justice Department
Filed: October 16, 2024

♦ ♦ ♦

Adopted Rule Reviews

Texas Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 507, End Stage Renal Disease Facilities

Notice of the review of this chapter was published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6757). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 507 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 507. Any amendments, if applicable, to Chapter 507 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 507 as required by Texas Government Code §2001.039.

TRD-202404936
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: October 22, 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 509, Freestanding Emergency Medical Care Facilities

Notice of the review of this chapter was published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6758). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 509 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 509. Any amendments, if applicable, to Chapter 509 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 509 as required by Texas Government Code §2001.039.

TRD-202404937
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: October 22, 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 903, Interstate Compact on Mental Health and Intellectual and Developmental Disabilities

Notice of the review of this chapter was published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6758). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 903 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 903. Any amendments, if applicable, to Chapter 903 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 903 as required by Texas Government Code §2001.039.

TRD-202404895
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: October 17, 2024

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §1.201(a)

Table 1. Initial and Final Review Periods for Permits Issued by the Railroad Commission of Texas, For Which Median Permit Processing Time Exceeds Seven Days

Rule and Permit All references are to Title 16, Tex. Admin. Code	**Division, Section Receiving Application**	**Initial Review Period**	**Final Review Period**
§3.6 (SWR 6), Application for Multiple Completion **Multiple Completion Authorization**	Oil and Gas Division, Administrative Compliance Section	60	10
§3.9 (SWR 9), Disposal Wells **Disposal Well Permits**	Oil and Gas Division, Injection-Storage Permits Section	30	15
§3.10 (SWR 10), Restriction of Production of Oil and Gas from Different Strata **Authority to Commingle**	Oil and Gas Division, Administrative Compliance Section	14	21
§3.23 (SWR 23), Vacuum Pumps **Authorization to Use Vacuum Pump**	Oil and Gas Division, Administrative Compliance Section	7	21
§3.41 (SWR 41), Application for New Oil or Gas Field Designation and/or Allowable **New Oil or Gas Field Designation and/or Allowable**	Oil and Gas Division, Administrative Compliance Section	14	7
§3.46 (SWR 46), Fluid Injection into Productive Reservoirs **Injection Permit**	Oil and Gas Division, Injection-Storage Permits Section	30	15
§3.46 (SWR 46), Fluid Injection into Productive Reservoirs **Injection Permit with Authorization to Inject Fresh Water**	Oil and Gas Division, Injection-Storage Permits Section	30	15
§3.46 (SWR 46), Fluid Injection into Productive Reservoirs **Area Permit**	Oil and Gas Division, Injection-Storage Permits Section	45	45
§3.48 (SWR 48), Capacity Oil Allowables for Secondary or Tertiary Recovery Projects **Capacity Oil Allowables**	Oil and Gas Division, Administrative Compliance Section	7	21
§3.50 (SWR 50), Enhanced Oil Recovery Projects Approval and Certification for Tax Incentive	Oil and Gas Division, Administrative Compliance Section	7	25

Rule and Permit All references are to Title 16, Tex. Admin. Code	Division, Section Receiving Application	Initial Review Period	Final Review Period
Certificate for Recovered Oil Tax Rate			
§3.50 (SWR 50) Enhanced Oil Recovery Projects Approval and Certification for Tax Incentive **Approval Concurrent With Recovered Oil Tax Rate**	Oil and Gas Division, Administrative Compliance Section	7	25
§3.50 (SWR 50), Enhanced Oil Recovery Projects Approval and Certification for Tax Incentive **Positive Production Response Certificate**	Oil and Gas Division, Administrative Compliance Section	7	25
§3.70 (SWR 70), Pipeline Permits Required **Permit to Operate a Pipeline**	Oversight and Safety Division, Pipeline Safety Department	21	15
§3.81 (SWR 81), Brine Mining Injection Wells **Brine Mining Injection Permit**	Oil and Gas Division, Technical Permitting Section	30	30
§3.82 (SWR 82), **Permit for Brine Production Projects and Associated Class V Spent Brine Return Wells**	Oil and Gas Division, Technical Permitting Section	60	90
§3.83 (SWR 83), Tax Exemption for Two-and Three-year Inactive Wells **Certification of Inactivity**	Oil and Gas Division, Administrative Compliance Section	20	45
§3.93 (SWR 93), Water Quality Certification **401 Certification**	Oil and Gas Division, Technical Permitting Section	30	15
3.95 (SWR 95), Underground Storage of Liquid or Liquified Hydrocarbons in a Salt Formation **Permit to Create, Operate, and Maintain an Underground Hydrocarbon Storage Facility**	Oil and Gas Division, Technical Permitting Section	45	45
§3.96 (SWR 96), Underground Storage of Gas in Production or Depleted Reservoirs **Permit to Operate a Gas Storage Project**	Oil and Gas Division, Technical Permitting Section	45	45
§3.97 (SWR 97), Underground	Oil and Gas Division, Technical Permitting	45	45

Rule and Permit All references are to Title 16, Tex. Admin. Code	Division, Section Receiving Application	Initial Review Period	Final Review Period
Storage of Gas in Salt Formations **Permit to Create, Operate, and Maintain an Underground Gas Storage Facility**	Section		
§3.101 (SWR 101), Certification for Severance Tax Exemption for Gas Produced from High-Cost Gas Wells **Area Designation**	Oil and Gas Division, Administrative Compliance Section	7	45
§§4.120-4.135, 4.150-4.154 **Non-Commercial and Non-Centralized Pit Permits**	Oil and Gas Division, Technical Permitting/ Environmental Permitting	45	90
§§4.120-4.135, §§4.140-4.143, and §§ 4.150-4.154 **Commercial or Centralized Pit Permits**	Oil and Gas Division, Technical Permitting/ Environmental Permitting	45	90
§4.120-4.135 **Non-Commercial and Non-Centralized Landfarming, Landtreatment**	Oil and Gas Division, Technical Permitting/ Environmental Permitting	45	90
§§4.120-4.135, §§4.140-4.143, and §§4.160-4.164 **Commercial and Centralized Landfarming, Landtreatment**	Oil and Gas Division, Technical Permitting/ Environmental Permitting	45	90
§§4.190-4.195 **Waste Hauler Permit**	Oil and Gas Division, Technical Permitting/ Environmental Permitting	30	15
§4.182 **Minor Permit, Hydrostatic Test Discharge and other minor permits**	Oil and Gas Division, Technical Permitting/ Environmental Permitting, District Offices	15	15
§§4.120-4.135, §§4.140-4.143, and §§4.170-4.173 **Reclamation Plant Permit**	Oil and Gas Division, Technical Permitting/ Environmental Permitting	45	90
§4.184 **Non-Commercial Recycling Plant**	Oil and Gas Division, Technical Permitting/ Environmental Permitting	45	90
§§4.202-4.211 **Commercial Recycling**	Oil and Gas Division, Technical Permitting/	45	90

Rule and Permit All references are to Title 16, Tex. Admin. Code	Division, Section Receiving Application	Initial Review Period	Final Review Period
Plant	Environmental Permitting		
§§4.202-4.211, §§4.212-4.224 **Commercial On-Lease Solid Oil and Gas Waste Recycling**	Oil and Gas Division, Technical Permitting/ Environmental Permitting	45	90
§§4.202-4.211, §§4.230-4.245 **Commercial Off-Lease or Centralized Solid Oil and Gas Waste Recycling**	Oil and Gas Division, Technical Permitting/ Environmental Permitting	45	90
§§4.202-4.211, §§4.247-4.261 **Commercial Stationary Solid Oil and Gas Waste Recycling**	Oil and Gas Division, Technical Permitting/ Environmental Permitting	45	90
§§4.202-4.211, §§4.262-4.277 **Commercial Off-Lease Fluid Recycling**	Oil and Gas Division, Technical Permitting/ Environmental Permitting	45	90
§§4.202-4.211, §§4.278-4.293 **Commercial Stationary Fluid Recycling**	Oil and Gas Division, Technical Permitting/ Environmental Permitting	45	90
§4.301, §4.302 **Beneficial Use of Drill Cutting Permits (Treatment and Recycling)**	Oil and Gas Division, Technical Permitting/ Environmental Permitting	45	90
§§5.201-5.208 **Permit to Construct a Geologic Storage Facility and Associated Class VI Injection Wells**	Oil and Gas Division, Technical Permitting Section	60	120
§§5.201-5.208 **Permit to Injection and Store Anthropogenic Carbon Dioxide**	Oil and Gas Division, Technical Permitting Section	60	120
Class V Closed-Loop Geothermal Injection Wells	Oil and Gas Division, Technical Permitting Section	15	15
§9.27, Application for an Exception to a Safety Rule **LPG Rule Exception**	Oversight and Safety Division, Alternative Fuels Safety Department	21	21
§9.54, Commission-Approved Outside Instructors-**LPG Outside Instructor Application**	Oversight and Safety Division, Alternative Fuels Safety Department	14	10
§9.101, Filings Required for Stationary LP-Gas Installations **LPG Plan Review**	Oversight and Safety Division, Alternative Fuels Safety Department	30	N/A

Rule and Permit All references are to Title 16, Tex. Admin. Code	Division, Section Receiving Application	Initial Review Period	Final Review Period
§11.93, Elements of Permit Application **New Permit Application**	Surface Mining and Reclamation Division	120	N/A
§11.97, Renewal **Permit Renewal**	Surface Mining and Reclamation Division	120	N/A
§11.98, Transfer **Permit Transfer**	Surface Mining and Reclamation Division	90	N/A
§11.114, Revision on Motion or with Consent **Permit Revision**	Surface Mining and Reclamation Division	120	N/A
§§11.131-11.137, Notice of Exploration Through Over-burden Removal; Content of Notice; Extraction of Minerals; Removal of Minerals; Lands Unsuitable for Surface Mining; Notice of Exploration Involving Hole Drilling; Permit **Uranium Exploration**	Surface Mining and Reclamation Division	30	30
§§11.205, 11.206, Changes in Coverage; Release or Reduction of Bonds **Bond Adjustment**	Surface Mining and Reclamation Division	90	N/A
§12.110, General Requirements: Exploration of less than 250 Tons **Coal Exploration < 250 Tons**	Surface Mining and Reclamation Division	90	N/A
§12.111, General Requirements: Exploration of More than 250 Tons **Coal Exploration > 250 Tons**	Surface Mining and Reclamation Division	120	N/A
§12.205, In Situ Processing Activities **In Situ Coal Gasification**	Surface Mining and Reclamation Division	120	N/A
§12.216, Criteria for Permit Approval or Denial **New Mine Permit**	Surface Mining and Reclamation Division	120	N/A
§12.226, Permit Revisions **Permit Revision-Administrative**	Surface Mining and Reclamation Division	60	N/A
§12.226, Permit Revisions **Permit Revision-Significant**	Surface Mining and Reclamation Division	120	N/A
§§12.227-12.230, Permit Renewals:	Surface Mining and	120	N/A

Rule and Permit All references are to Title 16, Tex. Admin. Code	Division, Section Receiving Application	Initial Review Period	Final Review Period
General Requirements; Permit Renewals: Completed Applications; Permit Renewals: Terms; Permit Renewals: Approval or Denial **Permit Renewal**	Reclamation Division		
§§12.227-12.230, Permit Renewals: General Requirements; Permit Renewals: Completed Applications; Permit Renewals: Terms; Permit Renewals: Approval or Denial **Permit Renewal/Revision**	Surface Mining and Reclamation Division	120	N/A
§§12.231-12.233, Transfer, Assignment, or Sale of Permit Rights: General Requirements; Transfer, Assignment or Sale of Permit Rights: Obtaining Approval; Requirements for New Permits for Persons Succeeding to Rights Granted under a Permit **Permit Transfer**	Surface Mining and Reclamation Division	90	N/A
§12.307, Adjustment of Amount **Bond Adjustment**	Surface Mining and Reclamation Division	60	30
§12.707, Certification **Blaster Certification**	Surface Mining and Reclamation Division	90	N/A
13.25, Filings Required for Stationary CNG Installations – **CNG Plan Review**	Oversight and Safety Division, Alternative Fuels Safety Department	30	N/A
§13.35, Application for an Exception to a Safety Rule **CNG Rule Exception**	Oversight and Safety Division, Alternative Fuels Safety Department	21	21
§14.2019, Certification Requirements **LNG Employee Exam**	Oversight and Safety Division, Alternative Fuels Safety Department	10	N/A
§14.2040, Filings and Notice Requirements for Stationary LNG Installations **LNG Plan Review**	Oversight and Safety Division, Alternative Fuels Safety Department	30	N/A
§14.2052, Application for an Exception to a Safety Rule **LNG Rule Exception**	Oversight and Safety Division, Alternative Fuels Safety Department	21	21

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/28/24-11/03/24 is 18.00% for consumer[1] credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/28/24-11/03/24 is 18.00% for commercial[2] credit.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-202404946
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 23, 2024

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Texas Education Agency

Request for Applications Concerning the 2024-2025 Charter School Program (Subchapter C and D, Cycle 3) Grant

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-25-111 is authorized by Public Law 114-95, Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, Title IV, Part C, Expanding Opportunity Through Quality Charter Schools; Texas Education Code, Chapter 12; and 19 Texas Administrative Code, Chapter 100, Subchapter AA.

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-25-111 from eligible applicants, which include open-enrollment charter schools that meet the federal definition of a charter school, have never received funds under this grant program, and are one of the following. (1) An open-enrollment charter school campus designated by the commissioner of education, for the 2023-2024, 2024-2025, or 2025-2026 school year, as a high-quality campus pursuant to 19 TAC §100.1033(b)(9) and (13). (2) Open-enrollment charter schools submitting an expansion amendment request and corresponding application for high-quality campus designation for the 2024-2025 or 2025-2026 school year by December 16, 2024, are considered eligible to apply for the grant. However, the commissioner must approve the expansion amendment request and designate the campus as a high-quality campus prior to the charter receiving grant funding, if awarded. (3) An open-enrollment charter school authorized by the commissioner of education under the Generation 28 or Generation 29 charter application pursuant to TEC, Chapter 12, Subchapter D, that has never received funds under this grant program. (4) A campus charter school authorized by the local board of trustees pursuant to TEC, Chapter 12, Subchapter C, on or before December 16, 2024, as a new charter school, or as a charter school that is designed to replicate a new charter school campus, based on the educational model of an existing high-quality charter school, and that submits all required documentation as stated in this RFA. A campus charter school must apply through its public school district, and the application must be signed by the district's superintendent or the appropriate designee.

Important: Any charter school that does not open prior to Wednesday, September 3, 2025, after having been awarded grant funds, may be required to forfeit any remaining grant funds and may be required to reimburse any expended amounts to TEA.

Description. The purpose of the Texas Quality Charter Schools Program Grant is to support the growth of high-quality charter schools in Texas, especially those focused on improving academic outcomes for educationally disadvantaged students. This will be achieved through administering the 2024-2025 Charter School Program (Subchapter C and D, Cycle 3) Grant to assist eligible applicants in opening and preparing for the operation of newly-authorized charter schools and replicated high-quality schools.

Dates of Project. The 2024-2025 Charter School Program (Subchapter C and D, Cycle 3) Grant will be implemented during the 2024-2025 and 2025-2026 school years. Applicants should plan for a starting date of no earlier than February 15, 2025, and an ending date of no later than September 30, 2025.

Project Amount. Approximately $15,721,865 is available for funding the 2024-2025 Charter School Program (Subchapter C and D, Cycle 3) Grant. It is anticipated that approximately 17 grants will be awarded up to $900,000. This project is funded 100% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants' Conference. A webinar will be held on Tuesday, November 12, 2024, from 3:00 p.m. to 4:30 p.m. Register for the webinar at https://zoom.us/meeting/register/tJcqf-mtqTosEtQ0CgGMWm9jn0P86phUUg0T. Questions relevant to the RFA may be emailed to Nate Johnson at CharterSchools@tea.texas.gov prior to 12:00 p.m. (noon) CST by Monday, November 11, 2024. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and the RFA.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at https://tea4avalonzo.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Available Grant

Opportunities" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to CharterSchools@tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than 12:00 p.m. (noon) CST on November 26, 2024. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by December 4, 2024.

Deadline for Receipt of Applications. Applications must be submitted to competitivegrants@tea.texas.gov. Applications must be received no later than 11:59 p.m. CST, December 16, 2024, to be considered eligible for funding.

Issued in Austin, Texas, on October 23, 2024.

TRD-202404954
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: October 23, 2024

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 6, 2024**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **December 6, 2024**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: ALIFAR LLC dba Huggy Bear Food Mart; DOCKET NUMBER: 2024-1157-PST-E; IDENTIFIER: RN102441987; LOCATION: Waco, McLennan County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Rachel Murray, (903) 535-5149; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: ATX Liberty Concrete LLC; DOCKET NUMBER: 2024-0364-EAQ-E; IDENTIFIER: RN110840485; LOCATION: Florence, Williamson County; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of an Edwards Aquifer Contributing Zone Plan prior to commencing regulated activity over the Edwards Aquifer Contributing Zone; PENALTY: $13,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,400; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: BULLSEYE CONSTRUCTION, INCORPORATED; DOCKET NUMBER: 2024-0938-WQ-E; IDENTIFIER: RN111963070; LOCATION: Bellville, Wharton County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Arti Patel, (512) 239-2514; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: BV Mountain Investments LLC; DOCKET NUMBER: 2024-0607-PWS-E; IDENTIFIER: RN111903423; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the Executive Director for review and approval prior to the construction of a new public water supply; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's well into service; and 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; PENALTY: $1,563; ENFORCEMENT COORDINATOR: Corinna Willis, (512) 239-2504; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(5) COMPANY: City of Happy; DOCKET NUMBER: 2023-0621-PWS-E; IDENTIFIER: RN101235307; LOCATION: Happy, Swisher County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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 Well Number 5 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 §290.43(c)(4), by failing to provide all ground storage tanks with a liquid level indicator; 30 TAC §290.45(b)(1)(D)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide two or more wells having a total capacity of 0.6 gallons per minute per connection; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 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(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 §290.109(d)(1)(A), by failing to collect routine distribution coliform samples at a customer's premise, dedicated sampling station, or other designated compliance sampling location at active service connections which are representative of water quality throughout the distribution system; 30 TAC §290.110(c)(4)(B), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once per day; 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 facility will use to comply with the monitoring requirements; PENALTY: $2,205; ENFORCEMENT COORDINATOR: Daphne Greene, (903) 535-5157; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: City of Quanah; DOCKET NUMBER: 2022-0163-MWD-E; IDENTIFIER: RN102080215; LOCATION: Quanah, Hardeman 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 WQ0010600001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, by failing to comply with permitted effluent limitations; PENALTY: $29,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $29,000; ENFORCEMENT COORDINATOR: Taylor Williamson, (512) 239-2097; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: City of Southmayd; DOCKET NUMBER: 2024-0555-MLM-E; IDENTIFIER: RN101377166; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §288.20(a) and §288.30(5)(B), and TWC, §11.1272(c), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.42(m), by failing to ensure that each water treatment plant and all appurtenances are enclosed by an intruder-resistance fence with gates that are locked during periods of darkness and when the plant is unattended; 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(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: $1,947; ENFORCEMENT COORDINATOR: Mason DeMasi, (210) 657-8425; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(8) COMPANY: DSCI Incorporated; DOCKET NUMBER: 2024-1056-WQ-E; IDENTIFIER: RN111887170; LOCATION: Springtown, Parker County; TYPE OF FACILITY: land development site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Madison Stringer, (512) 239-1126; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(9) COMPANY: Fuller Excavation and Sitework, LLC; DOCKET NUMBER: 2024-0887-EAQ-E; IDENTIFIER: RN111584967; LOCATION: Bulverde, Comal County; TYPE OF FACILITY: excavation business; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Megan Crinklaw, (512) 239-1129; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(10) COMPANY: GULF COAST CONCRETE AND SHELL, INCORPORATED; DOCKET NUMBER: 2024-1058-WQ-E; IDENTIFIER: RN106737422; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d) and Texas Pollutant Discharge Elimination System General Permit Number TXG112022, Part III Permit Requirements, Section A, Number 1; and Part IV Standard Permit Conditions Number 7.f, by failing to submit monitoring results at the intervals specified in the permit; PENALTY: $30,307; ENFORCEMENT COORDINATOR: Nancy M. Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: GULF COAST CONCRETE AND SHELL, INCORPORATED; DOCKET NUMBER: 2024-1059-WQ-E; IDENTIFIER: RN100860790; LOCATION: Manvel, Brazoria County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §205.6 and TWC, §5.702, by failing to pay General Permit Wastewater fees and associated late fees for TCEQ Financial Administration Account Number 20503260; and 30 TAC §305.125(1) and (17) and §319.7(d) and Texas Pollutant Discharge Elimination System General Permit Number TXG112023, Part III Permit Requirements, Section A, Number 1 and Part IV Standard Permit Conditions Number 7.f, by failing to submit monitoring results at the intervals specified in the permit; PENALTY: $35,358; ENFORCEMENT COORDINATOR: Nancy M. Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: HIGHWAY FOOD MART INCORPORATED; DOCKET NUMBER: 2024-1045-PST-E; IDENTIFIER: RN101493112; LOCATION: Bastrop, Bastrop County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to monitor underground storage tanks for releases at least once every 30 days; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Adriana Fuentes, (956) 430-6057; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(13) COMPANY: IACX Rock Creek LLC; DOCKET NUMBER: 2024-0949-AIR-E; IDENTIFIER: RN100221514; LOCATION: Channing, Moore County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §101.201(c) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; and 30 TAC §106.6(b), Permit by Rule Registration Number 41826, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $6,438; ENFORCEMENT COORDINATOR: Krystina Sepulveda, (956) 430-6045; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(14) COMPANY: L-C TRANSPORT, LLC; DOCKET NUMBER: 2024-1185-WQ-E; IDENTIFIER: RN110463171; LOCATION: Castroville, Medina County; TYPE OF FACILITY: inactive aggregate production operation; RULES VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System General Permit Number TXR05EC22, Part III, Section D, Number 5, by failing to retain required records; PENALTY: $656; ENFORCEMENT COORDINATOR: Nancy M. Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: League City Septic LLC; DOCKET NUMBER: 2024-1028-SLG-E; IDENTIFIER: RN111444832; LOCATION: League City, Galveston County; TYPE OF FACILITY: sludge transporter business; RULE VIOLATED: 30 TAC §312.142(a) and (d), by failing to submit an application to renew the sludge transporter registration biennially; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Mistie Gonzales, (254) 761-3056; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: MAG DRILLING, INCORPORATED; DOCKET NUMBER: 2024-1173-WQ-E; IDENTIFIER: RN109144055; LOCATION: Voca, Mason County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Arti Patel, (512) 239-2514; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: MIDWAY WATER UTILITIES, INCORPORATED; DOCKET NUMBER: 2024-0215-MLM-E; IDENTIFIER: RN101265213; LOCATION: Graford, Palo Pinto County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §288.20(a) and §288.30(5)(B), and TWC, §11.1272(c), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.39(j) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director (ED) prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 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 §290.44(a)(4), by failing to install water transmission and distribution lines below the frost line and in no case less than 24 inches below the ground surface; 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; 30 TAC §290.46(e)(6)(C), by failing to ensure that the facility has at least one Class C or higher surface water operator on duty when it is in operation or that the facility is provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the facility is not staffed; 30 TAC §290.46(f)(2) and (3)(C)(iv), (D)(ii) and (iii), and (E)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; 30 TAC §290.46(s)(2)(B)(i) and (ii), by failing to calibrate the facility's benchtop turbidimeter with primary standards at least once every 90 days and check the calibration with secondary standards each time a series of samples is tested; 30 TAC §290.46(s)(2)(B)(iii) and (iv), by failing to calibrate the facility's two on-line turbidimeters with primary standards at least once every 90 days and check the calibration with a primary standard, secondary standard, or manufacturer's proprietary calibration confirmation device or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit at least once every week; 30 TAC §290.109(d)(1)(A), by failing to collect routine distribution coliform samples at a customer's premise, dedicated sampling station, or other designated compliance sampling location at active service connections which are representative of water quality throughout the distribution system; and 30 TAC §290.110(c)(4)(C), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once per day; PENALTY: $18,199; ENFORCEMENT COORDINATOR: Kaisie Hubschmitt, (512) 239-1482; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(18) COMPANY: Military Highway Water Supply Corporation; DOCKET NUMBER: 2023-1099-MWD-E; IDENTIFIER: RN101524452; LOCATION: San Benito, Cameron 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 WQ0013462008, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: PANJWANI ENERGY, LLC; DOCKET NUMBER: 2024-1005-WQ-E; IDENTIFIER: RN111953550; LOCATION: Dobbin, Montgomery County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Nancy M. Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: QW Transport, LLC dba American Petrofina; DOCKET NUMBER: 2023-0592-PST-E; IDENTIFIER: RN100577683; LOCATION: Dallas, Dallas 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: $3,005; ENFORCEMENT COORDINATOR: Faye Renfro, (512) 239-1833; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(21) COMPANY: Richmond American Homes of Texas, Incorporated; DOCKET NUMBER: 2024-1114-WQ-E; IDENTIFIER: RN111507976; LOCATION: Jarrell, Williamson County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with construction activities; PENALTY: $12,500; ENFORCEMENT COORDINATOR: Nancy M. Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Ronald Francois dba A and S Water Services; DOCKET NUMBER: 2024-1142-PWS-E; IDENTIFIER: RN110665114; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of five picoCuries per liter for combined radium 226 and 228 based on the running annual average; and 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites that were tested, and failing to mail a copy of the consumer notification of tap results to the Executive Director along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for

the January 1, 2022 - June 30, 2022, monitoring period; PENALTY: $2,397; ENFORCEMENT COORDINATOR: De'Shaune Blake, (210) 403-4033; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(23) COMPANY: SHUFFORD, TROY A; DOCKET NUMBER: 2024-1180-LII-E; IDENTIFIER: RN107852626; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Corinna Willis, (512) 239-2504; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(24) COMPANY: Six Flags Entertainment Corporation dba Six Flags Fiesta Texas; DOCKET NUMBER: 2022-0846-PST-E; IDENTIFIER: RN100642198; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: fleet refueling; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 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 USTs; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases 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: $31,248; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(25) COMPANY: US DEPARTMENT OF THE AIR FORCE; DOCKET NUMBER: 2024-1046-PST-E; IDENTIFIER: RN109929737; LOCATION: Randolph Air Force Base, Bexar County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to monitor underground storage tanks for releases at least once every 30 days; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Danielle Fishbeck, (512) 236-5083; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202404938
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: October 22, 2024

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Amended (To Change Date of the Public Meeting) Notice of Public Meeting for TPDES Permit for Municipal Wastewater Renewal Permit No. WQ0015000001

APPLICATION. City of Liberty Hill, 926 Loop 332, Liberty Hill, Texas 78642, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal with minor amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015000001, which authorizes an additional Interim flow phase (0.70 MGD) and the removal of two currently authorized Interim flow phases (0.10 MGD and 0.35 MGD). The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1.4 MGD. TCEQ received this application on March 23, 2023.

The facility will be located approximately 2.5 miles north of the intersection of Ronald Reagan Boulevard and State Highway 29, in Williamson County, Texas 78628. The treated effluent will be discharged to an unnamed tributary, thence to Sowes Branch, thence to North Fork San Gabriel River in Segment No. 1251 of the Brazos River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary, and limited aquatic life use for Sowes Branch. The designated uses for Segment No. 1251 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://gisweb.tceq.texas.gov/LocationMapper/?marker=-97.842222,30.672777&level=18

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, December 3, 2024 at 7:00 p.m.

Rock Pointe Event Center

170 CR 214

Liberty Hill, Texas 78642

INFORMATION. Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our website at https://www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Liberty Hill Public Library, 355 Loop 332, Liberty Hill, Texas. Further information may also be obtained from City of Liberty Hill at the address stated above or

by calling Mr. David Thomison, Wastewater Superintendent, at (512) 778-5449.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: October 18, 2024

TRD-202404949
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 23, 2024

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Enforcement Orders

An agreed order was adopted regarding City of Bellmead, Docket No. 2022-1665-PWS-E on October 22, 2024 assessing $825 in administrative penalties with $165 deferred. Information concerning any aspect of this order may be obtained by contacting Wyatt Throm, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Texas, Inc., Docket No. 2023-0296-PWS-E on October 22, 2024 assessing $2,825 in administrative penalties with $565 deferred. Information concerning any aspect of this order may be obtained by contacting Daphne Greene, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tyler Independent School District, Docket No. 2023-0308-WQ-E on October 22, 2024 assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Kolby Farren, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AAM, INC., Docket No. 2023-0405-PST-E on October 22, 2024 assessing $5,273 in administrative penalties with $1,054 deferred. Information concerning any aspect of this order may be obtained by contacting Celicia Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Thak Tilicho LLC dba Quality Mart, Docket No. 2023-0631-PST-E on October 22, 2024 assessing $4,619 in administrative penalties with $923 deferred. Information concerning any aspect of this order may be obtained by contacting Lauren Little, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wildcatter Redi-Mix LLC, Docket No. 2023-0646-WQ-E on October 22, 2024 assessing $5,394 in administrative penalties with $1,078 deferred. Information concerning any aspect of this order may be obtained by contacting Nancy M. Sims, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JM WIMBERLEY STATION INC. dba Wimberley Shamrock, Docket No. 2023-0698-PST-E on October 22, 2024 assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Amy Lane, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TEXAS ENTERPRISES, INC. dba Allied Sales, Docket No. 2023-0708-PST-E on October 22, 2024 assessing $1,630 in administrative penalties with $326 deferred. Information concerning any aspect of this order may be obtained by contacting Lauren Little, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation order was adopted regarding GS Business LC, Docket No. 2023-1169-PST-E on October 22, 2024 assessing $1,750 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Trinidad, Docket No. 2023-1476-PWS-E on October 22, 2024 assessing $3,877 in administrative penalties with $775 deferred. Information concerning any aspect of this order may be obtained by contacting Ilia Perez-Ramirez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Addie Marlin dba Marlin Marina Water System, Docket No. 2023-1497-PWS-E on October 22, 2024 assessing $250 in administrative penalties with $50 deferred. Information concerning any aspect of this order may be obtained by contacting Wyatt Throm, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding A A A Z INVESTMENT INC dba EZ Way, Docket No. 2023-1513-PST-E on October 22, 2024 assessing $7,094 in administrative penalties with $1,418 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CSWR-Texas Utility Operating Company, LLC, Docket No. 2023-1653-PWS-E on October 22, 2024 assessing $4,590 in administrative penalties with $918 deferred. Information concerning any aspect of this order may be obtained by contacting Tessa Bond, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Undine Texas, LLC, Docket No. 2023-1790-PWS-E on October 22, 2024 assessing $2,600 in administrative penalties with $520 deferred. Information concerning any aspect of this order may be obtained by contacting Daphne Greene, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Goodlow, Docket No. 2024-0014-PWS-E on October 22, 2024 assessing $1,822 in administrative penalties with $364 deferred. Information concerning any aspect of this order may be obtained by contacting Wyatt Throm, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Alto Frio Baptist Encampment, Inc., Docket No. 2024-0054-PWS-E on October 22, 2024 assessing $7,475 in administrative penalties with $1,495 deferred. Information concerning any aspect of this order may be obtained by contacting Taner Hengst, Enforcement Coordinator at (512) 239-2545, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shiv Food & Fuel LLC dba Quik Trip 890, Docket No. 2024-0079-PST-E on October 22, 2024 assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Carrollton-Farmers Branch ISD, Docket No. 2024-0089-PST-E on October 22, 2024 assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Rachel Murray, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Makalu Enterprises, Inc. dba Thrifty 306, Docket No. 2024-0102-PST-E on October 22, 2024 assessing $3,494 in administrative penalties with $698 deferred. Information concerning any aspect of this order may be obtained by contacting Tiffany Chu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Robert Andrews dba PermaVista Trees, LLC, Docket No. 2024-0110-LII-E on October 22, 2024 assessing $867 in administrative penalties with $173 deferred. Information concerning any aspect of this order may be obtained by contacting Corinna Willis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WOODBINE SPECIAL UTILITY DISTRICT, Docket No. 2024-0140-PWS-E on October 22, 2024 assessing $900 in administrative penalties with $180 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Caston, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation order was adopted regarding Southwestern Bell Telephone Company, Docket No. 2024-0525-PST-E on October 22, 2024 assessing $2,625 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Danielle Fishbeck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sonterra Medical Management Group, Inc. and CPI/AHP Ridgewood San Antonio MOB Owner, L.P., Docket No. 2024-0533-EAQ-E on October 22, 2024 assessing $1,925 in administrative penalties with $385 deferred. Information concerning any aspect of this order may be obtained by contacting Megan Crinklaw, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Asphalt Inc., LLC, Docket No. 2024-0544-EAQ-E on October 22, 2024 assessing $2,250 in administrative penalties with $450 deferred. Information concerning any aspect of this order may be obtained by contacting Megan Crinklaw, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Ali Gullu Corporation, Docket No. 2024-0731-PST-E on October 22, 2024 assessing $2,625 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Danielle Fishbeck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Leon Springs Gas LLC, Docket No. 2024-0733-PST-E on October 22, 2024 assessing $5,250 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Danielle Fishbeck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Alabbas Group, Inc, Docket No. 2024-0828-PST-E on October 22, 2024 assessing $2,625 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Danielle Fishbeck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Kyndryl Inc, Docket No. 2024-0883-PST-E on October 22, 2024 assessing $2,625 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Danielle Fishbeck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Moore, Randall C, Docket No. 2024-1214-WOC-E on October 22, 2024 assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Nancy Sims, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202404957
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 23, 2024

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application No. 40341

Application. Brannon Industrial Group, LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40341, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, BVR Waste and Recycling Transfer Station, will be located at 8825 Stewarts Meadow, College Station, Texas 77845, in Brazos County. The Applicant is requesting authorization to sort, stockpile, and transfer municipal solid waste that includes non-putrescible solid waste and source-separated recyclable materials, including construction and demolition debris and rubbish from municipal and commercial activities. The registration application is available for viewing and copying at the Larry J. Ringer Library, 1818 Harvey Mitchell Pkwy. S., College Station, Texas 77845 and may be viewed online at www.tceq.texas.gov/goto/wasteapps. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://arcg.is/yKjnu. For exact location, refer to application.

Alternative Language Notice/Aviso de Idioma Alternativo. Alternative language notice in Spanish is available at www.tceq.texas.gov/goto/wasteapps. El aviso en idioma alternativo en español está disponible en www.tceq.texas.gov/goto/mswapps.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. **Written public comments or written requests for a public meeting must be submitted**

to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Mailing List. If you submit public comments, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their webpage, www.tceq.texas.gov/goto/pep. General information regarding the TCEQ can be found on our website at www.tceq.texas.gov/. *Si desea información en español, puede llamar al (800) 687-4040.*

Further information may also be obtained from Brannon Industrial Group, LLC at the mailing address 8825 Stewarts Meadow, College Station, Texas 77845 or by calling Mr. Cody Sheffield at (979) 260-0006.

Issued Date: October 18, 2024

TRD-202404958

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 23, 2024

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Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant With Enhanced Controls Proposed Air Quality Registration Number 177480

APPLICATION. Lauren Concrete Inc, 2001 Picadilly Drive, Round Rock, Texas 78664-9511 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 177480 to authorize the operation of a permanent concrete batch plant with enhanced controls. The facility is proposed to be located at corner of Crossroads Boulevard and Texas Avenue, Columbus, Colorado County, Texas 78934. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. https://gisweb.tceq.texas.gov/LocationMapper/?marker=-96.581055,29.711757&level=13. This application was submitted to the TCEQ on September 9, 2024. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on October 16, 2024.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Monday, December 16, 2024 at 6:00 p.m.

Columbus Hall

3845 Interstate 10

Columbus, Texas 78934

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment pe-

riod closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Houston Regional Office, located at 5425 Polk Street, Suite H, Houston, Texas 77023-1452, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Lauren Concrete, Inc., 2001 Picadilly Drive, Round Rock, Texas 78664-9511, or by calling Mr. Paul W. Henry PE, Engineer, Henry Environmental Services at (512) 281-6555.

Notice Issuance Date: October 16, 2024

TRD-202404951
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 23, 2024

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Notice of District Petition

Notice issued October 18, 2024

TCEQ Internal Control No. D-08082024-012: Political 339 LLC, Amazon Properties, LLC, and Vema Investments, LLC (Petitioners) filed a petition for creation of Caldwell County Municipal Utility District No. 6 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and Chapter 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders other than BOM Bank and its lien on the land owned by Political 339 LLC and the lienholder has consented to the creation; (3) the proposed District will contain approximately 477.621 acres located within Caldwell County, Texas; and (4) the proposed District is not within the corporate boundaries or extraterritorial jurisdiction of any city. The purposes of and the general nature of the work proposed to be to be done by the District at the present time is the purchase, design, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of a waterworks and sanitary sewer system for residential and commercial purposes, and the construction, acquisition, improvement, extension, maintenance and operation of works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition, to which reference is hereby made for more detailed description, and such other purchase, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of such additional facilities, including roads, systems, plants and enterprises as shall be consistent with all of the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners from such information as they have at this time, that such cost will be approximately $64,410,000 ($54,850,000 for waterworks system, sanitary sewer system, and drainage and storm sewer system projects, and $9,560,000 for road projects).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results. The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea informacón en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202404952
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 23, 2024

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Notice of District Petition

Notice issued October 18, 2024

TCEQ Internal Control No. D-09302024-055; The majority landowner, 0 Union Wine Road, LLC, a Texas limited liability company (Petitioner) filed a petition for creation of Liberty Trails Municipal Utility District (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and Chapter 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the

land to be included in the proposed District; (2) there are no lienholders against the land to be included in the District; (3) the proposed District will contain approximately 68.47 acres located within Guadalupe County, Texas; and (4) all of the area within the proposed District is wholly located within the extraterritorial jurisdiction of the city of New Braunfels. The petition further states that the nature of the work to be done by the District at the present time is the purchase, construction, acquisition, repair, extension and improvement of land, easements, works, improvements, facilities, plants, equipment and appliances necessary to: (i) provide a water supply for municipal uses, domestic uses and commercial purposes; (ii) collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state; (iii) gather, conduct, divert and control local storm water or other local harmful excesses of water in the District; (iv) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and (v) to provide such other facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is created and permitted under state law. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $15,010,000 ($10,300,000 for water, wastewater and drainage facilities, and $4,710,000 for road facilities).

INFORMATION SECTION

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TRD-202404953

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 23, 2024

♦ ♦ ♦

Notice of District Petition

Notice issued October 18, 2024

TCEQ Internal Control No. D-10012024-003; JLBC 710 Investments, LLC, a Texas limited liability company (Petitioner) filed a petition for creation of Sedona Municipal Utility District No. 2 (District) of Guadalupe County with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 337.396 acres located within Guadalupe County, Texas; and (4) all of the land within the proposed District is wholly within the extraterritorial jurisdiction of the City of San Marcos. By Ordinance No. 2024-34, passed, approved and adopted on August 5, 2024, the City of San Marcos, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will design, construct, acquire, improve, extend, finance, and issuance of bonds to: (1) maintain, operate, and convey of an adequate and efficient water works and sanitary wastewater system for domestic and commercial purposes (2) maintain, operate, and convey works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District, and to control, abate, and amend local storm waters or other harmful excesses of waters; (3) convey roads and improvements in aid of roads; and (4) maintain, operate, and convey such other additional facilities, systems, plants, and enterprises as may be consistent with any or all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $73,400,000 ($51,700,000 for water, wastewater, and drainage plus $21,700,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results. The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publica-

tion of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202404955
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 23, 2024

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Notice of District Petition

Notice issued October 18, 2024

TCEQ Internal Control No. D-09092024-016; Elgin 104 Holdings, LLC, a Texas limited liability company, (Petitioner) filed a petition for creation of Travis County Municipal Utility District No. 29 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are three lienholders on the property to be included in the proposed District, Plains Capital Bank, SVAG Investments LLC, and Wildrock Holdings LLC, and information provided indicates that the lienholders consent to the creation of the proposed District (3) the proposed District will contain approximately 99.37 acres located within Travis County, Texas; and (4) the land to be included within the proposed District is not within the corporate boundaries or extraterritorial jurisdiction of any municipality. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of waters; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve and extend such additional facilities, including roads, park and recreational facilities, systems, plants and enterprises as shall be consistent with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $30,025,000 ($23,350,000 for water, wastewater, and drainage plus $925,000 for district park and recreation plus $5,750,000 for roads) at the time of submittal.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results. The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202404956
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 23, 2024

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Notice of District Petition

Notice issued October 23, 2024

TCEQ Internal Control No. D-09172024-023; Sealy Horizon, LP, (Petitioner) filed a petition for creation of Austin County Municipal Utility District No. 6 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are two lienholders, Virnau Bypass Trust and Prism Constructions, LLC, on the property to be included in the proposed District and information provided indicates that the lienholders consent to the creation of the proposed District; (3) the proposed District will contain approximately 941.252 acres located within Austin County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, parks and recreation facilities, systems, plants,

and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $258,375,000 ($178,750,000 for water, wastewater, and drainage, $75,125,000 for roads, and $4,500,000 for recreational).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results. The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202404959
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 23, 2024

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Notice of District Petition

Notice issued October 23, 2024 TCEQ Internal Control No. D-09302024-057; The majority landowners, Norman Kyle Land, Gwendolyn Ann Land, and Michael Chapin (Petitioners) filed a petition for creation of Liberty County Municipal Utility District No. 15 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and Chapter 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are two lienholders, Southside Bank, a Texas state bank, and The First State Bank, a Texas state bank, on the property to be included in the District and the lienholders consent to the creation of the proposed District; (3) the proposed District will contain approximately 195.751 acres located within Liberty County, Texas; and (4) all of the area within the proposed District is not within the corporate limits or extraterritorial jurisdiction of any municipality. The petition further states that the nature of the work to be done by the District at the present time is (i) the construction, acquisition, maintenance and/or operation of a waterworks and sanitary sewer system for residential and commercial purposes, and (ii) the construction, acquisition, improvement, extension, maintenance and/or operation of works, improvements, facilities, plants, equipment and/or appliances helpful or necessary to provide more adequate drainage for the District, and (iii) to control, abate and amend local storm waters or other harmful excesses of waters, all as more particularly described in an engineer's report filed simultaneously with the filing of this petition, to which reference is hereby made for more detailed description, and (iv) such other construction, acquisition, improvement, maintenance and/or operation of such additional facilities, systems, plants and/or enterprises as shall be consonant with all of the purposes for which the District is created, and (v) to design, acquire, construct, finance, issue bonds for, operate, maintain, and convey to the State of Texas, a county or a municipality for operation and maintenance, a road or any improvement in aid of the road. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $37,459,800. The financial analysis in the application was based on an estimated $37,459,800 ($27,154,800 for water, sewer and drainage facilities, and $10,305,000 for road facilities) at the time of submittal.

INFORMATION SECTION

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TRD-202404960

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 23, 2024

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Notice of District Petition

Notice issued October 23, 2024

TCEQ Internal Control No. D-09202024-037; Ventana Hills, Ltd., a Texas limited partnership; Bird Island Investments, Ltd.; a Texas limited partnership and Back Lake Investments, Inc., a Texas corporation, (Petitioners) filed a petition for creation of Monte Verde Municipal Utility District (District) of Bastrop County with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) the proposed District will contain approximately 736.163 acres located within Bastrop County, Texas; and (3) none of the land within the proposed District is within the boundaries or extraterritorial jurisdiction of any municipality. By Resolution No. R-2024-23, passed and approved on February 27, 2024, and effective September 26, 2023, the City of Bastrop accepted the Petition for Release from the City's extraterritorial jurisdiction filed by the Petitioners for the land included in the proposed District and such land was released by operation of law on November 13, 2023. The proposed District is now located outside the corporate limits and extraterritorial jurisdiction of any city, town, or village. Therefore, city consent is not required. The petition further states that the proposed District will: (1) provide a water supply for municipal uses, domestic uses and commercial purposes; (2) collect, transport, process, dispose of and control all domestic, industrial or communal wastes whether in fluid, solid, or composite state; (3) gather, conduct, divert and control local storm water or other local harmful excess of water in the District and the payment of organization expenses, operational expenses during construction and interest during construction; (4) design, acquire, construct, finance, improve, operate and maintain macadamized graveled, or paved roads, or improvements in aid of those roads; (5) purchase, construct, acquire, provide, operate, maintain, repair, improve, extend and develop park and recreational facilities for the inhabitants of the District; and (6) provide such other facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is created and permitted under state law. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $99,650,000 ($72,000,000 for water, sewer, and drainage facilities; $500,000 for park and recreation facilities; and $27,150,000 for roads).

INFORMATION SECTION

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TRD-202404961
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 23, 2024

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

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 6, 2024**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 6, 2024**. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: City of Dublin; DOCKET NUMBER: 2022-0282-MWD-E; TCEQ ID NUMBER: RN101918308; LOCATION: 0.75

miles southwest of the intersection of Farm-to-Market Road 219 and Farm-to-Market Road 1702, Erath County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010405001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (18) and TPDES Permit Number WQ0010405001, Other Requirements Number 6, by failing to submit a quarterly progress report by the 14th day following the schedule date; PENALTY: $18,938; Supplemental Environmental Project offset amount of $18,938 applied to Erath County, Sewer Collection System Improvements; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202404940
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: October 22, 2024

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Notice of Public Meeting for Air Quality Standard Permit Registration Renewal Air Quality Registration No. 72039

APPLICATION. Torres Brothers Ready Mix, Inc., has applied to the Texas Commission on Environmental Quality (TCEQ) for renewal of Registration No. 72039, for an Air Quality Standard Permit for Concrete Batch Plants, which would authorize continued operation of a Concrete Batch Plant located at 4247 Fuqua Street, Houston, Harris County, Texas 77048. **AVISO DE IDIOMA ALTERNATIVO.** El aviso de idioma alternativo en español está disponible en https://www.tceq.texas.gov/permitting/air/newsourcereview/air-permits-pendingpermit-apps. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. https://gisweb.tceq.texas.gov/LocationMapper/?marker=-95.350661,29.612402&level=13. The existing facility is authorized to emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less. This application was submitted to the TCEQ on June 25, 2024.

The executive director has determined the application is administratively complete and will conduct a technical review of the application. Information in the application indicates that this permit renewal would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. **The TCEQ may act on this application without seeking further public comment or providing an opportunity for a contested case hearing if certain criteria are met.**

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, November 18, 2024 at 7:00 p.m.

Hiram Clarke Multi Service Center

3810 W. Fuqua Street

Houston, Texas 77045

INFORMATION. Members of the public are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our website at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the link, enter the permit number at the top of this form.

The application will be available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and the Johnson Neighborhood Library, 3517 Reed Road, Houston, Harris County, Texas. The facility's compliance file, if any exists, is available for public review in the Houston regional office of the TCEQ. Further information may also be obtained from Torres Brothers Ready Mix, Inc., 4247 Fuqua Street, Houston, Texas 77048-5007 or by calling Mr. Venkata Godasi, Graduate Engineer, AARC Environmental, Inc. at (713) 974-2272.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: October 18, 2024

TRD-202404950
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 23, 2024

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Notice of Request for Public Comment and Notice of a Public Meeting on Proposed Non-Rule Air Quality Standard Permit for Temporary Public Works Projects

The Texas Commission on Environmental Quality (TCEQ or commission) is providing an opportunity for public comment and will conduct a

public meeting to receive testimony regarding a new non-rule Air Quality Standard Permit for Temporary Public Works Projects proposed for issuance under the Texas Clean Air Act, Texas Health and Safety Code (THSC), §382.05195, Standard Permit; THSC, §382.051985, Standard Permit for Certain Temporary Concrete Plants for Public Works; 30 Texas Administrative Code Chapter 116, Subchapter F, Standard Permits; and Texas Government Code, Chapter 2001, Subchapter B.

Senate Bill (SB) 1397, 88th Session, amended Chapter 382 of the THSC to require TCEQ to issue a standard permit for temporary concrete plants that perform wet batching, dry batching, or central mixing to support public works projects. THSC, §382.051985 requires that a plant operating under the new standard permit must be located in or contiguous to the right-of-way of the public works project; may occupy a designated site for not more than 180 consecutive days or to supply material for a single project; and may not support a project which is not related to the public works project. The proposed standard permit contains conditions to ensure that facilities authorized by the standard permit meet the criteria of THSC, §382.051985, and includes emission control requirements, best management practices, and recordkeeping requirements to ensure the new standard permit is protective of human health and the environment and is enforceable.

The proposed non-rule air quality standard permit is subject to a 30-day comment period. During the comment period, any person may submit written comments. After the comment period, TCEQ may revise the draft standard permit if appropriate. The final standard permit will then be considered by the commission for adoption. Upon adoption of the standard permit by the commission, the final standard permit and a response to all comments received will be made available on TCEQ's website.

The commission will hold a hybrid virtual and in-person public meeting on this proposal in Austin on Friday, December 6, 2024, at 10:00 a.m. in Building A, Room 173, at the TCEQ's central office located at 12100 Park 35 Circle. The meeting is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the meeting; however, commission staff members will be available to discuss the proposal 30 minutes prior to the meeting at 9:30 a.m.

Individuals who plan to attend the meeting virtually and want to provide oral comments and/or want their attendance on record must register by Wednesday, December 4, 2024. To register for the meeting, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the meeting. Instructions for participating in the meeting will be sent on Thursday, December 5, 2024, to those who register for the meeting.

Members of the public who do not wish to provide oral comments but would like to view the meeting may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_OTBlNzNlZDUtZGNhNy00YWNiLWI3YmItZDllNTk1Yjk5MzRm%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%7d

Persons with special communication or other accommodation needs who are planning to attend the meeting should contact Michael Wilhoit, Air Permits Division at (512) 239-1222 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

If you need translation services, please contact TCEQ at (800) 687-4040. Si desea información general en español, puede llamar al (800) 687-4040.

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: https://tceq.commentinput.com. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project No. 2024-018-OTH-NR. The comment period closes at 11:59 p.m. on December 6, 2024. Copies of the proposed standard permit can be obtained from the commission's website at https://www.tceq.texas.gov/permitting/air/nav/standard.html. For further information, please contact Michael Wilhoit, Project Manager, Air Permits Division, at (512) 239-1222.

TRD-202404929
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 21, 2024

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Texas Superfund Registry 2024

BACKGROUND

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), Chapter 361, to identify, to the extent feasible, and evaluate facilities which may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first registry identifying these sites was published in the January 16, 1987, issue of the *Texas Register* (12 TexReg 205). Pursuant to THSC, §361.181, the commission must update the state Superfund registry annually to add new facilities that have been proposed for listing in accordance with THSC, §361.184(a) or listed in accordance with THSC, §361.188(a)(1) (see also 30 Texas Administrative Code (TAC) §335.343) or to remove facilities that have been deleted in accordance with THSC, §361.189 (see also 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

SITES LISTED ON THE STATE SUPERFUND REGISTRY

The state Superfund registry identifying those facilities that are *listed* and have been determined to pose an imminent and substantial endangerment are set out in descending order of Hazard Ranking System (HRS) scores as follows.

1. Col-Tex Refinery. Located on both sides of Business Interstate Highway 20 (United States Highway 80) in Colorado City, Mitchell County: tank farm and refinery.

2. First Quality Cylinders. Located at 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.

3. Camtraco Enterprises, Inc. Located at 18823 Amoco Drive in Pearland, Brazoria County: fuel storage/fuel blending/distillation.

4. Pioneer Oil Refining Company. Located at 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.

5. Precision Machine and Supply. Located at 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.

6. Voda Petroleum Inc. Located approximately 1.25 miles west of the intersection of Farm-to-Market Road (FM) 2275 (George Richey Road) and FM 3272 (North White Oak Road), 2.6 miles north-northeast of Clarksville City, Gregg County: waste oil recycling.

7. Sonics International, Inc. Located north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.

8. Maintech International. Located at 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.

9. Federated Metals. Located at 9200 Market Street, Houston, Harris County: magnesium dross/sludge disposal, inactive landfill.

10. International Creosoting. Located at 1110 Pine Street, Beaumont, Jefferson County: wood treatment.

11. McBay Oil and Gas. Located approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.

12. Materials Recovery Enterprises (MRE). Located about four miles southwest of Ovalo, near United States Highway 83 and Farm Road 604, Taylor County: Class I industrial waste management.

13. Hu-Mar Chemicals. Located north of McGlothlin Road, between the old Southern Pacific Railroad tracks and 12th Street, Palacios, Matagorda County: pesticide and herbicide formulation.

14. American Zinc. Located approximately 3.5 miles north of Dumas on United States Highway 287 and five miles east of Dumas on Farm Road 119, Moore County: zinc smelter.

15. Toups. Located on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105, in Sour Lake, Hardin County: fencepost treating and municipal waste.

16. Harris Sand Pits. Located at 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.

17. JCS Company. Located north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.

18. Jerrell B. Thompson Battery. Located north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead-acid battery recycling.

19. Ballard Pits. Located at the end of Ballard Road (also known as Ballard Lane), west of its intersection with County Road 73, northwest of Robstown, Nueces County: disposal of oil field drilling muds and petroleum wastes.

20. Spector Salvage Yard. Located at Jackson Avenue and Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.

21. Hayes-Sammons Warehouse. Located at Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.

22. Jensen Drive Scrap. Located at 3603 Jensen Drive, Houston, Harris County: scrap salvage.

23. State Highway 123 PCE Plume. Located near the intersection of State Highway 123 and Interstate Highway 35 in San Marcos, Hays County: contaminated groundwater plume.

24. Baldwin Waste Oil Company. Located on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.

25. Hall Street. Located north of the intersection of 20th Street East with California Street, north of Dickinson, Galveston County: waste disposal and landfill/open field dumping.

26. Unnamed Plating. Located at 6816 - 6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.

27. Bailey Metal Processors, Inc. Located at 509 San Angelo Highway (United States Highway 87), in Brady, McCulloch County: scrap metal dealer, primarily conducting copper and lead reclamation.

28. Tricon America, Inc. Located at 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.

29. Mineral Wool Insulation Manufacturing Company. Located on Shaw Road at the northwest corner of the city limits of Rogers, Bell County: mineral wool manufacturing.

SITES PROPOSED FOR LISTING ON THE STATE SUPERFUND REGISTRY

Those facilities that may pose an imminent and substantial endangerment and that have been *proposed* to the state Superfund registry are set out in descending order of HRS scores as follows.

1. Kingsland. Located in the vicinity of the 2100 and 2400 blocks of FM Road 1431 in the community of Kingsland, Llano County: former coin-operated dry cleaning facility.

2. Angus Road Groundwater Site. Located beneath the 4300 block of Angus Road, west of Odessa, Ector County: contaminated groundwater plume.

3. Industrial Road/Industrial Metals. Located at 3000 Agnes Street in Corpus Christi, Nueces County: lead acid battery recycling and copper coil salvage.

4. Tenaha Wood Treating. Located at 275 County Road 4382, about a mile and a half south of the city limits and near the intersection of United States Highway 96 and County Road 4382, Tenaha, Shelby County: wood treatment.

5. Poly-Cycle Industries, Inc., Tecula. Located northeast of Tecula on the southeast corner of the intersection of FM 2064 and County Road 4216, Cherokee County: lead acid battery recycling.

6. Process Instrumentation and Electrical (PIE). Located at the northwest corner of 48th Street and Andrews Highway (Highway 385) in Odessa, Ector County: chromium plating.

7. Marshall Wood Preserving. Located at 2700 West Houston Street, Marshall, Harrison County: wood treatment.

8. Avinger Development Company (ADCO). Located on the south side of State Highway 155, approximately 0.25 mile east of the intersection with State Highway 49, Avinger, Cass County: wood treatment.

9. Wigginsville Road Groundwater Plume. Located on the eastern edge of the Conroe Oilfield, southeast of Conroe, Montgomery County: contaminated groundwater plume.

10. Moss Lake Road Groundwater Site. Located approximately 0.25 mile north of the intersection of North Moss Lake Road and Interstate Highway 20, approximately four miles east of Big Spring, Howard County: contaminated groundwater plume.

11. Cass County Treating Company. Located at 304 Hall Street within the southeastern city limits of Linden, Cass County: wood treatment.

12. Tucker Oil Refinery/Clinton Manges Oil Refinery. Located on the east side of United States Highway 79 in the rural community of Tucker, Anderson County: oil refinery.

13. City View Road Groundwater Plume. Located northwest of the intersection of Interstate Highway 20 and State Highway 158, Midland County: contaminated groundwater plume.

14. Scrub-A-Dubb Barrel Company. Located at 1102 North Ash Avenue, and at 1209 North Ash Avenue, Lubbock, Lubbock County: former drum cleaning and reconditioning business.

CHANGES SINCE THE OCTOBER 2023 SUPERFUND REGISTRY PUBLICATION

There were no sites proposed to, listed on, or deleted from the state Superfund registry since its last publication, in the *Texas Register* on October 27, 2023 (48 TexReg 6411).

SITES DELETED FROM THE STATE SUPERFUND REGISTRY

The commission has *deleted* 57 sites from the state Superfund registry.

Aluminum Finishing Company, Harris County;

Archem Company/Thames Chelsea, Harris County;

Aztec Ceramics, Bexar County;

Aztec Mercury, Brazoria County;

Barlow's Wills Point Plating, Van Zandt County;

Bestplate, Inc., Dallas County;

Butler Ranch, Karnes County;

Cox Road Dump Site, Liberty County;

Crim-Hammett, Rusk County;

Dorchester Refining Company, Titus County;

Double R Plating Company, Cass County;

El Paso Plating Works, El Paso County;

EmChem Corporation, Brazoria County;

Force Road Oil, Brazoria County;

Gulf Metals Industries, Harris County;

Hagerson Road Drum, Fort Bend County;

Harkey Road, Brazoria County;

Hart Creosoting, Jasper County;

Harvey Industries, Inc., Henderson County;

Hicks Field Sewer Corp., Tarrant County;

Higgins Wood Preserving, Angelina County;

Hi-Yield, Hunt County;

Houston Lead, Harris County;

Houston Scrap, Harris County;

J.C. Pennco Waste Oil Service, Bexar County;

James Barr Facility, Brazoria County;

Kingsbury Metal Finishing, Guadalupe County;

LaPata Oil Company, Harris County;

Lyon Property, Kimble County;

McNabb Flying Service, Brazoria County;

Melton Kelly Property, Navarro County;

Munoz Borrow Pits, Hidalgo County;

Newton Wood Preserving, Newton County;

Niagara Chemical, Cameron County;

Old Lufkin Creosoting, Angelina County;

Permian Chemical, Ector County;

Phipps Plating, Bexar County;

PIP Minerals, Liberty County;

Poly-Cycle Industries, Ellis County;

Poly-Cycle Industries, Jacksonville, Cherokee County;

Rio Grande Refinery I, Hardin County;

Rio Grande Refinery II, Hardin County;

Rogers Delinted Cottonseed-Colorado City, Mitchell County;

Rogers Delinted Cottonseed-Farmersville, Collin County;

Sampson Horrice, Dallas County;

SESCO, Tom Green County;

Shelby Wood Specialty, Inc., Shelby County;

Sherman Foundry, Grayson County;

Solvent Recovery Services, Fort Bend County;

South Texas Solvents, Nueces County;

State Marine, Jefferson County;

Stoller Chemical Company, Hale County;

Texas American Oil, Ellis County;

Thompson Hayward Chemical, Knox County;

Waste Oil Tank Services, Harris County;

Woodward Industries, Inc., Nacogdoches County; and

Wortham Lead Salvage, Henderson County.

REMOVAL FROM INCLUSION

The Lindsay Post Company Site, located in Alto, Cherokee County, was removed from inclusion on the registry as a site that was proposed for listing in the January 22, 1988, issue of the *Texas Register* (13 TexReg 427).

How to Access Agency Records

Agency records for these sites may be accessible for viewing or copying by contacting the TCEQ Central File Room (CFR) Customer Service Center, Building E, North Entrance, at 12100 Park 35 Circle, Austin, Texas 78753, or e-mail *cfrreq@tceq.texas.gov*. CFR Customer Service Center staff will assist with providing program area contacts for records not maintained in the CFR. Note that, as of the date of this publication, the CFR in-person viewing area will be closed due to building renovations and is expected to reopen in 2025. Additionally, some CFR records are available electronically and accessible online: at *Access Records from our Central File Room - Texas Commission on Environmental Quality - www.tceq.texas.gov* or *https://www.tceq.texas.gov/agency/data/records-services*.

Inquiries concerning the agency Superfund program records may also be directed to Superfund staff at the Superfund toll-free line (800) 633-9363 or e-mail *superfnd@tceq.texas.gov*.

TRD-202404942
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 22, 2024

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Texas Ethics Commission

List of Delinquent Filers

LIST OF LATE 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: Monthly Report due January 5, 2023

#00065640 - Eugene H. Soslow, Park Cities / Central Dallas Democrats, 3982 Dunhaven Rd., Dallas, Texas 75220

#00087079 - Melissa E. Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

#00085026 - Joy Miller, Save Corpus Christi Bay for the Greater Good, 413 Waco St., Corpus Christi, Texas 78401

Deadline: Monthly Report due February 6, 2023

#00087079 - Melissa E. Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

#00065640 - Eugene H. Soslow, Park Cities / Central Dallas Democrats, 3982 Dunhaven Rd., Dallas, Texas 75220

#00085026 - Joy Miller, Save Corpus Christi Bay for the Greater Good, 413 Waco St., Corpus Christi, Texas 78401

Deadline: Monthly Report due March 6, 2023

#00065640 - Eugene H. Soslow, Park Cities / Central Dallas Democrats, 3982 Dunhaven Rd., Dallas, Texas 75220

#00087079 - Melissa E. Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

Deadline: Monthly Report due April 5, 2023

#00065640 - Eugene H. Soslow, Park Cities / Central Dallas Democrats, 3982 Dunhaven Rd., Dallas, Texas 75220

#00087079 - Melissa E. Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

Deadline: Monthly Report due May 5, 2023

#00065640 - Eugene H. Soslow, Park Cities / Central Dallas Democrats, 3982 Dunhaven Rd., Dallas, Texas 75220

#00087079 - Melissa E. Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

Deadline: Monthly Report due June 5, 2023

#00087079 - Melissa E. Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

#00086641 - Colin Leyden, Environmental Defense Action Fund Texas PAC, 301 Congress Ave., Suite 1300, Austin, Texas 78701

#00065640 - Eugene H. Soslow, Park Cities / Central Dallas Democrats, 3982 Dunhaven Rd., Dallas, Texas 75220

#00084763 - Chris Sallese, DEC PAC, 1 E. Greenway Plaza Ste. 225, Houston, Texas 77046

#00060363 - Cindy P. Milrany, Freese and Nichols PAC, 801 Cherry St., Fort Worth, Texas 76102

Deadline: Monthly Report due July 5, 2023

#00087079 - Melissa E. Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

#00086641 - Colin Leyden, Environmental Defense Action Fund Texas PAC, 301 Congress Ave., Suite 1300, Austin, Texas 78701

#00065640 - Eugene H. Soslow, Park Cities / Central Dallas Democrats, 3982 Dunhaven Rd., Dallas, Texas 75220

#00034667 - Angelo P. Zottarelli, Texas Assn. of Pawnbrokers PAC, 405 W. 14th St., Austin, Texas 78701

#00017039 - Teri Jackson, Concho Valley Republican Women's Club PAC, 1515 Grierson St., San Angelo, Texas 76901

Deadline: Monthly Report due August 7, 2023

#00087079 - Melissa E. Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

#00034667 - Angelo P. Zottarelli, Texas Assn. of Pawnbrokers PAC, 405 W. 14th Street, Austin, Texas 78701

Deadline: Monthly Report due September 5, 2023

#00087079 - Melissa E. Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

Deadline: Monthly Report due October 5, 2023

#00087079 - Melissa E. Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

Deadline: Monthly Report due November 6, 2023

#00087079 - Melissa E. Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

Deadline: Monthly Report due December 5, 2023

#00087079 - Melissa E. Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

#00017039 - Teri Jackson, Concho Valley Republican Women's Club PAC, 1515 Grierson St., San Angelo, Texas 76901

#00017193 - Dave Osborn, Texas Telephone Assn. PAC, 208 W 14th Street, Austin, Texas 78701

Deadline: Monthly Report due January 5, 2024

#00087079 - Melissa E. Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

Deadline: Monthly Report due February 5, 2024

#00087079 - Melissa E. Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

Deadline: Monthly Report due March 5, 2024

#00087079 - Melissa E. Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

#00084763 - Chris Sallese, DEC PAC, 1 E. Greenway Plaza Ste. 225, Houston, Texas 77046

#00060363 - Cindy P. Milrany, Freese and Nichols PAC, 801 Cherry St., Fort Worth, Texas 76102

Deadline: Monthly Report due April 5, 2024

#00087079 - Melissa E. Hernandez, Friends of GPISD, P.O. Box 712, Portland, Texas 78374

#00017039 - Teri Jackson, Concho Valley Republican Women's Club PAC, 1515 Grierson St., San Angelo, Texas 76901

Deadline: Monthly Report due May 6, 2024

#00017039 - Teri Jackson, Concho Valley Republican Women's Club PAC, 1515 Grierson St., San Angelo, Texas 76901

#00087038 - John R. Clay Jr., Texas Early Childcare PAC, 401 W 15th St., Suite 870, Austin, Texas 78701

#00087039 - John R. Clay, TX Bitcoin PAC, 401 West 15th St., Suite 870, Austin, Texas 78701

#00016265 - Emily Blair, Austin Apartment Association Political Action Committee, 8620 Burnet Rd. Suite 475, Austin, Texas 78757

Deadline: Monthly Report due June 5, 2024

#00017039 - Teri Jackson, Concho Valley Republican Women's Club PAC, 1515 Grierson St., San Angelo, Texas 76901

Deadline: Monthly Report due July 8, 2024

#00016265 - Emily Blair, Austin Apartment Association Political Action Committee, 8620 Burnet Rd Suite 475, Austin, Texas 78757

TRD-202404912
J.R. Johnson
Executive Director
Texas Ethics Commission
Filed: October 18, 2024

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List of Delinquent Filers

LIST OF LATE 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: Runoff Report due May 20, 2024

#00053491 -Steve Rudner, Texas Equity PAC, Rudner Law Offices, 12740 Hillcrest Rd., Ste. 240, Dallas, Texas 75230

TRD-202404935
J.R. Johnson
Executive Director
Texas Ethics Commission
Filed: October 21, 2024

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Texas Facilities Commission

RFP #303-6-20778 Sugar Land

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General - Child Support Division (OAG-CSD), announces the issuance of Request for Proposals RFP # 303-6-20778. TFC seeks a five (5) or ten (10) year lease of approximately 5,920 square feet of office space in Sugar Land, Texas.

The deadline for questions is November 12, 2024 and the deadline for proposals is December 3, 2024, at 3:00 p.m. The award date is February 20, 2025. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting Samantha De Leon at samantha.deleon@tfc.texas.gov. A copy of the RFP may be downloaded from the Electronic State Business Daily at https://www.txsmartbuy.gov/esbd/303-6-20778.

TRD-202404943
Gayla Davis
State Leasing Director
Texas Facilities Commission
Filed: October 22, 2024

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General Land Office

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

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of, October 14, 2024 to October 18, 2024. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.20(f), 30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, October 25, 2024. The public comment period for this project will close at 5:00 p.m. on Sunday, November 24, 2024.

Federal Agency Activities:

Applicant: Department of Energy

Location: The surveys are proposed to occur within Texas state waters, within 9 n.mi. from shore; however, the primary study area is no closer to shore than the 10-m isobath or ~1.3 km (closest point of approach is Port Aransas). If no suitable sites (i.e., lease areas) are available within Texas state waters, the surveys would occur on the outer continental shelf but within the 30-m isobath or between 13.3 and up to 115 km from shore (alterative study area). The actual surveys (or survey area) would occur in a limited area (~50 km^2) anywhere within the proposed study area, although a site within the primary study area is preferred. All activities would occur within the U.S. Exclusive Economic Zone, between ~27.1-29.6°N and ~93.6-97.4°W. The water depth at the site could be as shallow as 10 m and no deeper than 30 m.

Project Description: The U.S. Department of Energy (DOE) National Energy Technology Laboratory prepared this Draft Environmental Assessment to analyze the potential environmental, cultural, and social impacts of partially funding the University of Texas at Austin (UT) to conduct high-resolution 3-dimensional marine seismic surveys in the Gulf of Mexico (GoM) as part of the GoMCarb initiative. The surveys would be used to study the geologic environments beneath the GoM for secure, long-term, large-scale carbon dioxide (CO_2) storage. DOE's proposed action is to provide funding to UT for this research. The proposed seismic surveys would be conducted from a research vessel on the shallow shelf (<30 meters deep) off Texas. The surveys would use up to 2 Generator-Injector (GI) airguns, with a total discharge volume of ~210 in^3. The proposed surveys would take place sometime during January-April 2025 for a period of approximately 23 days, including 20 days of airgun operations.

Type of Application: Draft Environmental Assessment for Marine Geophysical Surveys by University of Texas in the Northwestern Gulf of Mexico, 2025. DOE/EA-2267: Marine Geophysical Surveys; Northwestern Gulf of Mexico | Department of Energy. https://www.energy.gov/nepa/doeea-2267-marine-geophysical-surveys-northwestern-gulf-mexico.

CMP Project No: 25-1038-F2

Federal License and Permit Activities:

Applicant: WR Production, LLC

Location: The project site is located in Galveston Bay, approximately 2.2 miles east-southeast of San Leon, in Galveston County, Texas.

Latitude and Longitude: 29.475694, -094.882056

Project Description: The applicant proposes to discharge approximately 573 cubic yards of fill material into a 0.1-acre area of the Gulf of Mexico in association with the expansion of an oil drill rock pad. Additionally, the proposed project includes the construction of thirteen, 5-pile clusters for drill barge stabilization. The 5-pile clusters will be approximately 12-foot-tall. The applicant also proposes to construct a 200-square-foot well protector platform which will be situated 3 feet above the mean high-water line. The applicant has not proposed compensatory mitigation for this project as there are no proposed fill material to be placed within wetland aquatic features.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2005-01730. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

CMP Project No: 25-1037-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202404944
Jennifer Jones
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: October 22, 2024

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Office of the Governor

Notice of Application and Priorities for the Justice Assistance Grant Program Federal Application

The Governor's Public Safety Office (PSO) is planning to apply for federal fiscal year (FFY) 2024 formula funds under the Edward Byrne Memorial Justice Assistance Grant (JAG) Program administered by the U.S. Department of Justice, Bureau of Justice Assistance. The FFY 2024 allocation to Texas is $14.5 million.

PSO proposes to use the FFY 2024 award to fund initiatives that target violent crimes and organized criminal activity, technology improvement programs, substance abuse diversion programs, and programs that seek to reduce recidivism.

Comments regarding the proposed use of JAG funds should be submitted in writing within 30 days from the date of this announcement in the *Texas Register*. Comments may be submitted to the attention of Ms. Alyssa Smith, Public Safety Office (PSO), Texas Office of the Governor, by email at *Alyssa.Smith@gov.texas.gov* or by mail to the Office of the Governor, Public Safety Office, Post Office Box 12428, Austin, Texas 78711. You may also request a copy of the application upon its completion from Ms. Smith.

TRD-202404902
Angie Martin
Director of Grants Administration
Office of the Governor
Filed: October 17, 2024

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Payment Rates for Medicaid Community Hospice Effective Retroactive to October 1, 2024, and Proposed Rate Actions for Employment Readiness Services, Effective January 1, 2025

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 19, 2024, at 9:00 a.m. Central Standard Time (CST) to receive public comments for proposed Medicaid payment rates for Medicaid Community Hospice and for Employment Readiness Required Under House Bill 4169, 88th Legislature, Regular Session, 2023.

This hearing will be conducted both in-person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following registration URL:

https://attendee.gotowebinar.com/register/4442224230956999262.

After registering, you will receive a confirmation email containing information about joining the webinar. Instructions for dialing in by phone will be provided after you register.

Members of the public may attend the rate hearing in person, which will be held in the Public Hearing Room M100 in the Robert D. Moreton Building, 1100 West 49th Street, Austin, Texas 78756. A recording of the hearing will be archived and accessible on demand at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings under the "Archived" tab. The hearing will be held in compliance with Texas Human Resources Code section 32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Any updates to the hearing details will be posted on the HHSC website at https://www.hhs.texas.gov/about/meetings-events.

Proposal. The federal fiscal year (FFY) 2023 proposed payment rates for Medicaid Community Hospice include routine home care, continuous home care, inpatient respite care, general inpatient care services, and the service intensity add-on. These increased payment rates will be in accordance with the federal hospice payment regulations located in Title 42 of the Code of Federal Regulations (CFR), Part 418, Subpart G, and effective retroactive to October 1, 2024.

The proposed rate actions for the employment readiness service would be effective January 1, 2025. The proposed payment rates will support new Employment Readiness services under Deaf, Blind with Multiple Disabilities (DBMD), Home and Community-Based Services (HCS) and Texas Home Living (TxHmL) and waiver programs pursuant to the 2024-25 General Appropriations Act, House Bill 4169, 88th Legislature, Regular Session, 2023 (Article II, House Bill 4169).

Methodology and Justification.

The proposed payment rate for Medicaid Community Hospice were calculated in accordance with Section 1814(i)(1)(C)(ii) of the Social Security Act, which outlines annual increases in payment rates for hospice care services.

The proposed payment rates for Employment Readiness Services were calculated in accordance with Title 1 of the Texas Administrative Code:

Section 355.502, relating to Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers

Section 355.505, relating to Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program

Section 355.513, relating to Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program

Section 355.723, relating to Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs

Section 355.725, relating to Reimbursement Methodology for Common Waiver Services in Home and Community-based Services (HCS) and Texas Home Living (TxHmL).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at https://pfd.hhs.texas.gov/rate-packets no later than November 1, 2024. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401, fax at (512) 730-7475, or email at PFD-LTSS@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates may be submitted instead or in addition to oral testimony until 5:00 p.m. CDT the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; fax to Provider Finance at (512) 730-7475; or email to PFD-LTSS@hhs.texas.gov. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 W. Guadalupe St., Austin, Texas 78751.

Preferred Communication. For the quickest response, please use email or phone for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202404913
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 18, 2024

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of September 2024, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
LAKE JACKSON	DOW HYDROCARBONS AND RESOURCES LLC	L07234	LAKE JACKSON	00	09/10/24

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
AUSTIN	PHARMALOGIC AUSTIN LLC	L07199	AUSTIN	02	09/10/24
AUSTIN	PHARMALOGIC AUSTIN LLC	L07199	AUSTIN	03	09/11/24
BISHOP	BASF CORPORATION	L06855	BISHOP	18	09/04/24
CEDAR PARK	CEDAR PARK HEALTH SYSTEM LP DBA CEDAR PARK REGIONAL MEDICAL CENTER	L06140	CEDAR PARK	22	09/04/24
CYPRESS	KPH CONSOLIDATION INC DBA HCA HOUSTON HEALTHCARE NORTH CYPRESS	L06988	CYPRESS	11	09/10/24
DALLAS	COLUMBIA HOSPITAL AT MEDICAL CITY DALLAS SUBSIDIARY LP DBA MEDICAL CITY DALLAS	L01976	DALLAS	241	09/10/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

EL PASO	TENET HOSPITALS LIMITED DBA THE HOSPITALS OF PROVIDENCE EAST CAMPUS	L06152	EL PASO	42	09/11/24
FORT WORTH	TEXAS HEALTH PHYSICIANS GROUP DBA TEXAS HEALTH HEART AND VASCULAR SPECIALISTS	L06468	FORT WORTH	12	09/11/24
HOUSTON	UIH AMERICA INC	L07090	HOUSTON	12	09/04/24
HOUSTON	CHI ST LUKES HEALTH BAYLOR COLLEGE OF MEDICINE MEDICAL CENTER RADIATION SAFETY OFFICE	L06661	HOUSTON	13	09/10/24
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN SOUTHWEST HOSPITAL	L00439	HOUSTON	270	09/03/24
IRVING	BAYLOR MEDICAL CENTER AT IRVING DBA SCOTT & WHITE MEDICAL CENTER - IRVING	L02444	IRVING	131	09/11/24
JEWETT	NRG TEXAS POWER LLC	L06457	JEWETT	09	09/10/24
MCKINNEY	TEXAS ONCOLOGY PA DBA TEXAS ONCOLOGY	L06947	MCKINNEY	18	09/11/24
RICHARDSON	TRUGLO INC	L05519	RICHARDSON	23	09/06/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

SAN ANTONIO	THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO	L01279	SAN ANTONIO	182	09/11/24
SAN ANTONIO	METHODIST HEALTHCARE SYSTEM OF SAN ANTONIO LTD LLP	L00594	SAN ANTONIO	392	09/09/24
SUGAR LAND	TMH PHYSICIAN ORGANIZATION DBA METHODIST SUGAR LAND CARDIOLOGY ASSOCIATES	L06575	SUGAR LAND	05	09/09/24
SUGAR LAND	TMH PHYSICIAN ASSOCIATES PLLC DBA METHODIST DIAGNOSTIC CARDIOLOGY OF HOUSTON	L06527	SUGAR LAND	10	09/10/24
TEXARKANA	ARKANSAS HEART HOSPITAL RURAL HEALTH SERVICES SERVICES LLC	L07185	TEXARKANA	01	09/03/24
THE WOODLANDS	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST THE WOODLANDS HOSPITAL	L07044	THE WOODLANDS	04	09/13/24
THE WOODLANDS	METHODIST HEALTH CENTER DBA HOUSTON METHODIST THE WOODLANDS HOSPITAL	L06861	THE WOODLANDS	22	09/10/24
THOUGHOUT TX	WEATHERFORD INTERNATIONAL LLC	L00747	BENBROOK	121	09/13/24
THOUGHOUT TX	IRISNDT INC	L06435	HOUSTON	37	09/12/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

THREE RIVERS	DIAMOND SHAMROCK REFINING COMPANY LP DBA VALERO THREE RIVERS REFINERY	L03699	THREE RIVERS	35	09/05/24
THROUGHOUT TX	CMT ASSOCIATES LLC	L06945	ARGYLE	05	09/06/24
THROUGHOUT TX	WEATHERFORD INTERNATIONAL LLC	L00747	BENBROOK	120	09/06/24
THROUGHOUT TX	WEATHERFORD INTERNATIONAL LLC	L04286	BENBROOK	134	09/06/24
THROUGHOUT TX	CLEAN-CO SYSTEMS INC	L07232	CHANNELVIEW	01	09/09/24
THROUGHOUT TX	MTME LLC	L07182	CORPUS CHRISTI	01	09/04/24
THROUGHOUT TX	RONE ENGINEERING SERVICES LLC	L02356	DALLAS	64	09/05/24
THROUGHOUT TX	KIEWIT INFRASTRUCTURE CO	L04569	FORT WORTH	30	09/10/24
THROUGHOUT TX	KIEWIT INFRASTRUCTURE CO	L04569	FORT WORTH	31	09/13/24
THROUGHOUT TX	QUARTET ENGINEERS CORPORATION	L06879	HOUSTON	10	09/10/24
THROUGHOUT TX	SCIENTIFIC DRILLING INTERNATIONAL	L05105	HOUSTON	13	09/04/24
THROUGHOUT TX	CORE LABORATORIES LP DBA PROTECHNICS DIVISION OF CORE LABORATORIES LP	L03835	HOUSTON	69	09/09/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

THROUGHOUT TX	AMERICAN DIAGNOSTIC TECH LLC	L05514	HOUSTON	171	09/04/24
THROUGHOUT TX	ARC INSPECTION SERVICES LLC	L06864	KRUM	07	09/04/24
THROUGHOUT TX	ENCORE DREDGING PARTNERS LLC	L07157	LEAGUE CITY	01	09/09/24
THROUGHOUT TX	WELD SPEC INC	L05426	LUMBERTON	125	09/04/24
THROUGHOUT TX	WELD SPEC INC	L05426	LUMBERTON	126	09/06/24
THROUGHOUT TX	WSB LLC	L06986	MELISSA	10	09/06/24
THROUGHOUT TX	ALLIED WIRELINE SERVICES LLC	L06374	MIDLAND	24	09/05/24
THROUGHOUT TX	PARKER HANNIFIN CORPORATION	L07153	MINERAL WELLS	02	09/05/24

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
CONROE	CHCA CONROE LP DBA HCA HOUSTON HEALTHCARE CONROE	L01769	CONROE	111	09/04/24
FORT WORTH	UNIVERSITY OF NORTH TEXAS HEALTH SCIENCE CENTER FORT WORTH	L02518	FORT WORTH	60	09/09/24
MIDLOTHIAN	ASH GROVE CEMENT COMPANY	L06629	MIDLOTHIAN	06	09/11/24
THROUGHOUT TX	BRYANT CONSULTANTS OPERATING LLC	L05096	CARROLLTON	15	09/11/24

RENEWAL OF LICENSES ISSUED:(continued)

THROUGHOUT TX	TEXTERRA ENGINEERING LLC	L06689	HOUSTON	10	09/11/24
THROUGHOUT TX	NEXTIER COMPLETION SOLUTIONS INC	L06712	HOUSTON	28	09/12/24

TRD-202404948
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: October 23, 2024

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Texas Department of Housing and Community Affairs

Announcement of the Public Comment Period for the Draft 2024 State of Texas Consolidated Plan Annual Performance Report - Reporting On Program Year 2023

The Texas Department of Housing and Community Affairs (TDHCA) announces the opening of a 15-day public comment period for the State of Texas Draft 2024 Consolidated Plan Annual Performance Report - Reporting on Program Year 2023 (the Report) as required by the U.S. Department of Housing and Urban Development (HUD). The Report is required, as part of the overall requirements, governing the State's consolidated planning process. The Report is submitted in compliance with 24 CFR §91.520, Consolidated Plan Submissions for Community Planning and Development Programs. The 15-day public comment period begins Friday, November 1, 2024, and continues until 5:00 p.m. Central Time on Friday, November 15, 2024.

The Report gives the public an opportunity to evaluate the performance of the past program year for five HUD programs: the Community Development Block Grant Program (CDBG) administered by the Texas Department of Agriculture (TDA), the Housing Opportunities for Persons with AIDS Program (HOPWA) administered by the Texas Department of State Health Services (DSHS), and the Emergency Solutions Grants (ESG), HOME Investment Partnerships, and National Housing Trust Fund programs, administered by TDHCA. The following information is provided for each of the programs covered in the Report: a summary of program resources and programmatic accomplishments; a series of narrative statements on program performance over the past year; a qualitative analysis of program actions and experiences; and a discussion of program successes in meeting program goals and objectives.

In addition, the report provides a summary and analysis of four new HUD funded programs created in response to and to recover from the COVID-19 Pandemic. These new programs are CDBG-CV, ESG-CV, and HOME-ARP administered by TDHCA and HOPWA-CV administered by DSHS.

Beginning November 1, 2024, the Report will be available on the Department's website at https://www.tdhca.texas.gov/tdhca-public-comment-center. A hard copy can be requested by contacting the Housing Resource Center at P.O. Box 13941, Austin, Texas 78711-3941 or by calling (512) 475-3976.

Written comment should be sent by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, or by email to info@tdhca.texas.gov.

TRD-202404945
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 22, 2024

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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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