TEXAS REGISTER

Volume 49 Number 47 *November 22, 2024* *Pages 9415 - 9660*

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

https://www.sos.texas.gov
register@sos.texas.gov

Texas Register, **(ISSN 0362-4781, USPS 12-0090),** is published weekly (52 times per year) for $669.00 ($991.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P. O. Box 1710, Latham, NY 12110.

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

POSTMASTER: Send address changes to the *Texas Register,* 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

In This Issue

Texas Windstorm Insurance Association

THE GOVERNOR

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

Appointments

Appointments for November 12, 2024

Appointed as the Nonresident Violator Compact Administrator for a term to expire February 1, 2025, Sheri L. Sanders Gipson of Coupland, Texas (Ms. Gipson is being reappointed).

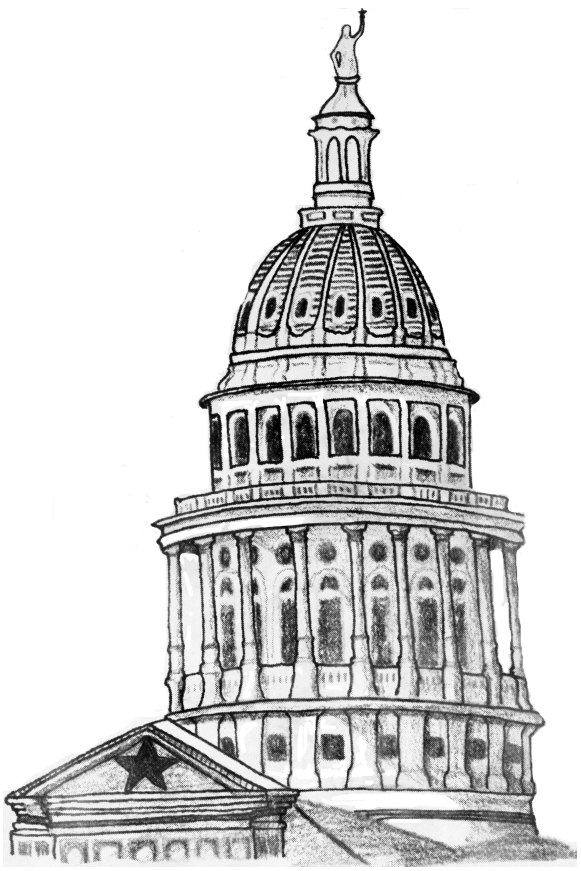
Appointments for November 13, 2024

Appointed as District Attorney of the 97th Judicial District, Archer, Clay, and Montague Counties, for a term to expire December 31, 2024, or until her successor shall be duly elected and qualified, Katie A. Woods Boggeman of Henrietta, Texas (replacing Casey R. Hall of Bowie, who resigned).

Greg Abbott, Governor

TRD-202405501

♦ ♦ ♦



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-0570-KP

Requestor:

Mr. Steven Daughety

Cherokee County Auditor

135 South Main, 3rd Floor

Rusk, Texas 75785

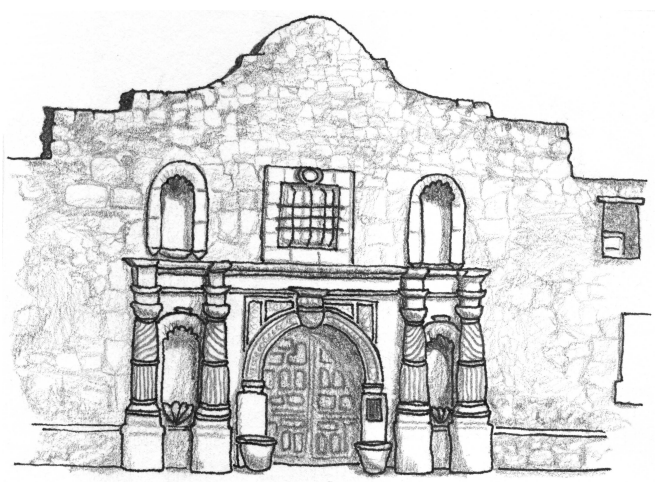
Re: Authorities and obligations regarding phone-card sales at a county jail (RQ-0570-KP)

Briefs requested by December 9, 2024

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

TRD-202405484
Justin Gordon
General Counsel
Office of the Attorney General
Filed: November 12, 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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8052, §355.8061

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §355.8052, concerning Inpatient Hospital Reimbursement, and §355.8061, concerning Outpatient Hospital Reimbursement.

BACKGROUND AND PURPOSE

The purpose of this proposal is to specify that High-Cost Clinician Administered Drugs and Biologics (HCCADs), Long-Acting Reversible Contraceptive (LARC) devices, and Donor Human Milk Services will be reimbursed outside the all-patient refined diagnosis-related group (APR-DRG) inpatient reimbursement and filed on a separate outpatient claim. The non-risk payment will be paid at the lesser of billed charges or the fee-for-service reimbursement amount with the fee schedule acting as the upper-payment limit. For more information regarding payment methodology, please refer to §355.8085, concerning Reimbursement Methodology for Physicians and Other Practitioners. This rule update increases efficiency in the delivery of HCCADs, LARCs and Human Breast milk. A hospital administering these services will be reimbursed separately from the Inpatient Hospital APR-DRG reimbursement methodology. DRG payments exclude separate reimbursement for HCCADs, LARCS and Human Breast milk, all which can range from hundreds of dollars to millions of dollars per client.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.8052(b) adds definitions for "Donor Human Milk Services," "High-Cost Clinician Administered Drugs and Biologics (HCCADS)," and "Long-Acting Reversible Contraceptive (LARC) devices." The definition for "Impact file" is amended for clarity. The definition for "Mean length of stay" is amended to correct punctuation. The subsection is renumbered to account for the addition and deletion of paragraphs.

The proposed amendment to §355.8052(i) adds a new paragraph with a list of services exempt from the inpatient hospital reimbursement methodology. The paragraphs are renumbered to account for the addition and a reference is updated in new paragraph (5).

The proposed amendment to §355.8061 updates the term "Human Breast Milk Processing, Storage and Distribution" to "Donor Human Milk Services." New subsection (e) is added to list the inpatient services that will be reimbursed on a separate outpatient claim. The following subsection is renumbered to account for the addition.

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 expand an existing regulation;

(7) the proposed rules will not change the number of individuals subject to the rule; 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 this rule because this rule does not impose 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 accessibility, minimal delays, and appropriate reimbursement for HCCAD treatments.

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 additional fees or costs on those who are required to comply.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be held by HHSC through a webinar. The meeting date and time will be posted on the HHSC Communications and Events website at https://hhs.texas.gov/about-hhs/communications-events and https://pfd.hhs.texas.gov/rate-packets.

Please contact the Provider Finance Department Hospital Finance section at pfd_hospitals@hhsc.state.tx.us if you have questions.

PUBLIC COMMENT

Written comments on the proposal may be submitted to the HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or by e-mail to pfd_hospitals@hhsc.state.tx.us.

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 24R090" in the subject line.

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, 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; 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 amendment affects Texas Government Code §531.0055, Chapter 531, and Texas Human Resources Code Chapter 32.

§355.8052. Inpatient Hospital Reimbursement.

(a) Introduction. The Texas Health and Human Services Commission (HHSC) uses the methodology described in this section to calculate reimbursement for a covered inpatient hospital service.

(b) Definitions.

(1) Add-on--An amount that is added to the base Standard Dollar Amount (SDA) to reflect high-cost functions and services or regional cost differences.

(2) Adjudicated--The approval or denial of an inpatient hospital claim by HHSC.

(3) Base standard dollar amount (base SDA)--A standardized payment amount calculated by HHSC, as described in subsections (c) and (d) of this section, for the costs incurred by prospectively paid hospitals in Texas for furnishing covered inpatient hospital services.

(4) Base year--For the purpose of this section, the base year is a state fiscal year (September through August) to be determined by HHSC.

(5) Base year claims--For the purposes of rate setting (including Diagnosis-related group (DRG) relative weights, Mean length of stay (MLOS) and Days Thresholds, and rebasing or realignment of base rates) effective September 1, 2021, and after HHSC includes Medicaid inpatient fee-for-service (FFS) and Managed Care Organization (MCO) encounters that meet the criteria in subparagraphs (A) - (F) of this paragraph in the Base Year claims data. For base rates set prior to September 1, 2021, individual sets of base year claims are compiled for children's hospitals and urban hospitals for the purposes of rate setting and realignment. All Medicaid inpatient fee-for-service (FFS) and Primary Care Case Management (PCCM) inpatient hospital claims for reimbursement filed by an urban or children's hospital that:

(A) had a date of admission occurring within the base year;

(B) were adjudicated and approved for payment during the base year and the six-month grace period that immediately followed the base year, except for such claims that had zero inpatient days;

(C) were not claims for patients who are covered by Medicare;

(D) were not Medicaid spend-down claims;

(E) were not claims associated with military hospitals, out-of-state hospitals, state-owned teaching hospitals, and freestanding psychiatric hospitals; and

(F) individual sets of base year claims are compiled for children's hospitals and urban hospitals for the purposes of rate setting and rebasing.

(6) Children's hospital--A Medicaid hospital designated by Medicare as a children's hospital and exempted by Centers for Medicare and Medicaid Services (CMS) from the Medicare prospective payment system.

(7) Cost outlier payment adjustment--A payment adjustment for a claim with extraordinarily high costs.

(8) Cost outlier threshold--One factor used in determining the cost outlier payment adjustment.

(9) Day outlier payment adjustment--A payment adjustment for a claim with an extended length of stay.

(10) Day outlier threshold--One factor used in determining the day outlier payment adjustment.

(11) Diagnosis-related group (DRG)--The classification of medical diagnoses as defined in the 3M™All Patient Refined Diagnosis Related Group (APR-DRG) system or as otherwise specified by HHSC. Each DRG has four digits. The last digit of the Diagnosis-Related Group is the Severity of Illness (SOI). SOI indicates the seriousness of the condition on a scale of one to four: minor, moderate, major, or extreme. SOI may increase if secondary diagnoses are present, in addition to the primary diagnosis.

(12) Donor Human Milk Services--Breast milk donated by healthy breastfeeding postpartum women to provide health benefits to newborn infants, especially high-risk infants.

(13) [~~(12)~~] Final settlement--Reconciliation of Medicaid cost in the CMS form 2552-10 hospital fiscal year end cost report performed by HHSC within six months after HHSC receives the cost report audited by a Medicare intermediary, or HHSC.

(14) [~~(13)~~] Final standard dollar amount (final SDA)--The rate assigned to a hospital after HHSC applies the add-ons and other adjustments described in this section.

(15) [~~(14)~~] Geographic wage add-on--An adjustment to a hospital's base SDA to reflect geographical differences in hospital wage levels. Hospital geographical areas correspond to the Core-Based Statistical Areas (CBSAs) established by the federal Office of Management and Budget in 2003.

(16) [~~(15)~~] HHSC--The Texas Health and Human Services Commission, or its designee.

(17) High-Cost Clinician Administered Drugs and Biologics (HCCADs)--

(A) HCCADs are high-cost specialty drugs and biologics whose manufacturers have signed up to participate in the Medicaid Drug Rebate Program (MDRP) and whose National Drug Code (NDC) show as rebate-eligible on the MDRP file provided by CMS.

(B) HCCADs can be administered to a patient by a licensed provider in an inpatient or outpatient setting.

(C) HCCADs are excluded from the All-Patient Refined Diagnosis Related Group (APR-DRG) and are billed on a separate outpatient claim with Type of Bill (TOB) 131. The associated inpatient or outpatient charges with the same date of service are billed separately with TOB 111.

(D) Details regarding HCCAD drugs and biologics included on the inpatient high-cost drug list can be found on the state's Vendor Drug Program website.

(E) Drugs and Biologics on the HCCAD list are reimbursed to hospitals pursuant to §355.8085 of this subchapter (relating to Reimbursement Methodology for Physicians and Other Practitioners).

(18) [~~(16)~~] Impact file--The Inpatient Prospective Payment System (IPPS) Final Rule Impact File that contains data elements listed by provider. The file is used to calculate [~~used by the CMS in calculating~~] Medicare rates and impacts. The impact file is publicly available on the CMS website.

(19) [~~(17)~~] Inflation update factor--Cost of living index based on the annual CMS Prospective Payment System Hospital Market Basket Index.

(20) [~~(18)~~] Inpatient Ratio of cost-to-charge (RCC)--A ratio that covers all applicable Medicaid hospital costs and charges relating to inpatient care.

(21) [~~(19)~~] In-state children's hospital--A hospital located within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(22) [~~(20)~~] Interim payment--An initial payment made to a hospital that is later settled to Medicaid-allowable costs, for hospitals reimbursed under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(23) [~~(21)~~] Interim rate--The ratio of Medicaid allowed inpatient costs to Medicaid allowed inpatient charges filed on a hospital's cost report, expressed as a percentage. The interim rate established during a cost report settlement for an urban hospital or a rural hospital reimbursed under this section excludes the application of TEFRA target caps and the resulting incentive and penalty payments.

(24) Long-Acting Reversible Contraceptive (LARC) devices--Methods of birth control that provide effective contraception for an extended period without requiring user action.

(25) [~~(22)~~] Managed Care Organization (MCO) Adjustment Factor--Factor used to estimate managed care premium tax, risk margin, and administrative costs related to contracting with HHSC. The estimated amounts are subtracted from appropriations.

(26) [~~(23)~~] Mean length of stay (MLOS)--One factor used in determining the payment amount calculated for each DRG,[~~;~~] the average number of inpatient days per DRG.

(27) [~~(24)~~] Medical education add-on--An adjustment to the base SDA for an urban teaching hospital to reflect higher patient care costs relative to non-teaching urban hospitals.

(28) [~~(25)~~] Military hospital--A hospital operated by the armed forces of the United States.

(29) [~~(26)~~] New Hospital--A hospital that was enrolled as a Medicaid provider after the end of the base year and has no base year claims data.

(30) [~~(27)~~] Out-of-state children's hospital--A hospital located outside of Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(31) [~~(28)~~] Realignment--Recalculation of the base SDA and add-ons using current RCCs, inflation factors, and base year claims as specified by HHSC or its designee, for one or more hospital types. Realignment will occur based on legislative direction.

(32) [~~(29)~~] Rebasing--Calculation of all SDAs and add-ons, DRG relative weights, MLOS, and day outlier thresholds for all hospitals using a base period as specified by HHSC,or its designee. Rebasing will occur based on legislative direction.

(33) [~~(30)~~] Relative weight--The weighting factor HHSC assigns to a DRG representing the time and resources associated with providing services for that DRG.

(34) [~~(31)~~] Rural base year stays--An individual set of base year stays is compiled for rural hospitals for the purposes of rate setting and realignment. All inpatient FFS claims and inpatient managed care encounters for reimbursement filed by a rural hospital that:

(A) had a date of admission occurring within the base year;

(B) were adjudicated and approved for payment during the base year or the six-month period that immediately followed the base year, except for such stays that had zero inpatient days;

(C) were not stays for patients who are covered by Medicare; and

(D) were not Medicaid spend-down stays; and were not stays associated with military hospitals, out-of-state hospitals, state-owned teaching hospitals, and freestanding psychiatric hospitals.

(35) [~~(32)~~] Rural hospital--A hospital enrolled as a Medicaid provider that:

(A) is located in a county with 68,750 or fewer persons according to the 2020 U.S. Census;

(B) is designated by Medicare as a Critical Access Hospital (CAH), a Sole Community Hospital (SCH), or a Rural Referral Center (RRC) that is not located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Office of Management and Budget; or

(C) meets all of the following:

(i) has 100 or fewer beds;

(ii) is designated by Medicare as a CAH, a SCH, or a RRC; and

(iii) is located in an MSA.

(36) [~~(33)~~] Safety-Net add-on--An adjustment to the base SDA for a safety-net hospital to reflect the higher costs of providing Medicaid inpatient services in a hospital that provides a significant percentage of its services to Medicaid and/or uninsured patients.

(37) [~~(34)~~] Safety-Net hospital--An urban or children's hospital that meets the eligibility and qualification requirements described in §355.8065 of this division (relating to Disproportionate Share Hospital Reimbursement Methodology) for the most recent federal fiscal year for which such eligibility and qualification determinations have been made.

(38) [~~(35)~~] Standard Dollar Amount (SDA)--A standardized payment amount calculated by HHSC for the costs incurred by prospectively-paid hospitals in Texas for furnishing covered inpatient hospital services.

(39) [~~(36)~~] State-owned teaching hospital--Acute care hospitals owned and operated by the state of Texas.

(40) [~~(37)~~] Teaching hospital--A hospital for which CMS has calculated and assigned a percentage Medicare education adjustment factor under 42 CFR §412.105.

(41) [~~(38)~~] Teaching medical education add-on--An adjustment to the base SDA for a children's teaching hospital with a program approved by the Accreditation Council for Graduate Medical Education (ACGME) to reflect higher patient care costs relative to non-teaching children's hospitals.

(42) [~~(39)~~] TEFRA target cap--A limit set under the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)) and applied to a hospital's cost settlement under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). TEFRA target cap is not applied to services provided to patients under age 21, and incentive and penalty payments associated with this limit are not applicable to those services.

(43) [~~(40)~~] Tentative settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year-end cost report performed by HHSC within six months after HHSC receives an acceptable cost report filed by a hospital.

(44) [~~(41)~~] Texas provider identifier (TPI)--A unique number assigned to a provider of Medicaid services in Texas.

(45) [~~(42)~~] Trauma add-on--An adjustment to the base SDA for a trauma hospital to reflect the higher costs of obtaining and maintaining a trauma facility designation, as well as the direct costs of providing trauma services, relative to non-trauma hospitals or to hospitals with lower trauma facility designations. To be eligible for the trauma add-on, a hospital must be eligible to receive an allocation from the trauma facilities and emergency medical services account under Texas Health and Safety Code Chapter 780.

(46) [~~(43)~~] Trauma hospital--An inpatient hospital that meets the Texas Department of State Health Services criteria for a Level I, II, III, or IV trauma facility designation under 25 Texas Administrative Code §157.125 (relating to Requirements for Trauma Facility Designation).

(47) [~~(44)~~] Universal mean--Average base year cost per claim for all urban hospitals.

(48) [~~(45)~~] Urban hospital--Hospital located in a metropolitan statistical area and not fitting the definition of rural hospitals, children's hospitals, state-owned teaching hospitals, or freestanding psychiatric hospitals.

(c) Base children's hospitals SDA calculations. HHSC will use the methodologies described in this subsection to determine average statewide base SDA and a final SDA for each children's hospital.

(1) HHSC calculates the average base year cost per claim as follows.

(A) To calculate the total inpatient base year cost per children's hospital:

(i) sum the allowable inpatient charges by hospital for the base year claims; and

(ii) multiply clause (i) of this subparagraph by the hospital's inpatient RCC and the inflation update factors to inflate the base year cost to the current year.

(B) Sum the amount of all hospitals' base year costs from subparagraph (A) of this paragraph.

(C) Subtract an amount equal to the estimated outlier payment amount for the base year claims for all children's hospitals from subparagraph (B) of this paragraph.

(D) To derive the average base year cost per claim, divide the result from subparagraph (C) of this paragraph by the total number of base year claims.

(2) HHSC calculates the base children's SDA as follows.

(A) From the amount determined in paragraph (1)(C) of this subsection, HHSC sets aside an amount for add-ons as described in paragraph (3) of this subsection. In determining the amount to set aside, HHSC considers factors including other funding available to reimburse high-cost hospital functions and services, available data sources, historical costs, Medicare practices, and feedback from hospital industry experts.

(B) The amount remaining from paragraph (1)(C) of this subsection after HHSC sets aside the amount for add-ons in subparagraph (A) of this paragraph is then divided by the sum of the relative weights for all children's base year claims to derive the base SDA.

(3) A children's hospital may receive increases to the base SDA for any of the following.

(A) Add-on amounts, which will be determined or adjusted based on the following.

(i) Impact files.

(I) HHSC will use the most recent finalized impact file available at the time of realignment to calculate add-ons; and

(II) HHSC will use the impact file in effect at the last realignment to calculate add-ons for new hospitals, except as otherwise specified in this section.

(ii) Geographic wage reclassification. If a hospital becomes eligible for the geographic wage reclassification under Medicare, the hospital will become eligible for the adjustment upon the next realignment.

(iii) Teaching medical education add-on during the fiscal year. If a hospital becomes eligible for the teaching medical education add-on, the hospital will receive an increased final SDA to include these newly eligible add-ons, effective for claims that have a date of discharge occurring on or after the first day of the next state fiscal year.

(iv) Safety-net add-on during the fiscal year. The hospital will receive an increased final SDA to include these newly eligible add-ons, effective for claims that have a date of discharge occurring on or after the first day of the next state fiscal year.

(v) New children's hospital teaching medical education add-on. If an eligible children's hospital is new to the Medicaid program and a cost report is not available, the teaching medical education add-on will be calculated at the beginning of the state fiscal year after a cost report is received.

(B) Geographic wage add-on.

(i) CBSA assignment. For claims with dates of admission beginning September 1, 2013, and continuing until the next realignment, the geographic wage add-on for children's hospitals will be calculated based on the corresponding CBSA in the impact file in effect on September 1, 2011.

(ii) Designated impact file. Subsequent add-ons will be based on the impact file available at the time of realignment.

(iii) Wage index. To determine a children's hospital geographic wage add-on, HHSC first calculates a wage index for Texas as follows.

(I) HHSC identifies the Medicare wage index factor for each CBSA in Texas.

(II) HHSC identifies the lowest Medicare wage index factor in Texas.

(III) HHSC divides the Medicare wage index factor in subclause (I) of this clause for each CBSA by the lowest Medicare wage index factor identified in subclause (II) of this clause and subtracts one from each resulting quotient.

(iv) County assignment. HHSC will initially assign a hospital to a CBSA based on the county in which the hospital is located. A hospital that has been approved for geographic reclassification under Medicare may request that HHSC recognize its Medicare CBSA reclassification under the process described in subparagraph (E) of this paragraph.

(v) Medicare labor-related percentage. HHSC uses the Medicare labor-related percentage available at the time of realignment.

(vi) Geographic wage add-on calculation. The final geographic wage add-on is equal to the product of the base SDA calculated in subsection (c)(2)(B) of this section, the wage index calculated in clause (iii)(III) of this subparagraph, and the Medicare labor-related percentage in clause (v) of this subparagraph.

(C) Teaching medical education add-on.

(i) Eligibility. A teaching hospital that is a children's hospital is eligible for the teaching medical education add-on. Each children's hospital is required to confirm, under the process described in subparagraph (E) of this paragraph, that HHSC's determination of the hospital's eligibility for the add-on is correct.

(ii) Teaching medical education add-on calculation.

(I) For each children's hospital, identify the total hospital medical education cost from each hospital cost report or reports that cross over the base year.

(II) For each children's hospital, sum the amounts identified in subclause (I) of this clause to calculate the total medical education cost.

(III) For each children's hospital, calculate the average medical education cost by dividing the amount from subclause (II) of this clause by the number of cost reports that cross over the base year.

(IV) Sum the average medical education cost per hospital to determine a total average medical education cost for all hospitals.

(V) For each children's hospital, divide the average medical education cost for the hospital from subclause (III) of this clause by the total average medical education cost for all hospitals from subclause (IV) of this clause to calculate a percentage for the hospital.

(VI) Divide the total average medical education cost for all hospitals from subclause (IV) of this clause by the total base year cost for all children's hospitals from subsection (c)(1)(B) of this section to determine the overall teaching percentage of Medicaid cost.

(VII) For each children's hospital, multiply the percentage from subclause (V) of this clause by the percentage from subclause (VI) of this clause to determine the teaching percentage for the hospital.

(VIII) For each children's hospital, multiply the hospital's teaching percentage by the base SDA amount to determine the teaching medical education add-on amount.

(D) Safety-Net add-on.

(i) Eligibility. If a children's hospital meets the definition of a "safety-net hospital" as defined in subsection (b) of this section, it is eligible for a safety-net add-on.

(ii) Add-on amount. HHSC calculates the safety-net add-on amounts annually or at the time of realignment as follows.

(I) For each eligible hospital, determine the following amounts for a period of 12 contiguous months specified by HHSC:

(-a-) total allowable Medicaid inpatient days for fee-for-service claims;

(-b-) total allowable Medicaid inpatient days for managed care encounters;

(-c-) total relative weights for fee-for-service claims; and

(-d-) total relative weights for managed care encounters.

(II) Determine the total allowable days for eligible safety-net hospitals by summing the amounts in items (-a-) and (-b-) of this subclause.

(III) Determine the hospital's percentage of total allowable days to the total in subclause (II) of this clause.

(IV) Determine the hospital's portion of appropriated safety-net funds before the MCO adjustment factor is applied by multiplying the amount in subclause (III) of this clause for each hospital by the total safety-net funds deflated to the data year.

(V) For each hospital, multiply item (-d-) of this subclause by the relevant MCO adjustment factor.

(VI) Sum the amounts in item (-c-) of this subclause and subclause (V) of this clause for each hospital.

(VII) To calculate the safety-net add-on, divide the amount in subclause (IV) of this clause by the amount in subclause (VI) of this clause for each hospital. The result is the safety-net add-on.

(iii) Reconciliation. Effective for costs and revenues accrued on or after September 1, 2015, HHSC may perform a reconciliation for each hospital that received the safety-net add-on to identify any such hospitals with total Medicaid reimbursements for inpatient and outpatient services in excess of their total Medicaid and uncompensated care inpatient and outpatient costs. For hospitals with total Medicaid reimbursements in excess of total Medicaid and uncompensated care costs, HHSC may recoup the difference.

(E) Add-on status verification.

(i) Notification. HHSC will determine a hospital's initial add-on status by reference to the impact file at the time of realignment, Medicaid days, and relative weight information from HHSC's fiscal intermediary. HHSC will notify the hospital of the CBSA to which the hospital is assigned, the Medicare teaching hospital designation for children's hospitals as applicable, and any other related information determined relevant by HHSC. For state fiscal years 2017 and after, HHSC will also notify eligible hospitals of the data used to calculate the safety-net add-on. HHSC may post the information on its website, send the information through the established Medicaid notification procedures used by HHSC's fiscal intermediary, send through other direct mailing, or provide the information to hospital associations to disseminate to their member hospitals.

(ii) Rate realignment. HHSC will calculate a hospital's final SDA using the add-on status initially determined by HHSC unless, within 14 calendar days after the date of the notification, HHSC receives notification in writing from the hospital, in a format determined by HHSC, that any add-on status determined by HHSC is incorrect and:

(I) the hospital provides documentation of its eligibility for a different teaching medical education add-on or teaching hospital designation;

(II) the hospital provides documentation that it is approved by Medicare for reclassification to a different CBSA; or

(III) for state fiscal years 2017 and after, the hospital provides documentation of different data and demonstrates to HHSC's satisfaction that the different data should be used to calculate the safety-net add-on.

(iii) Annual SDA calculation. HHSC will calculate a hospital's final SDA annually using the add-on status initially determined during realignment by HHSC unless, within 14 calendar days after the date of the notification, HHSC receives notification in writing from the hospital, in a format determined by HHSC, that any add-on status determined by HHSC is incorrect and:

(I) the hospital provides documentation of a new teaching program or new teaching hospital designation; or

(II) for state fiscal years 2017 and after, the hospital provides documentation of different data and demonstrates to HHSC's satisfaction that the different data should be used to calculate the safety-net add-on.

(iv) Failure to notify. If a hospital fails to notify HHSC within 14 calendar days after the date of the notification that the add-on status as initially determined by HHSC includes one or more add-ons for which the hospital is not eligible, resulting in an overpayment, HHSC will recoup such overpayment and will prospectively reduce the SDA accordingly.

(4) Final children's hospital SDA calculations. HHSC calculates a children's hospital's final SDA as follows.

(A) Add all add-on amounts for which the hospital is eligible to the base SDA.

(B) For labor and delivery services provided to adults age 18 or older in a children's hospital, the final SDA is equal to the base SDA for urban hospitals without add-ons, calculated as described in subsection (d)(4)(E)(i) of this section plus the urban hospital geographic wage add-on for an urban hospital located in the same CBSA as the children's hospital providing the service.

(C) For new children's hospitals that are not teaching hospitals, for which HHSC has no base year claim data, the final SDA is the base SDA plus the hospital's geographic wage add-on. The SDA will be inflated from the base year to the current period at the time of enrollment or to state fiscal year 2015, whichever is earlier.

(D) For new children's hospitals that qualify for the teaching medical education add-on, as defined in subsection (b) of this section, for which HHSC has no base year claim data, the final SDA is calculated based on one of the following options until realignment is performed with base year claim data for the hospital. A new children's hospital must notify the HHSC Provider Finance Department of its selected option within 60 days from the date the hospital is notified of its provider activation by HHSC's fiscal intermediary. If the HHSC Provider Finance Department does not receive timely notice of the option, HHSC will assign the hospital the SDA calculated as described in clause (i) of this subparagraph. The SDA calculated based on the selected option will be effective retroactive to the first day of the provider's enrollment.

(i) Children's hospital base SDA plus the applicable geographic wage add-on and the minimum teaching add-on for existing children's hospitals. No settlement of costs is required for services reimbursed under this option. The SDA will be in effect until the next realignment when a new SDA will be determined. The SDA will be inflated from the base year to the current period at the time of enrollment or to state fiscal year 2015, whichever is earlier.

(ii) Children's base SDA plus the applicable geographic wage add-on and the maximum teaching add-on for existing children's hospitals. A cost settlement is required for services reimbursed under this option. The SDA will be in effect for the hospital until the next realignment when a new SDA will be determined. The SDA will be inflated from the base year to the current period at the time of enrollment or to state fiscal year 2015, whichever is earlier.

(d) Base urban hospital SDA calculations. HHSC will use the methodologies described in this subsection to determine the average statewide base SDA and the final SDA for each urban hospital.

(1) HHSC calculates the average base year cost per claim (the universal mean) as follows.

(A) To calculate the total inpatient base year cost per urban hospital:

(i) sum the allowable inpatient charges by hospital for the base year claims; and

(ii) multiply clause (i) of this subparagraph by the hospital's inpatient RCC and the inflation update factors to inflate the base year cost to the current year.

(B) Sum the amount for all hospitals' base year costs from subparagraph (A) of this paragraph.

(C) To derive the average base year cost per claim, divide the result from subparagraph (B) of this paragraph by the total number of base year claims.

(2) HHSC calculates the base urban SDA as follows.

(A) From the amount determined in paragraph (1)(B) of this subsection for urban hospitals, HHSC sets aside an amount for add-ons as described in paragraph (3) of this subsection. In determining the amount to set aside, HHSC considers factors including other funding available to reimburse high-cost hospital functions and services, available data sources, historical costs, Medicare practices, and feedback from hospital industry experts.

(B) The amount remaining from paragraph (1)(B) of this subsection after HHSC sets aside the amount for add-ons in subparagraph (A) of this paragraph is then divided by the total number of base year claims to derive the base SDA.

(3) An urban hospital may receive increases to the base SDA for any of the following.

(A) Add-on amounts, which will be determined or adjusted based on the following.

(i) Impact files.

(I) HHSC will use the most recent finalized impact file available at the time of realignment to calculate add-ons; and

(II) HHSC will use the impact file in effect at the last realignment to calculate add-ons for new hospitals, except as otherwise specified in this section.

(ii) Geographic wage reclassification. If a hospital becomes eligible for the geographic wage reclassification under Medicare, the hospital will become eligible for the adjustment upon the next realignment.

(iii) Medical education add-on during fiscal year. If an existing hospital has a change in its medical education operating adjustment factor under Medicare, the hospital will become eligible for the adjustment to its medical education add-on upon the next realignment.

(iv) New medical education add-on. If a hospital becomes eligible for the medical education add-on after the most recent realignment:

(I) the hospital will receive a medical education add-on, effective for claims that have a date of discharge occurring on or after the first day of the next state fiscal year; and

(II) HHSC will calculate the add-on using the impact file in effect at the time the hospital initially claims eligibility for the medical education add-on; and

(III) this amount will remain fixed until the next realignment.

(B) Geographic wage add-on.

(i) Designated impact file. Subsequent add-ons will be based on the impact file available at the time of realignment.

(ii) Wage index. To determine an urban geographic wage add-on, HHSC first calculates a wage index for Texas as follows.

(I) HHSC identifies the Medicare wage index factor for each CBSA in Texas;

(II) HHSC identifies the lowest Medicare wage index factor in Texas;

(III) HHSC divides the Medicare wage index factor identified in subclause (I) of this clause for each CBSA by the lowest Medicare wage index factor identified in subclause (II) of this clause and subtracts one from each resulting quotient.

(iii) County assignment. HHSC will initially assign a hospital to a CBSA based on the county in which the hospital is located. A hospital that has been approved for geographic reclassification under Medicare may request that HHSC recognize its Medicare CBSA reclassification under the process described in subparagraph (F) of this paragraph.

(iv) Medicare labor-related percentage. HHSC uses the Medicare labor-related percentage available at the time of realignment.

(v) Geographic wage add-on calculation. The final geographic wage add-on is equal to the product of the base SDA calculated in subsection (d)(2)(B) of this section, the wage index calculated in clause (ii)(III) of this subparagraph, and the Medicare labor-related percentage in clause (iv) of this subparagraph.

(C) Medical education add-on.

(i) Eligibility. If an urban hospital meets the definition of a teaching hospital, as defined in subsection (b) of this section, it is eligible for the medical education add-on. Each hospital is required to confirm, under the process described in subparagraph (F) of this paragraph, that HHSC's determination of the hospital's eligibility and medical education operating adjustment factor under Medicare for the add-on is correct.

(ii) Add-on amount. HHSC multiplies the base SDA calculated in subsection (d)(2)(B) of this section by the hospital's Medicare education adjustment factor to determine the hospital's medical education add-on amount.

(D) Trauma add-on.

(i) Eligibility.

(I) If an urban hospital meets the definition of a trauma hospital, as defined in subsection (b) of this section, it is eligible for a trauma add-on.

(II) HHSC initially uses the trauma level designation associated with the physical address of a hospital's TPI. A hospital may request that HHSC, under the process described in subparagraph (F) of this paragraph use a higher trauma level designation associated with a physical address other than the hospital's TPI address.

(ii) Add-on amount. To determine the trauma add-on amount, HHSC multiplies the base SDA:

(I) by 28.3 percent for hospitals with Level 1 trauma designation;

(II) by 18.1 percent for hospitals with Level 2 trauma designation;

(III) by 3.1 percent for hospitals with Level 3 trauma designation; or

(IV) by 2.0 percent for hospitals with Level 4 trauma designation.

(iii) Reconciliation with other reimbursement for uncompensated trauma care. Subject to General Appropriations Act and other applicable law:

(I) if a hospital's allocation from the trauma facilities and emergency medical services account administered under Texas Health and Safety Code Chapter 780, is greater than the total trauma add-on amount estimated to be paid to the hospital under this section during the state fiscal year, the Department of State Health Services will pay the hospital the difference between the two amounts at the time funds are disbursed from that account to eligible trauma hospitals; and

(II) if a hospital's allocation from the trauma facilities and emergency medical services account is less than the total trauma add-on amount estimated to be paid to the hospital under this section during the state fiscal year, the hospital will not receive a payment from the trauma facilities and emergency medical services account.

(E) Safety-Net add-on.

(i) Eligibility. If an urban hospital meets the definition of a safety-net hospital as defined in subsection (b) of this section, it is eligible for a safety-net add-on.

(ii) Add-on amount. HHSC calculates the safety-net add-on amounts annually or at the time of realignment as follows.

(I) For each eligible hospital, determine the following amounts for a period of 12 contiguous months specified by HHSC:

(-a-) total allowable Medicaid inpatient days for fee-for-service claims;

(-b-) total allowable Medicaid inpatient days for managed care encounters;

(-c-) total relative weights for fee-for-service claims; and

(-d-) total relative weights for managed care encounters.

(II) Determine the total allowable days for eligible safety-net hospitals by summing the amounts in items (-a-) and (-b-) of this subclause.

(III) Determine the hospital's percentage of total allowable days to the total in subclause (II) of this clause.

(IV) Determine the hospital's portion of appropriated safety-net funds before the MCO adjustment factor is applied by multiplying the amount in subclause (III) of this clause for each hospital by the total safety-net funds deflated to the data year.

(V) For each hospital, multiply item (-d-) of this subclause by the relevant MCO adjustment factor.

(VI) Sum the amounts in item (-c-) of this subclause and subclause (V) of this clause for each hospital.

(VII) To calculate the safety-net add-on, divide the amount in subclause (IV) of this clause by the amount in subclause (VI) of this clause for each hospital. The result is the safety-net add-on.

(iii) Reconciliation. Effective for costs and revenues accrued on or after September 1, 2015, HHSC may perform a reconciliation for each hospital that received the safety-net add-on to identify any such hospitals with total Medicaid reimbursements for inpatient and outpatient services in excess of their total Medicaid and uncompensated care inpatient and outpatient costs. For hospitals with total Medicaid reimbursements in excess of total Medicaid and uncompensated care costs, HHSC may recoup the difference.

(F) Add-on status verification.

(i) Notification. HHSC will determine a hospital's initial add-on status by reference to the impact file available at the time of realignment or at the time of eligibility for a new medical education add-on as described in subparagraph (A)(iv) of this paragraph; the Texas Department of State Health Services' list of trauma-designated hospitals; and Medicaid days and relative weight information from HHSC's fiscal intermediary. HHSC will notify the hospital of the CBSA to which the hospital is assigned, the Medicare education adjustment factor assigned to the hospital for urban hospitals, the trauma level designation assigned to the hospital, and any other related information determined relevant by HHSC. For state fiscal years 2017 and after, HHSC will also notify eligible hospitals of the data used to calculate the safety-net add-on. HHSC may post the information on its website, send the information through the established Medicaid notification procedures used by HHSC's fiscal intermediary, send through other direct mailing, or provide the information to the hospital associations to disseminate to their member hospitals.

(ii) During realignment, HHSC will calculate a hospital's final SDA using the add-on status initially determined by HHSC unless, within 14 calendar days after the date of the notification, the HHSC Provider Finance Department receives notification in writing from the hospital, in a format determined by HHSC, that any add-on status determined by HHSC is incorrect and:

(I) the hospital provides documentation of its eligibility for a different medical education add-on or teaching hospital designation;

(II) the hospital provides documentation that it is approved by Medicare for reclassification to a different CBSA;

(III) the hospital provides documentation of its eligibility for a different trauma designation; or

(IV) for state fiscal years 2017 and after, the hospital provides documentation of different data and demonstrates to HHSC's satisfaction that the different data should be used to calculate the safety-net add-on.

(iii) Annually, HHSC will calculate a hospital's final SDA using the add-on status initially determined during realignment by HHSC unless, within 14 calendar days after the date of the notification, HHSC receives notification in writing from the hospital (in a format determined by HHSC) that any add-on status determined by HHSC is incorrect and:

(I) the hospital provides documentation of a new teaching program or new teaching hospital designation; or

(II) the hospital provides documentation of its eligibility for a different trauma designation; or

(III) for state fiscal years 2017 and after, the hospital provides documentation of different data and demonstrates to HHSC's satisfaction that the different data should be used to calculate the safety-net add-on.

(iv) If a hospital fails to notify HHSC within 14 calendar days after the date of the notification that the add-on status as initially determined by HHSC includes one or more add-ons for which the hospital is not eligible, resulting in an overpayment, HHSC will recoup such overpayment and will prospectively reduce the SDA accordingly.

(4) Urban hospital final SDA calculations. HHSC calculates an urban hospital's final SDA as follows.

(A) Add all add-on amounts for which the hospital is eligible to the base SDA. These are the fully funded final SDAs.

(B) Multiply the final SDA determined in subparagraph (A) of this paragraph by each urban hospital's total relative weight of the base year claims.

(C) Sum the amount calculated in subparagraph (B) of this paragraph for all urban hospitals.

(D) Divide the total funds appropriated for reimbursing inpatient urban hospital services under this section by the amount determined in subparagraph (C) of this paragraph.

(E) To determine the budget-neutral final SDA:

(i) multiply the base SDA in paragraph (2) of this subsection by the percentage determined in subparagraph (D) of this paragraph;

(ii) multiply each of the add-ons described in paragraph (3)(B)-(E) by the percentage determined in subparagraph (D) of this paragraph; and

(iii) sum the results of clauses (i) and (ii) of this subparagraph.

(F) For new urban hospitals for which HHSC has no base year claim data, the final SDA is a base SDA plus any add-ons for which the hospital is eligible, multiplied by the percentage determined in subparagraph (D) of this paragraph.

(e) Rural hospital SDA calculations. HHSC will use the methodologies described in this subsection to determine the final SDA for each rural hospital.

(1) HHSC calculates the rural final SDA as follows.

(A) Base year cost. Calculate the total inpatient base year cost per rural hospital.

(i) Total the inpatient charges by hospital for the rural base year stays.

(ii) Multiply clause (i) by the hospital's inpatient RCC and the inflation update factors to inflate the rural base year stays to the current year of the realignment.

(B) Full-cost SDA. Calculate a hospital-specific full-cost SDA by dividing each hospital's base year cost, calculated as described in subparagraph (A) of this paragraph, by the sum of the relative weights for the rural base year stays.

(C) Calculating the SDA floor and ceiling.

(i) Calculate the average adjusted hospital-specific SDA from subparagraph (B) of this paragraph for all rural hospitals with more than 50 claims.

(ii) Calculate the standard deviation of the hospital-specific SDAs identified in subparagraph (B) of this paragraph for all rural hospitals with more than 50 claims.

(iii) Calculate an SDA floor as clause (i) minus clause (ii) multiplied by a factor, determined by HHSC to maintain budget neutrality.

(iv) Calculate an SDA ceiling as clause (i) plus clause (ii) multiplied by a factor, determined by HHSC to maintain budget neutrality.

(D) Assigning a final hospital-specific SDA.

(i) If the adjusted hospital-specific SDA from subparagraph (B) is less than the SDA floor in subparagraph (C)(iii) of this paragraph, the hospital is assigned the SDA floor amount as the final SDA.

(ii) If the adjusted hospital-specific SDA from subparagraph (B) is more than the SDA ceiling in subparagraph (C)(iv), the hospital is assigned the SDA ceiling amount as the final SDA.

(iii) Assign the adjusted hospital-specific SDA as the final SDA to each hospital not described in clauses (i) and (ii) of this subparagraph.

(2) Alternate SDA for labor and delivery. For labor and delivery services provided by rural hospitals on or after September 1, 2023, the final SDA is the alternate SDA for labor and delivery stays, which is equal to the final SDA determined in paragraph (1)(D) of this subsection plus an SDA add-on sufficient to increase paid claims by no less than $1,500.

(3) HHSC calculates a new rural hospital's final SDA as follows.

(A) For new rural hospitals for which HHSC has no base year claim data, the final SDA is the mean rural SDA in paragraph (1)(C)(i) of this subsection.

(B) The mean rural SDA assigned in subparagraph (A) of this paragraph remains in effect until the next realignment.

(4) Minimum Fee Schedule. Effective March 1, 2021, MCOs are required to reimburse rural hospitals based on a minimum fee schedule. The minimum fee schedule is the rate schedule as described above.

(5) Biennial review of rural rates. Every two years, HHSC will calculate new rural SDAs using the methodology in this subsection to the extent allowed by federal law and subject to limitations on appropriations.

(f) Final SDA for military and out-of-state. The final SDA for military and out-of-state hospitals is the urban hospital base SDA multiplied by the percentage determined in subsection (d)(4)(D) of this section.

(g) DRG statistical calculations. HHSC rebases the relative weights, MLOS, and day outlier threshold whenever the base SDAs for urban hospitals are recalculated. The relative weights, MLOS, and day outlier thresholds are calculated using data from urban hospitals and apply to all hospitals. The relative weights that were implemented for urban hospitals on September 1, 2012, apply to all hospitals until the next realignment.

(1) Recalibration of relative weights. HHSC calculates a relative weight for each DRG as follows.

(A) Base year claims are grouped by DRG.

(B) For each DRG, HHSC:

(i) sums the base year costs per DRG as determined in subsection (d) of this section;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG; and

(iii) divides the result in clause (ii) of this subparagraph by the universal mean, resulting in the relative weight for the DRG.

(2) Recalibration of the MLOS. HHSC calculates the MLOS for each DRG as follows.

(A) Base year claims are grouped by DRG.

(B) For each DRG, HHSC:

(i) sums the number of days billed for all base year claims; and

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG, resulting in the MLOS for the DRG.

(3) Recalibration of day outlier thresholds. HHSC calculates a day outlier threshold for each DRG as follows.

(A) Calculate for all claims the standard deviations from the MLOS in paragraph (2) of this subsection.

(B) Remove each claim with a length of stay (number of days billed by a hospital) greater than or equal to three standard deviations above or below the MLOS. The remaining claims are those with a length of stay less than three standard deviations above or below the MLOS.

(C) Sum the number of days billed by all hospitals for a DRG for the remaining claims in subparagraph (B) of this paragraph.

(D) Divide the result in subparagraph (C) of this paragraph by the number of remaining claims in subparagraph (B) of this paragraph.

(E) Calculate one standard deviation for the result in subparagraph (D) of this paragraph.

(F) Multiply the result in subparagraph (E) of this paragraph by two and add that to the result in subparagraph (D) of this paragraph, resulting in the day outlier threshold for the DRG.

(4) If a DRG has fewer than five base year claims, HHSC will use National Claim Statistics and a scaling factor to assign a relative weight, MLOS, and day outlier threshold.

(5) Adjust the MLOS, day outlier, and relative weights to increase or decrease with SOI to coincide with the National Claim Statistics.

(h) DRG grouper logic changes. Beginning September 1, 2021, HHSC may adjust DRG statistical calculations to align with annual grouper logic changes. The changes will remain budget neutral unless rates are rebased, and additional funding is appropriated by the legislature. The adjusted relative weights, MLOS, and day outlier threshold apply to all hospitals until the next adjustment or rebasing described in subsection (g) of this section.

(1) Base year claim data and rural base year stays are regrouped, using the latest grouping software version to determine DRG assignment changes by comparing the newly assigned DRG to the DRG assignment from the previous grouper version.

(2) For DRGs impacted by the grouping logic changes, relative weights must be adjusted. HHSC adjusts a relative weight for each impacted DRG as follows.

(A) Divide the total cost for all claims in the base year by the number of claims in the base year.

(B) Base year claims and rural base year stays are grouped by DRG, and for each DRG, HHSC:

(i) sums the base year costs for all claims in each DRG;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in each DRG; and

(iii) divides the result in clause (ii) of this subparagraph by the amount determined in subparagraph (A) of this paragraph, resulting in the relative weight for the DRG.

(3) Recalibration of the MLOS. HHSC calculates the MLOS for each DRG as follows.

(A) Base year claims and rural base year stays are grouped by DRG.

(B) For each DRG, HHSC:

(i) sums the number of days billed for all base year claims; and

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG, resulting in the MLOS for the DRG.

(4) Recalibration of day outlier thresholds. HHSC calculates a day outlier threshold for each DRG as follows.

(A) Calculate for all claims the standard deviations from the MLOS in paragraph (3) of this subsection.

(B) Remove each claim with a length of stay (number of days billed by a hospital) greater than or equal to three standard deviations above or below the MLOS. The remaining claims are those with a length of stay less than three standard deviations above or below the MLOS.

(C) Sum the number of days billed by all hospitals for a DRG for the remaining claims in subparagraph (B) of this paragraph.

(D) Divide the result in subparagraph (C) of this paragraph by the number of remaining claims in subparagraph (B) of this paragraph.

(E) Calculate one standard deviation for the result in subparagraph (D) of this paragraph and multiply by two.

(F) Add the result of subparagraph (E) of this paragraph to the result in subparagraph (D) of this paragraph, resulting in the day outlier threshold for the DRG.

(5) If a DRG has fewer than five base year claims, HHSC will use National Claim Statistics and a scaling factor to assign a relative weight, MLOS, and day outlier threshold.

(6) Adjust the MLOS, day outliers, and relative weights to increase or decrease with SOI to coincide with the National Claim Statistics.

(i) Reimbursements.

(1) Calculating the payment amount. HHSC reimburses a hospital a prospective payment for covered inpatient hospital services by multiplying the hospital's final SDA as calculated in subsections (c) - (f) of this section as applicable, by the relative weight for the DRG assigned to the adjudicated claim. The resulting amount is the payment amount to the hospital.

(2) Inpatient reimbursement exceptions. The following are exceptions to the reimbursement methodology defined in §355.8061(e) of this subchapter (relating to Outpatient Hospital Reimbursement).

(A) Long-Acting Reversible Contraceptive devices.

(B) Donor Human Milk Services.

(C) Certain High-Cost Clinician Administered Drugs.

(3) [~~(2)~~] Full payment. The prospective payment as described in paragraph (1) of this subsection is considered full payment

for covered inpatient hospital services. A hospital's request for payment in an amount higher than the prospective payment will be denied.

(4) [~~(3)~~] Day and cost outlier adjustments. HHSC pays a day outlier or a cost outlier for medically necessary inpatient services provided to clients under age 21 in all Medicaid participating hospitals that are reimbursed under the prospective payment system. If a patient age 20 is admitted to and remains in a hospital past his or her 21st birthday, inpatient days and hospital charges after the patient reaches age 21 are included in calculating the amount of any day outlier or cost outlier payment adjustment.

(A) Day outlier payment adjustment. HHSC calculates a day outlier payment adjustment for each claim as follows.

(i) Determine whether the number of medically necessary days allowed for a claim exceeds:

(I) the MLOS by more than two days; and

(II) the DRG day outlier threshold as calculated in subsection (g)(3) of this section.

(ii) If clause (i) of this subparagraph is true, subtract the DRG day outlier threshold from the number of medically necessary days allowed for the claim.

(iii) Multiply the DRG relative weight by the final SDA.

(iv) Divide the result in clause (iii) of this subparagraph by the DRG MLOS described in subsections (g)(2) or (h)(3) of this section to arrive at the DRG per diem amount.

(v) Multiply the number of days in clause (ii) of this subparagraph by the result in clause (iv) of this subparagraph.

(vi) Multiply the result in clause (v) of this subparagraph by 60 percent.

(vii) Multiply the allowed charges by the current interim rate to determine the cost.

(viii) Subtract the DRG payment amount calculated in clause (iii) of this subparagraph from the cost calculated in clause (vii) of this subparagraph.

(ix) The day outlier amount is the lesser of the amount in clause (vi) of this subparagraph or the amount in clause (viii) of this subparagraph.

(x) For urban and rural hospitals, multiply the amount in clause (ix) of this subparagraph by 90 percent to determine the final day outlier amount. For children's hospitals the amount in clause (ix) of this subparagraph is the final day outlier amount.

(B) Cost outlier payment adjustment. HHSC makes a cost outlier payment adjustment for an extraordinarily high-cost claim as follows.

(i) To establish a cost outlier, the cost outlier threshold must be determined by first selecting the lesser of the universal mean of base year claims and rural base year stays multiplied by 11.14 or the hospital's final SDA multiplied by 11.14.

(ii) Multiply the full DRG prospective payment by 1.5.

(iii) The cost outlier threshold is the greater of clause (i) or (ii) of this subparagraph.

(iv) Subtract the cost outlier threshold from the amount of reimbursement for the claim established under cost reimbursement principles described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(v) Multiply the result in clause (iv) of this subparagraph by 60 percent to determine the amount of the cost outlier payment.

(vi) For urban and rural hospitals, multiply the amount in clause (v) of this subparagraph by 90 percent to determine the final cost outlier amount. For children's hospitals the amount in clause (v) of this subparagraph is the final cost outlier amount.

(C) Final outlier determination.

(i) If the amount calculated in subparagraph (A)(ix) of this paragraph is greater than zero and the amount calculated in subparagraph (B)(vi) of this paragraph is greater than zero, HHSC pays the higher of the two amounts.

(ii) If the amount calculated in subparagraph (A)(ix) of this paragraph is greater than zero and the amount calculated in subparagraph (B)(vi) of this paragraph is less than or equal to zero, HHSC pays the day outlier amount.

(iii) If the amount calculated in subparagraph (B)(vi) of this paragraph is greater than zero and the amount calculated in subparagraph (A)(ix) of this paragraph is less than or equal to zero, HHSC pays the cost outlier amount.

(iv) If the amount calculated in subparagraph (A)(ix) of this paragraph and the amount calculated in subparagraph (B)(vi) of this paragraph are both less than or equal to zero HHSC will not pay an outlier for the admission.

(D) If the hospital claim resulted in a downgrade of the DRG related to reimbursement denials or reductions for preventable adverse events, the outlier payment will be determined by the lesser of the calculated outlier payment for the non-downgraded DRG or the downgraded DRG.

(5) [~~(4)~~] Interim bill. A hospital may submit a claim to HHSC before a patient is discharged, but only the first claim for that patient will be reimbursed the prospective payment described in paragraph (1) of this subsection. Subsequent claims for that stay are paid zero dollars. When the patient is discharged, and the hospital submits a final claim to ensure accurate calculation for potential outlier payments for clients younger than age 21, HHSC recoups the first prospective payment and issues a final payment in accordance with paragraphs (1) and (4)[~~(3)~~] of this subsection.

(6) [~~(5)~~] Patient transfers and split billing. If a patient is transferred, HHSC establishes payment amounts as specified in subparagraphs (A) - (D) of this paragraph. HHSC manually reviews transfers for medical necessity and payment.

(A) If the patient is transferred from a hospital to a nursing facility, HHSC pays the transferring hospital the total payment amount of the patient's DRG.

(B) If the patient is transferred from one hospital (transferring hospital) to another hospital (discharging hospital), HHSC pays the discharging hospital the total payment amount of the patient's DRG. HHSC calculates a DRG per diem and a payment amount for the transferring hospital as follows.

(i) Multiply the DRG relative weight by the final SDA.

(ii) Divide the result in clause (i) of this subparagraph by the DRG MLOS described in subsections (g)(2) or (h)(3) of this section, to arrive at the DRG per diem amount.

(iii) To arrive at the transferring hospital's payment amount:

(I) for a patient age 21 or older, multiply the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS, the transferring hospital's number of medically necessary days allowed for the claim, or 30 days; or

(II) for a patient under age 21, multiply the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS or the transferring hospital's number of medically necessary days allowed for the claim.

(C) HHSC makes payments to multiple hospitals transferring the same patient by applying the per diem formula in subparagraph (B) of this paragraph to all the transferring hospitals and the total DRG payment amount to the discharging hospital.

(D) HHSC performs a post-payment review to determine if the hospital that provided the most significant amount of care received the total DRG payment. If the review reveals that the hospital that provided the most significant amount of care did not receive the total DRG payment, an adjustment is initiated to reverse the payment amounts. The transferring hospital is paid the total DRG payment amount and the discharging hospital is paid the DRG per diem.

(j) Cost reports. Each hospital must submit an initial cost report at periodic intervals as prescribed by Medicare or as otherwise prescribed by HHSC.

(1) Each hospital must send a copy of all cost reports audited and amended by a Medicare intermediary to HHSC within 30 days after the hospital's receipt of the cost report. Failure to submit copies or respond to inquiries on the status of the Medicare cost report will result in provider vendor hold.

(2) HHSC uses data from these reports when realigning or rebasing to calculate base SDAs, DRG statistics, and interim rates and to complete cost settlements.

(k) Cost Settlement.

(1) The cost settlement process is limited by the TEFRA target cap set pursuant to the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)) for children's and state-owned teaching hospitals.

(2) Notwithstanding the process described in paragraph (1) of this subsection, HHSC uses each hospital's final audited cost report, which covers a fiscal year ending during a base year period, for calculating the TEFRA target cap for a hospital.

(3) HHSC may select a new base year period for calculating the TEFRA target cap at least every three years.

(4) HHSC increases a hospital's TEFRA target cap in years in which the target cap is not reset under this paragraph, by multiplying the hospital's target cap by the CMS Prospective Payment System Hospital Market Basket Index adjusted to the hospital's fiscal year.

(5) For a new children's hospital, the base year for calculating the TEFRA target cap is the hospital's first full 12-month cost reporting period occurring after the date the hospital is designated by Medicare as a children's hospital. For each cost reporting period after the hospital's base year, an increase in the TEFRA target cap will be applied as described in paragraph (4) of this subsection, until the TEFRA target cap is recalculated as described in paragraph (3) of this subsection.

(6) After a Medicaid participating hospital is designated by Medicare as a children's hospital, the hospital must submit written notification to HHSC's provider enrollment contact, including documents verifying its status as a Medicare children's hospital. Upon receipt of the written notification from the hospital, HHSC will convert the hospital to the reimbursement methodology described in this subsection retroactive to the effective date of designation by Medicare.

(l) Out-of-state children's hospitals. HHSC calculates the prospective payment rate for an out-of-state children's hospital as follows:

(1) HHSC determines the overall average cost per discharge for all in-state children's hospitals by:

(A) summing the Medicaid allowed cost from tentative or final cost report settlements for the base year; and

(B) dividing the result in subparagraph (A) of this paragraph by the number of in-state children's hospitals' base year claims.

(2) HHSC determines the average relative weight for all in-state children's hospitals' base year claims by:

(A) assigning a relative weight to each claim pursuant to subsections (g)(1)(B)(iii) or (h)(2)(B)(iii) of this section;

(B) summing the relative weights for all claims; and

(C) dividing by the number of claims.

(3) The result in paragraph (1) of this subsection is divided by the result in paragraph (2) of this subsection to arrive at the adjusted cost per discharge.

(4) The adjusted cost per discharge in paragraph (3) of this subsection is the payment rate used for payment of claims.

(5) HHSC reimburses each out-of-state children's hospital a prospective payment for covered inpatient hospital services. The payment amount is determined by multiplying the result in paragraph (4) of this subsection by the relative weight for the DRG assigned to the adjudicated claim.

(m) Merged hospitals.

(1) When two or more Medicaid participating hospitals merge to become one participating provider and the participating provider is recognized by Medicare, the participating provider must submit written notification to HHSC's provider enrollment contact, including documents verifying the merger status with Medicare.

(2) The merged entity receives the final SDA of the hospital associated with the surviving TPI. HHSC will reprocess all claims for the merged entity back to the effective date of the merger or the first day of the fiscal year, whichever is later.

(3) HHSC will not recalculate the final SDA of a hospital acquired in an acquisition or buyout unless the acquisition or buyout resulted in the purchased or acquired hospital becoming part of another Medicaid participating provider. HHSC will continue to reimburse the acquired hospital based on the final SDA assigned before the acquisition or buyout.

(4) When Medicare requires a merged hospital to maintain two Medicare provider numbers because they are in different CBSAs, HHSC assigns one base TPI with a separate suffix for each facility. Both suffixes receive the SDA of the primary hospital TPI which remains active.

(n) Adjustments. HHSC may adjust a hospital's final SDA in accordance with §355.201 of this chapter (relating to Establishment and Adjustment of Reimbursement Rates for Medicaid).

(o) Additional data. HHSC may require a hospital to provide additional data in a format and at a time specified by HHSC. Failure to

submit additional data as specified by HHSC may result in a provider vendor hold until the requested information is provided.

§355.8061. Outpatient Hospital Reimbursement.

(a) Introduction. The Texas Health and Human Services Commission (HHSC), or its designee reimburses outpatient hospital services under the reimbursement methodology described in this section.

(1) For services provided on and after the date that the modernized Medicaid Management Information System (MMIS) becomes operational, HHSC, or its designee, will reimburse all hospital providers based on an outpatient prospective payment system (OPPS). This includes all hospitals as defined in §355.8052 of this division (relating to Inpatient Hospital Reimbursement), including rural, urban, and Children's. The OPPS used for reimbursement is the 3M™ Enhanced Ambulatory Patient Groups (EAPG) calculator. EAPGs are a visit-based classification system intended to reflect the type of resources utilized in outpatient encounters for patients with similar clinical characteristics.

(2) The following are exceptions to the OPPS reimbursement methodology.

(A) Reimbursement for Long-Acting Reversible Contraceptive devices.

(B) Donor Human Milk Services. [~~Human Breast Milk Processing, Storage and Distribution.~~]

(C) Certain Drugs Paid to Managed Care Organizations on a Non-Risk Basis, as determined by HHSC.

(D) Cochlear implant devices and certain high cost nerve stimulators.

(E) Non-Emergent emergency room services as described in subsection (b)(1)(C) of this section.

(F) State owned teaching hospitals outpatient reimbursement is based on cost principals as described in subsection (b) of this section.

(3) For services prior to the date that the modernized MMIS becomes operational, reimbursement is outlined below in subsection (b) of this section except as described in subsections (c) and (d) of this section, HHSC will reimburse for outpatient hospital services based on a percentage of allowable charges and an outpatient interim rate.

(b) Interim reimbursement.

(1) HHSC will determine a percentage of allowable charges, which are charges for covered Medicaid services determined through claims adjudication.

(A) For high volume providers that received Medicaid outpatient payments equaling at least $200,000 during calendar year 2004.

(i) For children's hospitals and state-owned hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 76.03 percent, except as described in subparagraph (C) of this paragraph.

(ii) For rural hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 100 percent.

(iii) For all other providers, the percentage of allowable charges is 72.00 percent.

(B) For all providers not considered high volume providers as determined in paragraph (1)(A) of this subsection.

(i) For children's hospitals and state-owned hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 72.27 percent.

(ii) For rural hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 100 percent.

(iii) For all other providers, the percentage of allowable charges is 68.44 percent.

(C) For outpatient emergency department (ED) services that do not qualify as emergency visits are exempt from the OPPS reimbursement described in subsection (a)(1) of this section. For these services, which are listed in the Texas Medicaid Provider Procedures Manual and other updates on the claims administrator's website, HHSC will reimburse:

(i) rural hospitals, as defined in §355.8052 of this division, an amount not to exceed 65 percent of allowable charges after application of the methodology in paragraph (1)(A) and (1)(B) of this subsection, which will result in a payment that does not exceed 65 percent of allowable cost; and

(ii) all other hospitals, a flat fee set at a percentage of the Medicaid acute care physician office visit amount for adults.

(2) HHSC will determine an outpatient interim rate for each non-rural hospital, which is the ratio of Medicaid allowable outpatient costs to Medicaid allowable outpatient charges derived from the hospital's Medicaid cost report.

(A) For a non-rural hospital with at least one tentative cost report settlement completed prior to September 1, 2013, the interim rate is the rate in effect on August 31, 2013, except the hospital will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(B) For a non-rural new hospital that does not have at least one tentative cost report settlement completed prior to September 1, 2013, the default interim rate is 50 percent until the interim rate is adjusted as follows.

(i) If the non-rural hospital files a short-period cost report for its first cost report, the hospital will be assigned the interim rate calculated upon completion of the hospital's first tentative cost report settlement.

(ii) The hospital will be assigned the interim rate calculated upon completion of the hospital's first full-year tentative cost report settlement.

(iii) The hospital will retain the interim rate calculated as described in clause (ii) of this subparagraph, except it will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(C) Interim claim reimbursement for non-rural hospitals is determined by multiplying the amount of a hospital's outpatient allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection by the outpatient interim rate in effect on the date of service.

(D) Interim claim reimbursement determined in subparagraph (C) of this paragraph will be cost-settled at both tentative and final audit of a non-rural hospital's cost report. The calculation of allowable costs will be determined based on the amount of allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection.

(i) Interim payments for claims with a date of service prior to September 1, 2013, will be cost settled.

(ii) Interim payments for claims with a date of service on or after September 1, 2013, will be included in the cost report interim rate calculation, but will not be adjusted due to cost settlement unless the settlement calculation indicates an overpayment.

(iii) HHSC will calculate an interim rate at tentative and final cost settlement for the purposes described in subparagraph (B) of this paragraph.

(iv) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year exceeded the allowable costs for those services, HHSC will recoup the amount paid to the hospital in excess of allowable costs.

(v) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year was less than the allowable costs for those services, HHSC will not make additional payments through cost settlement to the hospital for service dates on or after September 1, 2013.

(3) HHSC will determine an outpatient interim rate for each rural hospital, which is the ratio of Medicaid allowable outpatient costs to Medicaid allowable outpatient charges derived from the hospital's Medicaid cost report.

(A) For a rural hospital with at least one tentative cost report settlement completed prior to September 1, 2021, the interim rate effective on September 1, 2021, is the rate calculated in the latest initial cost report with an additional percentage increase, not to exceed an interim rate of 100 percent. After September 1, 2021, a rural hospital will be assigned the interim rate calculated upon completion of each initial or amended initial cost report, with an additional percentage increase, not to exceed an interim rate of 100 percent.

(B) For a new rural hospital that does not have at least one initial cost report completed prior to September 1, 2021, the default interim rate is 50 percent until the interim rate is adjusted as follows.

(i) If the rural hospital files a short-period cost report for their first cost report, the hospital will continue to receive the default rate until completion of the first full-year initial cost report.

(ii) The rural hospital will be assigned the interim rate calculated upon completion of a review of the hospital's first full-year initial or amended initial cost report, with an additional percentage increase, not to exceed an interim rate of 100 percent.

(C) Interim claim reimbursement for a rural hospital is determined by multiplying the amount of a hospital's outpatient allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection by the outpatient interim rate in effect on the date of service as described in subparagraph (A) of this paragraph.

(D) Interim claim reimbursement determined in subparagraph (C) of this paragraph will not be cost-settled for services rendered on or after September 1, 2021.

(c) Outpatient hospital surgery. Outpatient hospital non-emergency surgery is reimbursed in accordance with the methodology for ambulatory surgical centers as described in §355.8121 of this subchapter (relating to Reimbursement).

(d) Outpatient hospital imaging.

(1) For services provided on and after the date that the modernized MMIS becomes operational, all hospitals will be reimbursed based on an outpatient prospective payment system (OPPS). The OPPS used for reimbursement is the 3M™ Enhanced Ambulatory Patient Groups (EAPG) calculator.

(2) For services prior to the date that the modernized MMIS becomes operational, for all hospitals except rural hospitals, as defined in §355.8052 of this division, outpatient hospital imaging services are not reimbursed under the outpatient reimbursement methodology described in subsection (b) of this section. Outpatient hospital imaging services are reimbursed according to an outpatient hospital imaging service fee schedule that is based on a percentage of the Medicare Outpatient Prospective Payment System fee schedule for similar services. If a resulting fee for a service provided to any Medicaid beneficiary is greater than 125 percent of the Medicaid adult acute care fee for a similar service, the fee is reduced to 125 percent of the Medicaid adult acute care fee.

(3) For services prior to the date that the modernized MMIS becomes operational, for rural hospitals, outpatient hospital imaging services are reimbursed based on a percentage of the Medicare Outpatient Prospective Payment System fee schedule for similar services.

(e) Outpatient fee based reimbursement. The following inpatient services will be reimbursed on a separate outpatient claim.

(1) Certain High-Cost Clinician Administered Drugs.

(2) Donor Human Milk Services.

(3) Long-Acting Reversible Contraceptive devices.

(f) [~~(e)~~] Minimum Fee Schedule. Effective September 1, 2020, Managed Care Organizations are required to reimburse rural hospitals based on a minimum fee schedule. The minimum fee schedules are the rates specific to rural hospitals, as described in subsections (b) - (d) of this section.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405407
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 487-3480

♦ ♦ ♦

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 23, Single Family HOME Program Rule. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the HOME Program.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department, nor a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Single Family HOME Program.

7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal will not negatively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed chapter would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 22, 2024, to December 27, 2024, to receive input on the proposed repealed chapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Erin Mikulenka, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email HOME@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, December 27, 2024.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §23.1, §23.2

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

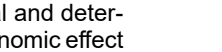
§23.1. Applicability and Purpose.

§23.2. 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.

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405418
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-3959



SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

10 TAC §§23.20 - 23.29

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

§23.20. Availability of Funds and Regional Allocation Formula.

§23.21. Application Forms and Materials and Deadlines.

§23.22. Contract Award Application Review Process for Open Application Cycles.

§23.23. Reservation System Participant Review Process.

§23.24. Administrative Deficiency Process.

§23.25. General Threshold Criteria.

§23.26. Contract Benchmarks and Limitations.

§23.27. Reservation System Participant (RSP) Agreement.

§23.28. General Administrative Requirements.

§23.29. Resale and Recapture Provisions.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405419
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER C. HOMEOWNER RECONSTRUCTION ASSISTANCE PROGRAM

10 TAC §§23.30 - 23.32

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

§23.30. Homeowner Reconstruction Assistance (HRA) Threshold and Selection Criteria.

§23.31. Homeowner Reconstruction Assistance (HRA) General Requirements.

§23.32. Homeowner Reconstruction Assistance (HRA) Administrative Requirements.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405420
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER D. CONTRACT FOR DEED PROGRAM

10 TAC §§23.40 - 23.42

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

§23.40. Contract for Deed (CFD) Threshold and Selection Criteria.

§23.41. Contract for Deed (CFD) General Requirements.

§23.42. Contract for Deed (CFD) Administrative Requirements.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405421
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER E. TENANT-BASED RENTAL ASSISTANCE PROGRAM

10 TAC §§23.50 - 23.52

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

§23.50. Tenant-Based Rental Assistance (TBRA) Threshold and Selection Criteria.

§23.51. Tenant-Based Rental Assistance (TBRA) General Requirements.

§23.52. Tenant-Based Rental Assistance (TBRA) Administrative Requirements.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405422
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER F. SINGLE FAMILY DEVELOPMENT PROGRAM

10 TAC §§23.60 - 23.62

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

§23.60. Single Family Development (SFD) Threshold and Selection Criteria.

§23.61. Single Family Development (SFD) General Requirements.

§23.62. Single Family Development (SFD) Administrative Requirements.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405423
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER G. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC)

10 TAC §§23.70 - 23.72

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

§23.70. Homebuyer Assistance with New Construction (HANC) Threshold and Selection Criteria.

§23.71. Homebuyer Assistance with New Construction (HANC) General Requirements.

§23.72. Homebuyer Assistance with New Construction (HANC) Administrative Requirements.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405490
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 23, Single Family HOME Program Rule. The purpose of the proposed new chapter is to update the rule to implement a more germane rule and better align administration to state and federal requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed new rules do not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Department's Single Family HOME Program activities, including Homeowner Reconstruction Assistance, Contract for Deed, Tenant-Based Rental Assistance, Single Family Development, and Homebuyer Assistance with New Construction.

2. The proposed new rules do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The proposed new rules do not require additional future legislative appropriations.

4. The proposed new rule will not result in an increase in fees paid to the Department, nor a decrease in fees paid to the Department.

5. The proposed new rules are not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed new rule will not expand or repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Department's Single Family HOME Program.

7. The proposed new rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111.

1. The Department has evaluated this proposed new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 60 rural communities currently participating in construction activities under the Single Family HOME Program that are subject to the proposed new rule for which no economic impact of the rules is projected during the first year the rules are in effect.

3. The Department has determined that because the proposed new rules serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed new rules do not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed new rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed new rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that participation in the Single Family HOME Program is at the discretion of the local government or other eligible subrecipients, there are no "probable" effects of the proposed new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the proposed new rules are in effect, the public benefit anticipated as a result of the rule will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the new section because the HOME Program provides reimbursement to those entities that are subject to the rule for the cost of compliance with the rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the proposed new rules are in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the Single Family HOME Program is a federally funded program, and no increase in the requirement to match federal funds is proposed in the rule.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 22, 2024, to December 27, 2024, to receive input on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Erin Mikulenka, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email HOME@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, December 27, 2024.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §23.1, §23.2

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new rules affect no other code, article, or statute.

§23.1. Applicability and Purpose.

(a) Applicability. This Chapter governs the use and administration of all HOME single family Activities funds provided to the Texas Department of Housing and Community Affairs (the "Department") by the U.S. Department of Housing and Urban Development (HUD) pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 as amended (42 U.S.C. §§12701 - 12839) and HUD regulations at 24 CFR Part 92, as amended. Chapter 20 of this Title relating to Single Family Programs Umbrella Rule and Chapters 1 and 2 of this Title will apply to all single family activities, including Single Family Development. Unless otherwise noted herein or required by law, all provisions of this Chapter apply to any Application for a Contract award, or any Reservation submitted or received on or after the date of adoption of this Chapter. Existing Agreements or current pending Applications may be amended in writing at the request of the Administrator or Applicant, and with Department approval, so that all provisions of this Chapter apply to the Agreement or Application. Amendments proposing only partial adoption of this Chapter are prohibited. No amendment adopting this Chapter shall be granted if, in the discretion of the Department, any of the provisions of this Chapter conflict with the Notice of Funding Availability (NOFA) under which the existing Agreement was awarded or Application was submitted. The Governing Board may waive rules subject to this Chapter for good cause to meet the purpose of the HOME Program as described further in subsection (b) of this section, provided the waiver does not conflict with the federal regulations governing the use of these funds, or impact federally imposed obligation or expenditure deadlines governing the HOME Program.

(b) Purpose. The State's HOME Program is designed to:

(1) focus on the areas with the greatest housing need described in the State Consolidated Plan;

(2) provide funds for home ownership and rental housing through acquisition, Reconstruction, New Construction, and Tenant-Based Rental Assistance;

(3) promote partnerships among all levels of government and the private sector, including nonprofit and for-profit organizations; and

(4) provide low, very low, and extremely low-income families with affordable, decent, safe, and sanitary housing.

§23.2. Definitions.

These words when used in this Chapter shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions may be found in Tex. Gov't Code Chapter 2306 or Chapter 20 of this Title relating to Single Family Programs Umbrella Rule.

(1) Area Median Family Income--The income limits published annually by the U.S. Department of Housing and Urban Development (HUD) for the Housing Choice Voucher Program that is used by the Department to determine the eligibility of Applicants for the HOME Program, also referred to as AMFI. All Households assisted with HOME funds must have income at or below 80% AMFI.

(2) CFR--Code of Federal Regulations.

(3) Commitment of Funds--Occurs when the funds are awarded to an Administrator for a specific Activity approved by the Department and set up in the Integrated Disbursement and Information System (IDIS) established by HUD.

(4) Construction Completion Date--The Construction Completion Date shall be the date of completion of all improvements as stated on the affidavit of completion, provided that the affidavit is filed within ten days of the stated date of completion or the date of filing as outlined in Tex. Prop. Code §53.106.

(5) Date of Assistance--The date that assistance is provided to the Household. For Tenant-Based Rental Assistance, this is the start date of the rental subsidy. For Homeowner Reconstruction Assistance and Contract for Deed, this is the date of the loan closing or date of execution of grant agreement. For Single Family Development and Homebuyer Assistance with New Construction, this is the date that the Household executes the purchase agreement.

(6) Development Site--The area, or if scattered site, areas on which the development is proposed to be located.

(7) Direct Activity Costs--The total costs of hard construction costs, demolition costs, aerobic septic systems, refinancing costs (as applicable), acquisition and closing costs for acquisition of real property, and rental and utility subsidy and deposits.

(8) HOME Final Rule--The regulations with amendments promulgated at 24 CFR, Part 92 as published by HUD for the HOME Investment Partnerships Program at 42 U.S.C. §§12701 - 12839.

(9) Homeownership--Ownership in fee simple title in a one to four unit dwelling or in a condominium unit, or equivalent form of ownership approved by the Department. Homeownership is not right to possession under a contract for deed, installment contract, or land contract that has not converted into a deed for title ownership.

(10) Identity of Interest--An acquisition will be considered to be an Identity of Interest transaction when the purchaser has any financial interest whatsoever in the seller or lender or is subject to common control, or any family relationship by virtue of blood, marriage, or adoption exists between the purchaser and the seller or lender.

(11) Match--Funds contributed to an Activity that meet the requirements of 24 CFR §§92.218 - 92.220. Match contributed to an Activity does not include mortgage revenue bonds, non-HOME-assisted projects, and cannot include any other sources of Department funding unless otherwise approved in writing by the Department.

(12) New Construction--Construction of a new Single Family Housing Unit which involves:

(A) Construction on a lot that was not the site of a Single Family Housing Unit on the date HOME assistance was requested;

(B) Construction of a new Single Family Housing Unit following acquisition; or

(C) Construction of a site-built Single Family Housing Unit that replaces a manufactured housing unit.

(13) Person--Any individual, partnership, corporation, association, unit of government, community action agency, or public or private organization of any character.

(14) Persons with Special Needs--Individuals or categories of individuals determined by the Department to have unmet housing needs as provided in the Consolidated Plan and the State's One Year Action Plan.

(15) Predevelopment Costs--Costs consistent with 24 CFR §92.212 related to a specific eligible Activity including:

(A) Predevelopment housing project costs that the Department determines to be customary and reasonable, including but not limited to consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, and site control;

(B) Pre-construction housing project costs that the Department determines to be customary and reasonable, including but not limited to, the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees; and

(C) Predevelopment costs do not include general operational or administrative costs.

(16) Principal--A Person, or Persons, that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) Partnerships: Principals include all General Partners, special limited partners, and Principals with ownership interest;

(B) Corporations: Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a ten percent or more interest in the corporation; and

(C) Limited liability companies: Principals include all managing members, members having a ten percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

(17) Reconstruction--Has the same meaning as the defined term in 24 CFR §92.2.

(18) Reservation System Participant (RSP)--Administrator who has executed a written Agreement with the Department that allows for participation in the Reservation System.

(19) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application and/or Agreement that the Administrator will serve.

(20) Third Party--A Person who is not:

(A) An Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(B) An Affiliate, Affiliated Party to the Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(C) A Person receiving any portion of the administration, contractor fee, or developer fee.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405424
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-3959

SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new rule affects no other code, article, or statute.

§23.20. Availability of Funds and Regional Allocation Formula.

Funds made available through an open Application cycle and subject to regional allocation formula shall be made available to each region and subregion for a time period to be specified in the applicable NOFA, after which the funds remaining shall collapse and be made available statewide.

§23.21. Application Forms and Materials and Deadlines.

(a) The Department will produce an Application to satisfy the Department's requirements to be qualified to administer HOME activities. The Application will be available on the Department's website.

(b) The Department must receive all Applications by the deadline specified in the NOFA.

§23.22. Application Review Process.

(a) Contract award review process for open Application cycles. An Application received by the Department in response to an open Application cycle NOFA will be assigned a "Received Date." An Application will be prioritized for review based on its "Received Date." Application acceptance dates may be staggered under an open Application cycle to prioritize Applications which propose to serve areas identified in Tex. Gov't Code §2306.127 as priority for certain communities. An Application with outstanding administrative deficiencies under §23.24 of this chapter, may be suspended from further review until all administrative deficiencies have been cured or addressed to the Department's satisfaction. Applications that have completed the review process may be presented to the Board for approval with priority over Applications that continue to have administrative deficiencies at the time Board materials are prepared, regardless of "Received Date." If all funds available under a NOFA are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed.

(b) Reservation System Participant review process. An Application for a Reservation System Participant (RSP) Agreement shall be reviewed and if approved under chapter 1, Subchapter C of this title, as amended or superseded, concerning Previous Participation Review of Department Awards, and not denied under §23.24 of this chapter, will be drafted and processed in the order in which it was accepted to be executed and made effective.

(c) Administrative deficiency review process. The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via an email or if an email address is not provided in the Application, by facsimile to the Applicant. Responses must be submitted electronically to the Department. A review of the Applicant's response may reveal that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to being resolved. Department staff may, in good faith, provide an Applicant confirmation that an administrative deficiency response has been received or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determination regarding the sufficiency of documentation submitted to cure an administrative deficiency as well as the distinction between material and non-material missing information are reserved for the Executive Director or authorized designee, and Board, as applicable.

(d) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, and may not add any set-asides, except in response to a direct request from the Department to remedy an administrative deficiency or by amendment of an Application after the Board approval of a HOME award. An administrative deficiency may not be cured if it would, in the Department's determination, substantially change an Application, or if the Applicant provides any new unrequested information to cure the deficiency.

(e) The time period for responding to a deficiency notice commences on the first day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m., central time, on the 14th day following the date of the deficiency notice, the application may be terminated. The Department may accept a corrected Board Resolution submitted after the deficiency deadline on the condition that the corrected Board Resolution resolves the deficiencies to the satisfaction of the Department, but the Board Resolution must be received and deemed satisfactory by the Department before the RSP Agreement or Contract start date. Applicants that have been terminated may reapply.

§23.23. General Threshold Criteria.

General Threshold. All Applicants and Applications to administer a HOME Program award from the Department must submit or comply with the following:

(1) An Applicant certification of compliance with state rules promulgated by the Department, and federal laws, rules and guidance governing the HOME Program as provided in the Application.

(2) A Resolution from the Applicant's direct governing body which includes:

(A) Authorization of the submission of the Application specifying the NOFA under which funds are requested for Contract award Applications;

(B) Commitment and amount of cash reserves, if applicable, for use during the Contract or RSP Agreement term;

(C) Source of funds for Match obligation and Match amount to be contributed as a percentage of Direct Activity Costs, if applicable;

(D) Title of the person authorized to represent the organization and who also has signature authority to execute a Contract and grant agreement or loan documents, as applicable, unless otherwise stated; and

(E) Date that the resolution was passed by the governing body, which must be within six months preceding Application submission for Reservation System Participation Agreement Applications, and no earlier than the date of the Department's Governing Board approval of the NOFA for Contract award Applications.

(3) An Applicant must be registered in the System for Award Management (SAM) and have a current Unique Entity Identification (UEID) number.

(4) Service Area. Applicants must include the Service Area proposed for the Contract or RSP Agreement for all Activity types. Administrators must state whether the Service Area is limited to only certain cities within any county in the proposed Service Area.

(A) The Service Area for TBRA must include the entire rural or urban area of a county as identified in the Application, excluding Participating Jurisdictions. However, Service Areas must include Participating Jurisdictions as applicable if the Agreement includes access to the Persons with Disabilities set-aside; or

(B) The Service Area may be limited to the boundaries of the jurisdiction of the Applicant if the Applicant for TBRA is a unit of local government.

(5) Match. The Department shall use population figures from the most recently available U.S. Census Bureau's American Community Survey (ACS) as of the date of submission of the Application to determine the applicable Match for cities with a population of less than 5,000 persons. The Department shall use the population figures from the most recent Population Estimates from the U.S. Census Bureau's QuickFacts for all counties and for cities with a population that exceeds 5,000 persons. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this paragraph. Such incentives may be established as selection criteria in the NOFA.

(A) Excluding Applications under the disaster relief and persons with disabilities set-asides, Match shall be required for Homeowner Reconstruction Assistance (HRA) and Homebuyer Assistance with New Construction (HANC) based on the tiers described in clauses (i) and (ii) of this subparagraph:

(i) Zero percent of Direct Activity Costs, exclusive of Match, is required as Match when:

(I) the Service Area includes the entire unincorporated area of a county and where the population of Administrator's Service Area is less than or equal to 20,000 persons; or

(II) When the Service Area does not include the entire unincorporated area of a county and the population of the Administrator's Service Area is less than or equal to 3,000 persons.

(ii) One percent of Direct Activity Costs, exclusive of Match, is required as Match for every 1,000 in population to a maximum of 25 percent.

(B) Applicants that charge customary fees related to the construction of single-family housing must waive all fees that otherwise apply to any HOME Activity. These fee waivers must be reported as Match, regardless of whether Match is otherwise required based on population and activity type. Applicants must submit their schedule of fees related to construction, if applicable, with their Application for a Contract or Reservation System Participation Agreement.

(6) Cash Reserve Threshold Requirements. Documentation, as described in subparagraphs (A) and (B) of this paragraph, must be submitted at the time of Application that demonstrates that the Applicant has at least $80,000 in cash reserves if the Application includes construction Activities, and at least $30,000 in cash reserves if the Application is for Tenant-Based Rental Assistance only. The cash reserves may be utilized to facilitate administration of the program, and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) evidence of an available line of credit or equivalent tool in an amount equal to or exceeding the requirement in this paragraph.

(7) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

(8) Applications proposing development using the Community Housing Development Organization (CHDO) set-aside must submit an Application for CHDO certification. Applicants must meet the requirement for CHDO certification as defined in §13.2 of this title (relating to the Multifamily Direct Loan Rule).

(9) Other Threshold and/or Selection criteria for this Activity may be outlined in the NOFA.

(10) An Application must be substantially complete when received by the Department. An Application will be terminated if an entire tab of the Application is missing; has excessive omissions of documentation from the threshold or selection criteria or uniform Application documentation; or is so unclear, disjointed, or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. To the extent that a review was able to be performed, specific reasons for the Department's termination will be included in the notification sent to the Applicant but, because of the suspended review, may not include an all-inclusive list of deficiencies in the Application.

§23.24. Contract Benchmarks and Limitations.

(a) Contract Award Funding Limits. Limits on the total amount of a Contract award will be established in the NOFA.

(b) Contract Award Terms. Homeowner Reconstruction Assistance awards will have a Contract term of not more than 21 months, exclusive of any applicable affordability period or loan term. Single Family Development awards will have a Contract term of not more than 24 months, exclusive of any applicable affordability period or loan term. Tenant-Based Rental Assistance awards will have a Contract term of not more than 36 months.

(c) Contract Award Benchmarks. Administrators must have attained environmental clearance for the contractually required number of Households served within six months of the effective date of the Contract. Contract Administrators must submit to the Department complete Activity setup information for the Commitment of Funds of all contractually required Households in accordance with the requirements herein within nine months from the effective date of the Contract. All remaining funds will be deobligated and reallocated in accordance with chapter 1 of this title relating to Reallocation of Financial Assistance.

(d) Voluntary deobligation. The Administrator may fully deobligate funds in the form of a written request signed by the signatory, or successor thereto, of the Contract. The Administrator may partially deobligate funds under a Contract in the form of a written request from the signatory if the letter also deobligates the associated number of targeted Households, funds for administrative costs, and Match and the partial deobligation would not have impacted the award of the Contract. Voluntary deobligation of a Contract does not limit an Administrator's ability to participate in an open application cycle.

(e) The Department may request information regarding the performance or status under a Contract prior to a Contract benchmark or at various times during the term of a Contract. Administrator must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds and ultimately in termination of the Contract by the Department.

(f) Pre-Contract Costs.

(1) The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the Contract in accordance with 24 CFR §92.212 and at the sole discretion of the Department.

(2) A Community Housing Development Organization may be reimbursed for Predevelopment Costs as defined in this chapter for an Activity funded under Single Family Development.

(3) In no event will the Department reimburse expenses incurred more than six months prior to Governing Board approval of the Administrator's award.

(g) Amendments to Contract awards will be processed in accordance with chapter 20 of this title, relating to Single Family Programs Umbrella Rule.

§23.25. Reservation System Participant (RSP) Agreement.

(a) Terms of Agreement. The term of an RSP Agreement will not exceed 36 months. Execution of an RSP Agreement does not guarantee the availability of funds under a reservation system. Reservations submitted under an RSP agreement will be subject to the provisions of this chapter in effect as of the date of submission by the Administrator.

(b) Limits on Number of Reservations. Except for Activities submitted under the Disaster set-aside, RSP Administrators may have no more than five Reservations per county within the RSP's Service Area submitted to the Department for approval at any given time, except that Tenant-Based Rental Assistance Reservations submitted for approval under an RSP Agreement is limited to 30 at any given time.

(c) Extremely Low-Income Households. Except for Households submitted under the Disaster set-aside, each RSP will be required to serve at least one extremely low-income Household out of every four Households submitted and approved for assistance. For purposes of this subsection, extremely low-income is defined as families that are either at or below 30 percent AMFI for the county in which they will reside or have an income that is lower than the statewide 30 percent income limit without adjustments to HUD limits.

(d) Match. Administrators must meet the Match requirement per Activity approved for assistance. Match may not be transferred from one Activity to another Activity.

(e) Completion of Construction. For Activities involving construction, construction must be complete within 12 months from the Commitment of Funds for the Activity, unless amended in accordance with subsection (g) of this section.

(f) Household commitment contract term. The term of a Household commitment contract may not exceed 12 months, except that the Household commitment contract term for Tenant-Based Rental Assistance may not exceed 24 months. Household commitment contracts may commence after the end date of an RSP Agreement only in cases when the Administrator has submitted a Reservation on or before the termination date of the RSP Agreement.

(g) Amendments to Household commitment contracts may be considered by the Department provided the approval does not conflict with the federal regulations governing use of these funds, or impact federally imposed obligation or expenditure deadlines.

(1) The Executive Director's authorized designee may approve an amendment that extends the term of a Household commitment contract by not more than six months, except that the term of a Household commitment contract for Tenant-Based Rental Assistance may not be extended to exceed a total Household commitment contract term of 24 months.

(2) The Executive Director's authorized designee may approve one or more amendments to a Household commitment contract to:

(A) extend the Construction Completion Date by not more than six months;

(B) extend the term of rental subsidy up to a total term of 24 months;

(C) extend the draw period by not more than three months after the Construction Completion Date or termination of rental subsidy; or

(D) to increase Activity funds within the limitations set forth in this chapter.

(3) The Executive Director may approve amendments to a Household commitment contract, except amendments to extend the contract term of a Household Commitment contract by more than 12 months.

(h) Pre-agreement costs. The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the RSP Agreement in accordance with 24 CFR §92.212 and at the sole discretion of the Department. In no event will the Department reimburse expenses incurred more than six months prior to the effective date of the RSP Agreement.

(i) Administrator must remain in good standing with the Department, the state of Texas, and HUD. If an Administrator is not in good standing, participation in the Reservation System will be suspended and may result in termination of the RSP Agreement.

§23.26. General Administrative Requirements.

Unless otherwise provided in this chapter, the Administrator or Developer must comply with the requirements described in paragraphs (1) - (21) of this section, for the administration and use of HOME funds:

(1) Complete training, as applicable.

(2) Provide all applicable Department Housing Contract System access request information and documentation requirements.

(3) Establish and maintain sufficient records at its regular place of business and make available for examination by the Department, HUD, the U.S. General Accounting Office, the U.S. Comptroller, the State Auditor's Office of Texas, the Comptroller of Public Accounts, or any of their duly authorized representatives, throughout the applicable record retention period.

(4) For non-Single Family Development Contracts, develop and establish written procurement procedures that comply with federal, state, and local procurement requirements including:

(A) Develop and comply with written procurement selection criteria and committees, including appointment of a procurement officer to manage any bid process;

(B) Develop and comply with a written code of conduct governing employees, officers, or agents engaged in administering HOME funds;

(C) Ensure consultant or any procured service provider does not participate in or direct the process of procurement for services. A consultant cannot assist in their own procurement before or after an award is made;

(D) Ensure that procedures established for procurement of building construction contractors do not include requirements for the provision of general liability insurance coverage in an amount to

exceed the value of the contract and do not give preference for contractors in specific geographic locations;

(E) Ensure that building construction contractors are procured in accordance with State and Federal regulations for single family HOME Activities;

(F) To the extent that a set of architectural plans are generated and used by an Administrator for more than one Single Family Housing Unit, the Department will reimburse only for the first time a set of architectural plans is used, unless any subsequent site specific fees are paid to a Third Party architect or licensed engineer for the reuse of the plans on that subsequent specific site, as demonstrated by a contract with the third-party;

(G) Ensure that professional service providers (consultants) are procured using an open competitive procedure and are not procured based solely on the lowest priced bid; and

(H) Ensure that any Request for Proposals or Invitation for Bid include:

(i) an equal opportunity disclosure and a notice that bidders are subject to search for listing on the Excluded Parties List;

(ii) bidders' protest rights and an outline of the procedures bidders must take to address procurement related disputes;

(iii) a conflict of interest disclosure;

(iv) a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must include complete, adequate, and realistic specifications;

(v) for sealed bid procedures, disclose the date, time and location for public opening of bids and indicate a fixed-price contract;

(vi) must not have a term of services greater than five years; and

(vii) for competitive proposals, disclose the specific election/evaluation criteria.

(5) In instances where a potential conflict of interest exists, follow procedures to submit required documentation to the Department sufficient to submit an exception request to HUD for any conflicts prohibited by 24 CFR §92.356. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict by newspaper publication, a description of how the public disclosure was made, and an attorney's opinion that the conflict does not violate state or local law. No HOME funds will be committed to or reserved to assist a Household impacted by the conflict of interest regulations until HUD has granted an exception to the conflict of interest provisions.

(6) Perform environmental clearance procedures, as required, before acquiring any Property or before performing any construction activities, including demolition, or before the occurrence of the loan closing, if applicable.

(7) Develop and comply with written Applicant intake and selection criteria for program eligibility that promote and comply with Fair Housing requirements and the State's One Year Action Plan.

(8) Complete Applicant intake and Applicant selection. Notify each Applicant Household in writing of either acceptance or denial of HOME assistance within 60 days following receipt of the intake application.

(9) Determine the income eligibility of a Household using the "Annual Income" as defined at 24 CFR §5.609, by using the list of income included in HUD Handbook 4350.3 (or most recent version), and excluding from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income. The Single Family HOME Program will implement the applicable requirements of the Housing Opportunity Through Modernization Act (HOTMA) not later than January 1, 2025.

(10) Complete an updated income eligibility determination of a Household if the date of certification is more than six months prior to the Date of Assistance.

(11) For single family Activities involving construction, perform initial inspection in accordance with chapter 20 of this title (relating to Single Family Programs Umbrella Rule). Property inspections must include photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom and each bathrooms. The inspection must be signed and dated by the inspector and the Administrator. The photographs submitted with the initial inspection should evidence the deficiencies noted on the initial inspection and must clearly show the entire property, including other buildings located on the property.

(12) Submit a substantially complete request for the Commitment or Reservation of Funds, loan closing preparation, and for disbursements. Administrators must upload all required information and verification documentation in the Housing Contract System. Requests determined to be substantially incomplete will not be reviewed and may be disapproved by the Department. Expenses for which reimbursement is requested must be documented as incurred. If the Department identifies administrative deficiencies during review, the Department will allow a cure period of 14 calendar days beginning at the start of the first day following the date the Administrator or Developer is notified of the deficiency. If any administrative deficiencies remain after the cure period, the Department, in its sole discretion, may disapprove the request. Disapproved requests will not be considered sufficient to meet the performance benchmark and shall not constitute a Reservation of Funds.

(13) Submit signed program documents timely as may be required for the completion of a Commitment or Reservation of Funds, and for closing preparation of the loan or grant documents. Department reserves the right to cancel or terminate Activities when program documents are not executed timely, in the Department's sole and reasonable discretion.

(14) Not proceed or allow a contractor to proceed with construction, including demolition, on any Activity or development without first completing the required environmental clearance procedures, preconstruction conference and receiving notice to proceed, if applicable, and execution of grant agreement or loan closing with the Department, whichever is applicable.

(15) Submit any Program Income received by the Administrator or Developer to the Department within 14 days of receipt; any fund remittance to the Department, including refunds, must include a written explanation of the return of funds, the Contract number, name of Administrator or Developer, Activity address and Activity number, and must be sent to the Department's accounting division.

(16) Submit required documentation for project completion reports no later than 60 days after the completion of the Activity, unless this term is extended though amendment.

(17) For Contract awards, submit certificate of Contract Completion within 14 days of the Department's request.

(18) Submit to the Department reports or information regarding the operations related to HOME funds provided by the Department.

(19) Submit evidence with the final draw for construction related activities that the builder has provided a one-year warranty specifying at a minimum that materials and equipment used by the contractor will be new and of good quality unless otherwise required, the work will be free from defects other than those inherent in the work as specified, and the work will conform to the requirements of the contract documents.

(20) Provide the Household all warranty information for work performed by the builder and any materials purchased for which a manufacturer or installer's warranty is included in the price.

(21) If required by state or federal law, place the appropriate bonding requirement in any contract or subcontract entered into by the Administrator or Developer in connection with a HOME award. Failure to include the bonding requirement in subcontracts may result in termination of the RSP Agreement.

§23.27. Project Cost Limitations.

(a) Direct Activity Costs for construction, exclusive of Match funds, are limited to the amounts described in this section; however, not more than once per year, the Board in its sole discretion, may increase or decrease by up to five percent of the limitation for Direct Activity Costs. Total Activity costs may not exceed HUD Subsidy Limits. Dollar amounts in a Household commitment contract are set at the time of Contract execution and may not be adjusted through this process. Current limit amounts under this section will be reflected on the Department's website.

(b) Reconstruction and New Construction of site-built housing: the lesser of $150 per square foot of conditioned space or $175,000; or for Households of five or more Persons that require a four-bedroom unit, the lesser of $150 per square foot of conditioned space, or $200,000; and

(c) Direct Activity Costs for acquisition and placement of a unit of Manufactured Housing, including demolition or removal of existing housing and exclusive of Match funds, is limited to $125,000.

(d) Direct Activity Costs for conversion of a Contract for Deed, including closing costs paid from HOME funds, is limited to $40,000.

(e) In addition to the Direct Activity Costs allowable under subsections (b) and (c) of this section, additional funds in the amount of $15,000 may be used to pay for each of the following, as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; and

(3) Homeowner requests for accessibility features.

(f) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) Acquisition or refinance, and New Construction of site-built housing: no more than $15,000 per housing unit; and

(2) Acquisition or refinance, and replacement with an MHU: no more than $10,000 per housing unit.

(g) Project Cost Limitations for Tenant-Based Rental Assistance Activities are limited as described in Subchapter E of this chapter.

(h) Projects Costs must not exceed the federal subsidy limit, unless waived by HUD.

(i) Unless waived by HUD, the purchase price of acquired property and the post-improvement value of the unit may not exceed the limitations set forth in 24 CFR §92.254. Compliance with the purchase price limitation must be evidenced prior to loan closing with an as-built appraisal.

(j) Administrative Cost Limitations.

(1) Funds for administrative costs are limited to no more than five percent of the Direct Activity Costs, exclusive of Match funds, for HRA.

(2) Funds for administrative costs are limited to no more than eight percent of the Direct Activity Costs, exclusive of Match funds, for CFD and HANC.

(3) For TBRA, Administrators must select one method under which funds for administrative costs and Activity soft costs may be reimbursed prior to execution of an RSP agreement or at Application for an award of funds. All costs must be reasonable and customary for the Administrator's Service Area. Applicants and Administrators may choose from one of the following options, and in any case funds for Administrative costs may be increased by an additional one percent of Direct Activity Costs if Match is provided in an amount equal to five percent or more of Direct Activity Costs:

(A) Funds for Administrative costs are limited to four percent of Direct Activity Costs, excluding Match funds, and Activity soft costs are limited to $1,200 per Household assisted. Activity soft costs may reimburse expenses for costs related to determining Household income eligibility, including recertification, and conducting Housing Quality Standards (HQS) inspections. All costs must be reasonable and customary for the Administrator's Service Area; or

(B) Funds for Administrative costs are limited to ten percent of Direct Activity Costs, excluding Match funds, and Administrator may not be reimbursed for Activity soft costs.

§23.28. Design and Quality Requirements.

(a) Each Single Family Housing Unit constructed with HOME funds must meet the design and quality requirements as described in paragraphs (1) - (6) of this subsection, and plans must be certified by a licensed architect or engineer:

(1) Current applicable International Residential Code, local codes, ordinances, and zoning ordinances in accordance with 24 CFR §92.251(a);

(2) Requirements in chapters 20 and 21 of this title;

(3) Units must Include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Disposal and Energy-Star or equivalently rated dishwasher (must only be provided as an option to each Household); Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include LED bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans; and Paved off-street parking for each unit to accommodate at least one mid-sized car and access to on-street parking for a second car;

(4) Units must contain no less than two bedrooms. Each Single Family Housing Unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(5) Each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self-contained with a

door; have at least one window that provides exterior access; and have at least one closet that is not less than two feet deep and three feet wide and high enough to contain at least five feet of hanging space; and

(6) Units must be no less than 800 total net square feet for a two bedroom Single Family Housing Unit; no less than 1,000 total net square feet for a three bedroom and two bathroom Single Family Housing Unit; and no less than 1,200 total net square feet for a four bedroom and two bathroom Single Family Housing Unit.

(7) An exception to paragraphs (2) - (6) may be requested by the Household and approved by the Division Director prior to submission of the Activity. A request for an exception must include the specific feature or design requirement for which the exception is requested, and must include justification for the exception.

(b) Units selected by Households assisted under the Tenant-Based Rental Assistance Program must meet the applicable federal requirements for the HOME Program as of the date of initial occupancy and any subsequent inspection.

§23.29. Resale and Recapture Provisions.

(a) Recapture is the primary method the Department will use to recoup HOME funds under 24 CFR §92.254(a)(5)(ii).

(b) To ensure continued affordability, the Department has established the recapture provisions described in paragraphs (1) -(4) of this subsection and further defined in 24 CFR §92.254(a)(5)(ii).

(1) In the event that a federal affordability period is required and the assisted property is rented, leased, or no member of the Household has it as the Principal Residence, the entire HOME investment is subject to recapture. The Department will include any loan payments previously made when calculating the amount subject to recapture. Loan forgiveness is not the same thing as loan payments for purposes of this subsection.

(2) In the event that a federal affordability period is required and the assisted property is sold, including through a short sale, deed in lieu of foreclosure, or foreclosure, prior to the end of the affordability period, the Department will recapture the available amount of net proceeds based on the requirements of 24 CFR §92.254, and as outlined in the State's One Year Action Plan.

(3) The Household can sell the unit to any willing buyer at any price. In the event of sale to a qualified low-income purchaser of a HOME-assisted unit, the qualified low-income purchaser may assume the existing HOME loan and assume the recapture obligation entered into by the original buyer if no additional HOME assistance is provided to the low-income purchaser. In cases in which the subsequent homebuyer needs HOME assistance in excess of the balance of the original HOME loan, the HOME subsidy (the direct subsidy as described in 24 CFR §92.254) to the original homebuyer must be recaptured. A separate HOME subsidy must be provided to the new homebuyer, and a new affordability period must be established based on that assistance to the buyer.

(4) If there are no net proceeds from the sale, no repayment will be required of the Household and the balance of the loan shall be forgiven as outlined in the State's applicable One Year Action Plan.

(c) The Department has established the resale provisions described in paragraphs (1) -(7) of this subsection, only in the event that the Department must impose the resale provisions of 24 CFR §92.254(a)(i).

(1) Resale is defined as the continuation of the affordability period upon the sale or transfer, rental or lease, refinancing, and no member of the Household is occupying the property as their Principal Residence.

(2) In the event that a federal affordability period is required and the assisted property is rented or leased, or no member of the Household has it as the Principal Residence, the HOME investment must be repaid.

(3) In the event that a federal affordability period is required and the assisted property is sold or transferred in lieu of foreclosure to a qualified low-income buyer at an affordable price, the HOME loan balance shall be transferred to the subsequent qualified buyer and the affordability period shall remain in force to the extent allowed by law.

(4) The resale provisions shall remain in force from the date of loan closing until the expiration of the required affordability period.

(5) The Household is required to sell the home at an affordable price to a reasonable range of low-income homebuyers that will occupy the home as their Principal Residence. Affordable to a reasonable range of low-income buyers is defined as targeting Households that have income between 70 and 80 percent AMFI and meet all program requirements.

(A) The seller will be afforded a fair return on investment defined as the sum of down payment and closing costs paid from the initial seller's cash at purchase, closing costs paid by the seller at sale, the principal payments only made by the initial homebuyer in excess of the amount required by the loan, and any documented capital improvements in excess of $500.

(B) Fair return on investment is paid to the seller at sale once first mortgage debt is paid and all other conditions of the initial written agreement are met. In the event there are no funds for fair return, then fair return does not exist. In the event there are partial funds for fair return, then the appropriate partial fair return shall remain in force.

(6) The appreciated value is the affordable sales price less first mortgage debt less fair return.

(A) If appreciated value is zero, or less than zero, then no appreciated value exists.

(B) The initial homebuyer's investment of down payment and closing costs divided by the Department's HOME investment equals the percentage of appreciated value that shall be paid to the initial homebuyer or persons as otherwise directed by law. The balance of appreciated value shall be paid to the Department.

(7) The property qualified by the initial Household will be encumbered with a lien for the full affordability period.

(d) In the event the housing unit transfers by devise, descent, or operation of law upon the death of the assisted homeowner, forgiveness of installment payments under the loan may continue until maturity or the penalty amount for noncompliance under the conditional grant agreement may be waived, if the new Household qualifies for assistance in accordance with this subchapter. If the new Household does not qualify for assistance in accordance with this chapter, forgiveness of installment payments will cease and repayment of scheduled payments under the loan will commence and continue until maturity or payment of a penalty amount under the conditional grant agreement may be required in accordance with the terms of the conditional grant agreement.

(e) Forgiveness of installment payments under the loan may continue until maturity or the penalty amount under conditional grant agreement may be waived by the Department if the housing unit is sold by the decedent's estate to a purchasing Household that qualifies for assistance in accordance with this chapter.

(f) Grants subject to conditional grant agreements are not subject to the entire penalty amount in the event the property is no longer the Principal Residence of any Household member.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405425
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-3959

SUBCHAPTER C. HOMEOWNER RECONSTRUCTION ASSISTANCE PROGRAM

10 TAC §23.30, §23.31

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new rule affects no other code, article, or statute.

§23.30. Homeowner Reconstruction Assistance (HRA) General Requirements.

(a) Program funds may be used for the following under this subchapter:

(1) Reconstruction of housing on the same site meeting the following conditions:

(A) Replacement of an owner-occupied site-built house with either a new site-built house or a new Manufactured Housing Unit (MHU) on the same site;

(B) Replacement of an owner-occupied MHU with a new MHU on the same site;

(C) A unit that is not owner-occupied has been destroyed may be eligible for Reconstruction under subparagraph (A) or (B) of this paragraph if:

(i) the unit was the Principal Residence of the Household as of the date of destruction where evidence of the Household's Principal Residence is established by a homestead exemption from the local taxing jurisdiction and Household certification in effect at the date of destruction; and

(ii) HOME funds are committed within 12 months of the date of destruction.

(2) New Construction of housing meeting the following conditions:

(A) Construction of site-built housing on the same site to replace an existing owner-occupied MHU;

(B) Replacement of existing owner-occupied housing with an MHU or construction of site-built housing on another site contingent upon written approval of the Department; or

(C) Replacement of a housing unit determined to be uninhabitable within four years of submission of a Reservation for funds on the same site or another site when:

(i) the unit has been rendered uninhabitable as a direct result of a natural or man-made disaster, a condemnation order from the unit of local government, or a determination from the unit of local government that the unit presents an imminent threat to life, health, and safety of occupants; and

(ii) the Household's Principal Residence is established by a homestead exemption from the local taxing jurisdiction as of the date of the disaster, condemnation order, or determination of uninhabitably though a Certification.

(b) If a housing unit has an existing mortgage loan and Department funds are provided in the form of a loan, the Department will require a first lien position if the existing mortgage loan has an outstanding balance that is less than the investment of HOME funds and any of the statements described in paragraphs (1) - (3) of this subsection are true:

(1) A federal affordability period is required;

(2) Any existing mortgage has been in place for less than three years from the date the Household applies for assistance; or

(3) The HOME loan is structured as a repayable loan.

(c) The Household must be current on any existing mortgage loans or home equity loans. If the Department's assistance is provided in the form of a loan, the property cannot have any existing home equity loan liens.

(d) Total Project costs, exclusive of Match funds, are limited to the amounts described in §23.27, Project Cost Limitations.

(e) For New Construction Activities, the assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Activity Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(f) For Reconstruction Activities, the assistance to an eligible Household will be in the form of a grant agreement with a five year affordability period.

(g) To ensure affordability, the Department will impose resale and recapture provisions established in this Chapter.

§23.31. Homeowner Reconstruction Assistance (HRA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (20) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Activity Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within $3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) When assistance is provided in the form of a loan, provide written consent from all Persons who have a valid lien or ownership interest in the Property;

(8) In the instance of relocation from one site to another site, the Household must document Homeownership of the existing unit to be replaced and must establish Homeownership of the lot on which the replacement housing unit will be constructed. The Household must agree to the demolition of the existing housing unit. HOME Activity funds cannot be used for the demolition of the existing unit and any funding used for the demolition is not eligible Match; however, solely for a Activity under this paragraph, the Administrator Match obligation may be reduced by the cost of such demolition without any Contract amendment;

(9) Identification of any Lead-Based Paint (LBP);

(10) For housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, certification from the Household that they understand the flood insurance requirements;

(11) Consent to demolish from any existing mortgage lien holders and consent to subordinate to the Department's loan, if applicable;

(12) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(13) A title commitment or policy or a down date endorsement to an existing title policy evidencing the Household's ownership of the property:

(A) For New Construction Activities, a title commitment or down-date endorsement to an existing title policy the effective date title commitment must be no more than 60 days prior to of the date of Activity submission. Title commitments for loan projects that expire prior to the loan closing date must be updated and must not have any adverse changes; and

(B) For Reconstruction Activities, a title report or a title commitment dated not more than six months prior to the date of Activity submission;

(14) Documents evidencing ownership, such as a warranty deed, life estate, or 99-year leasehold;

(15) If the housing to be replaced is an MHU, a Statement of Ownership and Location (SOL) for the MHU;

(16) Tax certificate that evidences a current paid status, and in the case of delinquency, evidence of an approved payment plan with the taxing authority and evidence that the payment plan is current;

(17) In the instances of replacement with an MHU, information necessary to draft loan documents or grant agreements to issue SOL;

(18) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(19) For disaster relief set-aside Activities, evidence that the housing unit occupied by the eligible Household was damaged as a direct result of a federal, state, or locally declared disaster that occurred less than four years prior to the submission of the Activity; and

(20) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing or grant agreement. In addition to the documents required under subsection (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which establishes the post construction value of improvements for Activities involving construction prior to the issuance of grant or loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (12) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (12) of this subsection, may be required with a request for disbursement:

(1) For construction costs associated with a loan, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 days, whichever is later. For release of retainage the down date endorsement must be dated at least 40 days after the Construction Completion Date;

(2) For construction costs associated with a grant agreement, an interim lien waiver or final lien waiver. For release of retainage the release on final payment must be dated at least 40 days after the Construction Completion Date;

(3) If applicable, a maximum of 50 percent of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(4) Property inspections, including photographs of the front, back, and side elevations of the housing unit and at least one picture of the each of the kitchen, family room, each bedroom and each bathroom with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(5) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided; that no Person that would benefit from the award of HOME funds; that it has satisfied any applicable cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service; and that the service does not violate any conflict of interest provisions;

(6) The executed grant agreement or original, executed, legally enforceable loan documents and statement of location, if applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(7) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(8) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(9) Include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(10) For final disbursement requests, submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation;

(11) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(12) For costs associated with insurance policies, including title policies and homeowner insurance policies, charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405426
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER D. CONTRACT FOR DEED PROGRAM

10 TAC §23.40, §23.41

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new rule affects no other code, article, or statute.

§23.40. Contract for Deed (CFD) General Requirements.

(a) Program funds may be utilized for Acquisition or refinance, and New Construction, of single family housing units occupied by the purchaser as shown on an executory contract for conveyance.

(b) The Department shall limit the availability of funds for CFD for a minimum of 60 days for Activities proposing to serve Households whose income does not exceed 60 percent AMFI, and for properties located in a Colonia as defined in Tex. Gov't Code §2306.083.

(c) The Department will require a first lien position.

(d) Total Project costs, exclusive of Match funds, are limited to the amounts described in §23.27, Project Cost Limitations.

(e) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Activity Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254. For refinancing activities, the minimum loan term and affordability period is 15 years, regardless of the amount of HOME assistance.

(f) To ensure affordability, the Department will impose resale or recapture provisions established in this Chapter.

§23.41. Contract for Deed (CFD) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1)-(15) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Activity and soft costs limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within $3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) Identification of Lead-Based Paint (LBP);

(8) For housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, certification from the Household that they understand the flood insurance requirements;

(9) If applicable, documentation to address or resolve any potential Conflict of Interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(10) Appraisal which includes post construction improvements for Activities involving construction;

(11) A title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien,

mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 60 days prior to the date of Activity submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(12) In the instances of replacement with an MHU, information necessary to draft loan documents and issue Statement of Ownership and Location (SOL);

(13) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(14) A copy of the recorded executory contact and a current payoff statement; and

(15) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Disbursement of funds. The Administrator must comply all of the requirements described in paragraphs (1) - (12) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (12) of this subsection may be required with a request for disbursement:

(1) For construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 days, whichever is later. For release of retainage the down date endorsement must be dated at least 40 days after the Construction Completion Date;

(2) If applicable, a maximum of 50 percent of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) Property inspections, including photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom and each bathroom with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents, and statement of location, as applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(7) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(8) Table funding requests must be submitted to the Department with complete documentation no later than 14 calendar days prior to the anticipated loan closing date. Such a request must include a draft closing disclosure, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Comptroller of Public Accounts with bank account wiring instructions, and invoices for costs being paid at closing;

(9) Include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(10) For final disbursement requests, submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot secured by the loan, and evidence of floodplain mitigation;

(11) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(12) For costs associated with insurance policies, including title policies and homeowner's insurance policies charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405428
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER E. TENANT-BASED RENTAL ASSISTANCE PROGRAM

10 TAC §23.50, §23.51

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new rule affects no other code, article, or statute.

§23.50. Tenant-Based Rental Assistance (TBRA) General Requirements.

(a) Households assisted under the general set-aside must participate in a self-sufficiency program, as described in the Administrator's policies and procedures.

(b) The amount of assistance will be determined using the HUD Housing Choice Voucher method.

(c) Late fees are not an eligible HOME cost. Late fees incurred for the subsidy portion of rent must be paid by the Administrator from a non-HOME funding source.

(d) A Household certifying to zero income must also complete a questionnaire that includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.

(e) The minimum Household contribution toward gross monthly rent must be ten percent of the Household's adjusted monthly income. The maximum Household contribution toward gross monthly rent at initial occupancy is limited to 40 percent of the Household's gross monthly income.

(f) Activity funds are limited to:

(1) Rental subsidy: Each rental subsidy term is limited to no more than 24 months. Total lifetime assistance to a Household may not exceed 36 months cumulatively, except that a maximum of 24 additional months of assistance, for a total of 60 months cumulatively may be approved if:

(A) the Household has applied for a Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program, and is placed on a waiting list during their TBRA participation tenure; and

(B) the Household has not been removed from the waiting list for the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program due to failure to respond to required notices or other ineligibility factors; or

(C) the Administrator submits documentation evidencing that:

(i) no Public Housing Authority within a 50 mile radius of the Household's address during their participation in TBRA has opened their waitlist during the term of the Household's participation in TBRA, or has excluded the Household's application for placement on the waiting list for any reason other than eligibility or failure to respond to required notices, such as a randomized drawing of applications that may be placed on the waitlist; and

(ii) no waiting list was opened during the term of the Household's participation in TBRA for any HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program located within a 50 mile radius of the Household's address during their participation in TBRA; or

(iii) the Household is not eligible for placement on a waiting list for any HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program located within a 50 mile radius of the Household's address during their participation in TBRA; and

(D) the Household has not been denied participation in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program while they were being assisted with HOME TBRA; and

(E) the Household did not refuse to participate in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program when a voucher was made available.

(2) Security deposit: no more than the amount equal to two month's rent for the unit.

(3) Utility deposit in conjunction with a TBRA rental subsidy.

(g) The payment standard is determined at the Date of Assistance. The payment standard utilized by the Administrator must be:

(1) The U.S. Department of Housing and Urban Development (HUD) published Small Area Fair Market Rent (SAFMR) for any area in which a SAFMR is available. In areas where an SAFMR is not published by HUD, the payment standard must be the HUD-published Fair Market Rent (FMR) for the county. HUD-published SAFMRs and FMRs will become effective for the HOME Program on January 1 of each year following publication;

(2) For a HOME-assisted unit, the current applicable HOME rent; or

(3) The Administrator may submit a written request to the Department for approval of a different payment standard. The request must be evidenced by a market study or documentation that the PHA serving the market area has adopted a different payment standard. An Administrator may request a Reasonable Accommodation as defined in §1.204 of this Title for a specific Household if the Household, because of a disability, requires the features of a specific unit, and units with such features are not available in the Service Area at the payment standard.

(h) Administrator must not approve a unit if the owner is by consanguinity, affinity, or adoption the parent, child, grandparent, grandchild, sister, or brother of any member of the assisted Household, unless the Administrator determines that approving the unit would provide Reasonable Accommodation for a Household member who is a Person with Disabilities. This restriction against Administrator approval of a unit only applies at the time the Household initially receives assistance under a Contract or Agreement, but does not apply to Administrator approval of a recertification with continued tenant-based assistance in the same unit.

(i) Administrators must maintain Written Policies and Procedures established for the HOME Program in accordance with §10.802 of this Title, except that where the terms Owner, Property, or Development are used Administrator or Program will be substituted, as applicable. Additionally, the procedures in subsection (j) of this section (relating to the Violence Against Women Act (if in conflict with the provisions in §10.802 of this Title) will govern).

(j) Administrators serving a Household under a Reservation Agreement may not issue a Certificate of Eligibility to the Household prior to reserving funds for the Activity without prior written consent of the Department.

(k) Administrators are required to comply with regulations and procedures outlined in the Violence Against Women Act (VAWA), and provide tenant protections as established in the Act.

(1) An Administrator of Tenant-Based Rental Assistance must provide all Applicants (at the time of admittance or denial) and Households (before termination from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance Coupon Contract) the Department's "Notice of Occupancy Rights under the Violence Against Women Act", (based on HUD form 5380) and also provide to Households "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking" (HUD form 5382) prior to execution of a Rental Coupon Contract and before termination of assistance from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance coupon contract.

(2) Administrator must notify the Department within three days when tenant submits a Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and/or alternate documentation to Administrator and must submit a plan to Department for continuation or termination of assistance to affected Household members.

(3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, Administrator may "bifurcate" a rental coupon contract, or otherwise remove a Household member from a rental coupon contract, without regard to whether a Household member is a signatory, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a recipient of TBRA and who engages in criminal acts of physical violence against family members or others. This action may be taken without terminating assistance to, or otherwise penalizing the person subject to the violence.

§23.51. Tenant-Based Rental Assistance (TBRA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the documents described in paragraphs (1) - (10) of this subsection, with a request for the Commitment or Reservation of Funds:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Direct Activity Costs, Activity soft costs, administrative costs requested, Match to be provided, evidence that Direct Activity Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator, and all Household members age 18 or over, and including the date of the income eligibility determination. Administrator must submit documentation used to determine the income and rental subsidy of the Household;

(6) Identification of Lead-Based Paint (LBP);

(7) If applicable, documentation to address or resolve any potential conflict of interest or duplication of benefit;

(8) Project address within 90 days of preliminary set up approval, if applicable;

(9) For Households assisted under the Disaster set-aside, verification that the household was displaced or is at-risk of displacement as a direct result of a Federal, State, or Locally declared disaster approved by the Department within four years of the date of Activity submission; and

(10) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (7) of this subsection for a request for disbursement of funds. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (7) of this subsection may be required with a request for disbursement:

(1) If required or applicable, a maximum of 50 percent of Direct Activity Costs for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Direct Activity Costs disbursed;

(2) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(3) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to the Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;

(4) With the exception of a maximum of 25 percent of the total funds available for administrative costs, the request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(5) Monthly subsidy may not be requested earlier than the tenth day of the month prior to the upcoming subsidized month;

(6) For final disbursement requests, submission of documentation required for Activity completion reports; and

(7) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405429
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER F. SINGLE FAMILY DEVELOPMENT PROGRAM

10 TAC §23.60, §23.61

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new rule affects no other code, article, or statute.

§23.60. Single Family Development (SFD) General Requirements.

(a) Program funds under this subchapter may be used for the Development of new single family housing for homeownership that complies with affordability requirements as defined at 24 CFR §92.254. Direct Activity Costs, exclusive of Match funds, are limited to the amounts described in§ 23.27, Project Cost Limitations.

(b) In addition to the requirements of Chapter 1, Subchapter B of this Title and Subchapter B of this Chapter, Applicants for an award of Single Family Development funds must submit a proposed development plan. The proposed development plan must be consistent with the requirements of this Chapter, all other federal and state rules, and include:

(1) a floor plan and front exterior elevation for each proposed unit which reflects the exterior building composition;

(2) a FEMA Issued Flood Map that identifies the location of the proposed site(s);

(3) letters from local utility providers, on company letterhead, confirming each site has access to the following services: water and wastewater, sewer, electricity, garbage disposal and natural gas, if applicable;

(4) documentation of site control of each proposed lot: A recorded warranty deed with corresponding executed settlement statement; or a contract or option for the purchase of the proposed lots that is valid for at least 180 days from the date of application submission; and

(5) an "as vacant" appraisal of at least one of the proposed lots if the Applicant has an Identity of Interest with the seller or current owner of the property; or any of the proposed property is part of a newly developed or under-development subdivision in which at least three other third-party sales cannot be evidenced. The purchase price of any lot in which the current owner has an Identity of Interest must not exceed the appraised value of the vacant lot at the time of Activity submission. The appraised value of the lot may be included in the sales price for the homebuyer transaction.

(6) The Department may prioritize Applications or otherwise incentivize Applications that partner with other lenders to provide permanent purchase money financing for the purchase of Single Family Housing Units developed with funds provided under this subchapter.

(c) Program funds under this subchapter are only eligible to be administered by a CHDO certified as such by the Department if administered utilizing the CHDO set-aside. A separate grant for CHDO operating expenses may be awarded to CHDOs that receive a Contract award if funds are provided for this purpose in the NOFA. A CHDO may not receive more than one grant of CHDO operating funds in an amount not to exceed $50,000 within any one year period, and may not draw more than $25,000 in CHDO operating funds in any twelve month period from any source, including CHDO operating funds from other HOME Participating Jurisdictions.

(d) Direct Activity Cost are limited to the costs described in § 23.27, Project Cost Limitations.

(e) Developer fees (including consulting fees) are limited to 15 percent of the total hard construction costs. The developer fee will be reduced by one percent per month or partial month that the construction period exceeds the original term of the construction period financing.

(f) General Contractor Fees are limited to 15 percent of the total hard construction costs. The General Contractor is defined as one who contracts for the construction of an entire development Activity, rather than a portion of the work. The General contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in paragraphs (1) and (2) of this subsection:

(1) Any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(2) If more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(g) Construction period financing for each unit shall be structured as a zero percent interest loan with a 12-month term. The maximum construction loan amount may not exceed the total development cost less developer fees/profit, closing costs associated with the permanent mortgage financing, and ineligible Activity costs. Prior to construction loan closing, a sales contract must be executed with a qualified homebuyer.

(h) In the instance that the total development cost equals more than 100 percent of the appraised value, the portion of the development cost that exceeds 100 percent of the appraised value will be granted to the developer to buy down the purchase price. Reasonable and customary seller closing costs may be provided with HOME funds as a grant to the Developer.

(i) Direct assistance to the buyer will be structured as a first and/or second lien loan(s):

(1) A first-lien, fully amortizing, repayable loan with a 30-year term may be provided by the Department and will initially be evaluated at zero percent interest. The loan amount will not exceed the total development cost combined with reasonable and customary buyer's closing costs. Should the estimated housing payment, including all funding sources, be less than the minimum required housing payment for the minimum term, the Department may charge an interest rate to the homebuyer such that the total estimated housing payment is no less than the required minimum housing payment. In no instance shall the interest rate charged to the homebuyer exceed five percent, and such result may deem the applicant as overqualified for assistance.

(A) The total Mortgage Loan may include costs incurred for the total development cost and Mortgage Loan Closing Costs, exclusive of Match funds.

(B) The total Debt-to-Income Ratio shall not exceed the limitations set forth in Chapter 20 of this Title.

(C) For buyers whose income is equal to or less than 50 percent AMFI, the minimum required housing payment shall be no less than 15 percent of the household's gross income. For homebuyers whose income exceeds 50 percent AMFI, the minimum required hous-

ing payment shall be no less than 20 percent of the household's gross income.

(2) Downpayment and closing costs assistance is limited to the lesser of downpayment required by a third-party lender and reasonable and customary buyer's closing costs, or the amount required to ensure affordability of the HOME financing. Downpayment and closing cost assistance may not exceed ten percent of the total development cost and shall be structured as a five or ten-year deferred, forgivable loan with a subordinate lien, in accordance with the required federal affordability period.

(3) A first lien conventional mortgage not provided by the Department must meet the mortgage financing requirements outlined in Chapter 20 of this Title.

(j) Earnest money is limited to no more than $1,000, which may be credited to the homebuyer at closing, but may not be reimbursed as cash.

(k) If a Household should become ineligible or otherwise cease participation and a replacement Household is not located within 90 days of the end of the construction period, all additional funding, closings, and draws on the award will cease and the Department will require the Applicant to repay any outstanding construction debt in full.

(l) The Division Director may approve the use of alternative floor plans or lots from those included in the approved Application, provided the requirements of this section can still be met and such changes do not materially affect the total budget.

(m) To ensure affordability, the Department will impose resale or recapture provisions established in this Chapter.

§23.61. Single Family Development (SFD) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment of Funds as described in paragraphs (1) - (12) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition cost, construction costs, contractor fees, and developer fees, as applicable. A maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Activity Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. All documentation used to determine the income of the Household must be provided;

(6) Project cost estimates, construction contracts, and other construction documents necessary, in the Department's sole determination, to ensure applicable property standard requirements will be met at completion;

(7) Identification of Lead-Based Paint (LBP) if site remediation is needed;

(8) Executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(9) Evidence that the housing unit will be located outside the 100-year floodplain;

(10) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(11) Appraisal, which includes post construction improvements; and

(12) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Construction Loan closing. The Administrator must submit the documents described in paragraphs (1) - (2) of this subsection, with a request for the preparation of loan closing with the request for the Commitment of Funds:

(1) A title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 60 days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close; and

(2) Within 90 days after the loan closing date, the Administrator must submit to the Department the original recorded deed of trust and transfer of lien, if applicable. Failure to submit these documents within 90 days after the loan closing date will result in the Department withholding payment for disbursement requests.

(c) Disbursement of funds. The Administrator must comply with the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (11) of this subsection may be required with a request for disbursement:

(1) For construction costs, an interim construction binder advance endorsement not older than the date of the last disbursement of funds or 45 days, whichever is later. For release of retainage a down date endorsement to the mortgagee policy issued to the homebuyer dated at least 40 days after the Construction Completion Date;

(2) If required or applicable, a maximum of 50 percent of Direct Activity Costs for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) Property inspections, including photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom and each bathroom with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator or Developer;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for

the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;

(7) Table funding requests must be submitted to the Department with complete documentation no later than 14 days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Comptroller of Public Accounts with bank account wiring instructions, and invoices for costs being paid at closing;

(8) Include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(9) For final disbursement requests, submission of documentation required for Activity completion reports;

(10) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(11) For costs associated with insurance policies, including title policies and homeowner's insurance policies, charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405430
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER G. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC)

10 TAC §23.70, §23.71

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new rule affects no other code, article, or statute.

§23.70. Homebuyer Assistance with New Construction (HANC) General Requirements.

(a) Eligible Activities must meet the ownership requirement in paragraph (1) of this subsection and an Activity described in paragraph (2) of this subsection:

(1) Ownership requirement. A site must be owned by the beneficiary or the HOME Activity must include one of the two following Activities:

(A) Acquisition of existing single family housing or a parcel; or

(B) Refinance of non-owner occupied real property parcel not prohibited for single family housing by zoning or restrictive covenants.

(2) All Activities must include New Construction of a unit of single family housing not occupied by the Household prior to assistance; New Construction described in this subsection includes the purchase and installation of a new unit of Manufactured Housing (MHU).

(b) The unit of housing in any of the Activities described in subsection (a) of this section must be occupied by the assisted Household as their principal residence for a minimum of 15 years from the Construction Completion Date.

(c) If the assisted property is owned by the Household prior to participation, the Household must be current on any existing Mortgage Loans and taxes, and the property cannot have any existing home equity loan liens. HOME funds may not be utilized to refinance loans made or insured by any federal program.

(d) Total Project costs, exclusive of Match funds, are limited to the amounts described in §23.27, Project Cost Limitations.

(e) Homebuyers may choose to obtain financing for the acquisition or construction, or any combination thereof, from a third-party lender so long as the loan meets the requirements of §20.13 of this Title (relating to Loan, Lien and Mortgage Requirements for Activities).

(f) Direct assistance will be structured as a fully amortizing, repayable loan and will initially be evaluated at zero percent interest. The minimum loan term shall be equal to the required federal affordability period based on the HOME investment, and shall be calculated by setting the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance), equal to at least the minimum required housing payment. Should the estimated housing payment, including all funding sources, be less than the minimum required housing payment for the minimum term, the Department may charge an interest rate to the homebuyer such that the total estimated housing payment is no less than the required minimum housing payment. In no instance shall the interest rate charged to the homebuyer exceed five percent and such result may deem the applicant as overqualified for assistance. The term shall not exceed 30 years and not be less than 15 years.

(1) The total Mortgage Loan may include costs incurred for Acquisition or Refinance, Mortgage Loan closing costs, and Direct Activity Costs, exclusive of Match funds.

(2) The total Debt-to-Income Ratio shall not exceed the limitations set forth in Chapter 20 of this Title.

(3) For buyers whose income is equal to or less than 50 percent AMFI, the minimum required housing payment shall be no less than 15 percent of the household's gross income. For homebuyers whose income exceeds 50 percent AMFI, the minimum required housing payment shall be no less than 20 percent of the household's gross income.

(g) Earnest money may be credited to the homebuyer at closing, but may not be reimbursed as cash. HOME funds may be used to pay other reasonable and customary closing costs that are HOME eligible costs.

(h) To ensure affordability, the Department will impose recapture provisions established in this Chapter.

§23.71. Homebuyer Assistance with New Construction (HANC) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (15) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Activity Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance from the Department;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. All documentation used to determine the income of the Household must be provided;

(6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) Identification of any Lead-Based Paint (LBP) if activity involves an existing unit and certification that LBP will be mitigated as required by 24 CFR §92.355;

(8) Evidence that the housing unit will be located outside of the 100-year floodplain;

(9) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, or duplication of benefit;

(10) Information necessary to draft Mortgage Loan documents, including issuance of an SOL;

(11) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(12) Documentation of homebuyer completion of a homebuyer counseling program/class provided by a HUD certified housing counselor;

(13) For Activities involving acquisition of real property:

(A) A title commitment to issue a title policy that evidences that the property will transfer with no tax lien, child support lien, mechanics or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 60 days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(B) Executed sales contract; and

(C) A loan estimate or letter from any other lender confirming that the loan terms and closing costs will be consistent with the executed sales contract, the first lien Mortgage Loan requirements, and the requirements of this Chapter;

(14) For Activities that do not involve acquisition of real property:

(A) A title commitment or policy, or a down date endorsement to an existing title policy, and the actual documents, or legible copies thereof, establishing the Household's ownership, such as a warranty deed or ground lease for a 99-year leasehold. The effective date of the title commitment must be no more than 60 days prior to of the date of project submission. Title commitments for loan projects that expire prior to the loan closing date must be updated and must not have any adverse changes. These documents must evidence the definition of Homeownership is met;

(B) A tax certificate that evidences a current paid status;

(C) Written consent from all Persons who have a valid lien or ownership interest in the Property;

(D) Consent to demolish from any existing Mortgage Loan lien holders and consent to subordinate to the Department's loan, if applicable; and

(15) Any other documentation necessary to evidence that the Activity meets the Program requirements.

(b) Loan closing. In addition to the documents required under subsection (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which establishes the post construction value of improvements prior to the issuance of loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of additional documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (11) of this subsection, may be required with a request for disbursement:

(1) For construction costs that are part of a loan subject to the requirements of this subsection, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 days, whichever is later, is required. For release of retainage, the down date endorsement must be dated at least 40 days after the Construction Completion Date;

(2) If applicable, a maximum of 50 percent of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) Property inspections, including photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom, and each bathroom with date and property address reflected on each photo, are required to be submitted. The inspection must be signed and dated by the inspector and Administrator;

(4) Certification of the following is required:

(A) That its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided;

(B) That no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith;

(C) That each request for disbursement of HOME funds is for the actual cost of providing a service; and

(D) That the service does not violate any conflict of interest provisions;

(5) Original, fully executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements are required. Certified copies of fully executed, recorded loan documents that are required to be recorded in the real property records of the county in which the housing unit is located must be returned to the Department, duly certified as to recordation by the appropriate county official. This documentation prior to disbursement is not applicable for funds made available at the loan closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(7) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(8) Disbursement requests must include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(9) For final disbursement requests, the following is required:

(A) Submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and disposal of all dilapidated housing units on the lot;

(B) Certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan; and

(C) A final appraisal of the property after completion of improvements;

(10) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with the Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(11) For costs associated with insurance policies, including title policies and homeowner insurance policies charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405485
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

22 TAC §531.20

The Texas Real Estate Commission (TREC) proposes amendments to §531.20, Information About Brokerage Services.

The proposed amendments to §531.20 and the form adopted by reference (the Information About Brokerage Services (IABS) notice) are made as a result of the recent industry changes surrounding broker compensation to clarify to the consumer that any brokerage fees are not set by law and are negotiable.

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

Ms. Lee also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be increased consumer awareness regarding brokerage compensation practices.

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

create or eliminate a government program;

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

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

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

create a new regulation;

expand, limit or repeal an existing regulation;

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

positively or adversely affect the state's economy.

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

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendment is also proposed under Texas Occupations Code, §1101.558, which requires the Commission to prescribe the text of the IABS notice.

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

§531.20. Information About Brokerage Services.

(a) The Commission adopts by reference the Information About Brokerage Services Notice, TREC No. IABS 1-1 [~~1-0~~] (IABS Notice). The IABS Notice is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(b) Each license holder shall provide:

(1) a link to a completed IABS Notice in a readily noticeable place on the homepage of each business website, labeled:

(A) "Texas Real Estate Commission Information About Brokerage Services", in at least 10 point font; or

(B) "TREC Information About Brokerage Services", in at least 12 point font; and

(2) the completed IABS Notice at the first substantive communication as required under §1101.558, Texas Occupations Code.

(c) For purposes of §1101.558, Texas Occupations Code, the completed IABS Notice can be provided:

(1) by personal delivery by the license holder;

(2) by first class mail or overnight common carrier delivery service;

(3) in the body of an email; or

(4) as an attachment to an email, or a link within the body of an email, with a specific reference to the IABS Notice in the body of the email.

(d) The link to a completed IABS Notice may not be in a footnote or signature block in an email.

(e) For purposes of this section, business website means a website on the internet that:

(1) is accessible to the public;

(2) contains information about a license holder's real estate brokerage services; and

(3) the content of the website is controlled by the license holder.

(f) For purposes of providing the link required under subsection (b)(1) on a social media platform, the link may be located on:

(1) the account holder profile; or

(2) a separate page or website through a direct link from the social media platform or account holder profile.

(g) License holders may reproduce the IABS Notice published by the Commission, provided that the text of the IABS Notice is copied verbatim and the spacing, borders and placement of text on the page must appear to be identical to that in the published version of the IABS Notice, except that the Broker Contact Information section may be prefilled.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405374
Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 936-3057

♦ ♦ ♦

CHAPTER 534. GENERAL ADMINISTRATION

22 TAC §534.8

The Texas Real Estate Commission (TREC) proposes new 22 TAC §534.8, Employee Sick and Family Leave Pools, in Chapter 534, General Administration.

The new rule is proposed to address the operation and procedures of both the employee sick and family leave pool required by sections 661.002 and 661.022, Texas Government Code.

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

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

Except as otherwise provided, for each year of the first five years the new rule is in effect, the rule will not:

create or eliminate a government program;

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

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

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

expand, limit or repeal an existing regulation;

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

positively or adversely affect the state's economy.

The proposal does create a new regulation; however, the regulation is required by law.

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

The new rule is proposed under §1101.151, Occupations Code, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The new rule is also proposed under sections 661.002 and 661.022, Texas Government Code, which requires a state agency to adopt rules and prescribe procedures relating to the operation of the agency sick and family leave pools.

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

§534.8. Employee Sick and Family Leave Pools.

(a) The Agency's Director of Human Resources is designated as the administrator for both the Agency's sick leave pool and family leave pool.

(b) The Director of Human Resources, with the approval of the Executive Director, will prescribe and implement policies to effectuate the operation of the pools.

(c) The policies and procedures must be consistent with the provisions of Chapter 661, Texas Government Code, and will be included in the Agency's employee handbook.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405385

Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 936-3057

♦ ♦ ♦

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

22 TAC §535.65

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.65, Responsibilities and Operations of Providers of Qualifying Courses.

The proposed amendment to §535.65(g)(1)(B)(i) replaces the phrase "check the photo identification" with "verify the identification" of each student to: (i) broaden the language in recognition of technology developments that may allow for this required verification in different ways; (ii) help alleviate concerns about the security of a student's personal data while taking a course; and (iii) make consistent with language used elsewhere in the rule. The remainder of the amendments to §535.65 remove the requirement to have a qualifying course examination proctored and to have a proctor in situations where a course is delivered through the use of technology and there are more than 20 students at a remote site. The proctoring requirements were recommended to be removed out of concerns that: (i) the exam requirement was unnecessary because the licensing examination itself is proctored; and (ii) the requirements generally are overly burdensome. The term "classroom delivery" is added to §535.65(g)(1)(C) to specify that the obligation applies to that type of course. The language in §535.65(h)(5) is reworded for consistency with similar language found in §535.72.

The proposed amendments were recommended by the Education Standards Advisory Committee and the Texas Real Estate Inspector Committee.

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

Ms. Lee also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated will be improved clarity and integrity in rule and processes for members of the public, including students of qualifying courses, as well as education providers.

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

create or eliminate a government program;

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

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

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

create a new regulation;

expand, limit, or repeal an existing regulation;

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

positively or adversely affect the state's economy.

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

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

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

§535.65. Responsibilities and Operations of Providers of Qualifying Courses.

(a) Responsibility of Providers.

(1) A provider is responsible for:

(A) the administration of each course, including, but not limited to, compliance with any prescribed period of time for any required course topics required by the Act, Chapter 1102, and Commission rules;

(B) maintaining student attendance records and pre-enrollment agreements;

(C) verifying instructor qualification, performance and attendance;

(D) proper examination administration;

(E) validation of student identity acceptable to the Commission;

(F) maintaining student course completion records;

(G) ensuring all advertising complies with subsection (c) of this section;

(H) ensuring that instructors or other persons do not recruit or solicit prospective sales agents, brokers, easement or right-of-way agents, or inspectors during course presentation; and

(I) ensuring staff is reasonably available for public inquiry and assistance.

(2) A provider may not promote the sale of goods or services during the presentation of a course.

(3) A provider may remove a student and not award credit if a student does not participate in class, or disrupts the orderly conduct of a class, after being warned by the provider or the instructor.

(4) If a provider approved by the Commission does not maintain a fixed office in Texas for the duration of the provider's approval to offer courses, the provider shall designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas that the provider is required to maintain by this section. A power-of-attorney designating the resident must be filed with the Commission in a form acceptable to the Commission.

(b) Use of Qualified Instructor.

(1) Except as provided by this subsection, a provider must use an instructor that is currently qualified under §535.63 of this subchapter (relating to Qualifications for Instructors of Qualifying Courses) to teach the specified course.

(2) Each instructor shall be selected on the basis of expertise in the subject area of instruction and ability as an instructor.

(3) A provider shall require specialized training or work experience for instructors teaching specialized subjects such as law, appraisal, investments, taxation or home inspection.

(4) An instructor shall teach a course in substantially the same manner represented to the Commission in the instructor's manual or other documents filed with the application for course approval.

(5) A provider may use the services of a guest instructor who does not meet the instructor qualifications under §535.63 of this subchapter for qualifying real estate, easement or right-of-way, or inspector courses provided that person instructs for no more than 10% of the total course time.

(c) Advertising.

(1) The following practices are prohibited:

(A) using any advertising which does not clearly and conspicuously contain the provider's name on the first page or screen of the advertising;

(B) representing that the provider's program is the only vehicle by which a person may satisfy educational requirements;

(C) conveying a false impression of the provider's size, superiority, importance, location, equipment or facilities, except that a provider may use objective information published by the Commission regarding pass rates if the provider also displays next to the passage rate in a readily noticeable fashion:

(i) A hyperlink to the Commission website's Education Provider Exam Passage Rate page labeled "TREC Provider Exam Pass Rates" for digital media; or

(ii) A URL to the Commission website's Education Provider Exam Passage Rate page labeled "TREC Provider Exam Pass Rates" for non-digital media;

(D) promoting the provider directly or indirectly as a job placement agency, unless the provider is participating in a program recognized by federal, state, or local government and is providing job placement services to the extent the services are required by the program;

(E) making any statement which is misleading, likely to deceive the public, or which in any manner tends to create a misleading impression;

(F) advertising a course under a course name other than the course name approved by the Commission; or

(G) advertising using a name that implies the course provider is the Texas Real Estate Commission, including use of the acronym "TREC", in all or part of the course provider's name.

(2) Any written advertisement by a provider that includes a fee that the provider charges for a course must display any additional fees that the provider charges for the course in the same place in the advertisement and with the same degree of prominence.

(3) The provider shall advertise a course for the full clock hours of time for which credit is awarded.

(4) The provider is responsible for and subject to sanctions for any violation of this subsection by any affiliate or other third party marketer or web hosting site associated with or used by the provider.

(d) Pre-enrollment agreements for approved providers.

(1) Prior to a student enrolling in a course, a provider approved by the Commission shall provide the student with a pre-enrollment agreement that includes all of the following information:

(A) the tuition for the course;

(B) an itemized list of any fees charged by the provider for supplies, materials, or books needed in course work;

(C) the provider's policy regarding the refund of tuition and other fees, including a statement addressing refund policy when a student is dismissed or withdraws voluntarily;

(D) the attendance requirements;

(E) the acceptable makeup procedures, including any applicable time limits and any fees that may be charged for makeup sessions;

(F) the procedure and fees, if applicable, associated with exam proctoring;

(G) the procedure and fees for taking any permitted makeup final examination or any permitted re-examination, including any applicable time limits; and

(H) the notices regarding potential ineligibility for a license based on criminal history required by §53.152, Texas Occupations Code.

(2) A pre-enrollment agreement must be signed by a representative of the provider and the student prior to commencement of the course.

(e) Refund of fees by approved provider.

(1) A provider shall establish written policies governing refunds and contingency plans in the event of course cancellation.

(2) If a provider approved by the Commission cancels a course, the provider shall:

(A) fully refund all fees collected from students within a reasonable time; or

(B) at the student's option, credit the student for another course.

(3) The provider shall inform the Commission when a student requests a refund because of a withdrawal due to the student's dissatisfaction with the quality of the course.

(4) If a provider fails to give the notice required by subsection (d)(1)(H) of this section, and an individual's application for a license is denied by the Commission because the individual has been convicted of a criminal offense, the provider shall reimburse the individual the amounts required by §53.153, Texas Occupations Code.

(f) Course materials.

(1) Before the course starts, a provider shall give each student copies of or, if a student has online access, provide online access to any materials to be used for the course.

(2) A provider shall update course materials to ensure that current and accurate information is provided to students as provided for under §535.62 of this subchapter (relating to Approval of Qualifying Courses).

(g) Presentation of courses.

(1) Classroom Delivery.

(A) The location for the course must:

(i) be conducive to instruction, such as a classroom, training room, conference room, or assembly hall that is separate and apart from work areas;

(ii) be adequate for the class size;

(iii) pose no threat to the health or safety of students; and

(iv) allow the instructor to see and hear each student and the students to see and hear the instructor, including when offered through the use of technology.

(B) The provider must:

(i) verify [~~check~~] the [~~photo~~] identification of each student at class sign up and when signing in for each subsequent meeting of the class;

(ii) ensure the student is present for the course for the hours of time for which credit is awarded;

(iii) provide a 10 minute break per hour at least every two hours; and

(iv) not have daily course segments that exceed 12 hours.

(C) For [~~If the course is~~] a qualifying or non-elective continuing education classroom delivery course delivered through the use of technology where [~~and~~] there are more than 20 students registered for the course, the provider will also use [~~:~~]

[~~(i)~~] a monitor [~~at the broadcast origination site~~] to verify identification of each student, monitor active participation of each student and facilitate questions for the instructor. [~~; and~~]

[~~(ii)~~ ~~a proctor at each remote site with more than 20 students to verify identification of each student, monitor active participation of each student and proctor any on-site examination~~].

(D) Makeup Session for Classroom Courses.

(i) A provider may permit a student who attends at least two-thirds of an originally scheduled qualifying course to complete a makeup session to satisfy attendance requirements.

(ii) A member of the provider's staff must approve the makeup procedure to be followed. Acceptable makeup procedures are:

(I) attendance in corresponding class sessions in a subsequent offering of the same course; or

(II) the supervised presentation by audio or video recording of the class sessions actually missed.

(iii) A student shall complete all class makeup sessions no later than the 90th day after the date of the completion of the original course.

(iv) A student who attends less than two-thirds of the originally scheduled qualifying course is not eligible to complete a makeup session. The student shall automatically be dropped from the course with no credit.

(2) Distance Education Delivery. The provider must ensure that:

(A) the student taking all topics of the course and completing all quizzes and exercises is the student receiving credit for the course through a student identity verification process acceptable to the Commission;

(B) a qualified instructor is available to answer students' questions or provide assistance as necessary in a timely manner;

(C) a student has completed all instructional modules and attended any hours of live instruction required for a given course; and

(D) a qualified instructor is responsible for providing answers and rationale for the grading of the course work.

(3) A provider is not required to present topics in the order outlined for a course on the corresponding course approval form.

(4) The periods of time prescribed to each unit of a topic for a qualifying course as outlined on the corresponding course approval form are recommendations and may be altered to allow instructors flexibility to meet the particular needs of their students.

(5) Notwithstanding subsections (3) - (4) of this section, all units must be presented within the prescribed topic.

(h) Course examinations.

(1) The final examination given at the end of each course must be given in the manner submitted to and approved by the Commission. All final examinations must be closed book.

(2) Final examination questions must be kept confidential and be significantly different from any quiz questions and exercises used in the course.

(3) A provider shall not permit a student to view or take a final examination before the completion of regular course work and any makeup sessions required by this section.

(4) A provider must rotate all versions of the examination required by §535.62(b)(7) of this subchapter throughout the approval period for a course in a manner acceptable to the Commission and [~~examinations~~] must~~:~~

[~~(A)~~] require an unweighted passing score of 70%. [~~; and~~]

[~~(B) be proctored by a member of the provider faculty or staff, or third party proctor acceptable to the Commission, who:~~]

~~*(i)* is present at the test site or able to monitor the student through the use of technology acceptable to the Commission; and~~]

~~*(ii)* has positively identified that the student taking the examination is the student registered for and who took the course.~~]

(5) A provider must administer the examination under conditions that ensure the student taking the examination is the student who registered for and took the course. [~~The following are examples of acceptable third party proctors:~~]

[~~(A) employees at official testing or learning/tutoring centers;~~]

[~~(B) librarians at a school, university, or public library;~~]

[~~(C) college or university administrators, faculty, or academic advisors;~~]

[~~(D) clergy who are affiliated with a specific temple, synagogue, mosque, or church; and~~]

[~~(E) educational officers of a military installation or correctional facility.~~]

(6) A provider may not give credit to a student who fails a final examination and a subsequent final examination as provided for in subsection (i) of this section.

(i) Subsequent final course examination.

(1) If a student fails a final course examination, a provider may permit the student to take a subsequent final examination only after the student has completed any additional course work prescribed by the provider.

(2) A student shall complete the subsequent final examination no later than the 90th day after the date the original class concludes. The subsequent final examination must be a different version of the original final examination given to the student and must comply with §535.62(b)(8) of this subchapter and subsection (h) of this section.

(3) If a student fails to timely complete the subsequent final examination as required by this subsection, the student shall be automatically dropped from the course with no credit.

(4) A student who fails the final course examination a second time is required to retake the course and the final course examination.

(j) Course completion certificate.

(1) Upon successful completion of a qualifying course, a provider shall issue a course completion certificate. The course completion certificate shall include:

(A) the provider's name and approval number;

(B) the instructor's name;

(C) the course title;

(D) course numbers;

(E) the number of classroom credit hours;

(F) the course delivery method;

(G) the dates the student began and completed the course; and

(H) the printed name and signature of an official of the provider on record with the Commission.

(2) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(3) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(k) Instructor and course evaluations.

(1) A provider shall provide each student enrolled in a course with an instructor and course evaluation form or provide a link

to an online version of the form that a student can complete and submit any time after course completion.

(2) An instructor may not be present when a student is completing the evaluation form and may not be involved in any manner with the evaluation process.

(3) When evaluating an instructor or course, a provider shall use all of the questions from the evaluation form approved by the Commission, in the same order as listed on that form. A provider may add additional questions to the end of the Commission evaluation questions or request the students to also complete the provider's evaluation form.

(4) A provider shall maintain any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(5) At the Commission's request, a provider shall produce instructor and course evaluation forms for inspection by Commission staff.

(l) Maintenance of records for a provider of qualifying courses.

(1) A provider shall maintain records of each student enrolled in a course for a minimum of four years following completion of the course, including course and instructor evaluations and student enrollment agreements.

(2) A provider shall maintain financial records sufficient to reflect at any time the financial condition of the school.

(3) A school's financial statement and balance sheets must be available for audit by Commission staff, and the Commission may require presentation of financial statements or other financial records.

(4) All records may be maintained electronically but must be in a common format that is legible and easily printed or viewed without additional manipulation or special software.

(m) Changes in ownership or operation of an approved provider of qualifying courses.

(1) An approved provider shall obtain the approval of the Commission at least 30 days in advance of any material change in the operations of the provider by submitting the Qualifying Education Provider Supplement Application, including but not limited to changes in:

(A) operations or records management; and

(B) the location of the main office and any other locations where courses are offered.

(2) An approved provider requesting approval of a change in ownership shall provide all of the following information or documents to the Commission:

(A) an Education Provider Application reflecting all required information for each owner and the required fee;

(B) a Principal Information Form for each proposed new owner who holds at least 10% interest in the school;

(C) financial documents to satisfy standards imposed by §535.61 of this subchapter (relating to Approval of Providers of Qualifying Courses), including a $20,000 surety bond for the proposed new owner; and

(D) business documentation reflecting the change.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405388
Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 936-3057

♦ ♦ ♦

SUBCHAPTER G. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

22 TAC §535.70, §535.72

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.70, Definitions, and §535.72, Approval of Non-elective Continuing Education Courses.

The proposed amendment to §535.70 removes the definition of "proctor." The proposed amendments to §535.72(g)(3)(B) remove the proctoring requirement for inspector non-elective continuing education course examinations for distance education delivery and make clarifying changes for rule consistency. Both changes were recommended out of concerns that: (i) the exam proctoring requirement was unnecessary; and (ii) the requirements generally are overly burdensome.

The proposed amendments were recommended by the Education Standards Advisory Committee and the Texas Real Estate Inspector Committee.

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

Ms. Lee also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated will be improved clarity and integrity in rule and processes for members of the public, including students, as well as education providers.

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

create or eliminate a government program;

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

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

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

create a new regulation;

expand, limit or repeal an existing regulation;

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

positively or adversely affect the state's economy.

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

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

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

§535.70. Definitions.

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

(1) Broker Responsibility Course--The course required by §1101.458 of the Act.

(2) CE--Continuing education.

(3) CE instructor--A person chosen by a provider to teach continuing education courses.

(4) CE provider--Any person approved by the Commission; or specifically exempt by the Act, Chapter 1102, Texas Occupation Code, or Commission rule; that offers a course for which continuing education credit may be granted by the Commission to a license holder or applicant.

(5) Classroom delivery--A method of course delivery where the instructor and students interact face to face and in real time, in either the same physical location, or through the use of technology.

(6) Distance education delivery--A method of course delivery other than classroom delivery, including online and correspondence delivery.

(7) Combination delivery--A combination of classroom and distance education where at least 50% of the course is offered through classroom delivery.

(8) Elective CE course--A continuing education course, other than a Non-elective CE course, approved by the Commission as acceptable to fulfil the continuing education hours needed to renew a license.

(9) Non-elective CE course--A continuing education course, for which the subject matter of the course is specifically mandated by the Act, Chapter 1102, or Commission rule, that a license holder is required to take prior to renewal of a license.

(10) Legal Update Courses--Required courses created for and approved by the Texas Real Estate Commission to satisfy the eight hours of continuing education required by §1101.455 of the Act.

(11) Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

~~[(12) Proctor--A person who monitors a final examination for a course offered by a provider under the guidelines contained in this section. A proctor may be a course instructor, the provider, an employee of a college or university testing center, a librarian, or other person approved by the Commission.]~~

§535.72. Approval of Non-elective Continuing Education Courses.

(a) General requirements.

(1) The non-elective continuing education courses must be conducted as prescribed by the rules in this subchapter.

(2) Elective continuing education courses are approved and regulated under §535.73 of this subchapter (relating to Approval of Elective Continuing Education Courses).

(b) Application for approval to offer non-elective real estate or inspector CE courses.

(1) A CE provider seeking to offer a specific non-elective real estate or inspector CE course as outlined in this section shall:

(A) for a non-elective real estate course:

(i) submit a Real Estate Non-Elective Continuing Education CE Course Application to the Commission; and

(ii) pay the fee required by §535.101 of this chapter (relating to Fees); and

(B) for a non-elective real estate inspection course:

(i) submit an Inspector Non-Elective Continuing Education CE Course Application to the Commission; and

(ii) pay the fee required by §535.210 of this chapter (relating to Fees).

(2) A provider may file a single application for a CE course offered through multiple delivery methods. A fee is required for content review of each CE course and for each distinct delivery method utilized by a provider for that course.

(3) A provider who seeks approval of a new delivery method for a currently approved CE course must submit a new application, and pay all required fees, including a fee for content review.

(4) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(c) Commission approval of non-elective course materials. Every two years, the Commission shall approve subject matter and course materials to be used for the following non-elective continuing education courses:

(1) a four-hour Legal Update I: Laws, Rules and Forms course;

(2) a four-hour Legal Update II: Agency, Ethics and Hot Topics course;

(3) a six-hour Broker Responsibility course; and

(4) an eight-hour Inspector Legal and Ethics and Standards of Practice Review course.

(d) Course expiration.

(1) Each legal update course expires on December 31 of each odd-numbered year.

(2) Each broker responsibility course expires on December 31 of each even-numbered year.

(3) Each Inspector Legal and Ethics and Standards of Practice Review course expires on August 31 of each odd-numbered year.

(e) Delivery method. Non-elective CE courses must be delivered by one of the following delivery methods:

(1) classroom delivery;

(2) distance education delivery; or

(3) a combination of (1) and (2) of this subsection if at least 50% of the combined course is offered by classroom delivery.

(f) Except as provided in this section, non-elective CE courses must meet the presentation requirements of §535.65(g) of this chapter (relating to Responsibilities and Operations of Providers of Qualifying Courses). The provider must submit a course completion roster in accordance with §535.75(d) of this subchapter (relating to Responsibilities and Operations of Continuing Education Providers). Non-elective real estate courses are designed by the Commission for interactive classroom delivery. Acceptable demonstration of methods to engage students in interactive discussions and activities to meet the course objectives and time requirements are required for approval.

(g) Course examinations. A provider must administer a final examination promulgated by the Commission for non-elective CE courses.

(1) Real estate non-elective CE courses. The examination will be included in course instruction time. Each student will complete the examination independently followed by a review of the correct answers by the instructor. There is no minimum passing grade required to receive credit.

(2) Inspector non-elective CE courses for classroom delivery.

(A) The examination will be given as a part of class instruction time with each student answering the examination questions independently followed by a review of the correct answers by the instructor.

(B) A student is not required to receive a passing grade on the examination to receive course credit.

(3) Inspector non-elective CE courses for distance education delivery.

(A) An examination is required after completion of regular course work.

(B) The examination must be:

~~*[(i)* proctored by a member of the provider faculty or staff, or third party proctor set out in §535.65(h)(5) of this chapter, who is present at the test site and has positively identified that the student taking the examination is the student who registered for and took the course; or~~]

(i) [~~(ii)~~] administered [~~using a computer~~] under conditions [~~that satisfy the Commission~~] that ensure the student taking the examination is the student who registered for and took the course; and

(ii) [~~(iii)~~] kept confidential.

(C) A provider may permit a student to take one subsequent final examination if the student fails the initial final examination. The subsequent final examination must be:

(i) different from the initial final examination; and

(ii) completed no later than the 30th day after the date the original course concludes.

(D) Credit will not be awarded to a student for a course where the student receives a pass rate on a final examination or subsequent final exam below 70%.

(E) A student who fails the subsequent final course examination is required to retake the course and the final course examination.

(h) Approval of currently approved courses by a secondary provider.

(1) If a CE provider wants to offer a course currently approved for another provider, that secondary provider must:

(A) submit the CE course application supplement form(s);

(B) submit written authorization to the Commission from the provider for whom the course was initially approved granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 of this chapter or §535.210 of this chapter.

(2) If approved to offer the currently approved course, the secondary provider is required to:

(A) offer the course as originally approved, assume the original expiration date, include any approved revisions, use all materials required for the course; and

(B) meet the requirements of §535.75 of this subchapter.

(i) Approval notice. A CE Provider shall not offer non-elective continuing education courses until the provider has received written notice of the approval from the Commission.

(j) Required revision of a currently approved non-elective CE course. Providers are responsible for keeping current on changes to the Act and Commission rules and must supplement materials for approved non-elective CE courses to present the current version of all applicable statutes and rules on or before the effective date of those changes.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405390
Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 936-3057

♦ ♦ ♦

SUBCHAPTER Q. ADMINISTRATIVE PENALTIES

22 TAC §535.191

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.191, Schedule of Administrative Penalties, in Chapter 535, General Provisions.

The amendment is proposed to: (i) clarify that a person may only pay an administrative penalty in an authorized manner; and (ii) add that if an online payment is authorized, such a payment may be subject to fees set by the Department of Information Resources that are in addition to the administrative penalty assessed by the Commission.

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

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

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

create or eliminate a government program;

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

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

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

create a new regulation;

expand, limit or repeal an existing regulation;

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

positively or adversely affect the state's economy.

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

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendment is also proposed under Texas Occupations Code, §1101.702, which requires the Commission adopt by rule a schedule of administrative penalties.

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

§535.191. Schedule of Administrative Penalties.

(a) The Commission may suspend or revoke a license or take other disciplinary action authorized by the Act in addition to or instead of assessing the administrative penalties set forth in this section.

(b) The administrative penalties set forth in this section take into consideration all of the criteria listed in §1101.702(b) of the Act.

(c) An administrative penalty range of $100 - $1,500 per violation per day may be assessed for violations of the following sections of the Act and Rules:

(1) §1101.552;

(2) §1101.652(a)(3);

(3) §1101.652(a)(8);

(4) §1101.652(a-1)(3);

(5) §1101.652(b)(23);

(6) §1101.652(b)(29);

(7) §1101.652(b)(33);

(8) 22 TAC §535.21(a);

(9) 22 TAC §535.53;

(10) 22 TAC §535.65;

(11) 22 TAC §535.91(d);

(12) 22 TAC §535.121;

(13) 22 TAC §535.154;

(14) 22 TAC §535.155;

(15) 22 TAC §535.157; and

(16) 22 TAC §535.300.

(d) An administrative penalty range of $500 - $3,000 per violation per day may be assessed for violations of the following sections of the Act and Rules:

(1) §§1101.652(a)(4) - (7);

(2) §1101.652(a-1)(2);

(3) §1101.652(b)(1);

(4) §§1101.652(b)(7) - (8);

(5) §1101.652(b)(12);

(6) §1101.652(b)(14);

(7) §1101.652(b)(22);

(8) §1101.652(b)(28);

(9) §§1101.652(b)(30) - (31);

(10) §1101.654(a);

(11) 22 TAC §531.18;

(12) 22 TAC §531.20;

(13) 22 TAC §535.2;

(14) 22 TAC §535.6(c) - (d);

(15) 22 TAC §535.16;

(16) 22 TAC §535.17; and

(17) 22 TAC §535.144.

(e) An administrative penalty range of $1,000 - $5,000 per violation per day may be assessed for violations of the following sections of the Act and Rules:

(1) §1101.351;

(2) §1101.366(d);

(3) §1101.557(b);

(4) §1101.558;

(5) §§1101.559(a) and (c);

(6) §1101.560;

(7) §1101.561(b);

(8) §1101.615;

(9) §1101.651;

(10) §1101.652(a)(2);

(11) §1101.652(a-1)(1);

(12) §§1101.652(b)(2) - (6);

(13) §§1101.652(b)(9) - (11);

(14) §1101.652(b)(13);

(15) §§1101.652(b)(15) - (21);

(16) §§1101.652(b)(24) - (27);

(17) §1101.652(b)(32);

(18) 22 TAC §535.141(f);

(19) 22 TAC §§535.145 - 535.148; and

(20) 22 TAC §535.156.

(f) The Commission may assess an additional administrative penalty of up to two times that assessed under subsections (c), (d) and (e) of this section, subject to the maximum penalties authorized under §1101.702(a) of the Act, if a person has a history of previous violations.

(g) Payment of an administrative penalty must be submitted in a manner acceptable to the Commission. Payments authorized to be submitted online may be subject to fees set by the Department of Information Resources that are in addition to the administrative penalty assessed by the Commission.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405391
Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 936-3057

♦ ♦ ♦

SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.219

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.219, Schedule of Administrative Penalties, in Chapter 535, General Provisions.

The amendment is proposed to: (i) clarify that a person may only pay an administrative penalty in an authorized manner; and (ii) add that if an online payment is authorized, such a payment may be subject to fees set by the Department of Information Resources that are in addition to the administrative penalty assessed by the Commission.

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

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

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

create or eliminate a government program;

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

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

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

create a new regulation;

expand, limit or repeal an existing regulation;

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

positively or adversely affect the state's economy.

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

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendment is also proposed under Texas Occupations Code, §1102.403, which allows the Commission to impose

an administrative penalty as provided by Subchapter O, Chapter 1101, pursuant to that section.

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

§535.219. Schedule of Administrative Penalties.

(a) The Commission may suspend or revoke a license or take other disciplinary action authorized by Chapter 1102 in addition to or instead of assessing the administrative penalties set forth in this section.

(b) The administrative penalties set forth in this section consider the criteria listed in §1101.702(b) of the Act.

(c) An administrative penalty range of $100 - $1,500 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

(1) §1101.652(a)(8);

(2) §1102.118;

(3) §1102.305;

(4) 22 TAC §535.216(c);

(5) 22 TAC §535.217;

(6) 22 TAC §535.220(a) - (d) and (g);

(7) 22 TAC §535.221; and

(8) 22 TAC §535.223.

(d) An administrative penalty range of $500 - $3,000 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

(1) §§1101.652(a)(3) - (4);

(2) §1102.301;

(3) 22 TAC §535.222;

(4) 22 TAC §535.226(d) - (e); and

(5) 22 TAC §§535.227 - 535.233.

(e) An administrative penalty of $1,000 - $5,000 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

(1) §§1101.652(a)(2), (5) - (6);

(2) §1102.101;

(3) §1102.102;

(4) §1102.103;

(5) §1102.302;

(6) §1102.303;

(7) §1102.304;

(8) 22 TAC §535.208(e)(2);

(9) 22 TAC §535.211;

(10) 22 TAC §535.215;

(11) 22 TAC §535.220(e)(1), (3) - (7); and

(12) 22 TAC §535.224(b)(1) - (2).

(f) The Commission may assess an administrative penalty of up to two times that outlined under subsections (c), (d), and (e) of this section, subject to the maximum penalties authorized under §1101.702(a) of the Act, if a person has a history of previous violations.

(g) Payment of an administrative penalty must be submitted in a manner acceptable to the Commission. Payments authorized to be submitted online may be subject to fees set by the Department of Information Resources that are in addition to the administrative penalty assessed by the Commission.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405392
Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 936-3057

♦ ♦ ♦

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.45

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §537.45, Standard Contract Form TREC No. 38-7, Notice of Buyer's Termination of Contract, in Chapter 537, Professional Agreements and Standard Contracts.

Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contracts for the sale of real property. These forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor. The Texas Real Estate Broker-Lawyer Committee recommended revisions to Paragraph 2 of the Notice of Buyer's Termination of Contract to ensure that the buyer has delivered the lender's written statement to the seller in accordance with the recent changes to Paragraph 2A, Buyer Approval, of the Third Party Financing Addendum.

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

Ms. Lee also has determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be improved clarity and greater transparency for members of the public and license holders who use these contract forms.

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

create or eliminate a government program;

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

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

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

create a new regulation;

expand, limit or repeal an existing regulation;

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

positively or adversely affect the state's economy.

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

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendment is also adopted under Texas Occupations Code, §1101.155, which authorizes the Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and adopted by the Commission.

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

§537.45. Standard Contract Form TREC No. 38-8 [~~38-7~~], Notice of Buyer's Termination of Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 38-8 [~~38-7~~] approved by the Commission in 2025 [~~2021~~] for mandatory use as a buyer's notice of termination of contract.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405394
Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 936-3057

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 221. MEAT SAFETY ASSURANCE
SUBCHAPTER B. MEAT AND POULTRY INSPECTION

25 TAC §§221.11 - 221.16

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes amendments to §221.11, concerning Federal Regulations on Meat and Poultry Inspection; §221.12, concerning Meat and Poultry Inspection; §221.13, concerning Enforcement and Penalties; §221.14, concerning Custom Exempt Slaughter and Processing; Low-Volume Poultry or Rabbit Slaughter Operations; §221.15, concerning Inspection of Alternate Source Food Animals; and §221.16, concerning Fees.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (S.B.) 691, 88th Legislature, Regular Session, 2023, that amended Subchapter A, Chapter 433, Texas Health and Safety Code by adding §433.0065, relating to an animal share exemption for certain meat and meat food products and providing for a civil penalty. The proposed amendments provide guidance regarding how producers may engage in the slaughtering, processing, labeling, and distribution of meat and meat food products produced for members of an animal share while remaining in compliance with state and federal laws and the regulatory requirements of 25 Texas Administrative Code (TAC) §221.14.

The proposed amendments also implement S.B. 664, 88th Legislature, Regular Session, 2023, that amended Subchapter D, Chapter 431, Texas Health and Safety Code, by adding §431.0805, that defines analogue and cell-cultured food products as distinguished from the definitions of "meat," "poultry," "meat food products," and "poultry food products." The proposed amendments update, correct, improve, and clarify the rule language and incorporate plain language where appropriate.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §221.11 includes a revision to the exemption listed for 9 Code of Federal Regulations (CFR) §303 and the removal of 9 CFR §355, and revises the DSHS Meat Safety website address.

The proposed amendment to §221.12 adds the definitions for "animal share," "meat," and "meat food product" as required by S.B. 691, 88th Legislature, Regular Session, 2023, and S.B. 664, 88th Legislature, Regular Session, 2023. This proposal also revises the definitions for "custom exempt operation," "custom processor," "custom slaughterer," "department," "federal regulations," "feral swine," "game animals," "grant of custom exemption," "heat-treated," "meat safety assurance section," "poultry," "poultry or rabbit exemption," and "slaughter" for clarity. Definitions for the terms "humane slaughter," "livestock producer," "official slaughter establishments premises," "poultry product," and "ritual cut" have been added. Revisions also add to the basic requirements to receive a grant from DSHS. Rules covering the humane treatment of livestock were moved from §221.14 to §221.12. Other minor revisions were made for clarity.

The proposed amendment to §221.13 includes additional examples of violations for severity levels I-V.

The proposed amendment to §221.14 includes combining rules required by both custom slaughter and custom processing establishments into one section for better clarity; consolidating and moving rules for the humane treatment of livestock from §221.14 to §221.12; revising temperature charts for the cooking of custom prepared meat and poultry products and renumbering those related figures, §221.14(c)(10)(B)(i) and §221.14(c)(10)(B)(ii); and updating the requirements for the custom slaughter and processing of co-owned livestock. The rule title is updated to include *animal share*, "Custom Exempt Slaughter and Processing; Animal Share and Low-Volume Poultry or Rabbit Slaughter Operations."

The proposed amendment to §221.15 includes the removal of subsection (e), Rabbits, and its reference to 9 CFR §354; subsection (f), Migratory water fowl, game birds, squab, and its reference to 9 CFR §362; and subsection (g), Certified products for dogs, cats, and other carnivora, and its reference to 9 CFR §355. Other minor revisions were made for clarity.

The proposed amendment to §221.16 updates language surrounding fees for clarity and incorporates plain language.

FISCAL NOTE

Christy Havel Burton, Chief Financial Officer, has determined, for each year of the first five years 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

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 expand existing regulations;

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

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

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

Christy Havel Burton has also determined 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 legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Dr. Timothy Stevenson, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rules are in effect, the public will benefit from the enhanced availability and safety of meat and meat food products.

Christy Havel Burton, Chief Financial Officer, has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because these rule amendments do not create any additional fees.

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 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 23R055" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Health and Safety Code Chapters 431 and 433, which direct the Executive Commissioner of HHSC to adopt rules to implement legislation; Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC 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 amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapters 431, 433 and 1001.

§221.11. Federal Regulations on Meat and Poultry Inspection.

(a) The department adopts by reference the following federal regulations in the Code of Federal Regulations (CFR), as amended.[:]

(1) 9 CFR[,] Part 301, Terminology; Adulteration and Misbranding Standards;

(2) 9 CFR[,] Part 303, Exemptions, except §303.1(a)(2)(i) [~~§303.1(a) and (b)~~];

(3) 9 CFR[,] Part 304, Application for Inspection; Grant of Inspection;

(4) 9 CFR[,] Part 305, Official Numbers; Inauguration of Inspection; Withdrawal of Inspection; Reports of Violation;

(5) 9 CFR[,] Part 306, Assignment and Authorities of Program Employees;

(6) 9 CFR[,] Part 307, Facilities for Inspection;

(7) 9 CFR[,] Part 309, Ante-Mortem Inspection;

(8) 9 CFR[,] Part 310, Post-Mortem Inspection;

(9) 9 CFR[,] Part 311, Disposal of Diseased or Otherwise Adulterated Carcasses and Parts;

(10) 9 CFR[,] Part 312, Official Marks, Devices and Certificates;

(11) 9 CFR[,] Part 313, Humane Slaughter of Livestock;

(12) 9 CFR[,] Part 314, Handling and Disposal of Condemned or Other Inedible Products at Official Establishments;

(13) 9 CFR[,] Part 315, Rendering or Other Disposal of Carcasses and Parts Passed for Cooking;

(14) 9 CFR[,] Part 316, Marking Products and Their Containers;

(15) 9 CFR[,] Part 317, Labeling, Marking Devices, and Containers;

(16) 9 CFR[,] Part 318, Entry into Official Establishments; Reinspection and Preparation of Products;

(17) 9 CFR[,] Part 319, Definitions and Standards of Identity or Composition, with the [~~. The~~] following requirements applying, [~~shall apply~~] except in the case of restaurant menus and signs:[~~.~~]

(A) the [~~The~~] label of products prepared from bison meat must contain the words "bison meat," "North American bison meat," or "Native American bison meat"; and[~~."~~]

(B) the [~~The~~] label of products prepared from buffalo meat must contain the words "water buffalo meat," or "Asian buffalo meat";[~~."~~]

(18) 9 CFR[,] Part 320, Records, Registration, and Reports;

(19) 9 CFR[,] Part 321, Cooperation with States and Territories;

(20) 9 CFR[,] Part 322, Exports;

(21) 9 CFR[,] Part 325, Transportation;

(22) 9 CFR[,] Part 327, Imported Products;

(23) 9 CFR[,] Part 329, Detention; Seizure and Condemnation; Criminal Offenses;

(24) 9 CFR[,] Part 331, Special Provisions for Designated States and Territories; and for Designation of Establishments Which Endanger Public Health and for Such Designated Establishments;

(25) 9 CFR[,] Part 335, Rules of Practice Governing Proceedings Under [~~under~~] the Federal Meat Inspection Act;

(26) 9 CFR[,] Part 350, Special Services Relating to Meat and Other Products;

(27) 9 CFR[,] Part 352, Exotic Animals and Horses; Voluntary Inspection, except 9 CFR §352, Subpart B;

(28) 9 CFR[,] Part 354, Voluntary Inspection of Rabbits and Edible Products Thereof;

~~[(29) 9 CFR, Part 355, Certified Products for Dogs, Cats, and Other Carnivora; Inspection, Certification, and Identification as to Class, Quality, Quantity, and Condition;]~~

(29) [~~(30)~~] 9 CFR[,] Part 362, Voluntary Poultry Inspection Regulations;

(30) [~~(31)~~] 9 CFR[,] Part 381, Poultry Products Inspection Regulations, except §381.10(a)(3) through §381.10(c);

(31) [~~(32)~~] 9 CFR[,] Part 416, Sanitation;

(32) [~~(33)~~] 9 CFR[,] Part 417, Hazard Analysis and Critical Control Point [~~(HACCP)~~] Systems;

(33) [~~(34)~~] 9 CFR[,] Part 418, Recalls;

(34) [~~(35)~~] 9 CFR[,] Part 424, Preparation and Processing Operations;

(35) [~~(36)~~] 9 CFR[,] Part 430, Requirements for Specific Classes of Product;

(36) [~~(37)~~] 9 CFR[,] Part 441, Consumer Protection Standards: Raw Products;

(37) [~~(38)~~] 9 CFR[,] Part 442, Quantity of Contents Labeling and Procedures and Requirements for Accurate Weights; and

(38) [~~(39)~~] 9 CFR[,] Part 500, Rules of Practice.

(b) Copies of these regulations are available via the Internet at www.dshs.texas.gov/meat-safety [~~https://www.dshs.texas.gov/meat/laws-rules.aspx~~].

§221.12. Meat and Poultry Inspection.

(a) Introduction. The purpose of this subchapter is to protect the public health by establishing uniform rules to assure that meat and poultry products are clean, wholesome, and truthfully labeled.

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

(1) Act--The Texas Meat and Poultry Inspection Act, Texas Health and Safety Code[,] Chapter 433.

(2) Adulterated--A carcass, part of a carcass, or a meat food product where:

(A) any part of it is the product of an animal that has died in a manner other than by slaughter;

(B) any part of it consists of a filthy, putrid, or decomposed substance or is for another reason unsound, unhealthy, unwholesome, or otherwise unfit for human food; or

(C) it contains, because of administration of any substance to a live animal or otherwise, an added poison or harmful substance that makes the carcass, part of the carcass, or meat food unfit for human food.

(3) Alternate source food animals--Animals slaughtered and processed for food that are amenable to inspection under the Act but are not amenable to inspection under the Federal Meat Inspection Act (21 United States Code (USC) [~~U.S.C.~~] §601 et seq.) or Federal Poultry Products Inspection Act (21 USC [~~U.S.C.~~] §451 et seq.).

(4) Animal share--An ownership interest, conveyed and documented before slaughter, in one or more identified livestock animals created by a contract between a livestock producer, who owns the livestock, and a prospective co-owner of the livestock.

(A) Animal shares are defined portions of one or more specifically identified livestock and do not apply to groups of livestock or herds.

(B) Purchase, acquisition, or ownership of animal shares is limited to an individual co-owner. Animal shares may not be purchased, acquired, or owned by groups, businesses, or organizations.

(C) A livestock producer may, but is not required to, own a share of the individual livestock animal at the time of slaughter.

(5) [~~(4)~~] Bison--An animal known by the scientific name Bovidae bison bison, commonly known as the North American prairie bison; or an animal known by the scientific name Bovidae bison athabascae, commonly known as the Canadian wood bison.

(6) [~~(5)~~] Bison meat--The meat or flesh of a bison.

(7) [~~(6)~~] Buffalo--An animal known by the scientific name Bovidae bubalus bubalus, commonly known as the Asian Indian buffalo, water buffalo, or caraboa; an animal known by the scientific name Bovidae syncerus caffer, commonly known as the African buffalo or the Cape buffalo; an animal known by the scientific name Bovidae anoa depressicornis, commonly known as the Celebes buffalo; or an animal known by the scientific name Bovidae anoa mindorenis, commonly known as the Philippine buffalo or Mindoro buffalo.

(8) [~~(7)~~] Buffalo meat--The carcass, part of the carcass, or meat food product made in whole or part of a buffalo.

(9) [~~(8)~~] Change in ownership--

(A) A change in the business organization operating the business that [~~which~~] changes the legal entity responsible for operation of the business; or

(B) any change in control of the business.

(10) [~~(9)~~] Commissioner--Commissioner of the Department of State Health Services. For the purposes of this subchapter, the term "Secretary," [~~Secretary,~~] when used in 9 Code of Federal Regulations (CFR), means [~~CFR, shall mean~~] commissioner.

(11) [~~(10)~~] Custom exempt operation--

(A) The slaughtering of livestock or the processing of an uninspected carcass or parts thereof for the owner of that livestock animal, carcass, or parts;[~~,~~] a member of the owner's household;[~~,~~] or a nonpaying guest or employee of the owner in accordance with Texas Health and Safety Code[~~,~~] §433.006; or

(B) the selling of livestock to be slaughtered and processed by the purchaser on premises owned or operated by the seller for the exclusive use of the purchaser;[~~,~~] a member of the owner's household;[~~,~~] or a nonpaying guest or employee of the owner in accordance with Texas Health and Safety Code[~~,~~] §433.006.

(12) [~~(11)~~] Custom processor--A person who prepares meat food products from uninspected livestock carcasses or parts thereof for the owner of those carcasses or parts for the exclusive use of the owner, a member of the owner's household, or a nonpaying guest or employee of the owner in accordance with Texas Health and Safety Code[~~,~~] §433.006.

(13) [~~(12)~~] Custom slaughterer--A person who slaughters livestock for a custom exempt operation [~~the owner of the livestock animal for the exclusive use of the owner of the livestock or sells livestock to be slaughtered by the purchaser on premises owned or operated by the seller, for the exclusive use of the purchaser of the livestock, a member of the purchaser's (owner's) household, or a nonpaying guest of the purchaser (owner)~~] in accordance with Texas Health and Safety Code[~~,~~] §433.006. Custom slaughter includes all activities related to slaughter, including restraining [~~of~~] livestock, cleaning or preparing any equipment used for slaughter such as tools and knives, and cleaning and preparing the slaughter facility.

(14) [~~(13)~~] Department--The Department of State Health Services. For the purposes of this subchapter, when using the federal regulations adopted by reference in §221.11 of this subchapter (relating to Federal Regulations on Meat and Poultry Inspection), the terms "United States Department of Agriculture" or "department" mean the Department of State Health Services [~~the term United States Department of Agriculture, when used in federal regulations adopted by reference by the department in §221.11 of this title (relating to Federal Regulations on Meat and Poultry Inspection), shall mean the department~~].

(15) Disfavored--Having a negative impact upon the determination to award a Grant of Custom Exemption, Grant of Inspection, or Grant of Voluntary Inspection.

(16) [~~(14)~~] Exotic animal--A member of a species of game not indigenous to this state, including axis deer, nilgai antelope, or other cloven hoofed ruminant animal.

(17) [~~(15)~~] Federal regulations--Chapter 9 of the Code of Federal Regulations (CFR) as [~~The regulations~~] adopted by reference [~~by the department~~] in §221.11 of this subchapter [~~title~~].

(18) [~~(16)~~] Feral swine--Nondomestic descendants of domestic swine that have either escaped or were released and subsequently developed survival skills necessary to thrive in the wild. Some feral swine are outcrossed with "Russian boar." Live feral [~~Feral~~] swine delivered to an establishment are subject to the same regulations as domestic swine.

(19) [~~(17)~~] Game animals--Wild animals [~~that are indigenous to this state~~], not amenable to the Act, for which the hunter must obtain a hunting license from the Texas Parks and Wildlife Department before hunting animals, such as white-tailed deer, mule deer, pronghorn antelope, and big horn sheep.

(20) [~~(18)~~] Grant of Custom Exemption--An authorization from the department to engage in a business of custom slaughtering or processing livestock for the owner of the livestock. This exemption is limited to [~~includes~~] the exclusive use for [~~of~~] the owner, a member of the owner's household, or a nonpaying guest or employee of the owner, in accordance with Texas Health and Safety Code[~~,~~] §433.006, provided that the following conditions are met:

(A) the establishment slaughters only sound, healthy livestock and conducts all processing and handling under sanitary standards and procedures resulting in meat products that are not adulterated;

(B) the product meets the marking and labeling requirements as specified in §221.14 of this subchapter [~~title~~] (relating to Custom Exempt Slaughter and Processing; Animal Share and Low-Volume Poultry or Rabbit Slaughter Operations); and

(C) the establishment maintains records as specified in §221.14 of this subchapter [~~title~~].

(21) [~~(19)~~] Grant of Inspection--An authorization issued by the department to engage in a business subject to inspection under the Act.

(22) [~~(20)~~] Grant of Voluntary Inspection--An authorization from the department to engage in a business subject to inspection of alternate source food animals under the Act.

(23) [~~(21)~~] Granted establishment--Any establishment with a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption.

(24) [~~(22)~~] Heat-treated--Meat or poultry products that are offered for human consumption following [~~ready-to-eat or have the appearance of being ready-to-eat because they received~~] heat processing.

(25) Humane Slaughter--In the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut.

(26) [~~(23)~~] Livestock--Cattle, sheep, swine, goats, horses, mules, other equines, poultry, domestic rabbits, exotic animals, or domesticated game birds.

(27) Livestock producer--A person actively engaged in livestock production or husbandry.

(28) [~~(24)~~] Low-volume livestock operation--For purposes of this subchapter, a low-volume livestock operation includes an establishment that processes fewer than 10,000 domestic rabbits or more than 1,000 but fewer than 10,000 poultry in a calendar year. The term[~~, but~~] does not include an establishment that processes 1,000 or fewer poultry raised by the operator of the establishment in a calendar year[~~,~~] or processes fewer than 500 domestic rabbits in a calendar year.

(29) Meat--Has the meaning assigned by 9 CFR §301.2. The term does not include an analogue product, or a cell-cultured product as defined in Texas Health and Safety Code §431.0805.

(30) Meat food product--Has the meaning assigned by 9 CFR §301.2. The term does not include an analogue product, or a cell-cultured product as defined in Texas Health and Safety Code §431.0805.

(31) [~~(25)~~] Meat Safety Assurance Section--The organization overseen by the state director, within the Department of State Health Services, responsible for meat safety in granted establishments and associated in-commerce products in Texas. For the purposes of this subchapter, the term "Food Safety and Inspection Service (FSIS)," [~~Food Safety and Inspection Service (FSIS),~~] when used in federal regulations adopted by reference by the department in §221.11 of this subchapter, means the [~~title, shall mean~~] Meat Safety Assurance Section.

(32) Official slaughter establishments premises--Locations where animals are held, including lots, pens, cages, and facilities associated with the holding and movement of livestock or poultry intended for slaughter. These facilities specifically include antemortem pens, suspect pens, alleyways, driveways, unloading areas, and adjoining pens that contain livestock intended for slaughter.

(33) [~~(26)~~] Person--Any individual, partnership, association, corporation, or unincorporated business organization.

(34) [~~(27)~~] Poultry--Any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs, also termed young pigeons from one to about 30 days of age), whether live or dead. The term does not include an analogue product, or a cell-cultured product as defined in Texas Health and Safety Code §431.0805 [~~A live or dead domesticated bird~~].

(35) [~~(28)~~] Poultry or Rabbit Exemption--Registration with the department for a person to engage in a low-volume livestock operation of slaughtering and processing poultry, rabbits, or both. The person must raise the animals [~~of their own raising~~] on their own property and personally distribute [~~distributing~~] the carcasses and parts to retail consumers, restaurants, or other retail establishments, provided [~~that~~] the following conditions are met:

(A) the person slaughters [~~more than~~] 500 or more but fewer than 10,000 domestic rabbits or [~~and/or~~] more than 1,000 but fewer than 10,000 poultry in a calendar year[~~, January 1 through December 31 inclusive~~];

(B) the person does not buy or sell other poultry or rabbit products (except live chicks, baby rabbits, and [~~and/or~~] breeding stock);

(C) the person slaughters only sound, healthy poultry or rabbits and conducts all processes and handling under sanitary standards and procedures resulting in poultry or rabbit products that are not adulterated;

(D) the product meets the marking and labeling requirements as specified in §221.14(e)(4) [~~§221.14(e)(4)~~] of this subchapter [~~title~~]; and

(E) the poultry is not a ratite.

(36) Poultry product--Has the meaning assigned by 9 CFR §381.1(b). The term does not include an analogue product, or a cell-cultured product as defined in Texas Health and Safety Code §431.0805.

(37) [~~(29)~~] Ratite--Poultry such as ostrich, emus, or rhea.

(38) Responsibly connected person--An officer, partner, director, managerial or executive employee, holder or owner of 10 percent or more of the business's voting stock.

(39) Ritual cut--The simultaneous and instantaneous severance of the carotid arteries with a sharp instrument in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain.

(40) [~~(30)~~] Slaughter--Methods of [~~humane~~] death, for the purpose of food, under sanitary conditions.

(41) [~~(31)~~] State director--For the purposes of this subchapter, the term "administrator," [~~administrator,~~] when used in federal regulations adopted by reference by the department in §221.11 of this subchapter, means [~~title, shall mean~~] state director.

(c) Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption.

(1) Basic requirements.

(A) A person must [~~shall~~] not engage in a business subject to the Act unless that person has met the standards established by the Act, the federal regulations as adopted by the department, and this subchapter, and has obtained the appropriate Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption issued by the department.

(B) A person must [~~shall~~] not engage in custom operations unless that person has met the standards established by the Act, the federal regulations, and this subchapter, and has obtained a Grant of Custom Exemption issued by the department.

(C) A person must [~~shall~~] not engage in exempted poultry or rabbit slaughter and processing operations unless that person has met the standards established by the Act, the federal regulations, and this subchapter, and has registered with the department, if required.

(D) A person must [~~shall~~] not engage in alternate food source livestock slaughter and processing operations unless that person has met the standards established by the Act, the federal regulations, and this subchapter, and has obtained a Grant of Voluntary Inspection issued by the department. Hunter-killed exotic game animals processed exclusively for donation to a non-profit food bank, as defined by Texas Government Code §418.026(a), do not require inspection.

(E) The establishment must [~~shall~~] display the Grant of Inspection, Grant of Voluntary Inspection, and Grant of Custom Exemption in a prominent place at the physical business location, easily visible to the public.

(F) All regulated establishments operating as a livestock or animal dealer, by conducting on-premises livestock or poultry sales, must also comply with all regulatory requirements required as an animal or livestock seller, dealer, broker, or market.

(2) Application.

(A) To apply for a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption, a person must [~~shall~~] complete department application forms, which can be obtained from the department's [~~Department of State Health Services,~~] Meat Safety Assurance Section.

(B) Upon submission of an application for a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption, the applicant must prove that the establishment meets all regulatory requirements for the grant.

(C) The department must [~~shall~~] conduct an inspection to verify whether the establishment meets all regulatory requirements for the grant. Additionally, the department must ensure that the grant application contains all necessary information to issue a grant and determine if any responsibly connected persons are unfit to engage in any business requiring inspection or whose compliance history is subject to the application being disfavored as defined by this section. The department must [~~and shall~~] notify the applicant of the results in accordance with policy, after [~~of the inspection within 45 working days of~~] receiving a complete and accurate application and making the required determinations.

(i) If the establishment meets all regulatory requirements and no responsibly connected persons associated with the establishment are subject to the application being disfavored as defined by this section [~~on the date of inspection~~], the department will provide the applicant with the appropriate grant.

(ii) If the establishment does not meet all regulatory requirements [~~on the date of inspection~~], the department will provide the applicant with a listing of the regulatory requirements that the establishment failed to meet. In this case, the applicant may reapply when the applicant can [~~is ready to~~] support that the establishment meets all regulatory requirements for the grant.

(iii) If the establishment meets all regulatory requirements, the department may deny the application if one or more responsibly connected person(s) associated with the establishment is subject to the application being disfavored as defined by this section.

(3) Duration. The applicant who has complied with the standards in the Act, the federal regulations, and this subchapter will receive a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption for an indefinite period subject to the denial, suspension, and revocation provisions in paragraph (6) of this subsection.

(4) Non-transferable. A Grant of Inspection, Grant of Voluntary Inspection, and Grant of Custom Exemption is not transferable to another person.

(5) Change of ownership. Any person operating a business under a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption from the department must [~~shall~~] notify the department of any change in ownership of that business and[~~, in such event, shall~~] relinquish the current grant to the department. The new owner must apply [~~shall make application~~] for a new grant on forms provided by the department. This notification and new application must [~~shall~~] be approved [~~made~~] before the new ownership begins operations [~~ownership change~~].

(6) Denial, suspension, and revocation.

(A) The department may deny a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption to any applicant who does not comply with the standards of the Act, the federal regulations, and this subchapter.

(B) The department will consider the compliance history of the establishment and any responsibly connected person(s) to determine whether to deny, revoke, or suspend a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption. The department will review all compliance history records maintained according to the department's Records Retention Policy. A disfavored application may lead to denial, revocation, or suspension. An application indicating the following will be disfavored:

(i) an establishment or responsibly connected person(s) is unfit to engage in any business requiring inspection according to 9 CFR §500.6(a)(9); or

(ii) a connection with an establishment or responsibly connected person(s) whose compliance history includes revocation, surrendered grant while enforcement actions are pending, or default on a previous enforcement action or agreement with the department.

(C) [~~(B)~~] The department may suspend or revoke a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption of any person who violates the standards of the Act, the federal regulations, [~~and~~] this subchapter, and engages in conduct described in §221.12(c)(6)(B) of this subsection.

(D) [~~(C)~~] The department may suspend a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption if an establishment is inactive for a period in excess of 30 calendar days.

(E) [~~(D)~~] An establishment, where a grant has been suspended, must [~~shall~~] undergo reinspection before reinstatement of the grant.

(F) [~~(E)~~] A person whose grant has been denied, suspended, or revoked is entitled to an opportunity for a formal hearing in accordance with §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures).[~~)~~]

(7) Meat and poultry establishments and related industries.

(A) For the purpose of conducting an inspection or performing any other inspection program duty, the department representatives must have access to the premises and to every part of an establishment that slaughters livestock or otherwise prepares or processes meat or poultry products subject to inspection[~~, at all times, day or night, whether the establishment is being operated~~]. The [~~numbered~~] official badge of a department representative is sufficient identification to allow [~~entitle~~] the representative [~~to~~] admittance to all parts of such an establishment and its premises at all times, day or night.

(B) At all reasonable hours, any person subject to record keeping requirements under the Act or this chapter (whether holding or not holding a Grant of Inspection or exemption therefrom)

must permit access to a department representative upon presentation of credentials. The department representative may[, ~~to enter the place of business to~~] examine the facilities and inventory. The department representative may also [~~and to~~] examine and copy [~~the~~] records specified in this chapter.

(C) All inspected establishments must enter into a work schedule agreement with the department. Work schedule agreements may be made for a maximum of 40 hours per week and do not include operations on weekends or official holidays. Work schedule agreements may be altered by the department due to inspector availability, other conditions inhibiting the ability of the department to provide inspection services, or to conserve resources, as necessary. Custom exempt establishments must communicate the intended hours of operation to the department at least five (5) business days before commencing operations to facilitate inspection. Mobile slaughter and mobile processing establishments, whether inspected or custom exempt, must communicate the intended location to the department at least five (5) business days before commencing operations to facilitate inspection. Deviation from these requirements, or the requirements set forth in 9 CFR §307.4, require prior written approval from the department.

(8) Disposition of livestock not eligible for entry into commerce.

(A) Livestock deemed ineligible for entry into commerce by the department may be slaughtered and processed under all applicable custom exemption rules and regulations if the department veterinarian determines such actions to be appropriate and that the livestock appear to be in such a condition that the resulting meat or meat food product may be fit for human consumption.

(B) All abnormal livestock, including livestock intended for slaughter and processing under custom exemption, must be presented for inspection at an establishment with a Grant of Inspection during hours of inspected operation.

(9) Requirements for the humane treatment of livestock, excluding poultry and domesticated game birds, at granted establishments.

(A) Livestock pens, driveways, ramps, gates, restraining devices, and all other facilities must be maintained in good repair and free from sharp or protruding objects that may cause injury or pain to the animals. Floors of livestock pens, driveways, ramps, restraining devices, and all other facilities must be constructed and maintained so as to provide good footing for livestock.

(B) A pen sufficient to protect livestock from the adverse climatic conditions of the locale is required at granted establishments that hold animals overnight or through the day.

(C) Animals must have access to water in all holding pens and, if held longer than 24 hours, access to feed. There must be sufficient room in the holding pen for animals held overnight to lie down. Disabled livestock must be separated from non-disabled livestock while being held in the establishments holding pens.

(D) Livestock must be humanely slaughtered in accordance with this section and 9 CFR §313, adopted by reference in §221.11 of this subchapter.

(i) Stunning instruments must be maintained in good repair and available for inspection by a department representative.

(ii) Inhumane treatment of animals is prohibited, and any observed inhumane treatment of animals is subject to regulatory control actions and enforcement actions.

(E) Establishments conducting ritual slaughter in accordance with 7 USC §1902(b).

(i) Establishments conducting ritual slaughter must have a completed document signed and dated by an appropriate religious authority, including the name, title, address, and other contact information of the appropriate religious authority. The document must describe and attest to the conduct of ritual slaughter at that establishment. This document must list, by name, the individuals authorized to perform ritual slaughter at that establishment. Individuals not specifically listed on the current document are not authorized to perform the ritual cut at the establishment unless an effective stunning procedure is utilized before the ritual cut. Any modification of the procedures, individuals authorized to perform ritual slaughter, or religious authority information requires completing an updated document. An individual listed on the current document may be assisted in the ritual slaughter by other establishment employees not listed on the document.

(ii) Establishments conducting ritual slaughter in accordance with 7 USC §1902(b) are exempt from the stunning requirements of this section and the requirements of 9 CFR §§313.2(f), 313.5, 313.15, 313.16, 313.30, and 313.50(c) pertaining to stunning methods provided the following.

(I) Animals are humanely restrained and adequately restrained to prevent harm to the animal throughout the slaughter process.

(II) The ritual cut severs both carotid arteries immediately and simultaneously in a single cut unless an effective stunning procedure is utilized before the ritual cut.

(III) Animals are fully unconscious before being shackled, hoisted, thrown, cast, or cut except for the ritual cut.

(10) Good Commercial Practices for Poultry. Poultry and domesticated game birds are to be slaughtered in a manner that ensures breathing has stopped before scalding, so birds do not drown. Slaughter must result in thorough bleeding of the poultry carcass. The slaughtering of poultry and domesticated game birds must comply with 9 CFR §381.90. Poultry and domesticated game bird carcasses showing evidence of having died from causes other than slaughter are considered adulterated and must be condemned. As required in 9 CFR §381.65(b), the department requires poultry and domesticated game birds be slaughtered in accordance with good commercial practices.

§221.13. Enforcement and Penalties.

(a) Administrative Penalties. The purpose of this section is to establish the criteria and procedures by which the commissioner will assess administrative penalties for violations relating to [~~the~~] provisions of the Act, these rules, [~~and~~] licenses, and orders issued pursuant to the Act or the rules.

(1) Determining the amount of the penalty. In determining the amount of the penalty, the commissioner must [~~shall~~] consider the criteria described in paragraphs (2) - (6) of this subsection.

(2) The seriousness of the violation.

(A) Violations must [~~shall~~] be categorized by one of the following severity levels.

(i) Severity Level I covers violations that are most significant and have a direct negative impact on, or represent a threat to, [~~the~~] public health and safety. Violations include: [~~and including, but not limited to, adulteration, misbranding, false representation, or false advertising that results in fraud.~~]

(I) adulteration;

(II) intentional and egregious inhumane treatment of animals;

(III) failure to remove known adulterated product from commerce; and

(IV) misbranding, false representation, or false advertising resulting in a danger to the public or improper monetary gain of over $25,000 by the violator.

(ii) Severity Level II covers violations that are very significant and [~~have~~] impact [~~on the~~] public health and safety. Violations include: [~~including, but not limited to, adulteration, misbranding, false representation, or false advertising, that results in fraud.~~]

(I) adulteration;

(II) repetitive egregious inhumane treatment of animals;

(III) slaughter of animals without a Grant of Inspection or Grant of Custom Exemption (when required by the department);

(IV) violation of a regulatory control action;

(V) bribery, coercion, or interference with inspection or attempted bribery, coercion, or interference with inspection; and

(VI) misbranding, false representation, or false advertising resulting in the entry of potentially harmful products into commerce or improper monetary gain of over $10,000 by the violator.

(iii) Severity Level III covers violations that are significant and which, if not corrected, could adversely impact public health and safety. Violations include: [~~threaten the public and have an adverse impact on the public health and safety, including, but not limited to, adulteration, misbranding, false representation, or false advertising that results in fraud.~~]

(I) adulteration;

(II) egregious or repetitive non-egregious inhumane treatment of animals;

(III) failure to remove known misbranded product from commerce;

(IV) misbranding, false representation, or false advertising resulting in public health risk or improper monetary gain of over $1,000 by the violator;

(V) producing product without a Grant of Inspection or Grant of Custom Exemption (when required by the department);

(VI) failing to correct significant deficiencies in Hazard Analysis and Critical Control Point plans, Sanitation Standard Operating Procedures; and

(VII) problems involving food contact surfaces.

(iv) Severity Level IV covers violations that are of more than minor significance, and if left uncorrected, would lead to more serious circumstances. Violations include:

(I) non-egregious inhumane treatment of animals;

(II) misbranding, false representation, or false advertising resulting in monetary gain of under $1,000 by the violator;

(III) failure to correct minor deficiencies in Hazard Analysis and Critical Control Point plans or Sanitation Standard Operating Procedures; and

(IV) problems involving non-food-contact surfaces.

(v) Severity Level V covers violations where minor noncompliant practices by a violator create some risk for production of adulterated product in the production environment. Violations include: [~~that are of minor safety or fraudulent significance.~~]

(I) failure by the establishment to correct minor noncompliant deficiencies in the production environment that do not involve product handling or product contact surfaces;

(II) failing to correct incidental noncompliance;

(III) general disrepair;

(IV) conditions that could potentially cause inhumane treatment of animals; and

(V) misbranding, false representation, or false advertising that does not result in public health risk or monetary gain by the violator.

(B) The severity of a violation must [~~shall~~] be increased if the violation involves deception or other indications of willfulness. In determining the severity of a violation, the department must take [~~there shall be taken~~] into account the economic benefit gained by a person through noncompliance.

(3) History of previous violations. The department may consider previous violations. Repetitive violations may be considered when determining the severity of a violation and may result in increased penalties within a severity level or elevation to a higher severity level. [~~The base penalty may be reduced or increased for past performance. Past performance involves the consideration of the following factors:~~]

[~~(A) how similar the previous violation was;~~]

[~~(B) how recent the previous violation was; and~~]

[~~(C) the number of previous violation(s) in regard to correction of the problem.~~]

(4) Demonstrated good faith. The department may consider demonstrated good faith. The base penalty may be reduced if good faith efforts to correct a violation have been made[~~,~~] or are being made. Good faith effort must [~~shall~~] be determined on a case-by-case [~~case by case~~] basis and be fully documented.

(5) Hazard to public [~~the~~] health and safety [~~of the public~~]. The department may consider the hazard to public [~~the~~] health and safety [~~of the public~~]. The base penalty must [~~shall~~] be increased when a direct hazard to public [~~the~~] health or [~~and/or to the~~] safety [~~of the public~~] is involved, with consideration to [~~. It shall be taken into account, but need not be limited to, the following factors~~]:

(A) whether any disease or injuries have occurred from the violation;

(B) whether any existing conditions contributed to a situation that could expose humans to a health hazard; or

(C) whether the consequences would be of an immediate or long-range [~~long range~~] hazard.

(6) Other matters. The commissioner may consider other matters as justice may require.

(7) Levels of penalties.

(A) The department [~~Department~~] will impose different levels of penalties for different severity level violations as follows: Figure: 25 TAC §221.13(a)(7)(A) (No change.)

(B) Each day a violation continues may be considered a separate violation.

(8) Assessment, payment, and refund procedures.

(A) The commissioner may assess an administrative penalty only after a person charged with a violation is given an opportunity for an administrative hearing under Texas [~~. The hearing shall be in accordance with the~~] Health and Safety Code[~~,~~] §433.095; Texas [~~the~~] Government Code[~~,~~] Chapter 2001; and the department's formal hearing procedures in Chapter 1 of this title (relating to Miscellaneous Provisions [~~Texas Board of Health~~]).

(B) Payment of an administrative penalty must [~~shall~~] be made under [~~in accordance with~~] the provision of Texas [~~the~~] Health and Safety Code[~~,~~] §433.096.

(C) Refund of an administrative penalty must be made under [~~shall be in accordance with~~] the provisions of Texas [~~the~~] Health and Safety Code[~~,~~] §433.097.

(b) Criminal Penalties.

(1) Interference with inspection.

(A) A person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with a livestock inspector while the inspector is performing a duty under the Act.

(B) An offense under this section is a Class B misdemeanor.

(C) It is a defense to prosecution under this section that the interruption, disruption, impediment, or interference alleged consisted of speech only.

(2) General.

(A) A person commits an offense if the person violates a provision of the Act or these rules for which these rules do not provide another criminal penalty.

(B) Except as provided by paragraph (2)(C) of this subsection, an offense under this section is punishable by a fine of not more than $1,000, imprisonment for not more than one year, or both.

(C) If an offense under this section involves intent to defraud, or [~~a~~] distribution or attempted distribution of an adulterated article[~~,~~] except adulteration described by Texas Health and Safety Code [~~(HSC),~~] §433.004(11), (12), or (13), the offense is punishable by a fine of not more than $10,000, imprisonment for not more than three years, or both.

(D) A person does not commit an offense under this section by receiving for transportation an article in violation of the Act if the receipt is in good faith and if the person furnishes, on request of a representative of the commissioner:

(i) the name and address of the person from whom the article is received; and

(ii) any document pertaining to the delivery of the article.

(E) This section does not require the commissioner to report for prosecution, or for institution of complaint or injunction proceedings, a minor violation of this chapter if the commissioner believes [~~that~~] the public interest will be adequately served by a suitable written warning notice.

(3) Injunction.

(A) If it appears [~~that~~] a person has violated or is violating the Act or a rule adopted under the Act, the commissioner may request the attorney general or the district attorney or county attorney in the jurisdiction where the violation is alleged to have occurred, is occurring, or may occur to institute a civil suit for:

(i) an order enjoining [~~injoining~~] the violation; or

(ii) a permanent or temporary injunction, a temporary restraining order, or other appropriate remedy, if the commissioner shows [~~that~~] the person has engaged in or is engaging in a violation.

(B) Venue for a suit brought under this section is in the county in which the violation occurred or in Travis County.

(C) The commissioner or the attorney general may recover reasonable expenses incurred in obtaining injunctive relief under this section, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses. The expenses recovered by the commissioner under this section may be used for the administration and enforcement of Texas Health and Safety Code [~~HSC,~~] Chapter 433. The expenses recovered by the attorney general may be used by the attorney general for any purpose.

(4) Emergency withdrawal of mark or suspension of inspection services [~~Withdrawal of Mark or Suspension of Inspection Services~~].

(A) The commissioner or the commissioner's designee may immediately withhold the mark of inspection or suspend or withdraw inspection services if:

(i) the commissioner or the commissioner's designee determines [~~that~~] a violation of the Act or these rules presents an imminent threat to public health and safety; or

(ii) a person affiliated with the processing establishment impedes an inspection under this chapter, including[~~, but not limited to,~~] assaulting, threatening to assault, intimidating, or interfering with a department employee.

(B) An affected person is entitled to a review of an action of the commissioner or the commissioner's designee under subparagraph (A) of this paragraph [~~subsection (a)~~] in the same manner that a refusal or withdrawal of inspection services may be reviewed under Texas Health and Safe Code [~~HSC,~~] §433.028.

(C) For purposes of this section only, the definition of "imminent threat" [~~imminent threat~~] to public health and safety includes[~~, but is not limited to~~]:

(i) the establishment produced and shipped adulterated or misbranded product as defined under Texas Health and Safety Code [~~HSC,~~] §433.004 and §433.005;

(ii) the establishment does not have or has an inadequate Hazard Analysis and Critical Control Point [~~a HACCP~~] plan as specified in 9 Code of Federal Regulations (CFR) §417.6 [~~CFR, §417.2~~];

(iii) the establishment does not have Sanitation Standard Operating Procedures as specified in 9 CFR §§416.11 - 416.16[~~, §416.11 and §416.12~~];

(iv) sanitary conditions are such that products in the establishment are or would be rendered adulterated under Texas Health and Safety Code [~~HSC,~~] §433.004; or

(v) the establishment violated the terms of a regulatory control action as specified in Texas Health and Safety Code [~~HSC,~~] §433.030, 9 CFR[~~,~~] §310.4, or 9 CFR[~~,~~] §416.6.

(D) This section in no way restricts or prohibits the department from taking action under Texas Health and Safety Code [~~HSC,~~] Chapter 431, Texas Health and Safety Code [~~HSC,~~] §433.008, the Federal Meat Inspection Act (21 United States Code (USC) [~~USC~~] 12), and the Poultry Products Inspection Act (21 USC 10) and the regulations adopted [~~thereunder~~] in §221.11 of this subchapter [~~title~~] (relating to Federal Regulations on Meat and Poultry Inspection).

§221.14. Custom Exempt Slaughter and Processing; Animal Share and Low-Volume Poultry or Rabbit Slaughter Operations.

(a) Custom Exempt Slaughter and Processing Operation Requirements. The requirements of this section apply to the custom exempt slaughter and custom exempt processing of uninspected livestock.

(1) Record keeping.

(A) Operators of facilities conducting custom exempt operations must keep records for a period of two years from the date of slaughter or processing.

(B) The records must be available to department representatives on request.

(C) Additional records that must be kept include records such as bills of sale, invoices, bills of lading, and receiving and shipping papers for transactions in which any livestock or carcass, meat, or meat food product is purchased, sold, shipped, received, transported, or otherwise handled by the custom slaughter establishment.

(D) If the custom exempt establishment also maintains a retail meat outlet, the records requirements in subparagraph (C) of this paragraph must be separately maintained.

(2) Containers used for meat food products, paper, or other materials in contact with meat food products.

(A) To avoid adulteration of product, containers must be lined with suitable material of good quality before packing.

(B) Containers and trucks or other means of conveyance in which any carcass or part is transported to the owner must be kept in a clean and sanitary condition.

(C) Paper or other materials used for covering or lining containers and the cargo space of trucks or other means of conveyance must be of a kind that does not tear during use but remains intact and does not disintegrate when moistened by the product.

(D) Boxes and any containers used as tote boxes must be clean and stored off the floor in a manner sufficient to prevent the creation of insanitary conditions and to ensure product is not adulterated.

(3) Tagging insanitary equipment, utensils, rooms, and carcasses.

(A) A department representative may attach a "Texas Rejected" tag to any equipment, utensil, room, or compartment at a custom exempt establishment that a department representative determines is insanitary and a health hazard. No equipment, utensil, room, or compartment, so tagged, may be used until untagged or released by a department representative. Such tags may not be removed by anyone other than a department representative.

(B) A department representative who determines a carcass or parts are adulterated, unfit for human food, is from an unhealthy or unsound animal, or could result in a health hazard, may attach a "Texas Retained" tag to the carcass and parts, document the reason for attaching the tag on a form specified by the department, and deliver the form to the operator of the custom exempt establishment. The owner of the carcass and parts must be notified by the plant operator and advised of the potential health risk. The custom exempt establishment must ensure the owner of the carcass and parts either authorizes the voluntary destruction and denaturing of the carcass and all parts or agrees to remove the carcass and parts from the custom exempt establishment. Under no circumstances may the carcass and parts be further processed at the establishment.

(4) Denaturing procedures. Carcasses, parts thereof, meat, and meat food products that are adulterated or not returned to the owner must be adequately denatured or decharacterized to preclude use as human food. Before the denaturing agents are applied, carcasses and carcass parts must be freely slashed or sectioned. The denaturing agent must be mixed with all of the carcasses or carcass parts to be denatured and must be applied in such quantity and manner that it cannot be removed by washing or soaking. A sufficient amount of the appropriate agent must be used to give the material a distinctive color, odor, or taste so that such material cannot be confused with an article of human food.

(b) [~~(a)~~] Custom Slaughter Requirements [~~slaughter requirements~~]. The requirements of this section [~~shall~~] apply to the custom slaughter of livestock by any person [~~of livestock~~], as defined in §221.12(b) of this subchapter [~~title~~] (relating to Meat and Poultry Inspection), delivered by or for the owner [~~thereof~~] for such slaughter, not for sale to the public, and for the exclusive use of the owner, a member of the owner's household, or a nonpaying guest or employee of the owner. The requirements of this section do not apply to hunter-killed [~~hunter killed~~] game animals, hunter-killed exotic animals, or hunter-killed feral swine. [~~as defined in §221.12(b) of this title. The requirements of this section do not apply to processing of hunter killed exotic animals, or hunter killed feral swine, as defined in §221.12(b) of this title, provided persons engaged in such processing do not utilize the same facilities to engage in the receipt, storage, processing, or distribution of other meat and/or poultry food products.~~]

(1) Animals for slaughter. Only healthy animals, exhibiting no abnormalities, may be accepted for custom slaughter at custom slaughter establishments. Unhealthy or unsound animals are those that exhibit any condition [~~that is~~] not normally expected [~~to be exhibited~~] in a healthy and sound member of that species.

(A) Examples of abnormal or unsound animals include animals that are not able to get up, or animals that have a missing or abnormal eye, swellings, rectal or vaginal prolapse, ocular or nasal discharge, a cough, or a limp.

(B) Animals that have an obviously recent break of the lower leg (below the stifle or elbow) and are able to walk and stand are not considered to be unsound or unhealthy if no other abnormal conditions are noted.

(2) Record keeping.

[~~(A) Operators of facilities conducting custom slaughter shall keep records for a period of two years, beginning on January 1 of the previous year plus the current year to date.~~]

[~~(B) The records shall be available to department representatives on request.~~]

[~~(C)~~] Custom slaughter records must [~~shall~~] contain the name, address, and telephone number of the owner of each animal presented, the date the animal was slaughtered, the species, and brief description of the livestock. If a custom processor accepts farm-slaughtered [~~farm slaughtered~~] animals for custom processing, records must [~~shall~~] contain a signed statement from the animal owner that the animal was healthy and exhibited no abnormalities, other than an obvi-

ously recent break to the lower leg (below the stifle or elbow), and was able to walk and stand at the time of slaughter.

[(D) Additional records that must be kept include records such as bills of sale, invoices, bills of lading, and receiving and shipping papers for transactions in which any livestock or carcass, meat or meat food product is purchased, sold, shipped, received, transported or otherwise handled by the custom slaughter establishment.]

[(E) If the custom slaughter establishment also maintains a retail meat outlet, separate records as listed in subparagraph (D) of this paragraph, shall be maintained for each type of business conducted at the establishment.]

(3) Sanitary methods. Custom slaughter establishments, including mobile operations, must [operations shall] be maintained in sanitary condition. Each custom slaughter establishment must [shall] comply with the requirements of 9 Code of Federal Regulations (CFR) [CFR,] Part 416, adopted under §221.11 of this subchapter [title] (relating to Federal Regulations on Meat and Poultry Inspection). Establishments that accept farm-slaughtered [farm slaughtered] livestock must complete and document cleaning and sanitization of all surfaces and equipment used in the processing of the farm-slaughtered [farm slaughtered] livestock before those surfaces and equipment may be used to process other products.

(4) Specified risk materials from cattle; handling and disposition. Each custom slaughter establishment must comply with the requirements of 9 CFR §310.22, adopted under §221.11 of this subchapter [Humane treatment of animals].

[(A) Livestock pens, driveways, and ramps shall be maintained in good repair and free from sharp or protruding objects which may cause injury or pain to the animals. Floors of livestock pens, ramps, and driveways shall be constructed and maintained so as to provide good footing for livestock.]

[(B) A pen sufficient to protect livestock from the adverse climatic conditions of the locale shall be required at those custom slaughter establishments that hold animals overnight or through the day.]

[(C) Animals shall have access to water in all holding pens and, if held longer than 24 hours, access to feed. There shall be sufficient room in the holding pen for animals held overnight to lie down.]

[(D) Livestock must be humanely slaughtered in accordance with this section and 9 CFR §313, Humane Slaughter of Livestock, adopted by reference in §221.11 of this title. The slaughtering of livestock by using captive bolt stunners, electrical stunners, and shooting with firearms, are designated as humane methods of stunning.]

[(i) The captive bolt stunners, electrical stunners, or delivery of a bullet or projectile shall be applied to the livestock in a manner so as to produce immediate unconsciousness in the animal before they are shackled, hoisted, thrown, cast, or cut. The animal shall be stunned in such a manner that they will be rendered unconscious with a minimum of excitement and discomfort.]

[(ii) The driving of animals to the stunning area shall be done with a minimum of excitement and discomfort to the animals. Delivery of calm animals to the stunning area is essential since accurate placement of stunning equipment is difficult on nervous or injured animals. Electrical equipment shall be minimally used with the lowest effective voltage to drive the animal to the stunning area. Pipes, sharp or pointed objects, and other items which would cause injury or unnecessary pain to the animal shall not be used to drive livestock.]

[(iii) Immediately after the stunning blow is delivered, the animals shall be in a state of complete unconsciousness and remain in this condition throughout shackling, sticking, and rapid exsanguination.]

[(iv) Stunning instruments must be maintained in good repair and available for inspection by a department representative.]

[(v) Inhumane treatment of animals is prohibited and any observed inhumane treatment of animals shall be subject to the tagging provisions of paragraph (6)(C) of this subsection in addition to possible enforcement action.]

[(E) Establishments conducting ritual slaughter in accordance with 7 U.S.C. §1902(b).]

[(i) Establishments conducting ritual slaughter must have a completed document, that is signed and dated by an appropriate authority attesting to the conduct of ritual slaughter at that establishment. This document must list, by name, the individuals authorized to perform ritual slaughter at that establishment.]

[(ii) Establishments conducting ritual slaughter in accordance with 7 U.S.C. §1902(b) are exempt from the stunning requirements of this section and the requirements of 9 CFR §313.2(f), §313.5, §313.15, §313.16, §313.30, and §313.50(c) pertaining to stunning methods provided animals are humanely restrained and adequately restrained to prevent harm to the animal throughout the slaughter process.]

(5) Custom exempt slaughter operators must adhere to the humane treatment of livestock as outlined in §221.12(c)(9) of this subchapter [Containers used for meat food products, paper, or other materials in contact with meat food products].

[(A) To avoid contamination of product, containers shall be lined with suitable material of good quality before packing.]

[(B) Containers and trucks, or other means of conveyance in which any carcass or part is transported to the owner shall be kept in a clean and sanitary condition.]

[(C) Paper or other materials used for covering or lining containers and the cargo space of trucks, or other means of conveyance shall be of a kind which does not tear during use but remains intact and does not disintegrate when moistened by the product.]

(6) Custom exempt slaughter operators must adhere to the humane treatment of poultry and domesticated game birds as outlined in §221.12(c)(10) of this subchapter [Tagging insanitary equipment, utensils, rooms, and carcasses].

[(A) A department representative may attach a "Texas Rejected" tag to any equipment, utensil, room, or compartment at a custom slaughter establishment that a department representative determines is insanitary and is a health hazard. No equipment, utensil, room, or compartment so tagged shall again be used until untagged or released by a department representative. Such tag shall not be removed by anyone other than a department representative.]

[(B) A department representative that determines a carcass is adulterated, unfit for human food, is from an unhealthy or unsound animal, or could result in a health hazard, may attach a "Texas Retained" tag to the carcass and document the reason for attaching the tag on a form specified by the department and deliver the form to the operator of the custom slaughter establishment. The owner of the carcass shall be notified by the plant operator and advised of the potential health risk. The custom slaughter establishment shall ensure that the owner of the carcass either authorizes the voluntary destruction and

denaturing of the carcass and all parts or agrees to remove the carcass from the custom slaughter establishment.]

(7) [(C)] Inhumane treatment of animals [that is] observed by a department representative will [shall] result in the attaching of a "Texas Rejected" tag to the deficient equipment, facility structure, or the stunning area causing the inhumane treatment. No equipment, area, or facility so tagged may [shall] be used until untagged or released by the department representative.

(8) [(7)] Marking and labeling of custom prepared products. Carcasses and parts therefrom that are prepared on a custom basis must [shall] be marked at the time of preparation with the term "Not for Sale" in letters at least 3/8 [three-eighths] inch in height, and must [shall] also be identified with the owner's name or a code that allows identification of the carcass or carcass part to its owner. Ink used for marking such products must be labeled for such purpose. Ink containing FD&C Violet No. 1 must [shall] not be used.

(9) [(8)] Requirements concerning procedures.

(A) Heads from animals slaughtered by gunshot to the head must [shall] not be used for food purposes. Such heads must [shall] be denatured in accordance with this section [paragraph (10) of this subsection] and placed into containers marked "INEDIBLE." Heads with gunshot wounds may be returned to the owner only after they have been freely slashed and adequately denatured to preclude [their] use for human food.

(B) Cattle paunches and hog stomachs intended for use in preparing [the preparation of] meat food products must [shall] be emptied of [their] contents immediately upon removal from the carcass and thoroughly cleaned on all surfaces and parts.

(C) Carcasses must [shall] not be adulterated, as defined in §221.12(b)(2) of this subchapter [title], when placed in coolers.

(10) [(9)] Requirements concerning ingredients. All ingredients and other articles used in the preparation of any carcass must [shall] be clean, sound, healthful, wholesome, and [will] not result in the adulteration of the carcass. A letter of guaranty from the manufacturer stating [that] the ingredient or article is safe when used in contact with food must [shall] be obtained by the custom slaughter establishment and made available upon request to the department representative.

[(10) Denaturing procedures. Carcasses, parts thereof, meat and meat food products that are adulterated or not returned to the owner shall be adequately denatured or decharacterized to preclude their use as human food. Before the denaturing agents are applied, carcasses and carcass parts shall be freely slashed or sectioned. The denaturing agent must be mixed with all of the carcasses or carcass parts to be denatured, and must be applied in such quantity and manner that it cannot be removed by washing or soaking. A sufficient amount of the appropriate agent shall be used to give the material a distinctive color, odor, or taste so that such material cannot be confused with an article of human food.]

(c) [(b)] Custom processing requirements. The requirements of this section [shall] apply to the custom processing by any person of uninspected livestock carcasses or parts, delivered by or for the owner thereof for such processing. These products are[,] not for sale to the public and are for the exclusive use of the owner, a member of the owner's household, or a nonpaying guest or employee of the owner. The requirements of this section do [shall] not apply to hunter-killed game animals, hunter-killed exotic animals, or hunter-killed feral swine. [processing hunter killed game animals, as defined in §221.12(b) of this title. The requirements of this section do not apply to processing of hunter killed exotic animals, or hunter killed feral swine, as defined in §221.12(b) of this title, provided persons engaged in such processing do not utilize the same facilities to engage in the receipt, storage, processing, or distribution of other meat and/or poultry food products.]

(1) Carcasses and parts for processing. No adulterated carcasses or parts as defined in §221.12(b)(2) of this subchapter may [title shall] be accepted for custom processing.

(2) Record keeping. Temperature monitoring records must be maintained by the custom processor for heat-treated or ready-to-eat products. These records must include the temperature attained and time held during heating and the time and temperatures during the cool down process.

[(A) Operators of facilities conducting custom processing shall keep records for a period of two years, beginning on January 1 of the previous year plus the current year to date.]

[(B) The records shall be available to the department representative on request.]

[(C) Custom processing records shall contain the name, address, and telephone number of the owner of each carcass or parts presented, the date the carcass or parts were delivered, the species and amount.]

[(D) Additional records such as bills of sale, invoices, bills of lading, and receiving and shipping papers for transactions in which any carcass, meat or meat food product is purchased, sold, shipped, received, transported or otherwise handled by the custom processor shall also be kept by the custom processor.]

[(E) If the custom processing establishment also maintains a retail meat outlet, separate records, as listed in subparagraph (D) of this paragraph, shall be maintained for each type of business conducted at the establishment.]

[(F) Temperature monitoring records shall be maintained by the custom processor, for heat treated or ready-to-eat products. These records shall include the temperature attained and time held during heating and the time and temperatures during the cool down process.]

(3) Sanitary methods. Custom processing establishments, including mobile operations, must [shall] be maintained in sanitary condition. Each custom processing establishment must [shall] comply with the requirements of 9 CFR[,] Part 416, adopted under §221.11 of this subchapter [title].

(4) Specified risk materials from cattle; handling and disposition. Each custom slaughter establishment must comply with the requirements of 9 CFR §310.22, adopted under §221.11 of this subchapter [Containers used for product; paper or other materials in contact with product].

[(A) To avoid contamination of product, containers shall be lined with suitable material of good quality before packing.]

[(B) Containers and trucks, or other means of conveyance in which any product is transported to the owner shall be kept in a clean and sanitary condition.]

[(C) Boxes and any containers used as tote boxes shall be clean and stored off the floor in a manner that does not interfere with good sanitation.]

[(5) Tagging insanitary equipment, utensils, rooms, and carcasses.]

[(A) A department representative may attach a "Texas Rejected" tag to any equipment, utensil, room, or compartment at a custom processing establishment that a department representative de-

termines is insanitary and is a health hazard. No equipment, utensil, room, or compartment so tagged shall again be used until untagged or released by a department representative. Such tag so attached shall not be removed by anyone other than a department representative.]

[(B) A department representative that determines a carcass is adulterated, unfit for human food, is from an unhealthy or unsound animal, or may be a health hazard, may attach a "Texas Retained" tag to the carcass and document the reason for attaching the tag on a form specified by the department and deliver the form to the operator of the establishment. The owner of the carcass shall be notified by the plant operator and advised of the potential health risk. The custom processor shall ensure that the owner of the carcass or parts either authorizes the voluntary destruction and denaturing of the carcass and all parts or agrees to remove the carcass from the custom processing establishment. Under no circumstances may the carcass be further processed at the establishment.]

(5) [(6)] Death by other means than slaughter. Carcasses, or parts thereof, derived from animals that have died through circumstances other than [otherwise than by] slaughter. This includes animals[,] such as roadkill or animals that have died by disease, trauma, or other accident. Such animals[,] may not enter[,] or be processed by a granted establishment.

(6) [(7)] Marking and labeling of custom prepared products.

(A) Products that are custom prepared must be packaged immediately after preparation and must be labeled with the term "Not For Sale" in lettering not less than 3/8 [three-eighths] inch in height. Such custom prepared products or [their] containers must [shall] also bear the owner's name and any additional labeling, such as product cut or description.

(B) Safe handling instructions must [shall] accompany every customer's raw or not fully cooked products. The information must [shall] be in lettering no smaller than 1/16 [one-sixteenth] of an inch in size and may be placed on each product package, placed on each tote box or bag containing packaged product, or given as a flyer to the customer with the product. The safe handling instructions must [shall] be placed immediately after the heading in subparagraph (A) of this paragraph and must [shall] include the following or similar statements.

(i) "Some food [meat and meat] products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions."

(ii) "Keep [Meat and poultry must be kept] refrigerated or frozen. Thaw in refrigerator or microwave." However, any portion of this statement [that is] in conflict with the product's specific handling instructions may be omitted ([,]e.g., some products may have instructions to cook without thawing). A graphic illustration of a refrigerator must [may] be displayed next to this statement.

(iii) "Keep raw [Raw] meat and poultry [must be kept] separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry." A graphic illustration of soapy hands under a faucet must [may] be displayed next to this statement.

(iv) "Cook thoroughly." ["Meat and poultry must be cooked thoroughly. Ground meat products should be cooked to an internal temperature of 160 degrees Fahrenheit or until the juices run clear. Other meat products should be cooked so that the external temperature reaches 160 degrees Fahrenheit."] A graphic illustration of a skillet must [may] be displayed next to this statement.

(v) "Keep hot foods hot [Hot foods must be kept hot]. Refrigerate leftovers immediately or discard." A graphic illustration of a thermometer must [may] be displayed next to the statement.

(7) [(8)] Requirements concerning procedures.

(A) Uninspected heads from custom slaughtered animals may not be sold or used in the preparation of meat food products unless prepared specifically for the owner of the animal for [his] personal use.

(B) Heads for use in the preparation of meat food products must [shall] be split and the bodies of the teeth, the turbinates and ethmoid bones, ear tubes, and horn butts removed, and the heads then thoroughly cleaned.

(C) Bones and parts of bones must [shall] be removed from product [which is] intended for chopping or grinding.

(D) Kidneys for use in the preparation of meat food products must [shall] first be freely sectioned and then thoroughly soaked and washed.

(E) Clotted blood must [shall] be removed from livestock hearts before they are used in the preparation of meat food products.

(F) Product must [shall] not be adulterated, as defined in §221.12(b)(2) of this subchapter, [title] when placed in coolers or freezers.

(G) Frozen product may be defrosted in water or thawed [pickle] in a manner [that is] not conducive to promoting bacterial growth or resulting in adulteration of the product.

(8) [(9)] Requirements concerning ingredients.

(A) All ingredients and other articles used in the preparation of any product must [shall] be clean, sound, healthful, wholesome, and not [otherwise such as to not] result in the adulteration of product. A letter of guaranty from the manufacturer stating [that] the ingredient or article is safe when used as an ingredient or in contact with food must [shall] be obtained by the custom processor and made available upon request to the department representative.

(B) Ingredients for use in any product may not contain any pesticide chemical or other residues in excess of levels permitted under the federal [Federal] Food, Drug, and Cosmetic Act.

(9) [(10)] Approval of substances for use.

(A) No substance may be used in the preparation of any product unless it is a Food and Drug Administration-approved [Administration approved] food additive.

(B) No product may [shall] contain any substance that [which] would render it adulterated.

(C) Nitrates must [shall] not be used in curing bacon.

(i) Nitrites in the form of sodium nitrite may be used at 120 parts per million (ppm) ingoing (or in the form of potassium nitrite at 148 ppm ingoing) maximum for injected, massaged, or immersion cured bacon; and 550 ppm of sodium ascorbate or sodium erythorbate (isoascorbate) for injected, massaged, or immersion cured bacon must [shall] be used.

(ii) Sodium or potassium nitrite may be used at 2 pounds to 100 gallons pickle at 10% pump level; 1 ounce to 100 pounds meat (dry cure).

(iii) Sodium ascorbate or sodium erythorbate (isoascorbate) may be used at 87.5 ounces to 100 gallons pickle at

10% pump level; 7/8 ounces to 100 pounds meat; or 10% solution to surfaces of cut meat.

(iv) Sodium nitrite must [~~shall~~] not exceed 200 ppm ingoing or an equivalent amount of potassium nitrite (246 ppm ingoing) in dry cured bacon based on the actual or estimated skin-free green weight of the bacon belly.

(D) When curing products other than bacon, nitrites, nitrates, or combination must [~~shall~~] not result in more than 200 ppm of nitrite in the finished product.

(i) Sodium or potassium nitrite may be used at 2 pounds to 100 gallons pickle at 10% pump level; 1 ounce to 100 pounds meat (dry cure); or 1/4 ounce to 100 pounds chopped meat or [~~and/or~~] meat byproduct.

(ii) Sodium or potassium nitrate may be used at 7 pounds to 100 gallons pickle; 3-1/2 ounces [~~3 1/2 ounce~~] to 100 pounds meat (dry cure); or 2-3/4 ounces [~~2 3/4 ounce~~] to 100 pounds chopped meat. (Nitrates may not be used in bacon.)

(10) [~~(11)~~] Prescribed treatment of heat-treated meat and poultry products.

(A) All forms of fresh meat and poultry, including fresh unsmoked sausage and pork such as bacon and jowls, are classified as products that are customarily well cooked in the home before being consumed. Therefore, the treatment of such products to destroy [~~for the destruction of~~] pathogens is not required.

(B) Meat and poultry products, which [~~that~~] are not customarily cooked or may not be cooked before consumption because they have the appearance of being fully cooked, must not contain pathogens.

(i) Heat-treated, [~~products and~~] dry, semi-dry, and fermented meat products [~~sausages, that are less than three inches in diameter,~~] are required to be heated to an internal temperature according to the following chart:
Figure: 25 TAC §221.14(c)(10)(B)(i)
[~~Figure: 25 TAC §221.14 (b)(11)(B)(i)~~]

(ii) Heat treated, [~~products and~~] dry, semi-dry, and fermented poultry products [~~sausages, that are more than three inches in diameter,~~] are required to be heated to an internal temperature according to the following chart:
Figure: 25 TAC §221.14(c)(10)(B)(ii)
[~~Figure 25 TAC §221.14 (b)(11)(B)(ii)~~]

(iii) Heat treated meat and poultry products that must be stored under refrigerated temperatures must be cooled quickly to prevent bacterial growth. During cooling, the product's maximum internal temperature must [~~should~~] not remain between 130 degrees Fahrenheit and 80 degrees Fahrenheit for more than 1-1/2 [~~1 1/2~~] hours nor between 80 degrees Fahrenheit and 40 degrees Fahrenheit for more than 5 hours. Custom processors may slowly cool cured products in accordance with Meat Safety Assurance (MSA) [~~Food Safety and Inspection Services (FSIS)~~] Directive 7111.1, Verification Procedures for Lethality and Stabilization [~~7110.3, Time/Temperature Guidelines for Cooling Heated Products~~], which may be viewed at www.dshs.texas.gov/meat-safety [~~www.fsis.usda.gov~~], or other substantiated support.

(iv) Custom processors not utilizing a heating step as described in clauses (i), (ii), and (iii) of this subparagraph must submit an alternate procedure, describing the method utilized in determining safety, to a department representative.

(v) Custom processors may produce heat-treated or ready-to-eat custom products, including chorizo, at temperatures other than those listed in clauses (i), (ii), and (iii) of this subparagraph when requested to do so by the owner of the product. The custom processor must obtain a signed statement from the owner of the product stating [~~that~~] the risks associated with eating under-cooked meat products are understood.

(C) When necessary to comply with the requirements of this section, [~~the~~] smokehouses, drying rooms, and other compartments used in the treatment of meat and poultry products to destroy pathogens must [~~shall~~] be suitably equipped with accurate automatic recording thermometers[,] by the operator of the custom processing establishment [~~with accurate automatic recording thermometers~~].

[~~(12) Denaturing procedures. Carcasses, parts thereof, meat and meat food products that are adulterated and/or not returned to the owner shall be adequately denatured or decharacterized to preclude their use as human food. Before the denaturing agents are applied, carcasses and carcass parts shall be freely slashed or sectioned. The denaturing agent must be mixed with all of the carcasses or carcass parts to be denatured, and must be applied in such quantity and manner that it cannot easily and readily be removed by washing or soaking. A sufficient amount of the appropriate agent shall be used to give the material a distinctive color, odor, or taste so that such material cannot be confused with an article of human food.~~]

(d) Animal Share Exemption Requirements. Livestock co-owned under an animal share program may be exempted from inspection under Texas Health and Safety Code §433.006 and are eligible to be custom slaughtered or custom processed under subsections (a) and (b) of this section. Livestock producers and custom exempt operators engaging in animal share programs must comply with the requirements of this subsection in addition to the requirements contained in subsections (a) and (b) of this section. Each animal share applies to one particular, identified livestock animal. A livestock producer may sell shares of more than one animal to a particular co-owner as long as those shares are collectively consistent with amounts for personal use. Each animal share is reflective of a defined percentage of the livestock animal on either a per animal basis or a percentage of portions, cuts, or products produced from the livestock animal. Livestock ownership must be documented and 100% of the animal must be designated before slaughter.

(1) Animals for slaughter.

(A) Animals presented for slaughter under an animal share must comply with all other requirements for animals slaughtered at the facility providing the slaughtering and processing services.

(B) Animals under an animal share must be slaughtered at the facility providing the slaughtering and processing services and may not be slaughtered on ungranted premises and be presented for custom processing only.

(C) The meat and meat food products are:

(i) prepared from livestock subject to an animal share and delivered to the establishment preparing the products by a co-owner of the livestock or the livestock producer boarding the livestock; and

(ii) following preparation, delivered directly to the co-owner or co-owners by either the custom exempt operator or the livestock producer.

(D) The custom operator or livestock producer that delivers the product to the co-owner or co-owners is responsible for maintaining the product in wholesome, sanitary conditions, including main-

taining the product under proper storage temperature and conditions until the product is delivered. If the livestock producer holds the product on behalf of the co-owner, the livestock producer must comply with all other regulatory requirements pertaining to the storage of such products.

(2) Recordkeeping.

(A) Custom exempt operators must:

(i) maintain records and make them available as required by §221.14 of this subchapter;

(ii) document the name, address, and telephone number of each co-owner of the animal share livestock animal presented. These documents must also include the date the livestock animal was delivered, the species, and amount defined as a percentage, based on either the entire animal or particular portions, cuts, or products, delivered to each co-owner;

(iii) maintain additional records, including bills of sale, invoices, bills of lading, and receiving and shipping papers for transactions in which any carcass, meat, or meat food product is purchased, sold, shipped, received, transported, or otherwise handled by the custom processor; and

(iv) provide to the livestock producer or co-owner, upon delivery of the meat or meat food products, written notice that conspicuously displays the warning that the department has not inspected the meat or meat food products.

(B) Livestock producers must:

(i) provide a bill of sale to the co-owner conveying an ownership interest in the animal;

(ii) complete a written agreement, which, at a minimum, includes:

(I) a provision authorizing the livestock producer to board the livestock and arrange preparation of the livestock as meat and meat food products for the co-owner; and

(II) a provision entitling the co-owner to a share of meat and meat food products derived from the livestock;

(iii) provide to the co-owner information describing the standards the livestock producer followed in maintaining livestock health and preparing the meat and meat food products derived from the livestock; and

(iv) provide to the co-owner, upon delivery of the meat or meat food products, written notice that conspicuously displays the warning that the department has not inspected the meat or meat food products.

(3) Marking and labeling of custom prepared animal share products.

(A) Animal share meat and meat food products must be marked and labeled under the requirements in subsections (b)(8) and (c)(6) of this section.

(B) On delivery of the meat or meat food products to the co-owner, the custom exempt operator must provide to the co-owner notice that the department has not inspected the meat or meat food products in:

(i) a separate written statement that conspicuously displays the warning; or

(ii) a warning statement conspicuously displayed on a label affixed to the meat or meat food product packaging.

(4) Enforcement. A person may not sell, donate, or commercially redistribute meat or meat food products produced under this section. A person who violates this section is liable for a civil penalty in the amount of $10,000 for each violation as provided by §221.13(a)(2)(A)(ii) of this subchapter.

(e) [~~(c)~~] Low-Volume Poultry or Rabbit Slaughter Operations Requirements [~~Low-volume poultry or rabbit slaughter operations requirements~~].

(1) Animals for slaughter. Adulterated [~~No adulterated~~] poultry or rabbits, as defined in §221.12(b)(2) of this subchapter, may not [~~title shall~~] be slaughtered for the purpose of selling the [~~its~~] carcass or parts for food. Only healthy poultry and rabbits, exhibiting no abnormalities, may be slaughtered for sale as food. Unhealthy or unsound poultry and rabbits are those that exhibit any condition [~~that is~~] not normally expected to be exhibited in a healthy and sound member of that species. Examples of abnormal or unsound animals include animals that are not able to get up, or animals that have a missing or abnormal eye, [~~any~~] swellings, rectal or vaginal prolapse, ocular or nasal discharge, a cough, or a limp.

(2) Record keeping.

(A) Operators of facilities conducting slaughter under a Poultry or Rabbit Exemption must [~~shall~~] keep records such as bills of sale, invoices, bills of lading, and receiving and shipping papers for transactions in which any livestock or carcass, meat, or meat food product is purchased, sold, shipped, received, transported, or otherwise handled for a period of two years, beginning on January 1 of the previous year plus the current year to date.

(B) The records must [~~shall~~] be available to department representatives on request.

(3) Sanitary methods. Low-volume poultry or rabbit slaughter operations must [~~shall~~] be maintained in sanitary condition.

(4) Marking and labeling of products. Carcasses and parts therefrom that are prepared under the Poultry or Rabbit Exemption must [~~shall~~] be packaged and the container must [~~shall~~] be marked with each of the following in letters at least 1/4 [~~one-quarter~~] inch in height, unless otherwise stated:

(A) the slaughterer's name and address and the term "Exempted P.L. 90-492" and the statement "Not Produced Under Inspection";[~~"~~]

(B) the common or usual name of the product, or [~~if any there be, and if there is none,~~] a truthful descriptive designation of the product;

(C) a special handling label such as, "Keep Refrigerated," "Keep Frozen," "Keep Refrigerated or Frozen," "Perishable - Keep Under Refrigeration," or any other similar statement that the establishment has received approval from the department to use; and

(D) safe handling instructions must [~~shall~~] be in lettering no smaller than 1/16 [~~one-sixteenth~~] of an inch in size and must [~~shall~~] be prominently placed with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.[~~:~~]

(i) Safe handling information. The safe handling information must [~~shall~~] be presented on the label under the heading "Safe Handling Instructions," which must [~~shall~~] be set in type size larger than the print size of the rationale statement and safe handling statement. The safe handling information must [~~shall~~] be set off by

a border and must [shall] be one color type printed on a single-color [single color] contrasting background whenever practical.

(ii) Rationale statement. The safe handling instructions must [shall] include the following rationale statement, "This product was prepared from meat or [and/or] poultry. Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." This statement must [shall] be placed immediately after the heading for safe handling instructions in clause (i) of this subparagraph and before the safe handling statement in clause (iii) of this subparagraph.

(iii) Safe handling statement. The safe handling instructions must [shall] include the following safe handling statements.[:]

(I) "Keep refrigerated or frozen. Thaw in refrigerator or microwave." [(]Any portion of this statement [that is] in conflict with the product's specific handling instructions may be omitted ([,]e.g., some products may have specific instructions to cook without thawing).[)] (]A graphic illustration of a refrigerator must [shall] be displayed next to the statement.[);]

(II) "Keep raw meat and poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry." [(]A graphic illustration of soapy hands under a faucet must [shall] be displayed next to the statement.[);]

(III) "Cook thoroughly." [(]A graphic illustration of a skillet must [shall] be displayed next to the statement.[); and]

(IV) "Keep hot foods hot. Refrigerate leftovers immediately or discard." [(]A graphic illustration of a thermometer must [shall] be displayed next to the statement.[)]

§221.15. Inspection of Alternate Source Food Animals.

(a) Requirements. Specific requirements of this section are [shall be] in addition to those required by the rules adopted for inspection of livestock, under the Texas Meat and Poultry Inspection Act, and federal regulations as listed in §221.11 of this subchapter [title] (relating to Federal Regulations on Meat and Poultry Inspection).

(b) Fees. Fees are [shall be] assessed in one-half hour increments for inspection services, provided by a department inspector to a facility holding a grant of inspection, as specified in §221.16 of this subchapter [title] (relating to Fees). Failure of a grant holder to promptly pay invoices will result in cessation of overtime inspection services. Inspection time includes:

(1) the inspector's time in the field during a hunt;

(2) the inspector's time spent completing inspection records;

(3) the inspector's time spent waiting for any purpose to facilitate the processor;

(4) the inspector's time for travel between hunt sites; and

(5) the inspector's time for travel from the inspector's official duty location to the field site and return.

(c) Sanitary Dressing Procedures [dressing procedures]. The following are general guidelines of sanitary dressing applicable to all species of livestock slaughtered.

(1) The person performing slaughter operations must not permit any contamination of edible portions of the carcass with materials such as feces, urine, hair, ingesta, milk, bile, pathological tissues and exudates, or [and] other filth. All controls of slaughter and dressing procedures must be aimed at accomplishing this purpose.

(2) Slaughter operations must be conducted in a manner that precludes contamination, i.e., adequate separation of carcasses, parts, and viscera during dressing; routine cleaning and disinfection of certain equipment and hand tools; design and arrangement of equipment to prevent the contact of successive carcasses and parts; and appropriately located, functional lavatories and disinfection units.

(3) In the event [that] contamination does occur, it must be handled promptly and in a manner that ensures adequate protection to the remaining product. Contamination with feces, milk, pus, or pathological tissue or exudate must be promptly removed by trimming. Removal must be complete. Enough tissue must be removed so only clean meat remains. Scraping with the edge or back of a knife, wiping with a cloth or towel, or the use of a water spray are unacceptable procedures for removal of this type of contamination.

(d) Exotic Animals [animal].

(1) Sanitation. All slaughter operations are to be conducted in a way that precludes contamination. The following conditions, at [as] a minimum, must [shall] be met.

(A) The slaughter facility unit must [shall] be constructed of smooth and impervious material capable of being thoroughly cleaned and sanitized before commencing operations and must be so maintained.

(B) Potable [Only potable] water must [shall] be used in conjunction with exotic animal slaughter procedures. Water from private water wells must [shall] be tested for potability by an approved laboratory within six months before [prior to] use. Water from portable water tanks must [shall] be tested by an approved laboratory every six months to determine that potable water remains potable after being in the portable tanks. Results of such testing must [shall] be made available to the department inspector.

(C) Hot water at a temperature adequate to facilitate equipment and unit sanitization during pre-operational and operational sanitation procedures is required on the skinning and evisceration [skinning/evisceration] floor. A procedure utilizing chemical sanitization in lieu of hot water may be used.

(D) Mobile as well as fixed slaughter units must [shall] provide adequate measures to control flies, other insects, and dust.

(E) Inedible by-products must be handled in a manner that does not create an insanitary condition or adulteration and ensures inedibles are not diverted to human food. When containers are used to remove inedibles from the premises, such containers must [shall] be marked "INEDIBLE" in letters at least two inches high. An adequate amount of denaturant in accordance with 9 Code of Federal Regulations (CFR) [CFR] §314.3 must [will] be used on all products placed in the "INEDIBLE" containers.

(2) Ante-mortem procedures.

(A) The producer must certify by completing and signing form MSA-71, Microchip Certification and Drug Advisory For Alternate Food Animal Species, whether the animal or animals [animal(s)] have been identified with a microchip device.

(B) For mobile and field slaughter, once an animal has been shot, the animal will be exsanguinated as soon as possible in the field with a properly sanitized knife. The assigned inspector will examine and inspect each animal before its entry into the processing facility to ensure [assure that] the animals being harvested appear to have been healthy and were killed by the harvester.

(C) For field slaughter, environmental temperature may affect the time that may lapse before it is necessary to return to the mobile slaughter unit or processing facility for skinning and eviscerating. High environmental temperature may shorten the time lapse before dressing, as dressing must begin before the carcass becomes distended due to gas formation in the interstitial tissues or in the small intestine. The department inspector has the final decision in determining the actual time allowed between exsanguination and skinning; however, a 2-1/2 [~~two and one-half~~] hour time lapse may [~~shall~~] not be exceeded.

(3) Post-mortem procedures.

(A) The vehicle used for transporting the slaughtered exotic animals must [~~shall~~] be clean before use and must [~~shall~~] be cleaned as needed, during the operation.

(B) Dressing procedures are to begin at the slaughter unit or facility as soon as practical after slaughter.

(C) Heads from animals slaughtered by gunshot to the head must [~~shall~~] not be used for food purposes. Such heads must [~~shall~~] be denatured and placed into inedible containers.

(D) In the event [~~that~~] an animal is shot in an area other than the head, the resulting wound area and bruised areas must be trimmed of all contamination.

(E) The dressing of any animal whether it be the removal of a foot, head, or any part is strictly forbidden in any area other than inside the slaughter unit, regardless of the size of the animal. However, the removal of the antlers only is permitted before entering the slaughter facility.

(4) Dressing procedures.

(A) Persons butchering an animal must keep [~~their~~] hands as clean as possible. Adequate hand washing facilities must be readily available.

(B) Skinning operations must be conducted in a sanitary manner.

(C) As the pelt is removed, care must be taken to prevent contamination of the carcass by dirty hands, knife, or pelt.

(D) If a pelt puller is used in such a manner [~~that~~] the carcass is raised to a horizontal position, the carcasses of the female animals must be checked closely for urine leakage.

(E) Heads must remain with the carcass until inspection is completed. Nasal and oral cavities should be flushed before heads are placed on inspection tables.

(F) Overall washing of carcasses must [~~should~~] be accomplished before any openings are made for inspection or evisceration; however, any feces, ingesta, or milk must be trimmed before washing. The washer must [~~should~~] take care to prevent filling the rectum with water during washing operations.

(G) The knife or other instrument used to open the breast must be disinfected after each use.

(H) The bung is not to be dropped until washing is completed. After opening the pelvic area, the neck of the bladder and the dropped bung should be grasped firmly and held until they clear the body cavity.

(I) Evisceration must be accomplished in a manner that precludes contamination of the carcass with contents from the bladder or intestine; viscera are [~~is~~] to be placed in an inspection pan.

(J) If intestines are to be saved, contamination should be prevented by stripping or [~~and/or~~] tying between the large and small intestine before removing from the table and sending to the next station.

(5) Processing. Processing of carcasses must [~~shall~~] be conducted in a manner and location that complies with requirements for processing all livestock carcasses, including the provisions adopted under §221.11 of this subchapter [~~title~~].

[~~(e) Rabbits. See 9 CFR, Part 354, as adopted by §221.11 of this title.~~]

[~~(f) Migratory water fowl, game birds, squab. See 9 CFR, Part 362, as adopted by §221.11 of this title.~~]

[~~(g) Certified products for dogs, cats, and other carnivora. See 9 CFR, Part 355, as adopted by §221.11 of this title.~~]

§221.16. Fees.

Special fees for inspection services.

(1) Inspection time. Inspection time may include:

(A) the inspector's time for performing inspection services;

(B) the inspector's time for completing inspection records;

(C) the inspector's time for waiting for any purpose to facilitate the slaughterer or processor [~~slaughterer/processor~~] to begin [~~their~~] regulated activity; and

(D) the inspector's time for traveling to perform inspection services.

(2) Fees. Fees are [~~shall be~~] assessed in one-half hour increments for inspection services. Invoices are due upon receipt and become delinquent 30 calendar days from the date [~~which is printed~~] on the invoice. Inspection services will not be performed for any establishment having a delinquent account.

(3) Overtime and holiday rate. The overtime and holiday rate for inspection services is [~~shall be~~] $60 per hour, per department [~~program~~] employee.

(4) Rate. Rate for inspections not required by state or federal meat and poultry inspection laws. The rate for special inspections is [~~shall be~~] $60 per hour, per program employee.

(5) Overtime and special inspection services. Overtime and special inspection services are subject to the availability of inspectors.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405415
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 834-6760

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER N. NEW WATER SUPPLY FOR TEXAS FUND

31 TAC §§363.1401 - 363.1408

The Texas Water Development Board (TWDB) proposes new rules in 31 Texas Administrative Code (TAC) Chapter 363 by adding new §§363.1401, 363.1402, 363.1403, 363.1404, 363.1405, 363.1406, 363.1407, and 363.1408.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED NEW RULES.

The 88th Texas Legislature enacted Senate Bill 28, amending Texas Water Code Chapter 15, Texas Water Assistance Program, to add a new subchapter creating the New Water Supply Fund for Texas. The new legislation directs the Board, by rule, to undertake to finance projects through the fund that will lead to seven million acre-feet of new water supplies by December 31, 2033.

SECTION BY SECTION DISCUSSION OF THE PROPOSED NEW RULES.

Subchapter N is added to 31 Texas Administrative Code Chapter 363

Section 363.1401. Scope

The proposed new section provides that the programs of financial assistance under Texas Water Code, Chapter 15, Subchapter C-1 will be governed by this subchapter and, unless in conflict with this subchapter, the provisions of 31 Texas Administrative Code 363 Subchapter A will be applied to the financial assistance and projects under this subchapter.

Section 363.1402. Definition of Terms

The proposed new section includes new definitions for terms commonly used in the Subchapter to provide clarity of the terms in the context used.

Section 363.1403. Use of Funds

The proposed new section provides the ways that the Board may or may not use the Fund.

Section 363.1404. Determination of Availability

The proposed new section provides the methods that the Board will obtain the amount within the Fund and how the Board will seek New Water Supply projects. Section 363.1405. Complete Application Requirements

The proposed new section provides what information must be included in a project application under the Fund. Section 363.1406. Consideration of Applications The proposed new section lists what the Board may consider when evaluating an application. Section 363.1407. Findings The proposed new section identifies what the Board must find when granting financial assistance for an application and the process for placing the application before the Board for approval.

Section 363.1408. Terms of Financial Assistance

The proposed new section provides what the Board must determine when granting financial assistance and limits the term length to up to 30 years.

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 rules will 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.

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.

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 TWDB borrowers and is necessary to implement a new financial assistance program. 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 participation in TWDB financial assistance programs is voluntary and the requirements set forth by the rules 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 establish the procedures by which the TWDB will implement the New Water Supply for Texas Fund.

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 §15.154. 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 establish the procedures by which the TWDB will implement the New Water Supply for Texas Fund. The proposed rule would substantially advance this stated purpose by providing the procedures and requirements associated with TWDB's implementation of the New Water Supply for Texas Fund.

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 is directed to implement the New Water Supply for Texas Fund.

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 the procedures by which the TWDB will implement the Fund. 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) expand, limit, or repeal an existing regulation; or (6) increase or decrease the number of individuals subject to the rule's applicability. The proposed rule will: (1) create new regulation, that regulation being 31 Texas Administrative Code 363 Subchapter N New Water Supply for Texas Fund; and (2) the proposed rule will positively affect the state's economy by providing a funding source for projects to identify and produce new water for the state's residents and 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 363" in the subject line of any comments submitted.

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The new rules are 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 §15.154

This rulemaking affects Water Code, Chapter 15.

§363.1401. Scope of Subchapter N.

This subchapter shall govern the board's programs of financial assistance under Texas Water Code, Chapter 15, Subchapter C-1. Unless in conflict with the provisions of this subchapter, the provisions of Subchapter A of this chapter (relating to General Provisions) applies to projects under this subchapter.

§363.1402. Definition of Terms.

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

(1) Fund--The New Water Supply for Texas Fund.

(2) Brackish--Water above 1,000 milligrams per liter of total dissolved solids (TDS).

(3) New Water Supply--means only:

(A) Marine and Brackish water desalination projects;

(B) Produced water treatment projects, other than projects that are only for purposes of disposal of or supply of water related to oil and gas exploration;

(C) Aquifer storage and recovery projects;

(D) Water supply projects of any type, that result in the acquisition or delivery of water from states other than Texas to locations within Texas; and

(E) The development of infrastructure to transport water that is made available by a project listed in (1) - (4).

(4) Water Conservation--The reduction of water consumption, loss, and waste via improved efficiency, recycling, and reuse.

(5) Water Need--Has the meaning assigned by §357.10 of this Title.

(6) Water User Group-- Has the meaning assigned by §357.10 of this Title.

§363.1403. Use of Funds.

(a) The board may use the Fund for financial assistance to an eligible political subdivision for a New Water Supply project.

(b) The board may use the Fund to make transfers to eligible programs.

(c) The board reserves the right to limit the amount of financial assistance available to an individual entity.

(d) Financial assistance may not be used for expenses associated with the maintenance or operation of a New Water Supply project.

§363.1404. Determination of Availability.

(a) Periodically, or at the request of the board, the executive administrator will present to the board:

(1) a statement of the total money available to the Fund;

(2) a recommendation identifying the amount of money from the Fund that may be made available to eligible applicants for financial assistance, including any subsidies.

(b) The board may approve the final allocations of money from the Fund for different purposes;

(c) Upon the approval of the board, the executive administrator will publish notice requesting applications for projects, which will identify the timing for mandatory preapplication meetings, and must include:

(1) the funds available for New Water Supply projects;

(2) the types of projects for which applications are being solicited;

(3) eligibility criteria;

(4) structure of financial assistance;

(5) the method and criteria for evaluation and approval of applications by the board;

(6) any requirements to be applied to the use of financial assistance in addition to the requirements set forth in this chapter; and

(7) the date by which the application must be submitted to the executive administrator.

§363.1405. Complete Application Requirements.

(a) All applications must include:

(1) Evidence the applicant has conducted, with appropriate notice, a public hearing concerning the project;

(2) Information, sufficient for the board's consideration of the application, regarding the intended end users of the water supply, the needs of the area to be served by the project, the expected benefit of the project to the area, the relationship of the project to the water supply needs of this state overall, and the relationship of the project to the state water plan; and

(3) The total cost of the project, the total volume of annual water supply, the unit cost of the water supply, the reliability of the water supply, the timeline for development, and the potential impacts of the project, all of which must be developed and provided by the applicant as part of the application in accordance with all requirements of §357.34(e) of this Title (related to Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects) and associated guidance.

(b) Applications may include letters of support from regional water planning groups, wholesale or retail water suppliers, customers, or any other member of the public that would be affected by the project.

§363.1406. Consideration of Applications.

When evaluating applications the board may consider:

(1) Whether the project is a recommended project in the most recently adopted state water plan;

(2) The sponsor of the project;

(3) The availability of money or revenue to the political subdivision from all sources for the ultimate repayment of the cost of the project, including all interest;

(4) The Water User Groups to be served by the project and the volume of water supply allocated to each;

(5) The identified Water Needs of the benefitting Water User Groups to be served by the project;

(6) The expected water supply benefit relative to the Water Needs associated with the Water User Group beneficiaries;

(7) The relationship of the project to the Water Needs of the state overall as defined by §357.10;.

(8) The relationship of the project to the state water plan; and

(9) Any information contained in the application.

§363.1407. Findings Required.

(a) The executive administrator must submit applications for financing under this subchapter to the board with comments concerning financial assistance. The application will be scheduled on the agenda for board consideration at the earliest practical date. The applicant and other interested parties known to the board must be notified of the time and place of such meeting.

(b) The board may grant the application only if the board finds that at the time the application for financial assistance was made:

(1) The public interest is served by state assistance for the project; and

(2) For an application for financial assistance for which repayment is expected, the money or revenue pledged by the political subdivision will be sufficient to meet all obligations assumed by the political subdivision during the term of the financial assistance.

§363.1408. Terms of Financial Assistance.

(a) The board must determine the amount and form of financial assistance and the amount and form of repayment.

(b) The board will determine the method of evidence of debt.

(c) Financial assistance from the Fund may provide for repayment terms of up to 30 years, in the board's discretion.

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

Filed with the Office of the Secretary of State on November 6, 2024.

TRD-202405356
Ashley Harden
General Counsel
Texas Water Development Board
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-1673

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.9

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC §1.9, Household Recipient Privacy Policy for Federal Funds or Assistance, without changes to the proposed text as published in the September 20, 2024, issue of the *Texas Register* (49 TexReg 7413). The rule will not be republished. The purpose of the new section is to provide a policy that protects, when permissible, the personal information provided by households to the Department or its subrecipients, when applying for assistance.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but provides for the privacy of information provided by households that apply for the Department's federal funding assistance.

2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new section does not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new section is creating a new regulation, but it is a regulation that does not place a burden on users of the Department's programs, but merely offers a privacy policy.

6. The new section will not expand, limit, or repeal an existing regulation.

7. The new section will increase the number of individuals subject to the rule's applicability; however that applicability is a household benefit (privacy).

8. The new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that it will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to its possible effects on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be increased privacy with the information provided by households when applying to the Department for federal assistance. There will not be economic costs to individuals required to comply with the new section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the section does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period was held September 20, 2024 to October 21, 2024, to receive input on the proposed action. One comment was received from the Texas Council on Family Violence (TCFV).

Comment: TCFV specifically offers support for the protection of personally identifying information for participants of any federally funded program or resource administered by the Department, either assisted directly by the Department or indirectly through a Vendor, Subrecipient or Owner. Under the Violence Against

Women Act (VAWA), there are critical protections in place to ensure that survivors of domestic violence can access necessary resources without the fear of their sensitive data being mishandled or disclosed. Ensuring the privacy of such information is vital for fostering trust and encouraging individuals to seek assistance. TCFV commends the Department's commitment to enhancing privacy for all Texans and recommend clear guidelines and training for staff to effectively implement this policy.

Department Response: The Department appreciates the support for the policy. No changes to the rule are being made in response to this comment.

STATUTORY AUTHORITY. The new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new section affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405413
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 27, 2024
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER I. PUBLIC FACILITY CORPORATION COMPLIANCE MONITORING

10 TAC §10.1103

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to 10 TAC Subchapter I, §10.1103 Public Facility Corporation Compliance Monitoring, with changes to the text previously published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5863). The rule will be republished. The purpose of the adoption of amendments is to provide compliance with Tex. Gov't Code §2306.053. The purpose of the rule is to codify requirements on which Public Facility Corporation multifamily residential developments are required to submit annual audit reports to the Department by June 1 of each year.

Tex. Gov't Code §2001.0045(b) does not apply to the amendments because it is necessary to implement legislation with HB 2071 (88th Regular Legislature). The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the amendments do not create or eliminate a government program:

1. This adopted amendment to the rule provides for an assurance that properties created by a Public Facility Corporation must annually submit an Audit Report to the Department.

2. The adopted amendment to the rule will require a change in the number of employees of the Department; the Compliance Monitoring Division will gain two additional full-time employees through 2025.

3. The adopted amendment to the rule does not require additional future legislative appropriations.

4. The adopted amendment to the rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The adopted amendment to the rule will create new regulations; which was created and codified because of HB 2071.

6. The adopted amendment to the rule will not repeal an existing regulation; but will expand the existing regulation on this monitoring activity because the amendment is necessary to ensure ongoing compliance with HB 2071. The Department must adopt rules to codify monitoring applicability.

7. The adopted amendment to the rule will increase the number of individuals subject to the rule's applicability because the rule is codifying that all Public Facilities Corporations must submit an annual audit report to the Department.

8. The adopted amendment to the rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this adopted amendment to the rule, has attempted to reduce any adverse economic effect on small or micro-businesses or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.053.

1. The Department has evaluated this new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. The rule relates to the procedures for Public Facilities Corporations. Other than in the case of a small or micro-business that is a PFC Operator or Sponsor submitting an audit report to the Department, no small or micro-business are subject to the rule. It is estimated that there may be 200 or less small or micro-businesses that may submit an audit report and be subject to the rule. For those entities, the adopted amendment provides clear expectations for entities that are subject to the rule to submit annual audit reports as required and does not result in a negative impact for those small or micro businesses. There are likely to be some rural communities subject to the new rule; however, because the Department does not know the number of PFC developments in these areas, it cannot be estimated how many may be impacted. The PFC Operators or Sponsors are required to submit annual audit reports to the Department. There is no fee collected by the Department for the review of PFC annual audit reports.

3. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities

because it applies to all Public Facility Corporation multifamily residential developments regardless when approved.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amendments do not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the amendment as to its possible effects on local economies and has determined that for the first five years the amendment will be in effect the adopted amendment to the rule has no impact on local employment because the rule only addresses the requirement for PFC Operators and/or Sponsors to submit annual audit reports to the Department; therefore, no local employment impact statement is required to be prepared for the adopted amendment to the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the new rule on employment in each geographic region affected by this new rule..." Considering that the adopted amendment to the rule only provides requirements for a PFC Operator and/or Sponsor to submit an annual audit report to the Department, there are no "probable" effects of the adopted amendment to the rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the adopted amendment to the rule will be to codify requirements for PFC multifamily residential developments to submit annual audit reports to the Department. There will be an economic cost to any individuals required to comply with the adopted amendment because they are required to hire an independent auditor to complete the annual audits. It is estimated the cost per annual PFC audit report is between $6,000 to $8,000. There is no additional cost to the PFC Operator or Sponsor to submit the annual audit to the Department, as the Department does not collect a fee to review PFC audit reports.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the adopted amendment to the rule is in effect, enforcing or administering the adopted amendment to the rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the rule only relates to the requirements for PFC Operators and/ or Sponsors to submit annual audit reports.

SUMMARY OF PUBLIC COMMENT. The public comment was accepted from August 9, 2024, through September 9, 2024. Comment was received from twenty-four commenters. Comments regarding the proposed amendment were accepted in writing and by e-mail with comments received from:

1. Alan Hassenflu, Chair, Houston Region Business Coalition

2. Nick Walsh, Vice President of Development, the NRP Group

3. Ben Martin, Research Director, Texas Housers

4. Erick Waller, President of NRP Management, LLC

5. Sandy Hoy, Vice President & General Counsel, Texas Apartment Association

6. Mark Jensen, Vice President, Weston Urban

7. Darren W. Smith, Managing Member, AUXANO Development, LLC

8. Daniel L. Smith, Managing Director, Ojala Partners

9. Cynthia L. Bast, Locke Lord, LLP

10. Dave Holland, Executive Director, Provident Realty Advisors

11. Shera Eichler, Director, Texans for Workforce Housing

12. Brian Alef, Founder & CEO, Town Companies,

13. Trey Embrey, President & Chief Executive Officer, Embrey

14. Kevin Cherry, Cherry Petersen Albert

15. Sara Black, oppressed renter, Austin/Travis County

16. David M Adleman, Principal of AREA Real Estate LLC

17. Paul Ahls, Senior Vice President, Starwood Capital Group

18. John Jeter, Post Real Estate Group

19. Jessica Antoniades, Vice President & Assistant Secretary, Fairfield

20. Pete Alanis, Executive Director, San Antonio Housing Trust

21. Jessica Kuehne, Director of Asset Management, San Antonio Housing Trust Foundation

22. Timothy Alcott, Executive Vice President, Development and General Counsel, Opportunity Home

23. Barry J. Palmer, Director, Coats Rose

24. Miller Sylvan, Senior Vice President, JPI Regional Development Partner

Rule Section §10.1103:

Comment Summary: Commenters 1, 3, and 15 strongly support the proposed amendment to the rule and believe the language in HB 2071 supports these changes.

Commenters 2, 4, 6, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 22, 23, and 24 have strong concerns that the proposed rule change is an unreasonable interpretation of the plain language and context in Chapter 303 Tex. Local Gov't Code and HB 2071. They feel the Department has misinterpreted HB 2071 and has undermined the intent of the legislation.

Commenter 2 requests that the Department withdraw the proposed changes and maintain the current rule because the plain language reading demonstrates that the new provisions in Sections 303.0421, 303.0425, and 303.0426 apply solely to new construction approved or acquisitions completed after June 18, 2023.

Commenter 4 expresses concern that the rule would subject affordable housing developments to undue scrutiny, increased cost during trying economic times and a variety of other issues like the lack of current auditing resources for this program with only a handful of approved auditors for hundreds of developments.

Commenters 8 and 12 echo Commenter 4's concerns above but also see the new proposed rule as having other major impacts on developments and residents. The concerns are that the publication of these annual reports to the county appraisal districts and to the Department's website, creates undue scrutiny and the potential for Nimbyism that may affect the broader mission of providing affordable housing.

Commenters 2, 4, 6, 8, 10, 12, 13, 16, 17, 19, and 24 have additional concerns about the administrative and unanticipated cost burden for existing Public Facility Corporation developments to complete the requested audit by the December 1, 2024, deadline.

Commenter 8 went on to state that requiring PFC properties approved prior to June 18, 2023, to submit annual audit reports, is adding new expenses that will total hundreds of thousands of dollars over a development's lifetime.

Commenters 2 and 4 also have additional concerns with the structure of the current audit workbook that seems to overlook Regulatory Agreement terms executed prior to June 18, 2023. For instance, many PFC projects initiated prior to June 18, 2023, only needed to reserve 50% of the units for households at or below 80% Area Median Income (AMI), which the current audit workbook does not address. Other areas of concern with the current audit workbook for pre-June 18, 2023, developments is the lack of options for selecting "Not Applicable" (N/A) for audit requirements that are not applicable to these developments. Lastly, Commenters 2 and 4 are apprehensive that utilizing the current audit workbook for those pre-June 18, 2023, developments could easily lead to inconsistencies and potential misinterpretations. Such misinterpretations could affect property owners and operators, but also auditors, TDHCA, the public and others.

Commenters 4, 8, 9, 11, 12, 14, 20, 22, and 23 are requesting an extension to the December 1, 2024 deadline to allow the participants time to work through implementation issues without imposing undue burden or risk on TDHCA, the PFCs, or the other participants.

Commenters 9, 11, 14, 20, 22, and 23 suggest that if the Department moves forward with the December 1, 2024 deadline, that the information submitted will be for calendar year 2023.

Commenters 2, 6, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 22, 23, and 24 believe these changes are not supported by the language in HB 2071, and that TDHCA lacks statutory authority; they request that the Department withdraw the proposed rulemaking.

Commenters 9, 11, 14, 20, 22, and 23 have concerns about PFC developments approved prior to June 18, 2023, specifically that some developments have been operational over roughly the last 7 years and will have different affordability requirements, different lease-up requirements, and different enforcement provisions; some may have Regulatory Agreements while others may not. Commenters 9, 11, 14, 20, 22, 23 go on to state that these older PFC developments may lack uniformity in their documentation, and many of the participants may not have prior experience with affordable housing. Meeting the December 1, 2024, deadline would be challenging as third-party auditors may not have the capacity to take on hundreds of audit reports.

Commenter 5 has concerns regarding the audit workbook made available by the Department. The audit workbook requires additional data to be collected from Responsible Parties, which include all PFC governing body contact information, PHA board members contact information and elected official's contact information. In addition, the audit workbook asks about property information regarding utilities, fees, deposits, unit mix, square footage of each floorplan, occupancy information, number of voucher holders, qualification policies, marketing information etc., and believes this exceeds the governing statue and creates an undue financial and administrative burden for PFC Operators. Additionally, requesting this extra data requires extensive time to collect and complete the audit workbook. Due to the increased time required for the data collection and data entry, the average cost of a compliance audit is estimated to be $8,000 or more per year. The compliance audit fee is higher than a standard audit, and is an unexpected expense for 2024. Commenter 5 also goes on to say, that if the additional data is only being collected for informational purposes, it should be optional and should be allowed to be provided to the Department in the form of a questionnaire directly from the PFC Operator. Commenter 5 also requested that the Audit Report as defined in §10.1102(1) be accepted in other formats. Also, they recommend that the term "Auditor" defined in §10.1102(2) be expanded to include not only an individual, but companies and firms to help broaden the options on who PFC Operators can engage with to conduct compliance audits to ensure large portfolios can complete them timely. It is strongly suggested that the Department extend the reporting deadline to start with audit report due June 1, 2025, so that PFC developments are not having to report twice in a six-month period.

Staff Response: Staff agrees with Commenters 1, 3, and 15 in their support of the rule change.

Staff disagrees that the proposed rule change contradicts HB 2071 and believes that these costs and administrative actions have not been unforeseen. HB 2071 and Section 303.0421(c), Tex. Local Gov't Code, specifically require that existing PFC developments be required to comply and submit an annual audit.

Section 10(d) of HB 2071 states:

Notwithstanding any other provisions of this section: (1)Section 303.0426, Local Government Code, as added by this Act, applies to all multifamily residential developments to which Section 303.0421 applies and with respect to which an exemption is sought or claimed under Section 303.042(c); and (2)the initial audit report required to be submitted under Section 303.0426(b), Local Government Code, as added by the Act, for a multifamily residential development that was approved or acquired by a public facility corporation before the effective date of the Act must be submitted by the later of: (A)the date established by Section 303.0426(f), Local Government Code, as added by this Act; or (B) June 1, 2024.

PFC multifamily residential developments created under Chapter 303 of the Texas Local Government Code, with the exception of those described in Tex. Local Gov't code §303.0421(a)(1)-(4), must annually submit an audit report to the Department. PFC Developments acquired, approved, or occupied prior to the effective date of the Act, as described in Sections 10(b) and (c) of HB2071, are governed by the law in effect on the date the Development was approved by the corporation or sponsor. However, as Section 10(d) applies "notwithstanding any other provision of this section," all PFC-owned multifamily residential developments with respect to which an exemption is sought or claimed under §303.042(c) - regardless of when the Development was acquired, approved, or occupied - must submit an Audit Report in accordance with Tex. Local Gov't Code §303.0426(b). For those PFC-owned developments that pre-date the Act (as described in Sections 10(b) and (c) of the Act), the Audit Report requirements of Tex. Local Gov't Code §303.0426(b)(1) will be satisfied by simply demonstrating its eligibility to continue under the former law, but the Audit Report must still fully address the requirements of §303.0426(b)(2) (identifying the difference in rent charged for income-restricted residential units and the estimated maximum market rents that could be charged for those units without the rent or income restrictions).

For those developments acquired by a Public Facility Corporation prior to the effective date of the Act, Section 10 (b) and (c) of HB 2071 speak to the applicability of sections 303.0421 and 303.0425 and restrict the need to be in compliance with Section 303.0425 new statutory provisions.

Therefore, all Public Facility Corporation approved developments must annually submit an audit report that includes the difference in the rent charged for income-restricted residential units and the estimated maximum market rents that could be charged for those units without the rent or income restrictions in compliance with Sections 303.0421 and 303.0425. The Department has created a new audit workbook for pre-June 18, 2023, developments, and has made it available on the Department's website.

In addition, the Department has extended the deadline to the December 15, 2024. The deadline is a cursory extension for those PFC developments that did not report by June 1, 2024.

The Department is required to publish summary of audits in accordance with HB 2071 and make them available on TDHCA's website. The Department deems that making the monitoring reports available on TDHCA's website and providing them to county appraisal districts is necessary to be transparent in this monitoring activity to the public and stakeholders. These monitoring reports are subject to public information requests and would be made available upon request by any person or entity.

The Department has been tasked through HB 2071 to monitor PFC developments regardless of when approved and has no oversight of the cost of a third party auditor. The PFC Operator has the ability to choose their third-party auditor and negotiate the price of an audit. Further, the auditor list provided on the Department's Public Facility Corporation website is not an exclusive auditor list. The audit report may be submitted by any auditor who meets the qualifications outlined in §10.1103(6).

TDHCA Compliance Division has numerous years of experience monitoring affordable housing that often has multiple layers of different programs, affordability periods, and income/rent requirements. The Compliance Division has the capacity and knowledge to monitor third-party audit reports for PFC developments regardless of when they were approved. In addition, the Compliance Division, as needed will provide written technical assistance in its monitoring letters to help enhance and strengthen PFC compliance obligations. The Department agrees that reports submitted in 2024, should be reporting for calendar year 2023, while reports due June 1, 2025, should be reporting for calendar year 2024.

Staff appreciates the comments regarding the audit workbook; however, a majority of the information being collected is required statutorily. For instance, in accordance with HB 2071, §303.0426(c)(2), TDHCA must issue a copy of the report "to a public facility user that has an interest in a development that is subject of an audit, the comptroller, the applicable corporation, the governing body of the corporation's sponsor, and, if the corporation's sponsor is a housing authority, the elected officials who appointed the housing authority's governing board." Per §303.0425 the Department is required to monitor specific requirements for unit mix, rent, housing choice voucher and tenant protections, specific marketing requirements and qualification polices as it relates to the housing choice voucher holders. Department staff cannot appropriately monitor a PFC development without collection of the required information. The Department is collecting additional information on utilities, fees, and deposits, which takes very little time for an auditor to determine and complete the basic questions in the audit workbook. The only non-required information the Department is collecting on is utilities, fees, and deposits. This information is being collected in the interest of the Department for tracking purposes and the information is optional to provide. The Department has a very short timeframe of forty-five days to review audit reports and provide a response and allowing other formats to be submitted would create a substantial burden on staff. Due to time constraints, staff needs the audit format to be consistent to ensure all monitoring report deadlines are completed on time. Department staff will update the definition of "Auditor" as suggested in the Public Facilities Corporation Monitoring Rule the next time that section of the rule is made available for public comment. The December 15, 2024, deadline is a cursory extension granted by the Department for those PFC developments that did not report by the June 1, 2024, deadline. The Department is statutorily required to monitor all PFC developments starting June 1, 2024.

Additional Comments and Concerns received:

Comment Summary: Commenter 7 is requesting that the Department acknowledge that developments that originated before HB 2071 will be reviewed per the current Regulatory Agreement. Commenter 7 goes on to describe how income limits should be calculated in the absence of an income definition in a Regulatory Agreement and that the Department should confirm that utility allowance and other charges are not included in the definition of rent. In addition, the TDHCA Income Certification form should be required for PFC developments approved prior to June 18, 2023.

Commenters 4, 9, 11, 14, 20, 21, 22, and 23 had many suggested changes for the audit workbook. Commenters 9, 11, 14, 22, and 23 also included suggestions for the TDHCA's PFC Income Certification form.

Commenter 18 submitted comments requesting that 10 TAC §10.1104 be modified to reflect the different audit requirements for regulatory agreements of PFC developments that were approved prior June 18, 2023. Commenter 18 has the following specific concerns:

1. The inclusion of fees and other charges when determining rent,

2. The requirement for verifications of assets when determining income for a qualified household,

3. The review of one-time fee and deposits amounts, and

4. The percentage of units set aside in each unit type and the requirement of rent savings for the property must be equal to or exceed 60% of the tax savings.

Commenter 18 has also suggested for Regulatory Agreements in place prior to June 18, 2023, the rule should allow for the reservations of units to be occupied by income-qualified tenants to count towards the compliance threshold, and should allow developments with Regulatory Agreements to use those in determining program compliance requirements.

Commenters 20 and 21 seek clarification on the Public Facilities Corporation Monitoring Rule and the audit workbook. Specifically looking for the Department to expand on the definition of who the PFC's Responsibly Parties are and what role they play in the PFC ownership and sponsor structure. Commenters 20 and 21 also ask what is an equivalent certification to the Certi-

fied Occupancy Specialist (COS), what business credentials and qualifications the Department requires for an independent auditor, how a vendor would get on the auditor's list and why the Department is requiring the HUD income and rent limits. They are also seeking clarification on how to initiate the Options for Review in 10 TAC §10.1107 and what the process is. Commenter 21 also asked what if a PFC development is not using the Income Certification form as required in 10 TAC §10.1104(b)(6). Commenters 20 and 21 also suggested the implementation of an "Affidavit or Ownership and no affiliation statement" for an independent auditor. They are also seeking information on what utilities the PFC Operator pay and how to complete Tab 7 on the audit workbook. Commenter 21 indicates that Tab 7 is problematic and only onsite staff or management will be able to complete it without detailed instructions or guidance. They would also like to know if the Department is requiring proof of marketing, for copies of the Income Certification to be submitted with the audit workbook.

Staff Response: Staff confirms that all PFC developments will be monitored in accordance with their Regulatory Agreement regardless of when the PFC was approved. In addition, for PFC developments which were approved before the effective date of June 18, 2023, they will be monitored in accordance with the law in effect on the date the development was approved by the Corporation or Sponsor. PFC developments approved on or after June 18, 2023, will be monitored under all new statutory provisions outlined in HB 2071. Staff disagrees with Commenter 7 regarding the Income Certification form; this form should be implemented when certifying and recertifying households as required in the PFC Compliance Monitoring Rule in §10.1104(b)(6).

Staff agrees that the current workbook contains areas that would not apply to the existing Public Facility Corporation (PFC) developments and appreciates the feedback on the audit workbook. Staff will consider all the suggestions as it updates the workbook for the 2025 audit cycle.

Staff agrees with the suggestions from Commenters 9, 11, 14, 20, 22, and 23 and will review and implement changes to the TDHCA Income Certification form.

Staff will take into consideration the concerns outlined by Commenter 18 during future rule revisions, as Section §10.1104 Audit Requirements is currently not out for public comment. Staff will monitor for requirements outlined in the developments specific Regulatory Agreement, HB 2071, and Public Facilities Corporation Monitoring Rule.

Fees and other charges are not considered rent for PFC developments. Assets are a part of determining a household's gross annual income and should be verified by the development using the Department's Assets Certification of Net Family Assets form; or verified using third party or firsthand documentation. One-time fee and deposits amounts are optional information to provide to the Department by a PFC Operator and/or Sponsor. PFC properties approved after June 18, 2023, must meet a specific unit mix requirement per HB 2071 and the sixty percent (60%) rent savings is only applicable to properties that are acquired, and not for new construction.

Department staff does monitor compliance with Regulatory Agreements.

10 TAC §10.1101 requires the Department to communicate with the Responsible Parties. Responsible parties are further described in HB 2071. It is the PFC Operator's responsibility to provide all Responsible Parties contact information to the independent auditor so the audit workbook may be accurately completed. The Department will rely on the information provided on the audit workbook completed by the auditor. An equivalent certification to the COS is the Certified Professional of Occupancy (CPO) provided through The National Affordable Housing Management Association (NAHMA). The Auditor is an independent Auditor or compliance expert with an established history of providing similar audits on housing compliance matters and qualifications must include experience auditing housing compliance, a current COS certification or an equivalent certification and resume. These Auditor qualifications must be submitted with each Audit report. An interested person/entity may request to be listed on the list of Auditors on the website by contacting Department staff listed on the PFC website. The development is not limited to only the income and rent limits published by HUD, but to the limits specified in the PFC development's Regulatory Agreement per 10 TAC §10.1105(b) and (c). Per 10 TAC §10.1104(b)(6), PFC developments should implement the Department approved Income Certification form moving forward. The Department will consider Commenter suggestion for the implementation of an "Affidavit or Ownership and no affiliation statement" the next time the audit workbook is updated. Tab 7 of the audit workbook should be completed by the Auditor who obtains the information from the PFC Operator, Sponsor, Owner and / or Property staff, which should readily have this property information available. The Department is not requiring proof of marketing or copies of Income Certification forms, as this is the independent Auditor's role to obtain, review and report to the Department. The independent Auditor will complete the audit workbook's relevant sections after reviewing required documentation, website, and household files.

STATUTORY AUTHORITY. The amended rule is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described, herein, the adopted amendment to the rules affects no other code, article, or statute.

§10.1103. Reporting Requirements.

The following reporting requirements apply to all Developments owned by a Public Facility Corporation (PFC), subject to Sections 303.0421 and 303.0425 of the Texas Local Government Code, and not eligible under Section 10(b) or (c) of House Bill 2071, 88th Texas Legislative Session, effective June 18, 2023, (the Act) for continuation of the former law in effect prior to the effective date of the Act. Pursuant to Section 10(d) of the Act, all Developments owned by a PFC as described in Tex. Local Gov't Code §303.0421(a), and with respect to which an exemption is sought or claimed under §303.042(c) - regardless of when the Development was acquired, approved, or occupied - must submit an Audit Report in accordance with §303.0426(b) as described below.

(1) No later than June 1 of each year, the Public Facility User will submit to the Department an Audit Report from an Auditor, obtained at the expense of the Public Facility User. Concurrently with submission of the Audit Report, the Operator will complete the contact information form available on the Department's website. For Developments eligible for continuation of the former law in effect prior to June 18, 2023, the first Audit Report (due no later than December 15, 2024, with a one-time discretionary extension of 30 days available from the Department upon written showing of good cause, if submitted to pfc.monitoring@tdhca.texas.gov prior to 5:00 p.m. on December 15th), will satisfy the requirements of Tex. Local Gov't Code §303.0426(b)(1) (compliance with new statutory provisions) by demonstrating its eligibility to continue under the former law, but must

still fully address the requirements of §303.0426(b)(2) (identifying the difference in rent charged for income-restricted residential units and the estimated maximum market rents that could be charged for those units without the rent or income restrictions).

(2) The first Audit Report must include a copy of the Regulatory Agreement. The first Audit Report for a Development must be submitted no later than June 1 of the year following the first anniversary of:

(A) The date of the PFC acquisition for an occupied Development; or

(B) The date a newly constructed PFC Development first becomes occupied by one or more tenants.

(3) No later than 60 days after the receipt of the Audit Report, the Department will post a summary of the Audit Report on its website. A copy of the summary will also be provided to the Development and all Responsible Parties. The summary must describe in detail the nature of any noncompliance.

(4) If any noncompliance with Sections 303.0421 and 303.0425 are identified by the Auditor, no later than 45 days after receipt of the Audit Report the Department will notify the Public Facility User. The notification must include a detailed description of the noncompliance and at least one option for corrective action to resolve the noncompliance. The Public Facility User will be given 60 days to correct the noncompliance. At the end of the 60 days, the Department will post a final report on its website.

(5) If all noncompliance is not corrected within the 60 days, the Department will notify the Public Facility User, appropriate appraisal district, and the Texas Comptroller. The Department will also recommend a loss of tax-exempt status.

(6) The qualification of the Auditor must be submitted with each Audit Report. Qualifications must include experience auditing housing compliance, a current Certified Occupancy Specialist (COS) certification or an equivalent certification, and resume. The Auditor may not be affiliated with or related to any Responsible Parties. Additionally, a current or previous Management Agent that has or had oversight of the Development or is/was responsible for reviewing and approving tenant files does not qualify as an Auditor under these rules.

(7) The Public Facility User may not engage the same individual as Auditor for a particular Development for more than three consecutive years. After the third consecutive Audit Report by the same Auditor, the Public Facility User must engage a new Auditor for at least two reporting years before re-engaging with a prior Auditor.

(8) Audit Reports and supporting documentation and required forms must be submitted to the following email address: pfc.monitoring@tdhca.state.tx.us.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405414
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 27, 2024
Proposal publication date: August 9, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

CHAPTER 12. MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (the Bond Rules), §§12.1 - 12.10, without changes to the text previously published in the September 20, 2024, issue of the *Texas Register* (49 TexReg 7557). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the issuance of Private Activity Bonds (PAB).

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce workload to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department or a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation but is associated with a simultaneous readoption making changes to an existing activity, the issuance of PABs.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043.

The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the issuance of PAB. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 20, 2024, and October 18, 2024, with no comments on the repeal itself received.

The Board adopted the final order adopting the repeal on November 7, 2024.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed sections affect no other code, article, or statute.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405411
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 27, 2024
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

10 TAC §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the text previously published in the September 20, 2024, issue of the *Texas Register* (49 TexReg 7558) new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (Bond Rules), §§12.1 - 12.10. The rules will not be republished. The purpose of the new sections is to provide compliance with Tex. Gov't Code §2306.359, to make minor administrative revisions, and to ensure that it is reflective of changes made in the Department's Qualified Allocation Plan where applicable.

Tex. Gov't Code §2001.0045(b) does not apply to the action on these rules pursuant to item (9), which excepts rule changes necessary to implement legislation. The rule provides compliance with Tex. Gov't Code §2306.359, which requires the Department to provide for specific scoring criteria and underwriting considerations for multifamily private activity bond activities.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rules will be in effect:

1. The rules do not create or eliminate a government program, but relates to the readoption of theses rules which makes changes to an existing activity, the issuance of Private Activity Bonds ("PAB").

2. The rules do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce workload to a degree that eliminates any existing employee positions.

3. The rules do not require additional future legislative appropriations.

4. The rule changes will not result in an increase in fees paid to the Department, but may, under certain circumstances, result in a decrease in fees paid to the Department regarding Tax-Exempt Bond Developments.

5. The rules are not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rules will not limit, expand or repeal an existing regulation but merely revises a rule.

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

8. The rules will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting these rules, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.359. Although these rules mostly pertain to the filing of a bond pre-application, some stakeholders have reported that their average cost of filing a full Application is between $50,000 and $60,000; which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average result in an increased cost of filing an application as compared to the existing program rules.

1. The Department has evaluated these rules and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. These rules relate to the procedures in place for entities applying for multifamily PAB. Only those small or micro-businesses that participate in this program are subject to these rules. There are approximately 100 to 150 businesses, which could possi-

bly be considered small or micro-businesses, subject to the rule for which the economic impact of the rule would be a flat fee of $11,000 which includes the filing fees associated with submitting a bond pre-application.

The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for PAB (and accompanying housing tax credits). There could be additional costs associated with pre-applications depending on whether the small or micro-businesses outsource how the application materials are compiled. The fee for submitting an Application for PAB layered with LIHTC is based on $30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units.

These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are approximately 1,300 rural communities potentially subject to the new rule for which the economic impact of the rule is projected to be $0. 10 TAC Chapter 12 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for PAB that are located in rural areas is not more than 20% of all PAB applications received. In those cases, a rural community securing a PAB Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural PAB awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive PAB awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The rules do not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect the rules may provide a possible positive economic effect on local employment in association with these rules since PAB Developments, layered with housing tax credits, often involve a total input of, typically at a minimum, $5 million in capital, but often an input of $10 million - $30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until PABs and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that significant construction activity is associated with any PAB Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive PAB awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson, has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be an updated and more germane rule for administering the issuance of PABs and corresponding allocation of housing tax credits. There is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing a pre-application and application remain unchanged based on these rule changes. The rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at these sections being repealed.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comments between September 20, 2024, and October 18, 2024. No Comments were received.

The Board adopted the final order adopting the new rule on November 7, 2024.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405412

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 27, 2024
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter B, §60.23; and Subchapter C, §60.33 and §60.34; adopts the repeal of existing rules at Subchapter C, §60.30 and §60.31; and Subchapter E, §§60.50 - 60.54; and adopts new rules at Subchapter C, §§60.30, 60.31, and 60.37; and Subchapter E, §§60.50 - 60.56, regarding the Procedural Rules of the Commission and the Department, without changes to the proposed text as published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6372). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 60 implement Texas Occupations Code, Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (Department), and other laws applicable to the Commission and the Department. The Chapter 60 rules are the procedural rules of the Commission and the Department. These rules apply to all of the agency's programs and to all license applicants and licensees, except where there is a conflict with the statutes and rules of a specific program.

The adopted rules update multiple subchapters and sections under Chapter 60 and are part of a larger effort to update the entire chapter. The adopted rules make substantive and clean-up changes to the agency's procedural rules and include changes resulting from staff and strategic planning, the required four-year rule review, and the Department's Sunset legislation.

Staff and Strategic Planning Changes

The adopted rules include changes suggested by the General Counsel's Office and suggested during past strategic planning sessions. The changes include updates to the rules regarding license applications, renewals, and denials; criminal history background checks; foreign transcripts and degrees; temporary licenses; voluntary license surrender; examination rescheduling, accommodations, and results; and reexaminations. The changes also include reorganization of existing rules, and editorial changes to "Commission," "Department," and "Executive Director" to use lower case terminology to be consistent with the statutes and consistent across the Chapter 60 rule subchapters.

Four-Year Rule Review Changes

The adopted rules also include changes as a result of the required four-year rule review conducted under Texas Government Code §2001.039. The Department conducted the required rule review of the rules under 16 TAC Chapter 60, and the Commission readopted the rule chapter in its entirety and in its current form. (Proposed Rule Review, 46 TexReg 2589, April 16, 2021. Adopted Rule Review, 46 TexReg 4701, July 30, 2021).

In response to the Notice of Intent to Review that was published, the Department received public comments from six interested parties regarding Chapter 60, but none of those public comments relate to the rules in this proposal.

The adopted rules include changes identified by Department staff during the rule review process. The changes are reflected throughout the adopted rules and include updates to the rules regarding initial license applications; criminal history background checks; license renewals; late renewals; temporary licenses; substantially equivalent license requirements; and the examination-related requirements. The changes also include clarifying the rules, using plain talk language, and making the same editorial changes to use lower case terminology.

Sunset Bill Statutory Changes

The adopted rules incorporate and reflect the changes made to Texas Occupations Code, Chapter 51, as a result of House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Department's Sunset legislation. HB 1560, Article 1, Section 1.10, added §51.359, Refunds, to Chapter 51. The adopted rules add refunds into the list of possible disciplinary actions that may be imposed by the Commission or the Executive Director.

The adopted rules are necessary to: update the rules regarding the sanction authority of the Commission and the Executive Director; update and supplement the requirements and the procedures for initial and renewal license applications; clarify the temporary license authority and applicability; update and clarify the substantially equivalent license requirements and procedures; add procedures for the voluntary surrender of a license; update and supplement the requirements and procedures regarding license examinations; and reorganize and clean up existing rules where necessary.

SECTION-BY-SECTION SUMMARY

Subchapter B. Powers and Responsibilities.

The adopted rules amend §60.23, Commission and Executive Director--Imposing Sanctions and Penalties. The adopted rules amend subsection (a) to remove the inspection and investigation provision under paragraph (3). This provision implements Texas Occupations Code §51.351, Inspections and Investigations, but more comprehensive rules have been added to Chapter 60, Subchapter H, under §60.203, Cooperation with Investigation of Complaints, and §60.222, Cooperation with Inspections. The provision under §60.23(a)(3) is no longer necessary and is being repealed. The subsequent paragraphs under subsection (a) have been renumbered.

The adopted rules amend subsection (b) to add new paragraph (7), which incorporates the statutory authority of the Commission and the Executive Director under Texas Occupations Code §51.359 to order refunds to consumers. This new statutory authority was added by HB 1560. The adopted rules renumber the subsequent paragraph and make technical changes to the provisions under paragraphs (6) and (8).

Subchapter C. License Applications and Renewals.

The adopted rules repeal existing §60.30, Initial License Applications. The provisions in this repealed rule have been updated

and supplemented under new §60.30, Initial License Applications.

The adopted rules add new §60.30, Initial License Applications. This new rule includes provisions from existing §60.30, which is being repealed, and updates and supplements the current requirements and procedures for initial license applications. The adopted rules update the existing provision under subsection (a) regarding the items required to be submitted for an initial license application; update the existing provision under subsection (b) regarding an incomplete initial application that includes the right to request a hearing; and add a new provision under subsection (c) regarding an insufficient or not qualified initial application that includes the right to request a hearing. The adopted rules add a new provision under subsection (d) that reflects the current requirements and processes regarding criminal history background checks for initial licenses for individuals and businesses; and add a new provision under subsection (e) that standardizes the process and requirements regarding applicants with foreign transcripts or foreign degrees. The adopted rules add a new provision under subsection (f) regarding the denial of an initial license application or denial of the opportunity to take an examination that links the denial under Subchapter C to the contested case process and rules under Subchapter I. This provision reflects the requirements under Texas Government Code §2001.054, Licenses, and Texas Occupations Code §51.354, Right to Hearing; Administrative Procedure.

The adopted rules repeal existing §60.31, License Renewal Applications. The provisions in this repealed rule have been updated and supplemented under new §60.31, License Renewal Applications.

The adopted rules add new §60.31, License Renewal Applications. This new rule includes provisions from existing §60.31, which is being repealed, and updates and supplements the current requirements and procedures for license renewal applications. The adopted rules update the existing provisions under subsections (a) - (c) regarding the license renewal notice, the items required to be submitted for license renewal, and the requirements that must be completed before the license expires. The adopted rules add a new provision under subsection (d) that clarifies that if a person completes all the renewal requirements and pays the renewal fees as prescribed, the license will not expire. This provision addresses situations where the license holder has met all the requirements, but the renewal is still being processed by the Department. The adopted rules update the existing provisions under subsection (e) to reiterate that if a person does not complete all the renewal requirements and pay the required renewal fee as prescribed, the license will expire and the person may not perform any act that requires a license. The adopted rules add a new provision under subsection (f) that reflects the current requirements and processes regarding criminal history background checks for license renewals for individuals and businesses.

The adopted rules update and expand the existing late renewal provisions under subsection (g) to address late license renewals that fall within the late renewal deadlines established in Texas Occupations Code §51.401. This subsection includes references to the statutory late renewal deadlines; specifies the requirements for late renewing a license; explains that a person with a late renewal has a gap in licensure and may not perform tasks that require a license; and prohibits a person from obtaining a new license if the person is still eligible to late renew the existing license. A person may not apply for a new license to avoid paying the higher late renewal fees and completing any required continuing education.

The adopted rules update the existing provisions under subsection (h) to address the situation involving a person whose license has expired beyond the late renewal deadlines established in Texas Occupations Code §51.401. A person who does not meet these statutory deadlines must apply for a new license and comply with the requirements for obtaining an original license, including any examination requirements and the payment of fees. The adopted rules clarify that a person must retake any licensing examinations required to apply for a new license and that any previous licensing examination results will not be accepted. This provision implements the statutory provisions under Texas Occupations Code §51.401(d) and reflects the Department's interpretation of those provisions.

The adopted rules add a new provision under subsection (i) to address the situation involving a person who was previously licensed in Texas and is currently licensed and practicing in another state. Under this provision, a person who meets the specified eligibility conditions may obtain a new Texas license without reexamination. The person must pay a fee that is two times the required renewal fee for the license. This provision reflects the statutory provisions under Texas Occupations Code §51.401(e) and incorporates this situation into the rules with the other licensing situations.

The adopted rules add a new provision under subsection (j) regarding the denial of a license renewal application that links the denial under Subchapter C to the contested case process and rules under Subchapter I. This provision reflects the requirements under Texas Government Code §2001.054, Licenses, and Texas Occupations Code §51.354, Right to Hearing; Administrative Procedure.

The adopted rules amend existing §60.33, Temporary License. The adopted rules update and clarify the existing rule in accordance with Texas Occupations Code §51.407, Temporary License. The adopted rules change the title of the section from "Temporary License Applications" to "Temporary License." The adopted rules add new subsection (a), which includes statutory authority language and clarifying language regarding the applicability of this rule, and they add new subsection (f), which states that a temporary license holder is subject to the specified statutes and rules of the Department and the applicable program. The adopted rules also re-letter the subsections and update a cross-reference.

The adopted rules amend existing §60.34, Substantially Equivalent License Requirements. The adopted rules update and clarify the substantially equivalent license requirements and procedures. The adopted rules update the applicability provision under subsection (a)(1) to reflect the statutory provisions under Texas Occupations Code §51.4041, Alternative Qualifications for License; and update subsection (a)(2) to use parallel construction. The adopted rules add new subsection (b) to define "another jurisdiction" or "other jurisdiction" for purposes of this section; add new subsection (e) that allows the Department to request additional documents or information in order to evaluate the substantially equivalent criteria; and add new subsection (f) to clarify that the Department has the final authority to determine substantially equivalent. The adopted rules also re-letter the existing subsections as necessary and update the terminology throughout the section.

The adopted rules add new §60.37, Voluntary Surrender of a License. The adopted rules add new procedures for the voluntary surrender of a license in accordance with the guidance provided under Texas Attorney General Opinion KP-0080 (May 3, 2016). The adopted rules make the license surrender process a standardized, administrative process and separate the voluntary license surrender process from any enforcement or disciplinary actions or process. The adopted rules allow a license holder to voluntarily surrender a license; establish the conditions under which the surrender request will be granted; provide that surrendering the license is not a defense and does not affect any investigation or disciplinary action; and provide that a voluntarily-surrendered license may not be renewed and that any license fees paid will not be refunded.

Subchapter E. Examinations.

The adopted rules under Subchapter E update and supplement the requirements and procedures regarding license examinations and address all aspects of the examination process. The existing rules under §§60.50 - 60.54 are being repealed and replaced with new rules under §§60.50 - 60.56.

The adopted rules repeal existing §60.50, Examination Rescheduling. The provisions in this repealed rule have been incorporated into new §60.51, Examination Scheduling and Rescheduling.

The adopted rules add new §60.50, Examination Providers. The adopted rules explain the Department's delegation of its statutory authority and responsibilities to provide or administer licensing examinations through a contracted third-party examination provider. The adopted rules state that the Department's examination provider must comply with all statutes and rules applicable to the Department regarding examinations and that the Department's examination provider serves as the point of contact for examination candidates. The adopted rules explain the applicability of the provisions in this subchapter.

The adopted rules repeal existing §60.51, Examination Fee Refund. The provisions in this repealed rule have been incorporated into new §60.52, Examination Fees and Refunds.

The adopted rules add new §60.51, Examination Scheduling and Rescheduling. The new rule includes provisions from existing §60.50, Examination Rescheduling, which is being repealed. The adopted rules under this section implement provisions under Texas Occupations Code §51.403, Examination Fee Refund, and Texas Occupations Code §54.002, Examination Scheduled on Religious Holy Day. The adopted rules under subsection (a) establish the requirements for scheduling an examination and direct the examination candidate to schedule the examination directly with the Department's examination provider, subject to the availability of examination appointments.

The adopted rules under subsection (b) establish the requirements for canceling and rescheduling an examination and direct the examination candidate to notify the Department's examination provider directly to cancel and reschedule an examination. The adopted rules provide that an examination candidate may cancel and reschedule an examination for any reason, which would include for religious holy days, as provided under Texas Occupations Code §54.002. The reason for canceling and rescheduling an examination does not need to be reviewed or approved by the Department or its examination provider. The adopted rules also provide the requirements for canceling and rescheduling an examination at no charge and define what "emergency" means for purposes of this section as required by Texas Occupations Code §51.403. The examination may be rescheduled subject to the availability of examination appointments.

The adopted rules repeal existing §60.52, Examination Security. The provisions in this repealed rule have been incorporated into new §60.54, Examination Security.

The adopted rules add new §60.52, Examination Fees and Refunds. This new rule includes provisions from existing §60.51, Examination Fee Refund, which is being repealed. The adopted rules under this section implement provisions under Texas Occupations Code §51.402, Examinations, and Texas Occupations Code §51.403, Examination Fee Refund. The adopted rules under subsection (a) require an examination candidate to pay the examination fee to the Department's examination provider and explain that information about the examination and the examination provider will be posted on the Department's website. The adopted rules under subsection (b) address an examination candidate who is unable to take the examination and who wants to obtain a refund of the examination fee. The adopted rules provide the requirements for requesting a refund and define what "reasonable notice" and "emergency" are for purposes of this section as required by Texas Occupations Code §51.403.

The adopted rules repeal existing §60.53, Access to Examinations. The provisions in this repealed rule have been incorporated into new §60.53, Examination Accommodations.

The adopted rules add new §60.53, Examination Accommodations. This new rule includes and expands the provisions under existing §60.53, Access to Examinations, which is being repealed. The adopted rules under this section include the procedures for requesting examination accommodations in accordance with the Americans with Disabilities Act (ADA) of 1990, its regulations, and any subsequent amendments; Texas Occupations Code §54.003, Examination Accommodations for Person with Dyslexia; and Texas Attorney General Opinion JC-0050 (May 17, 1999). Dyslexia is included and covered under the ADA, so the procedures in this rule implement both statutes and address any requests for examination accommodations.

The adopted rules update the existing provisions under subsection (a) to update the citation to the ADA and to clarify that the Department's examination provider will provide reasonable accommodations for an examination administered to an examination candidate with a disability. The adopted rules add new provisions under subsection (b) that provide the required procedures for requesting reasonable accommodations for an examination. The adopted rules update the existing provisions under subsection (c) to require that the written request for an examination in a foreign language be submitted before scheduling the examination.

The adopted rules repeal existing §60.54, Examination Results. The provisions in this repealed rule have been replaced with new §60.56, Validity and Acceptance of Examination Results; Reexamination.

The adopted rules add new §60.54, Examination Security. This new rule includes provisions from existing §60.52, Examination Security, which is being repealed. The adopted rules update existing provisions under subsection (a) to require an examination candidate to comply with all examination security requirements of any examination provider; update the existing provisions under subsection (b) to address the use of specified methods of assistance if available; update the existing provisions under subsection (c) to add activities to the list of conduct that violate the

examination security rule; and update the existing provision under subsection (d) to provide that the contents of a license examination are confidential. The adopted rules add new provisions under subsection (e) to address the consequences if a person is caught during the examination violating the examination security rule; and add new provisions under subsection (f) to address the consequences if the person is found to have violated the examination security rule.

The adopted rules add new §60.55, Examination Results. This new rule implements Texas Occupation Code §51.402, Examinations. The adopted rules under subsections (a) - (b) require the Department's examination provider to notify a person regarding the person's examination results not later than 30 days after the examination, and to provide an explanation if the results will be delayed for longer than 90 days. The adopted rules under subsection (c) state that a person will receive an analysis of the person's performance on the examination from the examination provider. While the statute allows a person who fails a license examination the right to request in writing an analysis of the person's performance on the examination, in practice any person taking an examination automatically receives a diagnostic report from the examination provider, without the need to submit a written request to receive the analysis, and regardless of whether the person fails or passes the examination. The adopted rules under subsection (d) prohibit a person from presenting falsified or fraudulent documents concerning the person's examination results. This provision has been relocated from existing §60.52, Examination Security, which is being repealed.

The adopted rules add new §60.56, Validity and Acceptance of Examination Results; Reexamination. This new rule replaces existing §60.54, Examination Results, which is being repealed, and which provides that examination results are valid for one year from the date of the examination, unless stated otherwise in specific program statutes or rules. New §60.56 extends the one year period for how long the examination results are valid for new license applicants who have never held a Texas license. New §60.56 makes a distinction between new license applicants who have never held a Texas license and license applicants who previously held a Texas license and are applying for a new license. The distinctions are necessary and required due to Occupation Code §51.401, License Expiration and Renewal, for expired licenses, and due to Occupations Code, Chapters 51 and 53, and Texas Attorney General Opinion GA-0064 (April 28, 2003) for revoked licenses.

The adopted rules under subsection (a) state the purpose and applicability of new §60.56, which addresses the validity and acceptance of licensing examination results and whether a person must retake a licensing examination.

The adopted rules under subsection (b) address examination results for a person who is applying for a new license issued by the Department and who has not previously held that license. The adopted rules extend the time period examination results are valid from one year to four or five years, depending on the term of the license sought. After this time period, a person must retake any examinations required to apply for a new license. Any previous licensing examination results will not be accepted. This change recognizes that the current one-year time limit is too restrictive, but it also recognizes that occupations and professions may change over the years and that an old examination may not be testing on today's issues. The examination serves as proof of competency, so the examination results cannot be valid indefinitely.

The adopted rules under subsection (c) address examination results for a person who previously held a Texas license and is applying for a new license. The adopted rules address previous examination results and whether the person has to take any required licensing examinations again. As explained under subsection (c)(1), the adopted rules group the different situations involving previous license holders into one subsection, and the specific situations are addressed in each paragraph. The adopted rules reflect the Department's interpretation of the statutory provisions under Texas Occupations Code, Chapters 51 and 53, and Texas Attorney General Opinion GA-0064. These provisions prevent the examination expiration dates under subsection (b) from applying to the situations under subsection (c).

The adopted rules under subsection (c)(2) address the situation involving a person whose license has expired beyond the late renewal deadlines established in Texas Occupations Code §51.401. A person who does not meet these statutory deadlines must apply for a new license and comply with the requirements for obtaining an original license, including any examination requirements and the payment of fees. The adopted rules clarify that a person must retake any licensing examinations required to apply for a new license and that any previous licensing examination results will not be accepted. This provision implements the statutory provisions under Texas Occupations Code §51.401(d).

The adopted rules under subsection (c)(3) address the situation involving a person who was previously licensed in Texas and is currently licensed and practicing in another state. Under this provision, a person who meets the specified eligibility conditions may obtain a new Texas license without reexamination. This provision reflects the statutory provisions under Texas Occupations Code §51.401(e).

The adopted rules under subsection (c)(4) address the situation involving a person whose license was revoked. This provision provides the general rule that a person whose license has been revoked must retake any examinations required to apply for a new license. Any previous licensing examination results will not be accepted. The provision also provides a limited exception for a person who reapplies for licensure after having a license revoked solely for failure to pay an administrative penalty or failure to pay an insufficient funds fee. Under this exception, the person will not be required to retake an examination required to apply for a new license, but only if the person's license has been in a revoked status for less than three years at the time of the new application. The adopted rules reflect the Department's interpretation of Texas Occupations Code, Chapters 51 and 53; Texas Attorney General Opinion GA-0064; the existing rule under §60.36; and the Department's policy regarding revocations and retaking an examination pursuant to Texas Occupations Code §51.355 and existing rule §60.36.

The adopted rules under subsection (c)(5) address the situation involving a person who was previously licensed in Texas but voluntarily surrendered the person's Texas license. Under this provision, the person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license. The person must retake any examinations required to apply for a new license. Any previous licensing examination results will not be accepted. This provision is tied to the new rule under §60.37.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules

were published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6372). The public comment period closed on September 23, 2024. The Department received comments from one interested party on the proposed rules. The public comments are summarized below.

Comment: The Texas Food & Fuel Association (TFFA) submitted comments on the Chapter 60 rules §60.31 and §60.83, regarding the late renewal fees under Texas Occupations Code, Chapter 51, and the late renewal fees for the Motor Fuel Metering and Quality (FMQ) Program under Texas Occupations Code, Chapter 2310.

TFFA stated: "Section 60.31 incorporates by reference the department's late renewal fee policy which is set forth in §60.83 and authorized by Chapter 51 of the Code. However, Chapter 2310, related to Motor Fuel Metering and Quality establishes a separate late renewal fee policy for motor fuel metering devices." TFFA explained the FMQ statutory late fee provisions for device registrations and noted the difference in late fees between the two statutes. TFFA encouraged the Department "to review §60.83 to incorporate §2310.103(e) motor fuel device registrations in accordance with Chapter 2310, as referenced in TFFA's Chapter 97 Rule Review comments." TFFA further stated: "In the interim, we propose that §60.31(g) be amended to refer to the exception for motor fuel metering device late renewal fees."

Department Response: The Department disagrees with the suggested changes as they relate to the Chapter 60 proposed rules. The Department declines to make the suggested changes as explained below.

First, the Department declines to make changes to §60.83, Late Renewal Fees, since it is not part of this rules package. Section 60.83 implements Texas Occupations Code §51.401, License Expiration and Renewal, which establishes the statutory late renewal fee structure and amounts. The TFFA comment that the Department should review §60.83 and incorporate the late renewal fees for motor fuel device registrations under Texas Occupations Code §2310.103(e) is outside of the scope of this rulemaking. The Department declines to make this change.

Second, the Department declines to make changes to the Chapter 60 proposed rules specific to the FMQ program while the rule review of Chapter 97 is still pending. As noted in its comment letter on the Chapter 60 proposed rules, TFFA submitted a separate comment letter in response to the four-year rule review of the FMQ rules under 16 TAC Chapter 97. The four-year rule review of Chapter 97 is a separate rulemaking action. The public comment period on the rule review opened May 24, 2024, and closed June 24, 2024. In its rule review comment letter dated June 24, 2024, TFFA suggested making changes to FMQ rule §97.74, Fee Policy, and adding a new rule §97.75, to address the late renewal fees for FMQ licenses and motor fuel device registrations. The rule review of Chapter 97 is still pending.

The Department declines to amend §60.31(g) in the interim to include an exception for motor fuel metering device late renewal fees. Any suggested rule changes regarding the late renewal fees specific to the FMQ program as authorized under the FMQ statute, Texas Occupations Code §2310.103(e), should be addressed as part of the FMQ program's rulemaking activities. The appropriate Department staff, the FMQ advisory board, and the FMQ interested parties should be part of the discussions regarding the late renewal fees that are specific to the FMQ program. The Department declines to make changes to the Chapter 60 proposed rules that could interfere with the FMQ rule review that is pending and any possible future FMQ rulemakings.

Third, the Chapter 60 rules are rules of general applicability that implement Texas Occupations Code, Chapter 51, and other state laws applicable to state agencies. As stated in §60.1, the Chapter 60 rules apply to all TDLR programs "except in the event of a conflict with specific statutes and rules governing a specific program." Rules that implement specific program statutes are addressed at the program-level. The Department declines to make changes to the Chapter 60 proposed rules that could interfere with the FMQ rule review that is pending and any possible future FMQ rulemakings.

COMMISSION ACTION

At its meeting on October 23, 2024, the Commission adopted the proposed rules as published in the *Texas Register*.

SUBCHAPTER B. POWERS AND RESPONSIBILITIES

16 TAC §60.23

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

In addition, the adopted rules are adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code §51.308, §29.902, and Chapter 1001 (Driver Education and Safety); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers): 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); Transportation Code, Chapters 521 (Driver Education and Safety); 551A (Off-Highway

Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety); and Utilities Code, Chapter 42 (Electric Vehicle Charging Stations).

In addition, the statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules under Subchapter B, §60.23 are adopted is House Bill (HB) 1560, 87th Legislature, Regular Session (2021).

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405367
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 23, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER C. LICENSE APPLICATIONS AND RENEWALS

16 TAC §60.30, §60.31

STATUTORY AUTHORITY

The adopted repeals are repealed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

In addition, the adopted repeals are repealed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code §51.308, §29.902, and Chapter 1001 (Driver Education and Safety); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers): 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); Transportation Code, Chapters 521 (Driver Education and Safety); 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety); and Utilities Code, Chapter 42 (Electric Vehicle Charging Stations).

In addition, the statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005. No other statutes, articles, or codes are affected by the adopted repeals.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405373
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 23, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

16 TAC §§60.30, 60.31, 60.33, 60.34, 60.37

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

In addition, the adopted rules are adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code §51.308, §29.902, and Chapter 1001 (Driver Education and Safety); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Lan-

guage Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers): 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); Transportation Code, Chapters 521 (Driver Education and Safety); 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety); and Utilities Code, Chapter 42 (Electric Vehicle Charging Stations).

In addition, the statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405371
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 23, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER E. EXAMINATIONS

16 TAC §§60.50 - 60.54

STATUTORY AUTHORITY

The adopted repeals are repealed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

In addition, the adopted repeals are repealed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code §51.308, §29.902, and Chapter 1001 (Driver Education and Safety); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers): 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); Transportation Code, Chapters 521 (Driver Education and Safety); 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety); and Utilities Code, Chapter 42 (Electric Vehicle Charging Stations).

In addition, the statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005. No other statutes, articles, or codes are affected by the adopted repeals.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405375
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 23, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

16 TAC §§60.50 - 60.56

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

In addition, the adopted rules are adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code §51.308, §29.902, and Chapter 1001 (Driver Education and Safety); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers): 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); Transportation Code, Chapters 521 (Driver Education and Safety); 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety); and Utilities Code, Chapter 42 (Electric Vehicle Charging Stations).

In addition, the statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405372
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 23, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

The Texas Commission of Licensing and Regulation (Commission) adopts a new rule at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter C, §60.32, and amendments to an existing rule at Subchapter D, §60.40, regarding the Procedural Rules of the Commission and the Department, without changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5236). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 60, Procedural Rules of the Commission and the Department, implement Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation, and other laws applicable to state agencies.

The adopted rules enable the Department to require certain individuals to furnish e-mail addresses for purposes of receiving correspondence. The adopted rules additionally permit certain incarcerated individuals to apply for licensure prior to release. The adopted rules are necessary to implement §§3 and 5 of House Bill (HB) 3743, 88th Legislature, Regular Session (2023). HB 3743 took effect on September 1, 2023.

Section 3 of HB 3743 amended Occupations Code §51.207(c) to permit the Commission to adopt a rule to require an applicant, license holder, or other person who regularly receives correspondence from the Department to provide an e-mail address for purposes of receiving correspondence. The section further provides that any e-mail address furnished under this provision is confidential for purposes of Government Code, Chapter 552 (the Public Information Act).

The adopted rules implement HB 3743 §3 by authorizing the Department to require e-mail addresses from applicants, license holders, and others who regularly receive correspondence from the Department, and to deem an application incomplete if an applicant fails to provide an e-mail address when directed to do so. The intent of this rule is to allow the Department the flexibility to use instructions on Department forms to make providing an e-mail address mandatory when, in the Department's discretion, requiring an e-mail address would be administratively expedient, while also allowing the Department the flexibility to process an application without an e-mail address on a case-by-case basis.

HB 3743 §5 enacted Occupations Code §51.4014, which authorizes the Department to accept a license application from an inmate imprisoned in the Texas Department of Criminal Justice (TDCJ), but prohibits the Department from issuing the license until the applicant has been released. The Department interprets these provisions as permitting, but not requiring, the Department to accept inmate applications. The adopted rules implement these provisions by amending the existing rule at 16 TAC, Chapter 60, Subchapter, C, at §60.40, License Eligibility for Persons with Criminal Convictions. The existing rule prohibits a person incarcerated because of a felony conviction from obtaining or renewing a license and requires a person whose license is revoked by operation of law under Occupations Code §53.021(b) to wait until release from imprisonment before applying for a license. Because under Occupations Code §53.021(b), automatic license revocation occurs upon imprisonment due to a felony conviction, the existing rule effectively bars formerly licensed TDCJ inmates from applying for a license.

The adopted rules carve out two new circumstances under which the Department will accept inmate applications: when the inmate previously held a license of the same type for which the inmate is applying, and when the inmate has completed a relevant course of study in the Windham School District, or other program acceptable to the Department, to prepare the person for reentry into the workforce in the occupation. The adopted rules further restrict the acceptance of these applications to those inmates who are scheduled for release within the next 90 days. The

adopted rules additionally keep in place a provision authorizing the issuance of student permits to inmates studying barbering or cosmetology in a Windham School District or TDCJ program. The Department enjoys a longstanding and successful partnership with the Windham School District and TDCJ. The adopted rules strike a balance in furthering a common goal of this partnership by ameliorating barriers convicted individuals face in reentry to the workforce, while avoiding the imposition of an undue burden on the Department by limiting the acceptance of applications to those reasonably likely to be eligible for approval in the near future.

SECTION-BY-SECTION SUMMARY

The adopted rules adopt new §60.32, E-mail Communications and Requirements. Subsection (a) states the circumstances under which the Department may require a person to provide an e-mail address for purposes of receiving correspondence. Subsection (b) sets forth a potential consequence to an applicant for failing to provide an e-mail address when directed to do so, namely, that the application may be deemed incomplete.

The adopted rules amend §60.40. The first sentence of subsection (c) is deleted and replaced with verbiage clarifying that the provisions in (c) apply when the exceptions in new subsection (d) are inapplicable. Subsection (c)(3) is deleted, and the substance moved to the new subsection (d). New subsection (d), containing the exceptions, is added and subdivided into two paragraphs. Subsection (d)(1) contains the substance of former (c)(3), the student permit exception for the barbering and cosmetology program. Subsection (d)(2) sets forth the new exceptions implemented under Occupations Code §51.4014 and contains language permitting the Department to accept applications from TDCJ inmates who are scheduled for release within the next 90 days in two circumstances, which are set forth in subsection (d)(2)(A) and (d)(2)(B), respectively. Subsection (d)(2)(A) refers to previously licensed inmates and subsection (d)(2)(B) refers to inmates who have completed participation in certain career preparation programs.

PUBLIC COMMENTS

The proposed rules were published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5236). The public comment period closed on August 19, 2024. The Department received comments from four interested parties on the proposed rules. The public comments are summarized below.

Comment: The commenter objected to incarcerated individuals being issued a barbering or cosmetology license, citing safety concerns, including access to sharp tools and the fact that some incarcerated individuals suffer from violent or unethical tendencies or psychiatric disorders.

Department Response: The Department notes that although the proposed rules affect the timing of license issuance by permitting an application to be processed prior to the applicant being released from incarceration and the applicant to be licensed immediately upon release, the proposed rules do not otherwise loosen the requirements for an individual to become licensed. Under the existing rules, incarcerated individuals are permitted to receive training in regulated occupations and may apply for licensure upon being released, with the exception that student permits in the barbering and cosmetology program are already issued to some incarcerated individuals who are receiving occupational training. Under existing law, the criminal history of applicants is considered on a case-by-case basis in accordance with statutory standards. Therefore, the Department declines to make changes in response to this comment.

Comment: The commenter stated general opposition to all of the proposed rules but provided no supporting rationale.

Department Response: Because no rationale was provided, the Department declines to make changes in response to this comment.

Comment: The commenter expressed support for the proposed changes to Rule §60.40, stating that allowing incarcerated individuals to apply for a cosmetology license is a positive decision and will bring hope to individuals otherwise facing a bleak future.

Department Response: The Department appreciates the comment in support of the proposed rules. The Department did not make any changes to the proposed rules as a result of the comment.

Comment: The commenter expressed opposition to the changes to Rule §60.40, expressing that the commenter has worked as a massage therapist for 25 years. The commenter alluded to a former statute prohibiting those with prostitution convictions from becoming licensed as massage therapists and questioned why, in light of the strict standards for the profession, should a convicted individual be permitted to be licensed.

Department Response: The Department notes that although the proposed rules affect the timing of license issuance, the proposed rules do not otherwise loosen the requirements for an individual to become licensed. The Department analyzes an applicant's criminal history and determines eligibility on a case-by-case basis in accordance with statutory standards. Lastly, the Department notes that although certain offenses are an automatic bar to a massage license, there have been recent statutory changes to the eligibility standards. The Department declines to make changes to the proposed rules in response to this comment.

COMMISSION ACTION

At its meeting on October 23, 2024, the Commission adopted the proposed rules as published in the *Texas Register*.

SUBCHAPTER C. LICENSE APPLICATIONS AND RENEWALS

16 TAC §60.32

STATUTORY AUTHORITY

The proposed rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all of the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathol-

ogists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers): 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

The legislation that enacted the statutory authority under which the adopted rules are proposed to be adopted is House Bill 3743, 88th Legislature, Regular Session (2023).

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405365
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: July 19, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER D. CRIMINAL HISTORY AND LICENSE ELIGIBILITY

16 TAC §60.40

STATUTORY AUTHORITY

The proposed rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all of the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers): 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 3743, 88th Legislature, Regular Session (2023).

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405366
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: July 19, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

CHAPTER 65. BOILERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 65, Subchapter A, §65.2; Subchapter C, §65.14 and §65.15; Subchapter D, §65.25 and §65.26; Subchapter F, §65.40 and §65.41; Subchapter H, §65.50; Subchapter I, §§65.60 - 65.63; Subchapter J, §65.70 and §65.71; Subchapter K, §65.83 and §65.86; Subchapter M, §65.101; Subchapter N, §65.206 and §65.217; Subchapter O, §65.300; Subchapter P, §65.401; new Subchapter S, Technical Requirements, amendments to §§65.607 - 65.609, 65.611, 65.612, and 65.614; new rules at Subchapter K, §65.87; and Subchapter R, §§65.550 - 65.552, 65.555, 65.556, 65.559, and 65.560; and the repeal of existing rules at Subchapter B, §65.8; Subchapter L, §65.90 and §65.91; Subchapter M, §65.104; and existing Subchapter R, §§65.600 - 65.604, regarding the Boiler program, without changes to the proposed text as published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3441). These rules will not be republished.

The Commission also adopts amendments to existing rules at 16 TAC Chapter 65, §§65.12, 65.13, 65.61, 65.200, and 65.555 regarding the Boiler program, with changes to the proposed text as published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3441). These rules will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 65, implement Texas Health and Safety Code, Chapter 755, Boilers.

The adopted rules make twelve discrete changes to improve standards for and regulation of boilers and those who install, operate, maintain, and inspect them. The amendments originate with staff and the Board of Boiler Rules members and are authorized by the boiler enabling act.

The new and amended rules promote equipment safety and compliance. They include more detailed requirements for installing boilers and reporting their installation; installing blow-down equipment where needed and required; replacing and plugging boiler tubes; provide an option for remote monitoring of carbon monoxide levels in boiler rooms; and add a requirement for a visual display to carbon monoxide detectors if absent.

Other new and amended rules to enhance safety address National Fire Protection Association compliance; safety of the physical conditions of the premises for inspectors; and detailed requirements for preservation of the scene of boiler accidents to aid investigation and determine causes of malfunction.

To provide for more efficient and effective regulation, new rule requirements include clarifying the responsibilities of Authorized Inspection Agencies (AIA) to timely conduct required inspections and imposing the new late inspection fee on them as appropriate; prohibiting inspectors from installing boilers to prevent conflicts of interest; and removing minor or infrequently assessed fees. These amendments replace the late renewal fee with a fairer late inspection fee and a presumption of operation after expiration of the certificate of operation. The fee change for late inspections accompanies the removal of the referral fee for a department inspection when the owner fails to obtain an inspection. The late inspection fee is expected to increase compliance with the required frequency of boiler inspections, resulting in improved safety and more proportionate consequences for noncompliance.

Finally, the department has made edits throughout the rules to correct and update citations, cross-references, grammar, capitalization, and usage to improve accuracy, readability, and consistency in the rule text. These are hence referred to collectively as "nonsubstantive edits" for brevity.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §65.2, Definitions, to add definitions for blowdown separators, blowdown tanks, and blowdown water; clarify the definitions of "install" and "reinstalled boiler," make numerous nonsubstantive edits; and renumber the section.

The adopted rules repeal §65.8, Registration--Authorized Inspection Agency Without NB-360 Accreditation, because the National Board has retired this accreditation.

The adopted rules amend §65.12, Boiler Registration and Certificate of Operation Required, to add that the issuance of a certificate of operation triggers the obligation to remain in compliance, to timely conduct the required inspections, and that continued operation is presumed during the term of the certificate. The section is edited for clarity. The word "person" has been replaced with "owner or operator" for a more precise statement of the applicability of the rule.

The adopted rules amend §65.13, Boiler Installation, to require submission of the installation report upon completion of installation instead of within 30 days after installation, and to prohibit operation or test-firing before the first inspection unless the installation was conducted in compliance with the rules, the installation report has been submitted, and a temporary operating permit has been approved. In §65.13(a)(2) three undefined terms were removed and a citation to the definition of a fourth was added to improve clarity.

The adopted rules amend §65.14, Inspector Commissions, to make a nonsubstantive edit.

The adopted rules amend §65.15, Boiler Certificate of Operation, to add the condition that unpaid invoices associated with a boiler must be paid before the boiler is eligible for a certificate of operation. The section is renumbered, and the section heading is updated.

The adopted rules amend §65.25, Authorized Inspector--Eligibility Requirements and §65.26, Commission-Renewal and Reinstatement, to make non-substantive edits.

The adopted rules amend §65.40, Authorized Inspector--Commission Card, to simplify and clarify the requirements for obtaining and using commission cards.

The adopted rules amend §65.41, Reissuance of Commission Card after Reemployment, to simplify and clarify the requirements for reissuance of a commission card when changing employers. The section heading is amended.

The adopted rules amend §65.50, Inspectors--Prohibited Conflicts of Interest, to prohibit inspectors and inspection agencies from installing boilers or inspecting boilers installed by other inspectors or inspection agencies due to the inherent conflict of interest.

The adopted rules amend §65.60, External Inspection, to make a non-substantive edit.

The adopted rules amend §65.61, Inspection of All Boilers Required, to subject owners, operators, and Authorized Inspection Agencies that are responsible for a boiler to the late inspection fee for failure to conduct the certificate inspection before the certificate of operation expires. Operation beyond expiration of the certificate is presumed. AIAs are required to timely conduct inspections for boilers for which they are responsible. AIAs that are not responsible for a boiler at the time the certificate expires, and those agencies denied access to inspect, are not made responsible for the late inspection fee for failure to conduct the inspection timely. The late inspection fee is made applicable to boilers for which the certificate of operation expires one year or more after the adoption of these rule amendments. For clarity, staff has edited the text to state the date certain instead of the time period.

The adopted rules amend §65.62, Notice of Inspection to Owners or Operators of Boilers, to clarify that owners or operators must make boilers available for inspection when notified by the inspector.

The adopted rules amend §65.63, Inspection of Portable Boilers, to make nonsubstantive edits.

The adopted rules amend §65.70, Texas Boiler Numbers--Required, to clarify requirements related to the identification number tag attached to each boiler during its first inspection.

The adopted rules amend §65.71, Texas Boiler Number--Placement on Boiler, to make nonsubstantive edits.

The adopted rules amend §65.83, Boiler Accidents, to clarify and add details about the actions to take and the items to preserve and protect from disturbance following a serious accident until an inspection and investigation are conducted.

The adopted rules amend §65.86, Authorized Inspection Agencies Reporting Requirements, to remove mention of the obsolete NB-360 authorization.

The adopted rules add new §65.87, Boiler Installation Reporting Requirements, to add the updated requirement for the owner, operator, or installer to submit the boiler installation report upon completion of the installation of a boiler.

The adopted rules repeal §65.90, Commissions--Authorized Inspector, because the requirements in this section are obsolete or appear in §§65.14, 65.26, 65.40, and 65.41.

The adopted rules repeal §65.91, Overdue Boiler Inspection--Authorized Inspection Agency Referral, because the Department will no longer refer boilers for which the inspection is past due to another AIA but will instead impose the late inspection fee.

The adopted rules amend §65.101, Board of Boiler Rules--Membership; Presiding Officer, to update the requirements for presiding officer participation consistent with the Act, and to amend the section heading.

The adopted rules repeal §65.104 because the Boiler Board rules in §65.101 are being amended to include the relevant requirement.

The adopted rules amend §65.200, New Boiler Installations, to clarify and update requirements consistent with other updates in the chapter regarding installation, inspection, and operation, and to add the presumption of continued operation past expiration of the certificate of operation unless the owner, operator, or AIA demonstrates otherwise. The word "person" has been replaced with "owner or operator" for a more precise statement of the applicability of the rule.

The adopted rules amend §65.206, Boiler Room, to add the requirement to install a display on any carbon monoxide detector that is not so equipped. The amended rule also provides for the choice to use a remote monitoring system provided certain alarm and interlock conditions are met. The section is renumbered.

The adopted rules amend §65.217, Variance, to make nonsubstantive edits.

The adopted rules amend §65.300, Fees, to clarify that the owner or operator is responsible for the fee to file boiler installation reports. Additional amendments remove the late renewal fee, the fee for reissuance of a commission card, the fee for overdue boiler inspections, and make nonsubstantive edits. The rule specifies that any due or past due amounts must be paid with the fee for a certificate of operation. The late inspection fee is imposed and is limited to $25 per day for the first 30 days following expiration of the certificate of operation. The daily fee increases at the 31st day and the 61st day after expiration of the certificate of operation until the inspection is conducted.

The adopted rules amend §65.401, Sanctions, to impose the late inspection fee for boilers not inspected before the expiration of the certificate of operation, and to make nonsubstantive edits.

The adopted rules amend the heading of Subchapter R, Technical Requirements, to Subchapter R, Basic Technical Requirements, which now encompasses all sections from new §65.550 and ending with new §65.560. Sections 65.550, 65.551, 65.552, 65.556, and 65.559 were formerly §§65.600, 65.601, 65.602, 65.603, and 65.604, respectively, which are adopted for repeal and inclusion with these new section numbers as described in the following. New sections with all new requirements are §65.555 and §65.560.

The adopted rules add new §65.550, Conditions Not Covered by Rules, which is the repealed former §65.600, Conditions Not Covered by Rules, with no substantive changes made.

The adopted rules add new §65.551, General Safety, which is the repealed former §65.601, General Safety, but with new additional requirements for the owner or operator to maintain a safe work environment for access and inspection of a boiler, and which clarifies and updates the procedures for an inspector and the department to follow if the conditions or the boiler itself are unsafe.

The adopted rules add new §65.552, Chimneys and Vents, which is the repealed former §65.602, Chimneys and Vents, with no substantive changes made.

The adopted rules create new §65.555, Boiler Blowdown, which adds requirements to install blowdown separators or blowdown tanks to ensure that the temperature and pressure of the water does not exceed safe levels when discharged from a power boiler into a sanitary sewer. Requirements for design, standards, construction, and registration with the National Board of Boiler and Pressure Vessel Inspectors are included, as is a requirement for compliance with the new requirements no later than six months after the adoption of the rule. For clarity, staff has edited the text to state the date certain instead of the time period.

The adopted rules add new §65.556, Boiler Room Ventilation, which is the repealed former §65.603, Boiler Room Ventilation, with no substantive changes made.

The adopted rules add new §65.559, Location of Discharge Outlets, which is the repealed §65.604, Location of Discharge outlets, with no substantive changes made.

The adopted rules create new §65.560, Boiler and Combustion Systems Hazards Code, to add requirements for compliance with National Fire Protection Association Code Book 85 for certain specified types of boilers, pulverized fuel systems, and steam generators.

The adopted rules repeal existing §§65.600, 65.601, 65.602, 65.603, and 65.604 and repropose them with additional requirements and nonsubstantive edits as described above, in existing Subchapter R, as new §§65.550, 65.551, 65.552, 65.556, and 65.559.

The adopted rules add the new Subchapter S., Technical Requirements, which encompasses all existing sections from §65.605 to §65.615, the end of the boiler rules. These sections were formerly in Subchapter R. They are not renumbered and adopted changes to some sections are described in the following.

The adopted rules amend §65.607, Power Boilers, Excluding Unfired Steam Boilers and Process Steam Generators; §65.608, Unfired Steam Boilers; §65.609, Process Steam Generators; and §65.611, Heating Boilers, to correct cross-references and to make nonsubstantive edits.

The adopted rules amend §65.612, Repair and Alterations, to add requirements for replacing and plugging boiler tubes on certain boilers and to add qualifications for persons performing the

activities, to ensure safety. Renumbering and nonsubstantive edits are also made in the section.

The adopted rules amend §65.614, Authority to Set and Seal Safety Appliances, to make nonsubstantive edits.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3441). The public comment period closed on June 17, 2024. The Department received written comments on the proposed rules from two interested parties, Luminant Power Generation Company and NRG Energy. In addition, five individuals appeared at the Board of Boiler Rules' meeting on August 21, 2024, and provided public comment on behalf of the Texas Chemistry Council, Vistra Corp./Luminant Generating Co., Entergy Services Inc., Calpine Corp., and Constellation Energy Corp. The public comments are summarized below.

Comment: One commenter requests clarification of when an installation report following installation or reinstallation must be filed so that operators will know when an inspection must be scheduled, and the equipment may go online. The commenter states that the requirement to file the installation report before operation provides sufficient motivation to file the report timely, so there is no need for a filing deadline, or, alternatively, the existing 30-day deadline could be retained. The comments claim that operators and installers need time after installation concludes to complete the report. The commenter requests modifying both proposed §65.13(a) and new §65.87, regarding installation reporting requirements, to make consistent changes.

Department Response: The Department agrees that timely if not immediate notification of installation to the Department will occur if the operator desires to commence test firing and operation upon installation but before the initial inspection. In such a situation the submission of the installation report and the application for a Temporary Operating Permit can be made contemporaneously or in rapid succession. The Department does not agree that there is no benefit to requiring the installation report to be filed at the time that installation or reinstallation is completed. This provides the Department, the Authorized Inspection Agency, and all parties a trigger to completing the required initial inspection, which is done after the Temporary Operating Permit expires or after the boiler has been installed but not yet operated.

Each boiler must be installed, registered, and inspected. Currently, both an installation report and an inspection report must be submitted to the Department within 30 days after the completion of each activity. No deadline exists for completing the installation of a boiler. However, each boiler must have either a Temporary Operating Permit or a Certificate of Operation before it may be operated. A boiler that has been installed but for which no installation report has been submitted is unknown to the Department and has not been inspected. It presents a safety risk, both for unlawful operation or for inadvertent or accidental operation. The current 30-day notification period is unnecessarily long because the installation report can reasonably be completed and submitted upon completion of installation. Prompt submission will also reduce the potential delay of the initial inspection from 60 days to a maximum of either: (1) 30 days from the submission of the installation report or (2) the expiration of the Temporary Operating Permit. The Department has made no changes to the proposed rule in response to this comment.

Comment: All of the seven commenters recommended that the proposed new §65.13(a)(2) be revised either to remove undefined new terms; to possibly form a work group to create a clearer requirement; or to define "reconnection," "disassembly," and "reassembly" used in the proposed subsection: *"The owner or operator of a boiler in this state must submit a boiler installation report to the department . . . not later than the time of completion of: (1) a boiler installation; or (2) a boiler reinstallation following relocation, disconnection and reconnection, or disassembly and reassembly."*

The commenters state that from a practical standpoint, any disassembly, as that term is generally understood, will be accompanied by a disconnection; however, the commenters also stated that disassembly does not always refer to the entire boiler but to portions of it, thus creating ambiguity as to when an installation report is required. They indicate that maintenance and repair can result in disassembly and reassembly that is not accompanied by disconnection and reconnection of the boiler, as defined in §65.2(26). The commenters state that the ambiguity could result in confusion as to when to file an installation report, and delay in returning a boiler to service due to obtaining an unnecessary certificate inspection.

Department Response: The Department disagrees that the conditions upon which the installation or reinstallation of a boiler (qualitatively, exactly the same process) requires an installation report to be submitted are unclear. The operative word in §65.13(a)(2) is "reinstallation." That term is followed by the activities that typically precede the activity of reinstallation. However; the Department agrees with the board's recommendation to simplify the rule language, but notes that the applicability of the requirement to file an installation report and obtain an inspection following installation or reinstallation of a boiler remains unchanged. Reinstallation is invariably preceded by disconnection, then reconnection at the location where the boiler is reinstalled. The Department has amended the requirement in §65.13(a)(2) to say "a boiler reinstallation following relocation or disconnection (as defined in §65.2(26))."

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Board of Boiler Rules met on August 21, 2024, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to §65.12 and §65.13 made in response to public comment and described in the Section-By-Section Summary. The recommended change to §65.12 replaces "person" with "owner or operator" for a more precise statement of the applicability of the rule. The Department made the identical change in §65.200 as well. In new §65.13(a)(2), which makes no substantive change to the rules, three undefined terms were removed and a citation to the definition of a fourth was added to improve clarity. In §§65.61 and 65.555 nonsubstantive edits were made to reword effective dates from stating a time period to stating the date certain.

At its meeting on October 23, 2024, the Commission adopted the proposed rules with changes as recommended by the Advisory Board.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §65.2

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405376
Doug Jennings
General Counsel
Texas Deparment of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER B. REGISTRATION--AUTHORIZED INSPECTION AGENCY

16 TAC §65.8

STATUTORY AUTHORITY

The adopted repeals are repealed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted repeals are also repealed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted repeals.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405398
Doug Jennings
General Counsel
Texas Deparment of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER C. BOILER REGISTRATION AND CERTIFICATE OF OPERATION--REQUIREMENTS

16 TAC §§65.12 - 65.15

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

§65.12. Boiler Registration and Certificate of Operation Required.

(a) Except as provided by this chapter, the owner or operator of each boiler operated in this state must:

(1) register the boiler with the department;

(2) have qualified each boiler for a current certificate of operation; and

(3) post the current certificate of operation in a conspicuous place on or near the boiler for which it is issued.

(b) Upon issuance of a certificate of operation for a boiler:

(1) the obligation to comply with the Act and this chapter, including the requirement for periodic inspections, is required to continue operation; and

(2) the continued operation of the boiler is presumed unless the owner or operator establishes to the satisfaction of the department, based on the owner or operators' records or other evidence reasonably acceptable to the department, that the boiler was not in operation after the expiration of a certificate of operation for that boiler.

§65.13. Boiler Installation.

(a) The owner or operator of a boiler in this state must submit a boiler installation report to the department, in the manner prescribed by the department, not later than the time of completion of:

(1) a boiler installation; or

(2) a boiler reinstallation following relocation or disconnection (as defined in §65.2(26)).

(b) A boiler may not be test-fired or operated before the required first inspection unless the boiler installation:

(1) is conducted in accordance with the applicable requirements of this chapter, including but not limited to this section and §§65.50, 65.87, 65.200, 65.201, 65.204, and 65.209;

(2) the owner, operator, or boiler installer has submitted a boiler installation report to the department in the manner prescribed by the department; and

(3) a Temporary Boiler Operating Permit has been approved in accordance with subsection (c).

(c) Temporary Boiler Operating Permit.

(1) The owner or operator may request a Temporary Boiler Operating Permit in the manner prescribed by the department.

(2) The owner or operator must pay the applicable fee provided under §65.300.

(3) The department will not approve a Temporary Boiler Operating Permit if a boiler installation report for the boiler has not been submitted to the department in the manner prescribed by the department.

(4) Upon approval of the Temporary Boiler Operating Permit from the department, the boiler may be operated before the required initial inspection for up to thirty (30) days.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405377
Doug Jennings
General Counsel
Texas Deparment of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER D. AUTHORIZED INSPECTOR

16 TAC §65.25, §65.26

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405378
Doug Jennings
General Counsel
Texas Deparment of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER F. COMMISSION CARDS

16 TAC §65.40, §65.41

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405379
Doug Jennings
General Counsel
Texas Deparment of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER H. INSPECTOR STANDARDS OF CONDUCT

16 TAC §65.50

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department’s governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department’s governing body, to adopt rules as necessary to implement these

chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405380
Doug Jennings
General Counsel
Texas Deparment of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER I. INSPECTION OF BOILERS

16 TAC §§65.60 - 65.63

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

§65.61. Inspection of All Boilers Required.

(a) All boilers not exempted by Texas Health and Safety Code, §755.022 shall be inspected in accordance with Texas Health and Safety Code, §755.025, §755.026, or any applicable rules under this chapter.

(b) All boilers must receive a certificate inspection before the expiration date of the current certificate of operation.

(c) Boilers must be inspected by the Authorized Inspection Agency that issued an insurance policy to cover a boiler located in this state, or by an authorized representative. All other boilers must be inspected by the department.

(1) The Authorized Inspection Agency must conduct a certificate inspection for each boiler for which it is responsible before the expiration of the boiler's current certificate of operation.

(2) The continued operation of the boiler beyond the expiration of the certificate of operation is presumed in accordance with §65.200.

(3) The Authorized Inspection Agency listed in the department's reporting system that fails to timely inspect a boiler for which it is responsible is subject to the late inspection fee in §65.300 if the current certificate of operation expires while the Authorized Inspection Agency has inspection responsibility.

(4) The owner or operator of a boiler that does not receive a certificate inspection before the expiration of the current certificate of operation is subject to the late inspection fee in §65.300.

(5) An Authorized Inspection Agency that is denied access to a boiler for inspection purposes is not responsible for a late inspection fee under paragraph (c)(3). A denied-access violation of §65.62(a) must be documented on the inspection report.

(d) Upon request, an Authorized Inspection Agency must provide the department documentation of the effective dates of its inspection responsibility for a boiler.

(e) Subsections (c)(3) and (c)(4) apply to boilers for which the certificate of operation expires on or after December 1, 2025.

(f) Except in the case of an accident or other emergency, no inspection will be made by the chief inspector or any deputy inspector on a Saturday, Sunday, or legal holiday, unless otherwise directed by the department.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405381
Doug Jennings
General Counsel
Texas Deparment of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER J. TEXAS BOILER NUMBERS

16 TAC §65.70, §65.71

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405382
Doug Jennings
General Counsel
Texas Deparment of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER K. REPORTING REQUIREMENTS

16 TAC §§65.83, 65.86, 65.87

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405383
Doug Jennings
General Counsel
Texas Deparment of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER L. RESPONSIBILITIES OF THE DEPARTMENT

16 TAC §65.90, §65.91

STATUTORY AUTHORITY

The adopted repeals are repealed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted repeals are also repealed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted repeals.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405399
Doug Jennings
General Counsel
Texas Deparment of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER M. BOARD OF BOILER RULES

16 TAC §65.101

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405384
Doug Jennings
General Counsel
Texas Deparment of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

16 TAC §65.104

STATUTORY AUTHORITY

The adopted repeals are repealed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted repeals are also repealed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted repeals.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405400
Doug Jennings
General Counsel
Texas Deparment of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER N. RESPONSIBILITIES OF THE OWNER AND OPERATOR

16 TAC §§65.200, 65.206, 65.217

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

§65.200. New Boiler Installations.

(a) No boiler, except reinstalled boilers and those exempted by Texas Health and Safety Code, §755.022, may be operated in this state unless:

(1) it has been constructed, installed, inspected, and stamped in conformity with the applicable section of the ASME Code;

(2) it is registered with the National Board of Boiler and Pressure Vessel Inspectors except cast iron or cast-aluminum sectional boilers; and

(3) it is installed, approved, registered, and inspected in accordance with the requirements of this chapter.

(b) A boiler having the standard stamping of another state that has adopted a standard of construction equivalent to the standard of the State of Texas, or a special-designed boiler, may be approved by the department. Any person desiring to install such a boiler must file a written request for approval to install and for a special inspection.

(c) New boilers and reinstalled boilers must be installed in accordance with the requirements of the latest revision of the applicable section of the manufacturer's recommendations, the ASME Code, the Act, and this chapter. These boilers must be inspected before test-firing or operation in accordance with §65.13 and all applicable rules.

(d) Upon issuance of a certificate of operation for a boiler:

(1) the obligation to comply with the Act and this chapter, including the requirement for periodic inspections, is required to continue operation; and

(2) the continued operation of the boiler is presumed unless the owner or operator establishes to the satisfaction of the department, based on the owner or operators' records or other evidence reasonably acceptable to the department, that the boiler was not in operation after the expiration of the certificate of operation for that boiler.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405386
Doug Jennings
General Counsel
Texas Deparment of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER O. FEES

16 TAC §65.300

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405387
Doug Jennings
General Counsel
Texas Deparment of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER P. ADMINISTRATIVE PENALTIES AND SANCTIONS

16 TAC §65.401

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405389
Doug Jennings
General Counsel
Texas Deparment of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER R. BASIC TECHNICAL REQUIREMENTS

16 TAC §§65.550 - 65.552, 65.555, 65.556, 65.559, 65.560

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

§65.555. Boiler Blowdown.

(a) Blowdown water from power boilers must pass through an approved blowdown separator or blowdown tank when entering a sanitary sewer.

(b) The temperature of the blowdown water leaving the blowdown separator or blowdown tank must not exceed 140 degrees Fahrenheit.

(c) The pressure of the blowdown water leaving a blowdown separator or blowdown tank must not exceed 5 PSIG.

(d) All blowdown piping and fittings must meet requirements set forth in ASME Piping Code B31.1, Power Piping.

(e) A blowdown separator must be fitted with threaded or flanged openings to facilitate inspection. A blowdown tank must be fitted with a manway for cleaning and inspection.

(f) The vent and drain of the blowdown separator or blowdown tank must be piped to a safe point of discharge.

(g) A blowdown separator or blowdown tank, when required by this chapter, must:

(1) be constructed in accordance with ASME Boiler and Pressure Vessel Code, Section VIII Division 1;

(2) have a minimum design pressure equal to the recommended pressure of the boiler manufacturer for the boiler to which the tank or separator is connected; and

(3) be registered with the National Board of Boiler and Pressure Vessel Inspectors.

(h) Installation or modification of equipment to achieve compliance with this section is required to be completed no later than June 1, 2025.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405397
Doug Jennings
General Counsel
Texas Deparment of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER R. TECHNICAL REQUIREMENTS

16 TAC §§65.600 - 65.604

STATUTORY AUTHORITY

The adopted repeals are repealed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted repeals are also repealed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted repeals.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405401
Doug Jennings
General Counsel
Texas Deparment of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

SUBCHAPTER S. TECHNICAL REQUIREMENTS

16 TAC §§65.607 - 65.609, 65.611, 65.612, 65.614

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405395
Doug Jennings
General Counsel
Texas Deparment of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §84.2 and §84.3; Subchapter C, §§84.40, 84.43, 84.44, 84.46; Subchapter D, §84.50; Subchapter E, §84.60 and §84.63; Subchapter G, §84.80; and Subchapter N, §84.601; new rule at Subchapter D, §84.52; Subchapter M, §§84.500 - 84.505; and the repeal of existing rules at Subchapter D, §84.51 and §84.52; and Subchapter M, §§84.500 - 84.502 and §84.504 regarding the Driver Education and Traffic Safety (DES) program, without changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6669). These rules will not be republished.

The Commission also adopts an amendment to existing rules at 16 TAC Chapter 84, Subchapter N, §84.600; the Program of Organized Instruction in Driver Education and Traffic Safety, also known as the "POI-DE Program Guide" and new rules at 16 TAC Chapter 84, Subchapter D, §84.51, regarding the Driver Education and Traffic Safety (DES) program, with changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6669). These rules will be republished. The POI-DE will be republished in the "In-Addition" section of the *Texas Register.*

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules under 16 TAC, Chapter 84, implement House Bill (HB) 1560, Article 5, Regular Session (2021) and Texas Education Code, Chapter 1001, Driver and Traffic Safety Education.

The adopted rules are necessary to complete the Department's administrative rulemaking effort for the implementation of HB 1560, Article 5 for the DES program, which addresses rule amendments relating to: (1) driver training curriculum, driver education certificate prerequisites, and enforcement; and (2) implementing the recommendations of the DES Curriculum Workgroup (Workgroup).

House Bill 1560, Article 5, Driver Education (Phase 2)

House Bill 1560, Article 5, Regular Session (2021) represented a significant reorganization and modification in the Driver Education and Traffic Safety program, which the Department is implementing in two phases. The first phase of the DES bill implementation project included: (1) repealing specific driver training license types, program courses, endorsements, and administrative functions to promote simplicity and transparency for stakeholders; and (2) amending program fees and requirements related to the revised license types. The Department accomplished these objectives in its first rulemaking to implement the

bill, through the adoption of rules that became effective June 1, 2023.

This second phase of rulemaking will address additional amendments that will impact issues such as: (1) driver education course curriculum, classroom and behind-the-wheel instruction hours, and course creation; (2) provider administration of driver education certificates after course auditing; and (3) authorizing the Commission to change minimum hours for driver education course instruction.

SECTION-BY-SECTION SUMMARY

Subchapter A, General Provisions.

The adopted rules amend §84.2, Definitions, by: (1) adding new definitions for "behind-the-wheel instruction", "in-car instruction", "registered agent", and "supervised practice"; and (2) renumbering the provisions as needed.

The adopted rules amend §84.3, Materials Adopted by Reference, by updating the DES Program Guides adopted by reference to their new 2024 editions, which include updates to reflect current laws, rules, and Department policies and to improve organization and clarity. The adopted rules include a change recommended by the Driver Education and Traffic Safety Advisory Committee at its meeting on October 3, 2024, to amend the minimum duration of Module One of the driver education classroom instruction course from four to six hours in the Program of Organized Instruction in Driver Education and Traffic Safety (POI-DE). Completion of this instructional module is the prerequisite for a student to receive a Learner License and required by Texas Transportation Code §521.222. The duration of Module One is governed by 37 TAC §15.27(b) and currently set at six hours. The Advisory Committee made no change to the published versions of the two remaining Program Guides. However, due to the change to the POI-DE, that specific Program Guide will be published separately in the *Texas Register* in the "In-Addition" section of the publication with the adopted rules.

Subchapter C, Driver Education Schools and Instructors.

The adopted rules amend §84.40, Driver Education Provider Licensure Requirements, by: (1) repealing the requirement that a school provide a current list of inventoried motor vehicles used for instruction as a part of the license renewal application; and (2) correcting rule language.

The adopted rules amend §84.43, Driver Education Certificates, by: (1) adding a provision that a school's failure to update curriculum following an audit recommendation could result in the Department's suspension of the school's right to receive driver education certificates; (2) expanding suspension or revocation penalties to a school's credentials in the event of any misrepresentation made by a school or instructor in issuing a driver education certificate; and (3) clarifying rule language and grammar.

The adopted rules amend §84.44, Driver Education Instructor License, by correcting rule language.

The adopted rules amend §84.46, Attendance and Makeup, by correcting rule language.

Subchapter D, Parent-Taught Driver Education.

The adopted rules amend §84.50, Parent-Taught Driver Education Program Requirements, by (1) adding language clarifying the minimum amount of behind-the-wheel instruction and supervised practice a student must complete after receiving a learner license upon completion of Module One; and (2) repealing language requiring that behind-the-wheel parent taught driver education be conducted solely on Texas highways.

The adopted rules repeal existing §84.51, Submission of Parent-Taught Course for Department Approval.

The adopted rules add new §84.51, Submission of Parent-Taught Course for Department Approval. The new rule replaces existing §84.51 to repeal the department's practice of pre-approval of course material at initial application, and course review upon renewal, consistent with HB 1560 directives. The adopted rules in this section include the Driver Education and Traffic Safety Advisory Committee amendments recommended at its October 3, 2024, meeting, in response to public comments received, to subsections (a)-(c) by: (1) correcting rule language addressing classroom instruction elements for parent-taught driver education courses; and (2) reorganizing subsections as needed.

The adopted rules repeal existing §84.52, Cancellation of Department Approval.

The adopted rules add new §84.52, Revocation of Department Approval (formerly entitled "Cancellation of Department Approval"). The new rule replaces existing §84.52 to: (1) expand the Department's authority to revoke a parent-taught driver education (PTDE) provider license in the event the course material is inconsistent with applicable state law; (2) provide a 90-day window for a PTDE provider to correct any deficiencies in the course material noticed by the Department before possible revocation; (3) establish a 30-day waiting period for a PTDE provider to reapply for a new parent-taught driver education provider license after revocation; and (4) clarified rule language.

Subchapter E, Providers.

The adopted rules amend §84.60, Driving Safety Provider License Requirements, by correcting rule language.

The adopted rules amend §84.63, Uniform Certificate of Course Completion for Driving Safety Course, by correcting rule language.

Subchapter G, General Business Practices.

The adopted rules amend §84.80, Names and Advertising, by correcting rule language.

Subchapter M, Curriculum and Alternative Methods of Instruction.

The adopted rules repeal existing §84.500, Courses of Instruction for Driver Education Schools.

The adopted rules add new §84.500, Courses of Instruction for Driver Education Providers. The new rule replaces existing §84.500 to: (1) update the educational objectives of driver training courses consistent with current state law; (2) reduce the minimum of classroom instruction hours in driver education courses from 32 to 24 hours; (3) govern the administration and teaching of driver education materials to maximize student mastery of educational content; (4) clarify driver education requirements related to behind-the-wheel and in-car instruction; (5) transfer the rule requirements for in-person and online adult six-hour driver education courses to new §§84.502 and 84.503, respectively; (6) restrict students from enrolling in a driver education course after commencement of the fifth hour (instead of the seventh hour) of classroom instruction; (7) allow DE providers more flexibility in the presentation of driver education

instruction to students, consistent with the provisions of HB 1560; and (8) reorganize subsections as needed.

The adopted rules repeal existing §84.501, Driver Education Course Alternative Method of Instruction.

The adopted rules add new §84.501, Driver Education Course Alternative Method of Instruction. The new rule replaces existing §84.501 to: (1) clarify minimum Department standards for AMI approval to ensure secure testing and security measures for content and personal validation, and integrity and consistency in presentation of driver education course curriculum with in-person and online instruction; (2) reduce the total duration of student break intervals, and the minimum hours of driver education instructional content presented in an AMI format from 32 hours to 24 hours; (3) increase the minimum amount of minutes allocated to an AMI for multimedia presentations from 640 minutes to 720 minutes; (4) simplify the academic integrity standards and instructional design concepts for an AMI driver education course; (5) add multifactor authentication requirements for personal validation of students for an AMI driver education course; (6) clarify the process by which a DE provider may modify AMI instructional methods and ensure that such changes are consistent with applicable law, rules and DE Program Guides; and (7) reorganize subsections as needed.

The adopted rules repeal existing §84.502, Driving Safety Courses of Instruction.

The adopted rules add new §84.502, In-Person Driver Education Course Exclusively for Adults. The new rule replaces existing §84.502 to: (1) move the Department rules related to the Adult In-Person Six Hour Driver Education Course from §84.500(b)(2) and place them in a separate section for greater ease in location and clarity for the public; and (2) reorganize the subsections as needed.

The adopted rules add new §84.503, Online Driver Education Course Exclusively for Adults, to: (1) move the Department rules related to the Adult Online Six Hour Driver Education Course from §84.500(b)(2)(B) and place them in a separate section for greater ease in location and clarity for the public; (2) add multifactor authentication requirements for personal validation of students for an online adult six-hour driver education course; and (3) reorganize the subsections as needed.

The adopted rules repeal existing §84.504, Driving Safety Course Alternative Delivery Method.

The adopted rules add new §84.504, Driving Safety Courses of Instruction. The new rule replaces existing §84.504 to: (1) relocate the Driving Safety rules from §84.502 to this new rule location; (2) update the educational objectives of driver training courses consistent with current state law; (3) remove authorship requirements for those providers that compose customized driving safety curriculum; (4) simplify rule language; and (5) reorganize the subsections as needed.

The adopted rules add new §84.505, Driving Safety Course Alternative Delivery Method, to: (1) relocate existing §84.504 to this new rule location; (2) add multifactor authentication requirements for personal validation of students for an ADM six-hour driving safety education course; (3) simplify rule language; and (4) reorganize the subsections as needed.

Subchapter N, Program Instruction for Public Schools, Education Service Centers, and Colleges or Universities Course Requirements.

The adopted rules amend §84.600, Program of Organized Instruction, by: (1) reducing the minimum of classroom instruction hours in a driver education course from 32 to 24 hours; (2) restricting students from enrolling in a driver education course after commencement of the fifth hour (instead of the seventh hour) of classroom instruction in a 24-hour program; (3) limiting driver education training (including in-car instruction) to a maximum of six hours each day; and (4) clarifying rule language. The adopted rules in this section include the Driver Education and Traffic Safety Advisory Committee amendments recommended at its October 3, 2024, meeting, and in response to public comments received, to subsections (a) and (c) by: (1) including rule language to provide consistency with previous sections; and (2) correcting the number of classroom instruction hours from four to six in Module One of minor and adult driver education classroom instruction to be consistent with the Department of Public Safety (DPS) rule at 36 TAC §17.27(b). The same six hour correction to Module One was made to the Program of Organized Instruction in Driver Education and Traffic Safety, also known as the "POI-DE Program Guide" to comply with the aforementioned DPS rule.

The adopted rules amend §84.601, Additional Procedures for Student Certification and Transfers, by reducing the record retention period for Texas schools of driver education course completion certificates from seven years to three years, or as mandated by the school district.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6669). The public comment period closed on September 30, 2024. The Department received comments from six interested parties in response to the required summary of the proposed rules, which was posted on the Department's website and distributed on August 20, 2024, the same day that the proposed rules were filed with the *Texas Register*, but before the official publication of the proposed rules and the official start of the public comment period. The Department received comments from 30 interested parties on the published proposed rules during the official public comment period. The public comments are summarized below.

Comments in Response to the Published Proposed Rules

Comment: Nine written comments were submitted related to the published rules proposing reduction of minimum classroom instruction course hours from 32 hours to 24 hours in the minor and adult driver education course as contained in the published proposed rules in 16 TAC Chapter 84, Subchapter M. The written comments submitted were five in favor and four opposed. Four comments representing four interested parties who opposed the reduction argued: (1) young students would not be able to retain sufficient knowledge and understanding of the traffic laws to operate motor vehicles properly and endanger lives; (2) that 32 hours of classroom instruction allowed the presentation of curriculum at a good pace for learning; and (3) 24 hours of instruction is insufficient time to present the growing number of state mandated topics to students thereby weakening curriculum. Five comments representing 25 interested parties who supported the reduction argued that the change: (1) would provide more flexibility for providers and instructors in the content and manner by which course materials were presented to students; (2) allows providers to concentrate on important issues in a more efficient manner promoting more innovative course creation; and

(3) benefits in-person providers by providing parents with fewer trips to the provider's location for instruction due to the reduction in classroom hours.

Department Response: The Department appreciates the input received from the commenters on the published rules. The Department agrees with the comments in support of the reduction in the minimum classroom instruction hours from 32 hours to 24 hours, and the Department disagrees with the comments opposing the change. The Legislature specifically changed Occupations Code §1001.101 in HB 1560 pursuant to a recommendation from the Sunset Commission in the 2020 Sunset Report (Report) to remove prescriptive curriculum hours from statute and authorize TDLR to set minimum hours of instruction in rule. The change in hours is consistent with the recommendation of the Driver Education and Traffic Safety Advisory Committee. Moreover, the rule change cites a "minimum" number of hours for classroom instruction. Driver education providers when creating their courses may choose additional hours of instruction for their curriculum. The Department expects that providers will design their courses to best promote subject matter mastery for students, address parents and instructor concerns, and emphasize the overall safety of the public. The Department made no change to the proposed rules as a response to these comments.

Comment: One commenter submitted comments seeking amendment to the proposed rules including: (1) 16 TAC §84.51(a) citing an error in the calculation in the number of minutes allowed for multimedia content in parent-taught courses due to the reduction in the minimum instructional classroom hours; and (2) requesting a revision to 16 TAC §84.51(b) to clarify the provider responsibilities in the event of a provider change in course curriculum. The commenter further submitted observations on the Department's rule deletion at 16 TAC §84.500(b)(1)(T) removing driver training provider and public school collection of collision data related to a discrete class of driver education students, and the Department's rule revision at 16 TAC 84.500(e) regarding personal validation requirements for online providers.

Department Response: The Department appreciates the input received from the commenter on these specific issues in the published rules. The Department agrees with the arguments made by the commenter and has made changes to the proposed rules as recommended by the Driver Education and Traffic Safety Advisory Committee at its October 3, 2024, meeting. The change to §84.51(a) replaces "640 minutes" with "720 minutes." The change to §84.51(b) clarifies that any substantive change in course curriculum or materials "must be consistent with applicable law, department rules and the POI-DE."

Due to the change made in subsection (b), the Department has determined that subsection (c) is no longer needed as it is duplicative of amended subsection (b). Thus, 16 TAC §84.51(c) has been removed and the subsequent subsections have been reorganized accordingly.

The Driver Education and Traffic Safety Advisory Committee did not recommend any changes to the proposed rules in response to the comments on §84.500(b)(1)(T) and §84.500(e), so the Department did not make any changes to the proposed rules in response to those comments. The commenter filed the same comments before the official comment period, and they are addressed here. The Department made no other changes to the proposed rules as a response to these comments.

Comment: One commenter submitted comments in support of the Department changes made at 16 TAC §§84.500(b)(1)(A)(i), 85.501(b)(4), 84.501(c)(3), and 84.501(i). The commenter also proposed an amendment to 16 TAC 84.82(b)(12) relating to driver training provider student enrollment contracts.

Department Response: The Department appreciates the comments in support of the proposed rule changes and declines to make any change to 16 TAC §84.82(b)(12) as that rule section was not included in this rulemaking and therefore, is outside of the scope of this proceeding. The Department may open a future rulemaking to address issues at a later date. The Department made no change to the proposed rules as a response to this comment.

Comment: One commenter offered a comment in support of the Department's changes to 16 TAC 84.501(d)(1) relating to the use of timers in online driver education courses to ensure the right amount of educational content is disseminated to students and aid in content and personal validation.

Department Response: The Department appreciates the comment in support the proposed rule change. The Department made no change in the proposed rules as a response to this comment.

Comments in Response to the Posted Summary

Comment: One commenter submitted a comment asking questions regarding what would be the Commission's decision on the minimum number of driver education instruction hours and when would any change take effect?

Department Response: The Department appreciates the comment in support the proposed rule change. The Department made no change in the proposed rules as a response to this comment.

Comment: Three written comments from three interested parties were submitted relating to the reduction of minimum classroom instruction course hours from 32 hours to 24 hours in the minor and adult driver education course as contained in the published proposed rules in 16 TAC Chapter 84, Subchapter M. These comments were filed in opposition to the proposed reduction in instructional hours. The commenters argued that the reduction in instructional hours would (1) not allow sufficient time to teach necessary instructional material; (2) increase the incidence of driver crashes and fatalities among young drivers; and (3) slow developmental driving skills in young drivers.

Department Response: The Department disagrees with the comment's opposition to the reduction in the minimum classroom instruction hours from 32 hours to 24 hours. The Legislature specifically changed Occupations Code §1001.101 in HB 1560 pursuant to a recommendation from the Sunset Commission in the 2020 Sunset Report (Report) to remove prescriptive curriculum hours from statute and authorize TDLR to set minimum hours of instruction in rule. The change in hours is consistent with the recommendation of the Driver Education and Traffic Safety Advisory Committee. Moreover, the rule change cites a "minimum" number of hours for classroom instruction. Driver education providers when creating their courses may choose additional hours of instruction for their curriculum. The Department made no change to the proposed rules as a response to these comments.

Comment: One commenter requested that driver education observation instruction hours be abolished as they served little pur-

pose. The driver education provider could provide the observation instruction as a charged service where needed.

Department Response: The Department disagrees with the comment as observation instruction is required under Education Code §1001.101(b). Such a change would require legislative intervention. The Department made no change to the proposed rules as a response to these comments.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Driver Training and Traffic Safety Advisory Committee met on October 3, 2024, to discuss the proposed rules and the public comments received. The Advisory Committee recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to 16 TAC §84.51 and §84.600, and the Program of Organized Instruction in Driver Education and Traffic Safety, also known as the "POI-DE Program Guide" made in response to public comment and Department recommendations as explained in the Section-by-Section summary. At its meeting on October 23, 2024, the Commission adopted the proposed rules with changes as published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §84.2, §84.3

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405453
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

SUBCHAPTER C. DRIVER EDUCATION SCHOOLS AND INSTRUCTORS

16 TAC §§84.40, 84.43, 84.44, 84.46

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405454
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

SUBCHAPTER D. PARENT-TAUGHT DRIVER EDUCATION

16 TAC §84.50

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405455

Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

16 TAC §84.51, §84.52

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405462
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

16 TAC §84.51, §84.52

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.51. Submission of Parent-Taught Course for Department Approval.

(a) If the curriculum and all materials meet or exceed the applicable minimum standards set forth in the Code, the department will approve the course. No more than 720 minutes of the required hours of classroom instruction delivered via multimedia may be counted.

(b) Notification of approval or denial will be sent to the requesting entity. Deficiencies will be noted in cases of denial. Any substantive change in course curriculum or materials must be consistent with applicable law, department rules and the POI-DE.

(c) The department will retain submitted materials according to the department's retention schedule.

(d) Course identification. All parent-taught courses must display the parent-taught provider name and license number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(e) A parent-taught driver education provider may accept students redirected from a website if the student is redirected to a webpage that clearly identifies the parent-taught provider and license number offering the course. This information must be visible before and during the student registration and course payment processes.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405456
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

SUBCHAPTER E. PROVIDERS

16 TAC §84.60, §84.63

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405457

Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

SUBCHAPTER G. GENERAL BUSINESS PRACTICES

16 TAC §84.80

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405458
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

SUBCHAPTER M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

16 TAC §§84.500 - 84.502, 84.504

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405463
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

16 TAC §§84.500 - 84.505

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405461
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

SUBCHAPTER N. PROGRAM INSTRUCTION FOR PUBLIC SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES COURSE REQUIREMENTS

16 TAC §84.600, §84.601

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement

these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.600. Program of Organized Instruction.

(a) To be approved under this subchapter, a driver education plan must include one or more of the following course programs.

(1) Core program. This program must consist of a minimum of 24 hours of classroom instruction; seven hours of behind-the-wheel instruction in the presence of a certified instructor; seven hours of in-car observation in the presence of a certified instructor; and 30 hours of behind-the-wheel supervised practice, including at least 10 hours of instruction that takes place at night, certified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

(2) In-car only program. This program must consist of at least seven hours of behind-the-wheel instruction in the presence of a certified instructor; seven hours of in-car observation in the presence of a certified instructor; and 30 hours of behind-the-wheel supervised practice, including at least 10 hours of instruction that takes place at night, certified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

(3) Classroom only program. This program must consist of a minimum of 24 hours of classroom instruction.

(b) The minimum requirements of the driver education program must be met regardless of how the course is scheduled. The following applies to all minor and adult driver education programs.

(1) A learner portion of a DE-964 must be issued to a student to obtain a learner's license upon completion of Module One of the POI-DE. A driver license portion of the DE-964 must be given when all in-car laboratory and classroom instruction has been completed by the student.

(2) In-car laboratory lessons may be given only after the student has obtained a learner's license.

(3) Instruction may be scheduled any day of the week, during regular school hours, before or after school, and during the summer.

(4) Instruction must not be scheduled before 5:00 a.m. or after 11:00 p.m.

(5) The driver education classroom phase must have uniform beginning and ending dates. Students must proceed in a uniform sequence. Students must be enrolled and in class before the fifth hour of classroom instruction in a 24-hour program and the 12th hour of classroom instruction in 56-hour or semester-length programs.

(6) Self-study assignments occurring during regularly scheduled class periods must not exceed 25 percent of the course and must be presented to the entire class simultaneously.

(7) The driver education course must be completed within the timelines established by the superintendent, college or university chief school official, or ESC director. This must not circumvent attendance or progress. Variances to the established timelines must be determined by the superintendent, college or university chief school official, or ESC director and must be agreed to by the parent or legal guardian.

(8) Public schools are allowed five minutes of break within each instructional hour in all phases of instruction. A break is an interruption in a course of instruction occurring after the lesson introduction and before the lesson summation. It is recommended that the five minutes of break be provided outside the time devoted to behind-the-wheel instruction so students receive a total of seven hours of instruction.

(9) Driver education training offered by the public school must not exceed six hours per day. Public schools may include five minutes of break per instructional hour as identified in §84.500 (relating to Courses of Instruction for Driver Education Providers). In-car instruction provided by the public school must not exceed four hours per day as follows:

(A) four hours or less of in-car training; however, behind-the-wheel instruction must not exceed two hours per day; or

(B) four hours or less of simulation instruction; or

(C) four hours or less of multicar range instruction; or

(D) any combination of the methods delineated in this subsection that does not exceed four hours per day.

(10) Driver education training certified by the parent is limited to two hours per day.

(c) Course content, minimum instruction requirements, and administrative guidelines for each phase of driver education classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range must include the instructional objectives established by the department, as specified in this subsection and the POI-DE, and meet the requirements of this subchapter. Sample instructional modules may be obtained from the department. Schools may use sample instructional modules developed by the department or develop their own instructional modules based on the approved instructional objectives. The instructional objectives are organized into the modules outlined in this subsection and include objectives for classroom and in-car training (behind-the-wheel and observation), simulation lessons, parental involvement activities, and evaluation techniques. In addition, the instructional objectives that must be provided to every student enrolled in a minor and adult driver education course include information relating to litter prevention; anatomical gifts; safely operating a vehicle near oversize or overweight vehicles; distractions, including the use of a wireless communication device that includes texting; motorcycle awareness; alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle; and recreational water safety. A student may apply to the Texas Department of Public Safety (DPS) for a learner's license after completing six hours of instruction as specified in Module One of the POI-DE.

(d) A public school may use multimedia systems, simulators, and multicar driving ranges for instruction in a driver education program.

(e) Each simulator, including the instructional programs, and each plan for a multicar driving range must meet state specifications developed by the department. Simulators are electromechanical equipment that provides for teacher evaluation of perceptual, judgmental, and decision-making performance of individuals and groups. With simulation, group learning experiences permit students to operate vehicular controls in response to audiovisual depiction of traffic environments and driving emergencies. The specifications are available from the department.

(f) A minimum of four periods of at least 55 minutes per hour of instruction in a simulator may be substituted for one hour of be-

hind-the-wheel and one hour observation instruction. A minimum of two periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for one hour of behind-the-wheel and one hour observation instruction relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to behind-the-wheel instruction and a minimum of four hours must be devoted to observation instruction.

(g) A school may not permit more than 36 students per driver education class, excluding makeup students.

(h) All behind-the-wheel lessons must consist of actual driving instruction. Observation of the instructor, mechanical demonstrations, etc., must not be counted for behind-the-wheel instruction. The instructor must be in the vehicle with the student during the entire time behind-the-wheel instruction is provided.

(i) Minor and adult driver education programs must include the following components.

(1) Driver education instruction is limited to eligible students between the ages of 14-18 years of age, who are at least 14 years of age when the driver education classroom phase begins and who will be 15 years of age or older when the behind-the-wheel instruction begins. Students officially enrolled in school who are 18-21 years of age may attend a minor and adult driver education program.

(2) Motion picture films, slides, videos, tape recordings, and other media that present concepts outlined in the instructional objectives may be used as part of the required instructional hours of the classroom instruction. Units scheduled to be instructed may also be conducted by guest speakers as part of the required hours of instruction. Together, these must not exceed 720 minutes of the total classroom phase.

(3) Each classroom student must be provided a driver education textbook or driver education instructional materials approved by the department.

(4) A copy of the current edition of the "Texas Driver Handbook" or equivalent study material must be made available to each student enrolled in the classroom phase of the driver education course.

(5) No public school should permit a ratio of less than two, or more than four, students per instructor for behind-the-wheel instruction, except behind-the-wheel instruction may be provided for only one student when it is not practical to instruct more than one student, for makeup lessons, or if a hardship would result if scheduled instruction were not provided. In each case when only one student is instructed:

(A) the school must obtain a waiver signed and dated by the parent or legal guardian of the student and the chief school official stating that the parent or legal guardian understands that the student may be provided behind-the-wheel instruction on a one-on-one basis with only the instructor and student present in the vehicle during instruction;

(B) the waiver may be provided for any number of lessons; however, the waiver must specify the exact number of lessons for which the parent is providing the waiver; and

(C) the waiver must be signed before the first lesson in which the parent is granting permission for the student to receive one-on-one instruction.

(j) Colleges and universities that offer driver education to adults must submit and receive written approval for the course from the department prior to implementation of the program. The request for approval must include a syllabus, list of instructors, samples of instructional records that will be used with the course, and information necessary for approval of the program.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405459
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

CHAPTER 96. ELECTRIC VEHICLE SUPPLY EQUIPMENT

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 96, regarding the Electric Vehicle Charging Stations (EVS) program, §§96.1, 96.90, and 96.91 without changes to the proposed text as published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6384). These rules will not be republished.

The Commission also adopts new rules at 16 TAC Chapter 96, Subchapter A, §96.10 and §96.14; Subchapter B, §§96.20 - 96.24, and 96.30; Subchapter C, §96.60; Subchapter D, §§96.70 - 96.72, and 96.74; Subchapter E, §96.80 and §96.83; and Subchapter G, §96.100 regarding the Electric Vehicle Charging Stations program, with changes to the proposed text as published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6384). These rules will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 96, implement Senate Bills (SB) 1001 and 1732, 88th Legislature, Regular Session (2023), and Texas Occupations Code, Chapter 2311, Electric Vehicle Charging Stations, and Electric Vehicle Supply Equipment (EVSE).

The adopted rules are necessary to introduce the Department's administrative rulemaking effort for the implementation of SB 1001 and 1732, and Texas Occupations Code, Chapter 2311 for the EVS program, which address rules relating to: (1) electric vehicle supply equipment definitions; (2) registration and EVSE provider statutory and rule compliance deadlines; (3) EVSE registration and renewal requirements; (4) investigation and inspection of EVSE; (5) EVSE provider duties and responsibilities; (6) program fees; (7) enforcement provisions; (8) general technical requirements for EVSE providers from supplemental rules and regulation publications; and (9) implementing the recommendations of the EVSE Stakeholder Workgroup (Workgroup), as authorized by SB 1001, Article 3, and public comment received by the Department from the "First Look" posting of a working draft version of the EVS adopted rules.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions

The adopted rules create new §96.1, Authority, to identify the statutory provisions under which the rule chapter derives its regulatory jurisdiction.

The adopted rules create new §96.10, Definitions, to establish the definitions to be used in the rule chapter. On October 15, 2024, the Workgroup amended the definition for "charging unit" to clarify that the term had the same meaning as the definition for "electric vehicle supply equipment" for consistency and to lessen confusion within the industry.

The adopted rules create new §96.14, Effective Dates for Electric Vehicle Supply Equipment Compliance, to provide notice to EVSE providers of the deadlines for registration and operational standards for regulated electric vehicle charging units. In response to public comments, changes were made to the published proposed rule text to: (1) relocate the text of subsection (a) to §96.20 and relabel the remaining provisions accordingly; (2) add language clarifying when charging units are considered to be operating; and (3) add language clarifying a reference to a "state" rebate program. On October 15, 2024, the Workgroup amended and extended the deadline for EVSE operational compliance to January 1, 2030, for charging units and legacy equipment installed before March 1, 2025, allowing time for providers to perform any necessary modifications to such equipment to comply with the Occupations Code, Chapter 2311 and the rules.

Subchapter B. Electric Vehicle Supply Equipment Registration

The adopted rules create new §96.20, Electric Vehicle Supply Equipment Registration Required, to require an EVSE provider to register each charging unit prior to making it available for commercial service to electric vehicle owners. In response to public comments, changes were made to the published proposed rule text to add language relocated from §96.14(a), remove unnecessary language, and add clarifying language.

The adopted rules create new §96.21, Electric Vehicle Supply Equipment Registration Requirements, to: (1) identify the prerequisites for initial charging unit registration; (2) set the length of the registration term at one year; and (3) set forth the required procedures related to changes in controlling provider status. On October 15, 2024, the Workgroup amended new §96.21 to clarify that installation and operation of EVSE must comply with Occupations Code, Chapter 1305, the Texas Electrical Safety and Licensing Act.

The adopted rules create new §96.22, Electric Vehicle Supply Equipment Registration Renewal Requirements, to detail the annual registration renewal procedures for electric vehicle charging units.

The adopted rules create new §96.23, Electric Vehicle Supply Equipment Registration Changes, to establish the registration procedures by which an EVSE provider may add to or reduce the number of charging units at an existing location. On October 15, 2024, the Workgroup amended new §96.23 to clarify that installation and operation of EVSE must comply with Occupations Code, Chapter 1305, the Texas Electrical Safety and Licensing Act.

The adopted rules create new §96.24, Certificate of Registration, to establish how an EVSE provider may provide a copy of the issued registration certificate to a member of the public upon request. In response to public comments, clarifying changes were made to the published proposed rule text to replace "registrant" with "provider."

The adopted rules create new §96.30, Exemptions, which illustrate exceptions under which electric vehicle supply equipment will not be regulated by the Department. On October 15, 2024, the Workgroup amended new §96.30 to clarify that the Department may extend an exemption to an EVSE provider from an administrative requirement if certain conditions are determined to exist that would hinder compliance with rule or state law, consistent with Occupations Code §2311.0206.

Subchapter C. Inspections and Investigations

The adopted rules create new §96.60, EVSE Inspections and Investigations, to state the Department's authority to carry out inspections and investigations of EVSE providers and equipment. On October 15, 2024, the Workgroup amended new §96.60 to clarify that the Department would not perform on-site EVSE inspections until March 1, 2026, except for such action conducted as a part of an investigation pursuant to a filed consumer complaint.

Subchapter D. Responsibilities of the Provider

The adopted rules create new §96.70, Notification of Department Jurisdiction and Complaint Information, to require the EVSE provider to display a notice to consumers on its charging units or the provider's digital network that instruct consumers on how to file complaints about their vehicle charging experience with the Department. In response to public comments, changes were made to the published proposed rule text in subsection (b) to clarify that the notification can appear either on the charging unit's visual display or the provider's digital network.

The adopted rules create new §96.71, Consumer Information Sticker, to require EVSE providers to affix an adhesive notice on each registered electric vehicle charging unit that contains the specific information required in §96.70. In response to public comments, changes were made to the published proposed rule text in subsection (a) to add clarifying language and remove unnecessary language and in subsection (c) to change from 30 to 60 the number of days within which a sticker must be replaced.

The adopted rules create new §96.72, Damaged Electric Vehicle Supply Equipment, to instruct EVSE providers on how to address onsite nonfunctional electric vehicle charging units and publish status warnings to consumers. In response to public comments, changes were made to the published proposed rule text to remove the term "recalled" and to add language clarifying that a provider is not required to physically relocate equipment from its current location while under repair.

The adopted rules create new §96.74, Recordkeeping Requirements, to require EVSE providers to maintain and make available specific types of electric vehicle supply equipment records to Department personnel upon request for three years.

Subchapter E. Fees

The adopted rules create new §96.80, EVSE Registration Fees, to establish the fees for the issuance and renewal of EVSE charging unit registration and consumer information stickers. On October 15, 2024, the Workgroup amended new §96.80 to clarify that initial registration and renewal fees authorized by Occupations Code §2311.0202 would be charged to an EVSE provider for each electric vehicle charging port affixed to a charging unit.

The adopted rules create new §96.83, Fee Policy and Disclosures, to establish the required information to be disclosed to consumers regarding the determination of fees and surcharges

associated with an electric vehicle charging transaction. In response to public comments, changes were made to the published proposed rule text in subsection (d) to provide clarity on the applicable requirements. On October 15, 2024, the Workgroup amended new §96.83 to extend the time for compliance with this rule section to March 1, 2026, for those providers installing charging units on or after March 1, 2025, in order to allow sufficient time for software and firmware development.

Subchapter F. Enforcement Provisions

The adopted rules create new §96.90, Administrative Penalties and Sanctions, to establish the authority of the Commission and the executive director of the Department to impose administrative penalties and sanctions against an individual or entity who violates a statute or rule applicable to the EVS program.

The adopted rules create new §96.91, Enforcement Authority, to establish the authority of the Commission and the Department to enforce the statutes and rules applicable to the EVS program.

Subchapter G. General Technical Requirements

The adopted rules create new §96.100, Adoption by Reference, to adopt selected publications and regulations into the rule chapter to supplement the administration and enforcement of the EVS program. In response to public comments, changes were made to the published proposed rule text to provide clarity on the applicable sections of the NIST handbooks.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6384). The public comment period closed on September 23, 2024. The Department received comments from 16 interested parties on the proposed rules. The public comments are summarized below.

Comments in Response to the Published Proposed Rules

The Department received comments from a number of interested parties during the official 30-day comment period. These parties include the Texas Food and Fuel Association (TFFA); the Joint EV Parties (Joint Parties), which includes ABB E-Mobility, the Alliance for Transportation Electrification, Alliance for Automotive Innovation, ChargePoint, Electrify America, EVgo, National Electrical Manufacturers Association (NEMA jointly and individually), Rivian, SWITCH, and Tesla (jointly and individually); CPS Energy; and Walmart. The Department received one comment from a private interested party during this period.

Many of the interested parties shared common concerns about the proposed rule sections and such comments will be combined in this document and the Department responses where appropriate. Some commenters filed comments in their sole capacity and unique comments will be addressed separately. The Department appreciates the comments received from the interested parties on the proposed rules and looks forward to working with all interested parties in creating a responsive and positive business environment for EVSE providers that will deploy an efficient, reliable and safe electric vehicle charging network for the public in the State of Texas.

TFFA Comments

Comment: TFFA filed comments requesting amendments to the proposed rules including: (1) opposing additional requirements in the proposed rules beyond that in the applicable sections in the National Institute of Standards and Technology (NIST) Handbooks 44 and 130 as problematic for providers required to rapidly implement hardware, firmware and software changes; (2) objecting to the requirements of §96.21 and §96.23 requiring a licensed electrical contractor to install the charging units at a location; (3) requesting that the Department issue a two-year registration in §96.21; (4) proposing the deletion of §96.24 suggesting the provision creates an undue burden in programming and digital network changes for providers; (5) promoting a rule change to §96.74 to limit Department requests for records directly related to the installation of equipment excluding business sensitive and proprietary information; and (6) recommending that the proposed rules adopt the National Electric Vehicle Infrastructure (NEVI) Standards and Requirements for terms not defined in statute for consistency within the industry.

Department Response: The Department appreciates the comments from TFFA. The Department agrees with TFFA's comment regarding issue (1), and has, in the interests of clarity and Occupations Code §2311.0303(a), made changes to the proposed rules by including specific reference to Section 3.40, NIST Handbook 44, and Section 2.34, NIST Handbook 130, in §96.100(a)(1) and (a)(2).

The Department agrees with the TFFA comments related to issue (2). Addressing this issue, Occupations Code §2311.0303(b) requires that EVSE be installed and operated in accordance with Occupations Code, Chapter 1305. That chapter governs the electrician's occupation and the classes of electrician that are required to perform the designated electrical tasks within that statutory chapter under the auspices of a licensed electrical contractor. Section 96.21 and §96.23 reflect the legal requirements imposed by Occupations Code, Chapters 1305 and 2311. On October 15, 2024, the Workgroup amended new §96.21 and §96.23 to clarify that installation and operation of EVSE must comply with Occupations Code, Chapter 1305, the Texas Electrical Safety and Licensing Act.

The Department disagrees with the TFFA comments related to issue (3). The Department has established a one-year registration at this time. The reason is that SB 1001, Section 4 requires that EVSE registration commence on March 1, 2025, which is in the middle of TDLR's fiscal year. In keeping with the legislative authority granted by SB 1001, the Department determined that a one-year registration term would best address its ability to reasonably incur the necessary costs and obtain revenues sufficient to administer this program. The Department may revisit the registration term duration in a future rulemaking. The Department made no change to the proposed rules as a response to this comment.

The Department declines to delete §96.24 as recommended in issue (4). The Department sees no undue burden imposed on EVSE providers to choose one of the methods contained within the proposed rule to provide a copy of its registration to a consumer upon request. The Department leaves it to the provider to choose its mode of compliance with a consumer's request for a copy of its registration. The Department agrees in part with TFFA's request to use the word "provider" throughout the rule chapter and revised this rule section to include the term in §96.24 for consistency throughout the proposed rules.

The Department disagrees with the TFFA comments related to issue (5). The Department contends that §96.74 is necessary for the administration of the program as contemplated by SB 1001 and 1732. These documents are essential for the Department to perform its inspection and enforcement duties. The inspection

and investigatory process is governed by 16 TAC Chapter 60, Subchapter H, and will be conducted in accordance with those rule sections, including the Department's handling of confidential materials. The Department made no change to the proposed rules as a response to this comment.

The Department disagrees with the TFFA comments related to issue (6). The Department is currently employing the terms mandated by the Legislature in SB 1001 and 1732, and has determined that using consistent rule language reduces public confusion. Neither SB 1001 nor SB 1732 adopted NEVI regulations in Occupations Code, Chapter 2311. It did, however, adopt NIST standards in the statutory chapter at §2311.0303(a). The Department made no change to the proposed rules as a response to this comment.

TFFA and Walmart Comments

Comment: TFFA and Walmart filed comments in common requesting amendments to the proposed rules including: (1) the establishment of a variance application process in §96.14 to allow providers additional time to comply with proposed operational compliance requirements for existing charging units, legacy chargers, and those units installed prior to March 1, 2025, or alternatively, urge the Department to allow providers in rule sufficient time for providers to perform the hardware and software work necessary to meet operational compliance for pre-March 1, 2025 charging units and legacy chargers; (2) seeking a registration exemption for charging units installed prior to March 1, 2025 in §96.20, including those not subject to operational compliance requirements; (3) proposing a "self-certification" process in §96.21 to expedite the application for initial registration and renewal of charging units for providers; (4) recommending that the Department adopt the receipt and price display requirements in the applicable sections of NIST Handbooks 44 and 130; (5) recommending revision to §96.71 to give a provider 60 days from the time the Department discovers a damaged or removed consumer information sticker to come into compliance with rule requirements; (6) removing the term "recalled" from §96.72 as that discrete EVSE class is not contemplated by the statute, and requesting that the proposed rule be clarified that the language "removed from service" does not mean the physical removal of a damaged charging unit; and (7) proposing the deletion of §96.70 as TFFA and Walmart contends the section is overly onerous, redundant and unreasonably costly by requiring a provider to post complaint and contact information in three different manners.

Department Response: The Department appreciates the comments from TFFA and Walmart. The Department recognizes the issues raised by the commenters in issue (1) and agrees that providers need sufficient time to bring charging units installed prior to March 1, 2025, into operational compliance with the rules and the Code. Therefore, §96.14(a) has been amended to address the issue by allowing pre-March 1, 2025, installed charging units to come into operational compliance not later than January 1, 2030. The Department further recognizes that Occupations Code §2311.0206 allows the Department to exempt EVSE providers from requirements established by law, if at least one of three conditions is determined to be present. To that end, the Department has amended §96.30(a) to either establish additional exemptions by rule, or consider petitions for exemption on a case-by-case basis.

The Department disagrees with the TFFA and Walmart comments related to issue (2). While the Department recognizes and agrees with the practical aspects of time extensions for operational compliance for legacy EVSE in §96.14, the Department disagrees that the same equipment should be exempt from registration. SB 1001 adopted a registration requirement for EVSE and the Department is obligated to implement legislative mandates. Registration is the means by which the EVSE deployment can be monitored. The Department intends to make the process efficient and simple. Neither commenter has presented sufficient reason to explain why legacy equipment should not be registered at minimum. EVSE registration allows the Department to receive complaints on such equipment, monitor deployment of the charging infrastructure statewide, and ensure the reliability and safety of the equipment and facilities. The Department made no change to the proposed rules as a response to this comment.

The Department disagrees with the TFFA and Walmart comments related to issue (3). The Department is not clear on what is meant by a "self-certification" amendment for §96.21. If what is meant by the commenters is providing a "self-service" process to register charging units, then the Department is currently developing an automated process by which providers can "self-register" and renew registration of charging units ready for commercial operation. Staff is targeting a "go-live" date for the system of December 1, 2024. The start for registration deadline is March 1, 2025. Staff will be scheduling a future demonstration for the system for interested parties with training and expects that, once operational, there will be little delay in registration. The Department made no change to the proposed rules as a response to this comment.

The Department agrees with the TFFA and Walmart comment related to issue (4). Occupations Code §2311.0303(a) adopts the NIST specifications and tolerances. The proposed rules at §96.83(d) and §96.100(a) have been amended to specifically adopt NIST Handbook 44, Section 3.40, and NIST Handbook 130, Section 2.34.

The Department agrees and disagrees in part with the TFFA and Walmart comment related to issue (5). The Department agrees with the commenters' argument requesting more time to replace a damaged or missing consumer information sticker (CIS) in §96.71. The Department amends §96.71(c) to allow a 60-day cure period to replace a damaged or missing CIS. The Department disagrees with the part of issue (5) where the commenters recommend that the 60-day clock starts from the time that the Department discovers the condition requiring replacement of the sticker. The Department contends that it is the responsibility of the provider to inspect their EVSE locations as part of their regular maintenance rotations and, if they discover a damaged or missing CIS, they are expected to order a replacement sticker from the Department. The 60-day clock starts from the time the provider discovers the damaged or missing CIS. If the Department receives notice of a damaged or missing CIS before the provider, it will inform the provider and appropriate action is expected from the provider under the proposed rules. The Department made no further change to the proposed rules as a response to this comment.

Four commenters, including TFFA, Walmart, NEMA and a private interested party filed comments related to issue (6). The Department, therefore, deletes the word "recalled" from §96.72 and has added §96.72(b) to clarify that a provider is not required to physically remove EVSE from its location while under repair. The Department declines, however, to delete §96.72 as recommended by TFFA.

The Department declines to delete §96.70 as recommended by TFFA in issue (7). However, the Department agrees with TFFA

and Walmart that the proposed rule imposed unreasonable consequences on providers if not given an option on the manner a provider transmits complaint filing information to consumers concerning improperly functioning charging units. Occupations Code §2311.0304(c) requires that complaint information be disclosed on the electric supply equipment or on the provider's digital network. Thus, the Department has amended the language in §96.70(b) to reflect the same.

TFFA, NEMA and Joint Parties Comments

Comment: TFFA, NEMA and the Joint Parties filed comments requesting amendments to the proposed rules including: (1) utilizing the statutory EVSE definition throughout the rules, and replacing the definition for "legacy charger", and "charging unit" in §96.10 with definitions for "charging connector" and "combined charging system" as it is advanced that "charging unit" is a term and definition not commonly used within the industry and causes confusion; (2) extending the deadline for operational compliance requirements for charging units installed prior to March 1, 2025 and legacy chargers in §96.14 to avoid additional expense to either retrofit or replace the affected charging units, and allow providers sufficient time to comply with the proposed rule; (3) requesting an exemption for EVSE from department inspection in §96.60 for legacy chargers and chargers installed prior to March 1, 2025, as it is stated that it would be financially and technologically challenging to providers; and (4) opposing uniform registration fees in §96.80 for Level 2 chargers and DC fast chargers (DCFC), and charging registration fees per connector.

Department Response: Five commenters, including TFFA, NEMA, the Joint Parties and a private interested party filed comments recommending the replacement of the "charging unit" definition. The Department disagrees with the comment related to issue (1) made by the commenters calling for replacement definitions in §96.10. The term "charging unit" is derived from the Legislature in SB 1001 and was employed in statute at Occupations Code §2311.0302 and §2311.0306. The Department has included the term as adopted in the legislative bill. On October 15, 2024, the Workgroup amended the definition for "charging unit" to clarify that the term had the same meaning as the definition for "electric vehicle supply equipment" for consistency and to lessen confusion within the industry.

Regarding issue (2), the Department has considered the TFFA, NEMA and Joint Parties comments related to §96.14 and notes the possible financial and logistical complications that a March 1, 2025, operational compliance deadline could impose for charging units installed between June 18, 2023, and March 1, 2025. The Department agrees that a March 1, 2025, deadline is an inadequate amount of time to allow pre-March 1, 2025, EVSE to comply with operational standards imposed by law. The proposed rules initially reflected the transition language of Section 4 of SB 1001. Therefore, the Department amends §96.14 to address the concerns raised by the commenters, and at the October 15, 2024, Workgroup meeting, by extending the operational compliance deadline to January 1, 2030, for charging units installed prior to March 1, 2025. The Department declines to amend the proposed rules to allow a 10-year extension as recommended by TFFA as unnecessary at this time. The Department also moved previous subsection (a) of §96.14 to §96.20 as recommended by TFFA for greater clarity.

The Department disagrees in part with the commenters on issue (3) requesting an exemption from inspection in §96.60 for EVSE installed prior to March 1, 2025. Inspections of licensees are part of the standard regulatory responsibility of the Department for all of its programs. The EVS program is no exception. Tracking the deployment of the EVSE network and monitoring reliability and safety concerns are facilitated by program inspections. At present, Department inspections and investigations will be limited to requests for documentation as maintained by EVSE providers pursuant to proposed rule §96.74. However, the Department recognizes the concerns raised by the commenters and adds subsection (b) to §96.60 to clarify that on-site EVSE inspections will not commence until March 1, 2026, except in conjunction with a Department investigation pursuant to a filed consumer complaint.

The Department disagrees with issue (4) recommending a different set of fees for Level 2 chargers and DC fast chargers. Occupations Code Chapters 51 and 2311 authorize the Commission to set fees at a level reasonable and necessary to cover the costs of administering a program. The Department has conducted the analysis and determined that the proposed registration and renewal fees are consistent with state law. On October 15, 2024, the Workgroup amended the registration and renewal fees at §96.80 to clarify the charges to refer to electric vehicle charging ports affixed to charging units. Therefore, the noted fees will be assessed by port instead of by charging connector or plug. This change was made for greater industry consistency, to assist those agencies in counseling prospective providers seeking NEVI funds on registration fees to be assessed for their charging units by the Department, and to lessen confusion within the industry.

CPS Energy Comments

Comment: CPS Energy filed comments raising questions on the proposed rules including: (1) when is a charging unit considered in "operation" under §96.14 and subject to the proposed rule requirements; (2) whether EVSE installed prior to March 1, 2025 needs to certify the installation were conducted by a licensed electrical contractor and within manufacturer's specifications, as noted in §96.21; (3) whether EVSE installed prior to March 1, 2025 will be required to have consumer and complaint notices on its display or the digital network, and consumer receipts under §96.70; (4) whether §96.70 and §96.83 were duplicative; and (5) would EVSE installed prior to March 1, 2025 be required to adhere to NIST requirements on receipts and calibration standards.

Department Response: In response to question (1), the Department amended §96.14(a) to clarify that a charging unit is considered to be "in operation" once it is activated as part of the provider's digital network as defined by §96.10(5). Thus, once a charging unit is enabled to work by the provider through the provider's digital network as a part of a commercial transaction to charge an electric vehicle, it is subject to the requirements of the rule chapter unless exempted.

The Department notes in regard to question (2) that EVSE installed prior to March 1, 2025, is not subject to the requirement that it be registered with a statement affirming that the charging unit was installed and operates in accordance with Occupations Code, Chapter 1305. Section 96.21(a)(2) was amended to include the language "for charging units installed on or after March 1, 2025," to address CPS Energy's comment and clarify this exemption.

Addressing question (3) about whether legacy equipment will be required to have consumer and complaint notices on its display or the digital network, and consumer receipts, the Department notes that under §96.14(a), EVSE installed prior to March

1, 2025, is subject to exemption to operational compliance until January 1, 2030.

In response to question (4), the Department disagrees that §96.70(a) and (b) are duplicative with §96.83(c)(1) and (c)(2). Section 96.70(a) and (b) describes the specific information that must be a part of the customer notice. Section 96.83 simply references back to §96.70. The Department made no change to the proposed rules as a response to this comment.

Addressing CPS Energy question (5) about whether receipt and calibration standards in §96.83(d) would apply to legacy equipment, the Department again notes that any EVSE installed prior to March 1, 2025, would not be subject to operational compliance requirements until January 1, 2030.

NEMA Comments

Comment: NEMA, individually, filed comments raising concerns on the proposed rules including: (1) recommending at §96.74 that the proposed rules amend the recordkeeping requirements to focus on the preservation and production of records by the provider that directly affect the metering functions for the charging unit; and (2) recommending that a one year phase-in period be provided for complying with the fee policy and disclosures in §96.83 to allow for software development, and suggests consideration for a reduction in detail of information required under the proposed rule, and if a link to TDLR consumer complaint information would be a sufficient alternative.

Department Response: The Department disagrees with NEMA's issue (1) in its comments to amend §96.74 to have the proposed rule focus recordkeeping requirements on document preservation relating to the EVSE metering functions. The Department contends that in order to properly administer this program, it must be able to have access to information related to a registrant's regulated activities. The proposed rule mandates that a provider maintain documents sufficient to allow the Department to adequately assess the provider's compliance with applicable rule and law. Access to the information required by the proposed rule becomes particularly important if the Department receives a complaint. The Department made no change to the proposed rules as a response to this comment.

The Department agrees with NEMA's issue (2) in its comments to amend §96.83 to allow providers a one-year phase-in period to comply with the proposed rule fee policy and disclosure requirements to allow for software and firmware changes, and its recommendation to reduce required detail on disclosures and receipts required in the proposed rule. The proposed rule is derived from Occupations Code §2311.0304 and §2311.0305 and, therefore, required under state law. The requirements are rooted in SB 1001 and NIST Handbook 44. The Department notes that pre-March 1, 2025, EVSE are subject to temporary exemption to the requirements of this proposed rule section. On October 15, 2024, the Workgroup amended §96.83 and added a subsection (e) to allow EVSE providers that install charging units after March 1, 2025, additional time to make software and firmware changes. The deadline is extended for those units until March 1, 2026.

Private Interested Party Comments

Comment: One commenter filed comments raising concerns on the proposed rules including: (1) noting surveys that illustrate consumer dissatisfaction with EV charging station reliability and usability, and that an effective registration, inspection, disclosure and complaint resolution process was necessary for Texas EV drivers; (2) recommending the Department extend the operational compliance deadline to March 1, 2028 for currently installed charging stations; and (3) supporting the proposed rules related to complaint information and the consumer information sticker regulations at §96.70 and §96.71, and the recordkeeping requirements at §96.74.

Department Response: The Department agrees with the concerns raised by issue (1) about customer surveys measuring dissatisfaction regarding electric vehicle charging station reliability and usability. These two elements represent some of the most significant worries for vehicle owners affecting vehicle sales, and serve as an impediment to statewide infrastructure network deployment for providers. SB 1001 and 1732 were passed by the Legislature to assist providers and consumers to nurture a safe, innovative and robust charging infrastructure which, in turn, will assist the overall growth of the electric vehicle market as a whole. The Department made no change to the proposed rules as a response to this comment.

The Department agrees with the commenter on issue (2) that §96.14 should extend the operational compliance deadline for pre-March 1, 2025, installed charging units. The new date extends compliance to January 1, 2030. The Department amended §96.14(a) to reflect the theme of the commenter's recommendation.

The Department agrees with the commenter on issue (3) and thanks the commenter for its support. While the Department amended §96.70 and §96.71 to more closely comply with applicable law and to accommodate providers with additional time to replace missing or damaged consumer information stickers, there was no change to the recordkeeping requirements found in §96.74 as a result of this comment.

Walmart Comments

Comment: Walmart filed comments seeking amendment to the proposed rules including: (1) amending §96.74 to require a provider to only retain and tender EVSE records to the Department that are in its possession; (2) amending §96.90 to allow for a 60-day cure period prior to penalties being imposed; and (3) amending §96.100 to not require National Type Evaluation Program (NTEP) certification for registered EVSE in Texas with its adoption of NIST Handbook 44 and 130.

Department Response: The Department disagrees with issue (1) of Walmart's comments, which are similar to the comment raised by NEMA to §96.74. The Department contends that in order to properly administer this program, it must be able to have access to information related to a registrant's regulated activities. The proposed rule mandates that a provider maintain specific documents in designated subjects sufficient to allow the Department to adequately assess the provider's compliance with applicable rule and law. Access to the information required by the proposed rule becomes particularly important if the Department receives a complaint. The Department understands that if a record is beyond the care, custody or control of the registrant that it may not be tendered by a provider. However, the Department expects reasonable cooperation from registrants in performing the recordkeeping obligations imposed by the proposed rule. The Department made no change to the proposed rules as a response to this comment.

The Department disagrees with issue (2) of Walmart's comments regarding §96.90. The Department does not employ a "cure period" prior to penalties being imposed on a registrant in any of its programs. The Department has established administrative pro-

cedures, rules and laws that it follows when pursuing enforcement actions which are readily available in Occupations Code, Chapters 51 and 2311 and in the Texas Administrative Code. The Department will be establishing an enforcement plan for this program, which is commonly done with the participation of the public for final approval by the Commission. Providers will have an opportunity to provide input on the EVS enforcement plan and this idea can be considered at that point. The Department made no change to the proposed rules as a response to this comment.

The Department agrees with Walmart regarding issue (3) to not require National Type Evaluation Program (NTEP) certification for registered EVSE in Texas with the adoption of NIST Handbook 44 and 130 at this time. The Department in §96.21 and §96.23 have set specific registration prerequisites which include proper installation and operation in accordance with Occupations Code, Chapter 1305. The Department is not at this time requiring NTEP certification as a part of §96.100. The Department made no change to the proposed rules as a response to this comment.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6384). The public comment period closed on September 23, 2024. The Department received comments from two interested parties in response to the required summary of the proposed rules, which was posted on the Department's website and distributed on August 13, 2024, before the official publication of the proposed rules and the official start of the public comment period. The public comments are summarized below.

Comments in Response to the Posted Summary

Comment: Love's Travel Stops and Country Stores, Inc (Love's) filed a comment to the posted summary requesting an amendment seeking that a change in ownership noted in §96.21 be filed with the Department only as a notification and not a new registration application. The commenter is concerned that the application process could disrupt business activity.

Department Response: The Department disagrees with the comment as simple notification is insufficient, however, it recognizes that diverse ownership interests owning disproportionate shares can be characteristic of large business entities. To that end, the Department has amended §96.21(c) and added a provision that requires a new registration application to the Department only if there is a change in controlling provider.

Comment: TFFA filed a comment to the posted summary seeking a halt to the rulemaking process for 16 TAC Chapter 96 to allow the EVSE working group to have more time to express its concerns regarding the posted summary.

Department Response: The Department disagrees with this comment as there was no reasonable basis presented justifying a pause in the rulemaking process. Such an occurrence to the rulemaking would have prevented the Commission from adopting the proposed rules by the legislative deadline of December 1, 2024. The Department made no change to the proposed rules as a response to this comment.

COMMISSION ACTION

At its meeting on October 23, 2024, the Commission adopted the proposed rules with changes to Subchapter A, §96.10 and §96.14; Subchapter B, §§96.20 - 96.24, and 96.30; Subchapter C, §96.60; Subchapter D, §§96.70 - 96.72, and 96.74; Subchapter E, §96.80 and §96.83; and Subchapter G, §96.100 as published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§96.1, 96.10, 96.14

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 1305 and 2311, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are to be adopted is Senate Bills 1001 and 1732, 88th Legislature, Regular Session (2023).

§96.10. Definitions.

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

(1) Charging unit - has the same definition as electric vehicle supply equipment.

(2) Code - Texas Occupations Code, Chapter 2311, Electric Vehicle Supply Equipment, as added by Senate Bill 1001, 88th Legislature, Regular Session (2023), and Electric Vehicle Charging Stations, as added by Senate Bill 1732, 88th Legislature, Regular Session (2023).

(3) Commission - The Texas Commission of Licensing and Regulation.

(4) Department - The Texas Department of Licensing and Regulation.

(5) Digital network - an online-enabled application, website, or system offered or used by an electric vehicle supply provider that allows a user to initiate a commercial transaction to dispense electrical energy from electric vehicle supply equipment to an electric vehicle.

(6) Electric vehicle supply equipment (EVSE) - a device or equipment used to dispense electrical energy to an electric vehicle.

(7) Electric vehicle supply provider (provider) - an owner or operator of electric vehicle supply equipment that is available and accessible to the public to provide electrical energy through a commercial transaction.

(8) Legacy charger - an electric vehicle supply device defined in §2311.0207 of the Code.

(9) NIST - The National Institute of Standards and Technology, a non-regulatory federal agency under the United States Department of Commerce which certifies and provides standard reference materials used to perform instrument calibrations, verifies the accuracy of specific measurements, and supports the development of new measurement methods.

(10) Texas Electrical Safety and Licensing Act - Texas Occupations Code, Chapter 1305.

§96.14. Effective Dates for Electric Vehicle Supply Equipment Compliance.

(a) Except as provided in subsection (b), a charging unit installed in this state must be operated on the electric vehicle supply provider's digital network in compliance with manufacturer specifications, the Code, and this chapter:

(1) not later than January 1, 2030, if the charging unit is installed before March 1, 2025, or is a legacy charger; or

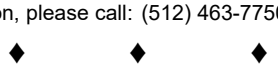
(2) when the charging unit begins operating on the provider's digital network if the charging unit is installed on or after March 1, 2025.

(b) Unless exempted by the Code or this chapter, any public charging unit installed after December 1, 2024, for commercial use, and funded by a public grant or state rebate program must be equipped with a charging connector or plug type that is widely compatible with as many types of electric vehicles as practicable. Providers are not required to comply with this subsection until January 1, 2030.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405445
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 23, 2024
For further information, please call: (512) 463-7750



SUBCHAPTER B. ELECTRIC VEHICLE SUPPLY EQUIPMENT REGISTRATION

16 TAC §§96.20 - 96.24, 96.30

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 1305 and 2311, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are to be adopted is Senate Bills 1001 and 1732, 88th Legislature, Regular Session (2023).

§96.20. Electric Vehicle Supply Equipment - Registration Required.

Unless exempted by Code or this chapter, an electric vehicle supply provider must register all electric vehicle supply equipment charging units in operation in this state with the department by March 1, 2025, before making it available for use on a digital network for a commercial transaction.

§96.21. Electric Vehicle Supply Equipment Registration Requirements.

(a) To register a charging unit of electric vehicle supply equipment at a new location, an electric vehicle supply equipment provider must submit:

(1) an application completed in a manner prescribed by the department;

(2) for charging units installed on or after March 1, 2025, a statement, affirmed by the provider that the charging unit was installed and operates in accordance with Occupations Code, Chapter 1305, and manufacturer specifications, and that the charging unit was in proper working order at the time of installation; and

(3) the fee required under §96.80.

(b) A certificate of registration is valid for one year from the date of issuance and must be renewed prior to its expiration.

(c) If a change in controlling provider takes place, the new provider must submit a new application for registration within 30 days of the change.

(d) A provider must report a change to its name, contact information, federal identification number, or social security number to the department within 30 days of the change. A change in the provider's federal identification number or social security number constitutes a change of business identity and requires a new registration application under this section.

§96.22. Electric Vehicle Supply Equipment Registration Renewal Requirements.

(a) To renew registration of a charging unit of electric vehicle supply equipment, an electric vehicle supply provider must submit:

(1) a completed renewal application in a manner prescribed by the department; and

(2) the fee required under §96.80.

(b) A provider is responsible for renewing electric vehicle supply equipment registration before the expiration date. Lack of receipt of a renewal notice from the department shall not excuse failure to file for renewal or late renewal.

(c) If a provider adds additional charging units to a location after its previous registration but less than 90 days prior to that renewal, the provider will not be charged an additional fee for the newly installed charging units.

(d) A provider must include an accurate count of all active charging units with its submission of the renewal application and required fee to the department.

§96.23. Electric Vehicle Supply Equipment Registration Changes.

(a) If the number of registered charging units increases at an existing location, prior to operation of the added devices, the electric vehicle supply provider must submit:

(1) notice in a manner required by the department;

(2) for charging units installed on or after March 1, 2025, a statement, affirmed by the provider that the charging unit was installed and operates in accordance with Occupations Code, Chapter 1305, and manufacturer specifications, and that the charging unit was in proper working order at the time of installation; and

(3) the fee required under §96.80.

(b) If a provider removes or decommissions a charging unit or units at a location, the provider must provide notice in a manner prescribed by the department.

§96.24. Certificate of Registration.

An electric vehicle supply provider must make available a copy of the current certificate of registration to a member of the public upon request. The provider may refer the requestor to an electronic link to its digital network for a copy of the certificate of registration, or provide a copy of the certificate to the requestor's email address or physical address, if the requestor has no electronic mail.

§96.30. Exemptions.

(a) The department may exempt an electric vehicle supply equipment provider from a requirement established by this chapter or the Code if it determines that imposing or enforcing the requirement:

(1) is not cost-effective for the department;

(2) is not feasible with current resources or standards; or

(3) will not substantially benefit or protect consumers.

(b) This chapter does not apply to electric vehicle supply equipment that is:

(1) installed in or adjacent to a private residence for non-commercial use;

(2) provided for the exclusive use of an individual, or a group of individuals, including employees, tenants, visitors, or residents of a multiunit housing or office development; or

(3) provided by a business for use at no charge.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405446
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 23, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

SUBCHAPTER C. INSPECTIONS AND INVESTIGATIONS

16 TAC §96.60

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 1305 and 2311, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are to be adopted is Senate Bills 1001 and 1732, 88th Legislature, Regular Session (2023).

§96.60. EVSE Inspections and Investigations.

(a) The department, or its authorized representative, shall be permitted to inspect and test all non-exempt EVSE operating at any location in Texas in accordance with the Code, Texas Occupations Code, Chapter 51, the inspection, and investigation rules under 16 Texas Administrative Code, Chapter 60, Subchapter H, this chapter, and all applicable state and federal laws and regulations.

(b) The department will not begin conducting on-site inspections until March 1, 2026, except for investigations conducted in response to complaints filed with the department.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405447
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 23, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

SUBCHAPTER D. RESPONSIBILITIES OF THE PROVIDER

16 TAC §§96.70 - 96.72, 96.74

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 1305 and 2311, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are to be adopted is Senate Bills 1001 and 1732, 88th Legislature, Regular Session (2023).

§96.70. Notification of Department Jurisdiction and Complaint Information.

(a) The electric vehicle supply provider must show a notice on the charging unit display or its digital network that the Texas Department of Licensing and Regulation regulates electric vehicle supply equipment.

(b) Consumers and providers must be notified by the provider of the name, e-mail address, website address, mailing address, and telephone number of the department for the purpose of directing complaints to the department regarding the Electric Vehicle Charging Program. The notification must appear on the charging unit's visual display or the provider's digital network.

(c) The notice described in subsection (b) must contain the following language: Unresolved complaints may be forwarded to the Texas Department of Licensing and Regulation, Electric Vehicle Charging Program, P.O. Box 12157, Austin, Texas 78711, or by

telephone (512) 463-6599 or (800) 803-9202, TDD (800) 735-2989, or https://www.tdlr.texas.gov/complaints.

§96.71. Consumer Information Sticker.

(a) An electric vehicle supply provider must obtain a department issued consumer information sticker containing the department's contact information shown in §96.70(c) and place the sticker on the front of each charging unit operating at the provider's registered location.

(b) A consumer information sticker must not be placed in a manner that affects the accuracy, readability, or lawful operation of a device.

(c) If any part of the information on the sticker affixed to the charging unit is no longer fully legible and in plain sight of the consumer, the provider must replace the sticker within 60 days after the date the provider discovered the condition.

§96.72. Damaged Electric Vehicle Supply Equipment.

(a) Any damaged charging unit that poses a safety risk to the public must be removed from service by the electric vehicle supply provider in a manner:

(1) that prevents the use of the damaged charging unit by the public; and

(2) removes the damaged charging unit from the provider's digital network listing of available charging units.

(b) A provider is not required to physically relocate electric vehicle supply equipment from its current location while under repair.

§96.74. Recordkeeping Requirements.

(a) Each electric vehicle supply provider that owns or operates electrical vehicle supply equipment available and accessible to the public for electric vehicle commercial charging transactions must maintain and preserve all documents related to the installation, maintenance, inspection, and calibration of electric vehicle supply equipment for a period of three (3) years.

(b) All records applicable to this section must be provided to or made available for inspection or investigation to the department upon request in accordance with §96.60.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405448
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 23, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

SUBCHAPTER E. FEES

16 TAC §96.80, §96.83

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 1305 and 2311, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are to be adopted is Senate Bills 1001 and 1732, 88th Legislature, Regular Session (2023).

§96.80. EVSE Registration Fees.

(a) Initial Registration for Newly Registered Charging Units and Additional Units - $30 per electric vehicle charging port.

(b) Renewal of Registration - $25 per electric vehicle charging port.

(c) Consumer Information Sticker - $1 per sticker.

(d) A duplicate/replacement fee for any registration issued under this chapter is $25.

(e) All fees paid to the department are non-refundable.

(f) Late renewal fees for registration issued under this chapter are provided under 16 TAC §60.83 (relating to Late Renewal Fees).

(g) A dishonored/returned check or payment fee is the fee prescribed under 16 TAC §60.82 (relating to Dishonored Payment Device).

§96.83. Fee Policy and Disclosures.

(a) Disclosure Requirements. An electric vehicle supply provider must disclose the following on the EVSE display or on the provider's digital network:

(1) the fee calculation method or methods; and

(2) all applicable surcharges.

(b) Prior to charging, the provider must disclose the following to the user:

(1) the rate the user will be charged at the time of the transaction based on the available fee calculation method or methods; and

(2) a list of applicable surcharges.

(c) A provider must show a notice to consumers on the EVSE display or on the provider's digital network that:

(1) states that the department regulates electric vehicle supply equipment; and

(2) provides information on filing a complaint with the department about the electric vehicle supply equipment as described in §96.70.

(d) Receipts. Upon completion of the commercial transaction for electric vehicle charging, the provider must transmit a summary of the transaction to the user that includes the requirements of §2311.0304 and §2311.0305 of the Code, and the requirements contained in the most recent version of NIST Handbook 44, Section 3.40, and NIST Handbook 130, Section 2.34.

(e) This section takes effect on March 1, 2026, for charging units installed on or after March 1, 2025.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405449
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 23, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

SUBCHAPTER F. ENFORCEMENT PROVISIONS

16 TAC §96.90, §96.91

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 1305 and 2311, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are to be adopted is Senate Bills 1001 and 1732, 88th Legislature, Regular Session (2023).

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405503
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 23, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

SUBCHAPTER G. GENERAL TECHNICAL REQUIREMENTS

16 TAC §96.100

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 1305 and 2311, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are to be adopted is Senate Bills 1001 and 1732, 88th Legislature, Regular Session (2023).

§96.100. Adoption by Reference.

In accordance with the Code, the department adopts the requirements of the most recent version of the following publications and rules for the purpose of administering and enforcing this chapter:

(1) NIST Handbook 44, Section 3.40, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices."

(2) NIST Handbook 130, Section 2.34, "Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality."

(3) Chapter 6, Special Equipment, Article 625: Electric Vehicle Power Transfer System, National Electric Code.

(4) 16 Texas Administration Code, Chapter 68, Subchapter I; Texas Government Code, Chapter 469; Texas Accessibility Standards (eff 3.15.12).

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405450
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 23, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

CHAPTER 130. PODIATRIC MEDICINE PROGRAM

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 130, Subchapter A, §130.1 and §130.2; Subchapter B, §§130.20, 130.23, 130.27, and 130.28; Subchapter C, §130.30 and §130.32; Subchapter D, §§130.40 - 130.42; Subchapter E, §§130.50, 130.51, 130.54, 130.55, 130.58, and 130.59; Subchapter F, §130.60; and Subchapter G, §§130.70, 130.72, and 130.73; adopts new rules at Subchapter B, §§130.21, 130.22, and 130.24; Subchapter C, §§130.31 and 130.34 - 130.36; and Subchapter D, §§130.43 - 130.48; and adopts the repeal of existing rules at Subchapter B, §§130.21, 130.22, and 130.24; Subchapter C, §130.31; Subchapter D, §§130.43 - 130.49; and Subchapter E, §130.52 and §130.53, regarding the Podiatric Medicine Program, without changes to the proposed text as published in the June 21, 2024, issue of the *Texas Register* (49 TexReg 4537). These rules will not be republished.

The Commission also adopts a new rule at 16 TAC Chapter 130, Subchapter C, §130.37; and amendments to an existing rule at

Subchapter E, §130.57, regarding the Podiatric Medicine Program, with changes to the proposed text as published in the June 21, 2024, issue of the *Texas Register* (49 TexReg 4537). These rules will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 130, implement Texas Occupations Code, Chapter 202, Podiatrists; and Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (Department). Specific provisions within this rule chapter also implement the statutory requirements under Texas Occupations Code, Chapters 53, 108, 112, 116, and 601.

Four-Year Rule Review

The adopted rules are necessary to implement changes recommended as a result of the required four-year rule review conducted under Texas Government Code §2001.039. The Department's Notice of Intent to Review 16 TAC Chapter 130, was published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5598). At its meeting on October 18, 2022, the Commission readopted the rule chapter in its entirety without changes. The readoption notice was published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 988).

In response to the Notice of Intent to Review that was published, the Department received one public comment from one interested party regarding Chapter 130. The comment questioned whether there is a fee for an inactive status license. The comment has been addressed in the adopted rules by explaining that there is not a fee for an inactive license.

The adopted rules also include changes recommended by Department staff during the rule review process to reorganize and streamline the entire chapter. These changes include consolidating the existing rules; reorganizing provisions by subject matter; expanding existing Subchapter C to include multiple license types; eliminating duplicative provisions; and using plain talk language to improve clarity.

In addition, the adopted rules include changes recommended by the Education and Examination Workgroup of the Podiatric Medical Examiners Advisory Board to increase the number of training hours required for Podiatric Medical Radiological Technicians. The updated training requirements apply to persons who apply for the Podiatric Medical Radiological Technician (PMRT) registration on or after the effective date of the adopted rules. The training requirements are prerequisites to applying for the PMRT registration, and the updated training requirements apply prospectively. Persons who applied for or obtained the PMRT registration before the effective date of the adopted rules do not have to obtain additional training hours.

Changes in License Terms

The adopted rules also change the license terms for the Podiatric Medical Radiological Technician Registration, the Hyperbaric Oxygen Certificate, and the Nitrous Oxide/Oxygen Inhalation Conscious Sedation Registration. Beginning January 1, 2025, all three license types change from one-year to two-year terms, and the application and renewal fees have been updated to reflect this change. Existing licenses renewed by the Department will be valid for one year if renewed before January 1, 2025, or for two years if renewed on or after January 1, 2025.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions.

The adopted rules amend §130.1, Authority and Applicability. The adopted rules change the name of the section from "Authority" to "Authority and Applicability." The adopted rules amend subsection (a) to identify other statutes that are implemented by the rules in Chapter 130. The adopted rules also add new subsection (b) to explain that the Chapters 60 and 100 rules also apply to the Podiatry program.

The adopted rules amend §130.2, Definitions. The adopted rules update the definition of "Podiatric Medical Radiological Technician" to clarify that the term includes a Podiatry X-ray Machine Operator. The adopted rules update the definition of "Practitioner" to clarify that the term is used interchangeably with "podiatrist" and "podiatric physician." The adopted rules also remove unnecessary language from the definition of "Act" and add clarifying language to the definition of "License."

Subchapter B. Advisory Board.

The adopted rules amend §130.20, Board Membership. The adopted rules streamline this section by referring to the Occupations Code instead of repeating it verbatim.

The adopted rules repeal existing §130.21, Public Member Eligibility. This section is replaced with new §130.21, Public Member Eligibility.

The adopted rules add new §130.21, Public Member Eligibility. The adopted rules streamline this section by referring to the Occupations Code instead of repeating it verbatim.

The adopted rules repeal existing §130.22, Membership and Employee Restrictions. This section is replaced with new §130.22, Membership and Employee Restrictions.

The adopted rules add new §130.22, Membership and Employee Restrictions. The adopted rules streamline this section by referring to the Occupations Code instead of repeating it verbatim.

The adopted rules amend §130.23, Terms; Vacancies. The adopted rules streamline this section by referring to the Occupations Code instead of repeating it verbatim.

The adopted rules repeal existing §130.24, Grounds for Removal. This section is replaced with new §130.24, Grounds for Removal.

The adopted rules add new §130.24, Grounds for Removal. The adopted rules streamline this section by referring to the Occupations Code instead of repeating it verbatim.

The adopted rules amend §130.27, Advisory Board Meetings and Duties of Department. The adopted rules merge subsection (i) into subsection (g).

The adopted rules amend §130.28, Training. The adopted rules streamline this section by referring to the Occupations Code instead of repeating it verbatim.

Subchapter C. Temporary Residency and Other License Types.

The adopted rules amend Subchapter C, Temporary Residency and Other License Types. The adopted rules rename Subchapter C from "Temporary Residency" to "Temporary Residency and Other License Types," which now includes requirements for a Limited Faculty License, for a Podiatric Medical Radiological Technician Registration, for a Hyperbaric Oxygen Certificate, and for a Nitrous Oxide/Oxygen Inhalation Conscious Sedation Registration.

The adopted rules amend §130.30, Temporary Residency License--General Requirements and Application. The adopted

rules remove the word "successfully" and replace the word "shall" with "must."

The adopted rules repeal existing §130.31, Temporary Residency License--Residency Requirements; Program Responsibilities; License Term. This section is replaced with new §130.31, Temporary Residency License--License Term; Residency Requirements; Program Responsibilities.

The adopted rules add new §130.31, Temporary Residency License--License Term; Residency Requirements; Program Responsibilities. The adopted rules rename the section from "Temporary Residency License--Residency Requirements; Program Responsibilities; License Term" to "Temporary Residency License--License Term; Residency Requirements; Program Responsibilities." The adopted rules rearrange the order of the section to increase readability.

The adopted rules amend §130.32, Temporary Residency License--Final Year of Residency. The adopted rules streamline the section to increase readability, rearrange the order of the section, and establish requirements a resident must follow in their final year of residency.

The adopted rules add new §130.34, Limited Faculty License--Requirements; License Term. The adopted rules create a standalone section for a limited faculty license by relocating existing §130.40(b) and §130.42(d) to this section. The adopted rules explain the requirements for procuring a limited faculty license and establish that the term of this license is up to two years. The adopted rules also establish when a limited faculty license will be terminated, and that termination does not preclude a podiatrist from applying for or holding another license type issued under this subchapter.

The adopted rules add new §130.35, Podiatric Medical Radiological Technicians. The adopted rules relocate existing §130.53 to this section and increase the number of required training hours from 20 hours to 45 hours for podiatric medical radiological technicians. The adopted rules update the didactic and clinical training requirements; increase the number of x-rays to be performed; and reflect the actual time needed to complete the training requirements. The updated training requirements apply to persons who apply for the Podiatric Medical Radiological Technician (PMRT) registration on or after the effective date of the adopted rules. The training requirements are prerequisites to applying for the PMRT registration, and the updated training requirements apply prospectively. Persons who applied for or obtained the PMRT registration before the effective date of the adopted rules do not have to obtain additional training hours.

The adopted rules under new §130.35 also change the length of the registration term from one year to two years. A registration is valid for one year if the registration was issued before January 1, 2025, or two years if the registration was issued on or after January 1, 2025. Similarly, the adopted rules establish that a registration renewed by the department is valid for one year if the renewal was issued before January 1, 2025, and must be renewed annually, or two years if the renewal was issued on or after January 1, 2025, and must be renewed every two years. The adopted rules explain the process for completing a renewal application, establish that human trafficking prevention training is required for each renewal, and explain when the department may refuse to issue or renew a registration.

The adopted rules add new §130.36, Hyperbaric Oxygen Certificate--Application Requirements and Guidelines. The adopted rules relocate existing §130.47 to this section and change the length of the certificate term from one year to two years. A certificate is valid for one year if the certificate was issued before January 1, 2025, or two years if the certificate was issued on or after January 1, 2025. Similarly, the adopted rules establish that a certificate renewed by the Department is valid for one year if the renewal was issued before January 1, 2025, and must be renewed annually, or two years if the renewal was issued on or after January 1, 2025, and must be renewed every two years.

The adopted rules add new §130.37, Nitrous Oxide/Oxygen Inhalation Conscious Sedation-Registration Requirements, Guidelines, and Direct Supervision. The adopted rules relocate existing §130.48 to this section and change the length of the certificate term from one year to two years. A registration is valid for one year if the registration was issued before January 1, 2025, or two years if the registration was issued on or after January 1, 2025. Similarly, the adopted rules establish that a registration renewed by the Department is valid for one year if the renewal was issued before January 1, 2025, and must be renewed annually, or two years if the renewal was issued on or after January 1, 2025, and must be renewed every two years. In response to a public comment, the adopted rules add the Health and Safety Institute as a sponsor of a basic and advanced CPR program that can be utilized by a practitioner. The Health and Safety Institute is a recognized sponsor in addition to the American Heart Association and the American Red Cross. All three entities are listed in the adopted rules.

Subchapter D. Doctor of Podiatric Medicine.

The adopted rules amend §130.40, Doctor of Podiatric Medicine License--General Requirements and Application; Limited Faculty License. The adopted rules change the name of the section from "Doctor of Podiatric Medicine License--General Requirements and Applications; Limited Faculty License" to "Doctor of Podiatric Medicine License--General Requirements and Application." The adopted rules relocate the limited faculty license language to new §130.34 and streamline the remaining language to make it easier to read.

The adopted rules amend §130.41, Doctor of Podiatric Medicine License--Jurisprudence Exam. The adopted rules replace the word "shall" with "must."

The adopted rules amend §130.42, Doctor of Podiatric Medicine License--Term; Renewal. The adopted rules remove language relating to a limited faculty license and relocate it to new §130.34. The adopted rules also remove outdated language and add clarifying language.

The adopted rules repeal existing §130.43, Doctor of Podiatric Medicine License--Provisional License. This section is replaced with new §130.43, Doctor of Podiatric Medicine License--Provisional License.

The adopted rules add new §130.43, Doctor of Podiatric Medicine License--Provisional License. The adopted rules remove duplicative language located elsewhere in the chapter and streamline the remaining language to make it easier to read.

The adopted rules repeal existing §130.44, Continuing Medical Education--General Requirements. This section is replaced with new §130.44, Continuing Medical Education--General Requirements.

The adopted rules add new §130.44, Continuing Medical Education--General Requirements. The adopted rules streamline

the section and relocate the continuing medical education audit process to new §130.45.

The adopted rules repeal §130.45, Continuing Medical Education--Exceptions and Allowances; Approval of Hours. The adopted rules relocate the repealed provisions to new §130.46.

The adopted rules add new §130.45, Continuing Medical Education--Audit Process. The adopted rules relocate audit information from current §130.44 and establish that the Department will select random license holders to ensure compliance with CME hours.

The adopted rules repeal §130.46, Inactive Status. The adopted rules relocate the repealed provisions to new §130.47.

The adopted rules add new §130.46, Continuing Medical Education--Exceptions and Allowances; Approval of Hours. The adopted rules relocate the requirements of existing §130.45 to this new section.

The adopted rules repeal §130.47, Hyperbaric Oxygen Certificate--Application Requirements and Guidelines. The adopted rules relocate the repealed provisions to new §130.36.

The adopted rules add new §130.47, Inactive Status. The adopted rules relocate the requirements of existing §130.46 to this new section and establish that a practitioner may place a license on inactive status at no cost.

The adopted rules repeal §130.48, Nitrous Oxide/Oxygen Inhalation Conscious Sedation--Registration Requirements, Guidelines, and Direct Supervision. The adopted rules relocate the repealed provisions to new §130.37.

The adopted rules add new §130.48, Voluntary Charity Care Status. The adopted rules relocate the requirements of existing §130.49 to this new section.

The adopted rules repeal §130.49, Voluntary Charity Care Status. The adopted rules relocate the repealed provisions to new §130.48.

Subchapter E. Practitioner Responsibilities and Code of Ethics.

The adopted rules amend §130.50, Practitioner Identification; Professional Corporations or Associations. The adopted rules remove redundant and unnecessary language regarding the purpose of this section and streamline the rest of the section to make it easier to read.

The adopted rules amend §130.51, Advertising. The adopted rules streamline the section and remove language relating to certifying boards that are not recognized by the Council of Podiatric Medical Education of the American Podiatric Medical Association.

The adopted rules repeal §130.52, Medical Offices, because the Department does not regulate medical offices, but individual licensees.

The adopted rules repeal §130.53, Podiatric Medical Radiological Technicians. The adopted rules relocate the repealed provisions to new §130.35.

The adopted rules amend §130.54, Records. The adopted rules streamline the section to make it easier to read.

The adopted rules amend §130.55, Practitioner Code of Ethics. The adopted rules add new subsection (g) to establish that treatment must be consistent with best practices and standards observed in the podiatry community.

The adopted rules amend §130.57, Sexual Misconduct. The adopted rules streamline the section to make it easier to read. In response to a public comment, the adopted rules update the references in this section to use the terminology "podiatric physician" or "practitioner."

The adopted rules amend §130.58, Standards for Prescribing Controlled Substances and Dangerous Drugs. The adopted rules streamline the section to make it easier to read.

The adopted rules amend §130.59, Opioid Prescription Limits and Required Electronic Prescribing. The adopted rules streamline the section to make it easier to read.

Subchapter F. Fees.

The adopted rules amend §130.60, Fees. The adopted rules update the fees for the hyperbaric oxygen certificate, the nitrous oxide registration, and the podiatric medical radiological technician registration, because the certificate and registration terms are changed from one year to two years. The fees are $25 if the certificate or registration is issued or renewed before January 1, 2025, or $50 if the certificate or registration is issued or renewed on or after January 1, 2025. The adopted rules add a $0 fee for an Inactive Status License (Initial and Renewal). The adopted rules also make clean-up changes to the cross-referenced fees under Chapter 60.

Subchapter G. Enforcement.

The adopted rules amend §130.70, Complaints and Claims. The adopted rules replace the word "shall" with "must" and streamline the section to make it easier to read.

The adopted rules amend §130.72, Administrative Penalties and Sanctions. The adopted rules clarify that a person or entity who violates or attempts to violate the Occupations Code, this chapter, or any rule of the commission may face proceedings against them.

The adopted rules amend §130.73, Conditions of Suspension of License. The adopted rules streamline the section to make it easier to read.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the June 21, 2024, issue of the *Texas Register* (49 TexReg 4537). The public comment period closed on July 22, 2024. The Department received comments from one interested party in response to the required summary of the proposed rules, which was posted on the Department's website and distributed on June 10, 2024, before the official publication of the proposed rules and the official start of the public comment period. The Department received comments from two interested parties on the published proposed rules during the official public comment period. The public comments are summarized below.

Comments in Response to the Posted Summary

Comment: One interested party submitted a comment in response to the posted summary of the proposed rules, not the published proposed rules. The interested party disagreed with the increase in the number of training hours for Podiatric Medical Radiological Technicians and stated that the additional training does not seem to be warranted.

Department Response: The Department disagrees with this comment. The proposed rules under §130.35 increase the number of training hours from 20 hours to 45 hours for the

Podiatric Medical Radiological Technicians, as recommended by the Education and Examination Workgroup of the Podiatric Medical Examiners Advisory Board. This change is necessary as a result of moving to an online course; expanding the clinical training requirements; expanding the online course and student manual to add digital content as the profession shifts from film to digital x-rays; and increasing the number of x-rays performed in a clinical setting from 60 x-rays to 90 x-rays. The change in the number of training hours also reflects the actual time needed to complete these requirements and ensures that students receive credit for the hours they complete. The Podiatric Medical Examiners Advisory Board agreed that the proposed changes are necessary. The Department did not make any changes to the proposed rules as a result of this comment.

Comments in Response to the Published Proposed Rules

Comment: The Health and Safety Institute (HSI) submitted a comment on proposed rule §130.37 and requested that its organization be added as a sponsor of a basic and advanced CPR program that can be utilized by a practitioner. The proposed rules only list the American Heart Association and the American Red Cross as sponsors. HSI provided information on why it should be included in the proposed rules as a third sponsor, including: (1) HSI, along with the American Red Cross (ARC) and American Heart Association (AHA), are the largest providers of CPR training in the United States; (2) HSI's training programs are equivalent to those of ARC and AHA; (3) HSI, like ARC and AHA, is nationally accredited by the Commission on Accreditation of Pre-Hospital Continuing Education (CAPCE); (4) HSI's resuscitation training programs are currently in use by, and accepted, approved, or recognized by, thousands of employers, state agencies, licensing boards, professional associations, and other organizations nationwide; and (5) the training business units of HSI, AHA, and ARC are similar. HSI commented that similarly situated resuscitation training programs should be treated the same and that including HSI will encourage competition while protecting the public health and safety.

Department Response: The Department agrees with this comment. This comment was reviewed by the Standard of Care Workgroup of the Podiatric Medical Examiners Advisory Board. The workgroup found the Health and Safety Institute (HSI) training to be equivalent to the CPR training of the American Heart Association and the American Red Cross. The workgroup had no objection to HSI being added as another CPR sponsor in the rules. The Department made changes to §130.37 to include the Health and Safety Institute as a result of this comment.

Comment: The Texas Medical Association (TMA) submitted a comment on the proposed rules addressing three issues. First, TMA requested to amend the proposed rules by reinserting the language under §130.50(c), regarding the purpose of the professional designations, which was removed. Second, TMA strongly recommended that the podiatry rules under §130.50(a) and (b) be amended to only include the identifiers listed for podiatrists under the Healing Art Identification Act, Texas Occupations Code, Chapter 104. Third, TMA strongly recommended that references to podiatrists as "physicians" be removed from the rules under Chapter 130.

Department Response: The Department agrees with part of this comment but disagrees with other parts of the comment.

In response to the comment about reinserting the deleted language under §130.50(c), regarding the purpose of the section and a professional designation, the Department with the advice of the Podiatric Medical Examiners Advisory Board disagrees with the comment. The provision under former subsection (c) was removed from the proposed rules, since it is redundant with the existing provisions under subsections (a) and (b). These two subsections address the specific professional identifiers and professional designations that must be used by the practitioner. It is unnecessary to reinsert former subsection (c) into the proposed rules. The Department declined to make changes to §130.50 in response to this comment.

In response to the comment that any professional identifications that are not listed in the Healing Art Identification Act should be removed from the podiatry rules, the Department declines to make those changes at this time. Removing professional identifications used by podiatrists at this stage of the rulemaking process is a substantive and significant change that would require notice and opportunity for public comment and is beyond the scope of this rulemaking. The Department recommended that this part of the comment be referred to an advisory board workgroup for further review, research, and consideration about whether this type of change should be undertaken in a future rulemaking. The Department did not make any changes to the proposed rules in response to this comment.

In response to the comment about the use of the word "physician" in the proposed rules, the terms "podiatrist," "podiatric physician," and "practitioner" are used interchangeably in the proposed rules, as explained in the definition of "practitioner" under §130.2, Definitions. To the extent there are references to "physician" only, the Department agrees that the references in the rules should be to "podiatric physician." The Department made changes to §130.57 to update the references and to use the terminology "podiatric physician" or "practitioner" in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Podiatric Medical Examiners Advisory Board met on August 19, 2024, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to §130.37 and §130.57 made in response to the public comments, as explained in the Section-by-Section Summary.

At its meeting on October 23, 2024, the Commission adopted the proposed rules with changes as recommended by the Advisory Board. In response to questions from the Commission regarding the updated training requirements for the Podiatric Medical Radiological Technician registration, the Department has added clarifying language in the Explanation and Justification section and in the Section-by-Section Summary under new §130.35 regarding the applicability of the updated training requirements. No changes were made to the adopted rule text under new §130.35.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §130.1, §130.2

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405431
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: June 21, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

SUBCHAPTER B. ADVISORY BOARD

16 TAC §§130.20 - 130.24, 130.27, 130.28

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405432
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: June 21, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

16 TAC §§130.21, 130.22, 130.24

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted repeals.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405439
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: June 21, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

SUBCHAPTER C. TEMPORARY RESIDENCY AND OTHER LICENSE TYPES

16 TAC §§130.30 - 130.32, 130.34 - 130.37

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted rules.

§130.37. Nitrous Oxide/Oxygen Inhalation Conscious Sedation--Registration Requirements, Guidelines, and Direct Supervision.

(a) As used in this section, conscious sedation means the production of an altered level of consciousness in a patient by pharmacological or non-pharmacological methods.

(b) Conscious sedation of a patient by nitrous oxide is the administration by inhalation of a combination of nitrous oxide and oxygen producing a minimally depressed level of consciousness while retaining the patient's ability to maintain a patent airway independently and continuously, and to respond appropriately to physical stimulation and verbal command.

(c) Conscious sedation of a patient by nitrous oxide must be induced, maintained, and continuously supervised only by the practitioner or by the assistant under continuous direct supervision of the practitioner. The nitrous oxide must not be flowing if the practitioner is not present in the room.

(d) To use nitrous oxide/oxygen inhalation conscious sedation on a patient for podiatric medical purposes in the State of Texas, the practitioner must first register with the department and provide the following:

(1) proof that the practitioner has completed a didactic and clinical course which includes aspects of monitoring patients and the hands-on use of the gas machine. The didactic and clinical course must:

(A) be directed by a licensed and certified M.D., D.O., D.D.S., or D.P.M., in the State of Texas with advanced educational and

clinical experience with routine administration of nitrous oxide/oxygen inhalation conscious sedation;

(B) include a minimum of four hours didactic work in pharmacodynamics of nitrous oxide/oxygen inhalation conscious sedation; and

(C) include a minimum of six hours of clinical experience under personal supervision;

(2) proof that the practitioner has completed a CME course in nitrous oxide/oxygen inhalation conscious sedation that includes training in the prevention and management of emergencies in the podiatric medical practice; and

(3) proof that the practitioner has completed a basic and advanced CPR program sponsored by the American Heart Association, the American Red Cross, or the Health and Safety Institute. Proof of current certification is the responsibility of the podiatric physician. Additionally, the D.P.M. must provide documented training or emergency procedures to office personnel.

(e) The department may, at any time and without prior notification, require an on-site office evaluation to determine that all standards regarding nitrous oxide/oxygen inhalation conscious sedation are being met.

(f) Registration Term and Renewal. A registration is valid for one or two years.

(1) A registration is valid for one year if the registration was issued before January 1, 2025, or two years if the registration was issued on or after January 1, 2025.

(2) A registration renewed by the department is valid for one year if the registration was renewed before January 1, 2025, and must be renewed annually, or two years if the registration was renewed on or after January 1, 2025, and must be renewed every two years. A registration renewal is completed by submitting a registration renewal application in a form and manner prescribed by the department and paying the required fee under §130.60.

(3) A registration will not be renewed if a current certificate of inspection of the gas machine is not filed with the department.

(g) A registrant must inform the department within 10 business days of any address change.

(h) When a registration is issued, it must be clearly displayed in the office.

(i) All office personnel who assist the practitioner in the nitrous oxide/oxygen inhalation conscious sedation procedure must:

(1) be trained in basic life support;

(2) have annual reviews of emergency protocols, contents, and use of emergency equipment; and

(3) have annual reviews of basic CPR.

(j) Documentation verifying these annual reviews must be maintained in the office of the practitioner who employs the personnel and must be provided to the department if requested.

(k) The practitioner must evaluate and document in the patient's medical record, prior to the nitrous oxide/oxygen inhalation conscious sedation procedure, the patient's health and medical status to ensure that nitrous oxide/oxygen inhalation conscious sedation is medically appropriate.

(l) Equipment used must meet the following safety criteria: The gas machine must have:

(1) 30% minimum oxygen flow;

(2) Glass flow tubes;

(3) Nitrous oxide fail-safe (will not flow without oxygen);

(4) Automatic room air intake in the event the bag is empty;

(5) Non-rebreathing check valve;

(6) Oxygen flush; and

(7) Auxiliary oxygen outlet with one demand valve resuscitation assembly per office.

(m) All practitioners administering nitrous oxide must have:

(1) a functioning vacuum system;

(2) a scavenger system;

(3) appropriate emergency drugs and equipment for resuscitation;

(4) a manifold to provide for protection against overpressure. The manifold must be equipped with an audible alarm system. The machine must have a service check on a three-year basis, a copy of which must be filed with the department; and

(5) a method of locking the nitrous oxide tanks after business hours.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405433
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: June 21, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

SUBCHAPTER C. TEMPORARY RESIDENCY

16 TAC §130.31

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted repeals.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405440
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: June 21, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

SUBCHAPTER D. DOCTOR OF PODIATRIC MEDICINE

16 TAC §§130.40 - 130.48

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405435
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: June 21, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

16 TAC §§130.43 - 130.49

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted repeals.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405441
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: June 21, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

SUBCHAPTER E. PRACTITIONER RESPONSIBILITIES AND CODE OF ETHICS

16 TAC §§130.50, 130.51, 130.54, 130.55, 130.57 - 130.59

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted rules.

§130.57. Sexual Misconduct.

(a) Sexual misconduct is behavior that exploits the podiatric physician-patient or podiatric physician-staff member relationship in a sexual way. This behavior is non-diagnostic and non-therapeutic, may be verbal or physical, and may include expressions of thoughts and feelings or gestures that are sexual or that reasonably may be construed by a person as sexual.

(b) Sexual misconduct may be the basis for disciplinary action if the behavior was injurious or there is an exploitation of the podiatric physician-patient or podiatric physician-staff member relationship.

(c) Sexual violation may include podiatric physician-patient or podiatric physician-staff member sex, whether or not initiated by the patient/staff, and engaging in any conduct with a patient/staff that is sexual or may be reasonably interpreted as sexual, including but not limited to:

(1) sexual intercourse, genital-to-genital contact;

(2) oral to genital contact;

(3) oral to anal contact, genital to anal contact;

(4) kissing in a romantic or sexual manner;

(5) touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment, or where the patient/staff has refused or has withdrawn consent;

(6) encouraging the patient/staff to masturbate in the presence of the podiatric physician or masturbation by the podiatric physician while the patient/staff is present; and

(7) offering to provide practice-related services, such as drugs, in exchange for sexual favors.

(d) Sexual impropriety may comprise behavior, gestures, or expressions that are seductive, sexually suggestive, or sexually demeaning to a patient/staff, including but not limited to:

(1) disrobing or draping practices that reflect a lack of respect for the patient's/staff's privacy, deliberately watching a patient/staff dress or undress, instead of providing privacy for disrobing;

(2) subjecting a patient/staff to an intimate examination in the presence of medical students or other parties without the explicit consent of the patient/staff or when consent has been withdrawn;

(3) examination or touching of genitals without the use of gloves;

(4) inappropriate comments about or to the patient/staff, including but not limited to:

(A) making sexual comments about a person's body or underclothing;

(B) making sexualized or sexually demeaning comments to a patient/staff;

(C) criticizing the patient's/staff's sexual orientation (transgender, homosexual, heterosexual, or bisexual);

(D) making comments about potential sexual performance during an examination or consultation, except when the examination or consultation is pertinent to the issue of sexual function or disfunction;

(E) requesting details of sexual history, sexual likes, or sexual dislikes when not clinically indicated for the type of consultation;

(5) engaging in treatment or examination of a patient/staff for other than bona fide health care purposes or in a manner substantially inconsistent with reasonable health care practices;

(6) using the podiatric physician-patient or podiatric physician-staff member relationship under the pretext of treatment to solicit a date;

(7) initiation by the podiatric physician of conversation regarding the sexual problems, preferences, or fantasies of the podiatric physician; and

(8) examining the patient/staff intimately without consent.

(e) Sexual exploitation by a practitioner is the breakdown of the professionalism in the podiatric physician/patient/staff relationship constituting sexual abuse. Sexual exploitation may undermine the therapeutic relationship, may exploit the vulnerability of the patient/staff, and ultimately may be detrimental to the patient's/staff's emotional well-being, including but not limited to:

(1) causing emotional dependency of the patient/staff;

(2) causing unnecessary dependence outside the therapeutic relationship;

(3) breach of trust; and

(4) imposing coercive power over the patient/staff.

(f) A third impartial person who is the same sex as the patient must be present in the examining room if a patient is asked to disrobe or if the genitalia are examined.

(g) The practitioner under investigation for sexual misconduct may be required to have a complete medical evaluation, including appropriate mental and physical examination. Laboratory examination should include appropriate urine and blood drug screens.

(h) The psychiatric history and mental status examination is to be performed by a psychiatrist knowledgeable in the evaluation suspected of sexual misconduct. The examination may include neuropsychological testing.

(i) Sexual violation or impropriety may warrant disciplinary action by the department up to and including revocation of license.

(j) In the event a podiatric physician applies for license reinstatement, any petition for reinstatement will include the stipulation that additional mental and physical evaluations may be required prior to the department's review for reinstatement to ensure the continuing protection of the public.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405436
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: June 21, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

16 TAC §130.52, §130.53

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted repeals.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405443
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: June 21, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

SUBCHAPTER F. FEES

16 TAC §130.60

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405437
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: June 21, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

SUBCHAPTER G. ENFORCEMENT

16 TAC §§130.70, 130.72, 130.73

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405438
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: June 21, 2024
For further information, please call: (512) 463-7750

♦ ♦ ♦

CHAPTER 131. PROCEDURAL RULES DURING TEMPORARY ADMINISTRATION OF THE TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

16 TAC §§131.1, 131.11, 131.21, 131.23, 131.25, 131.27, 131.29

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 131, §§131.1, 131.11, 131.21, 131.23, 131.25, and 131.27, regarding the Procedural Rules During Temporary Administration of the Texas Board of Veterinary Medical Examiners, without changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6692). These rules will not be republished.

The Commission also adopts a new rule at 16 TAC Chapter 131, §131.29, regarding the Procedural Rules During Temporary Administration of the Texas Board of Veterinary Medical Examiners, with changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6692). This rule will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules under 16 TAC, Chapter 131, will implement Texas Occupations Code, Chapter 801, Veterinarians, Subchapter A-1, Temporary Administration by the Texas Department of Licensing and Regulation.

On September 1, 2023, the Texas Board of Veterinary Medical Examiners (Board) was brought under the temporary administration of the Department by Senate Bill (SB) 1414, 88th Legislature, Regular Session (2023). As a result of SB 1414, the Texas Commission of Licensing and Regulation (Commission) now serves as the decision-maker in contested cases under Occupations Code, Chapter 801 (Veterinary Licensing Act or "the Act."). Occupations Code §801.022(a) and (b) vest the Department, during temporary administration, with most of the Board's former policymaking and decision-making authority under the Act, with the Board retaining rulemaking authority over standard of care and scope of practice matters, subject to limited oversight, under §801.024. Occupations Code §801.022(c) gives the Commission and Department discretion to delegate powers to the Board or its executive director, and to withdraw these delegations of power. Under Occupations Code §801.022(d), the Commission is required to adopt rules necessary to implement the temporary administration of the Board. Occupations Code §801.025 provides that in the event of a conflict between Occupations Code, Chapters 51 and 801, the latter prevails, and that the provisions of Subchapter A-1 prevail over the remainder of Chapter 801.

Prior to the effective date of SB 1414, contested cases under the Act were decided by the Board, applying the Act and the Board's procedural rules found in 22 TAC, Chapter 575, which implement the Act. Similarly, contested cases before the Commission are decided under the procedural rules at 16 TAC, Chapter 60, which implement Occupations Code, Chapter 51, the Department's enabling statute. Key differences exist between the Chapter 60 and Chapter 575 rules, introducing the possibility of confusion in conduct of contested veterinary licensing cases during the temporary administration. The adopted rules address these issues by resolving conflicts between the Chapter 60 and Chapter 575 rules as necessary to effect the temporary administration, while preserving the statutory rights of license holders and the statutory hierarchy set forth in Occupations Code §801.025.

The adopted rules clarify that unless the Commission delegates its authority to make decisions in contested cases under the Veterinary Licensing Act, the Commission will serve as the decision-maker in these matters. The Commission may delegate this

authority to its own executive director, the Board, or the Board's executive director. Further, the adopted rules provide detail regarding the Board's, Department's, and Commission's roles in the contested case process, and the procedures to be followed if the Commission does not delegate its decision-making power. Further, the adopted rules address conflicts between the Board's existing rules and the Commission's rules relating to interim and interlocutory appeals, as well as deadlines for exceptions and replies in cases before the State Office of Administrative Hearings.

SECTION-BY-SECTION SUMMARY

The adopted rules add new 16 TAC, Chapter 131, Procedural Rules During Temporary Administration of the Texas Board of Veterinary Medical Examiners.

The adopted rules add new §131.1, Authority and Applicability. Subsection (a) sets forth the legal authority for the rule chapter. Subsection (b) sets forth the circumstances under which the rules apply. Subsection (c) sets forth a framework for resolving any conflicts between this chapter, the Chapter 60 rules, and the Chapter 575 rules, as enumerated in paragraphs (1) - (3).

The adopted rules add new §131.11, Definitions. Subsection (a) incorporates by reference the definitions in the Act, the APA, and in 16 TAC §60.10. Subsection (b) provides specific definitions in paragraph (1) - (9) for certain key terms, doing so for clarity and ease of reference.

The adopted rules add new §131.21, Contested Case Proceedings at SOAH. The rule mirrors language in 16 TAC §60.305(a) and clarifies that the period for exceptions and replies is determined under the APA and SOAH's procedural rules, rather than under 22 TAC §575.6.

The adopted rules add new §131.23, Interlocutory or Interim Appeals. The rule clarifies that, notwithstanding the rule at 22 TAC §575.30(f), which purports to permit interlocutory or interim appeals, such a proceeding is not available during the temporary administration.

The adopted rules add new §131.25, Commission and Board Consideration of Proposals for Decision. The rule clarifies that the Board acts in an advisory capacity and that the Commission is the decision-maker following the issuance of a proposal for decision. Subsection (a) sets forth the Commission's status as decision-maker and its authority to delegate this power to the Board on a revocable basis, as provided in Occupations Code §801.022(c). Subsection (b) provides that the Board is to consider the proposal for decision at an open meeting in accordance with its procedural rules, is to make a written recommendation to the Commission, and will notify the parties of its recommendation by mail or email. Subsection (b) provides that no motion for rehearing or reconsideration is to be filed at the Board level. Subsection (c) outlines the procedures for Commission consideration of the Board's recommendation. Subsection (d) addresses the content of oral argument, where permitted, and prohibits the consideration of new evidence presented during oral arguments, tracking certain language from 16 TAC §60.308(b). Subsection (e) provides the factors that will be considered by the Commission in determining the appropriate disciplinary action for a violation.

The adopted rules add new §131.27, Motions for Rehearing. The rule tracks the language of 16 TAC §60.309, clarifying that the Commission's procedures for motions for rehearing apply to cases under the Act.

The adopted rules add new §131.29, Proceedings for the Modification or Termination of Agreed Orders and Disciplinary Orders. The rule clarifies that the Commission is the decision-maker over proceedings to modify or terminate a previously imposed sanction. The text of the heading is corrected from the proposed version to correct a typographical error. Subsection (a) clarifies that the rule does not create a new right to relief. Subsection (b) provides that the Commission is the decision-maker unless this power is delegated, and that the terms of a delegation order override any conflicting provision in this rule section. Subsection (c) provides that the Board is to consider and make recommendations on motions to modify or terminate a sanction. Subsection (d) provides that the Commission will rule on the motion after considering the Board's recommendation.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6692). The public comment period closed on September 30, 2024. The Department did not receive any comments from interested parties on the proposed rules.

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code §801.022, which authorizes the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, to adopt rules as necessary to effect the Department's temporary administration of the board in accordance with Occupations Code, Chapter 801, subchapter A-1.

The adopted rules are also adopted under Texas Occupations Code, Chapter 51, which authorize the Commission to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 801. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the proposed rules are adopted is Senate Bill 1414, 88th Legislature, Regular Session (2023).

§131.29. Proceedings for the Modification or Termination of Agreed Orders and Disciplinary Orders.

(a) No new right to relief created. This section governs proceedings to modify or terminate agreed orders and disciplinary orders where a right to seek such relief exists under current law and does not create a new right to such relief.

(b) Commission as decision-maker. The commission may delegate to the board or the executive director of the department the authority to rule upon motions to modify or terminate agreed orders or disciplinary orders. Such delegation is revocable. Unless so delegated, the commission will rule upon all such motions. Should the commission delegate this authority, the terms of the delegation will override any conflicting provision in this section.

(c) Board to issue recommendation. The board will receive and consider motions to modify or terminate agreed orders or disciplinary orders in accordance with the Veterinary Licensing Act and the board's procedural rules. Following board deliberation of the motion, the board will make a written recommendation to the commission on the resolution of the case and notify the parties or their representatives of its recommendation by postal or electronic mail.

(d) Following the issuance of the board's recommendation, the commission will rule upon the motion.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405427
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 463-3671

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 275. CONTINUING EDUCATION

22 TAC §§275.1 - 275.3

The Texas Optometry Board (Board) adopts amendments to 22 TAC Title 14 Chapter 275 Continuing Education without changes to the proposed text as published in the September 20, 2024 issue of the *Texas Register* (49 TexReg 7573). The rules will not be republished.

The Board adopts amendments to §§275.1 - 275.3.

The updated rule clarifies continuing education requirements for a biennial renewal period; for licensees who activating an expired license; and for new licensees when first licensed. The rule eliminates the continuing education requirement for the one-time controlled prescribing course as the course has been added as prerequisite for receiving a therapeutic license. No changes were made to the total number of continuing education courses required for renewal of a license.

No comments were received.

The Board adopts the amendments pursuant to the authority found in §351.151 of the Occupations Code which vests the Board with the authority to adopt rules necessary to perform its duties and implement Chapter 351 of the Occupations Code and under §351.308 of the Occupations Code which requires continuing education as a condition for renewal of a license.

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

Filed with the Office of the Secretary of State on November 5, 2024.

TRD-202405321
Janice McCoy
Executive Director
Texas Optometry Board
Effective date: November 25, 2024
Proposal publication date: September 20, 2024
For further information, please call: (512) 305-8500

♦ ♦ ♦

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.20, 537.22, 537.28, 537.30 - 537.32, 537.37, 537.46, 537.47, 537.67

The Texas Real Estate Commission (Commission) adopts amendments to 22 TAC §537.20, Standard Contract Form TREC No. 9-16, Unimproved Property Contract; §537.22, Standard Contract Form TREC No. 11-7, Addendum for "Back-Up" Contract; §537.28, Standard Contract Form TREC No. 20-17, One to Four Family Residential Contract (Resale); §537.30, Standard Contract Form TREC No. 23-18, New Home Contract (Incomplete Construction); §537.31, Standard Contract Form TREC No. 24-18, New Home Contract (Completed Construction); §537.32, Standard Contract Form TREC No. 25-15, Farm and Ranch Contract; §537.37, Standard Contract Form TREC No. 30-16, Residential Condominium Contract (Resale); §537.46, Standard Contract Form TREC No. 39-9, Amendment to Contract; §537.47, Standard Contract Form TREC No. 40-10, Third Party Financing Addendum; and new rule §537.67, Standard Contract Form TREC No. 60-0, Addendum for Section 1031 Exchange in Chapter 537, Professional Agreements and Standard Contracts, without changes to the rule text, as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6965), but with non-substantive changes to the forms adopted by reference in Chapter 537, Professional Agreements and Standard Contracts. The rule text will not be republished, but the non-substantive changes to the forms adopted by reference are available through the Commission's website at www.trec.texas.gov.

Each of the rules correspond to contract forms adopted by reference. Texas real estate license holders are generally required to use forms promulgated by the Commission when negotiating contracts for the sale of real property. These forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee (the "committee"), an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by the Commission, and one public member appointed by the governor. The committee recommended revisions to the contract forms adopted by reference under the proposed amendments and new rule. The changes listed below apply to all contract forms unless specified otherwise. Paragraph numbers referenced are from the *One to Four Family Residential Contract (Resale)*.

Paragraph 4 is amended to add the term "geothermal" to the definition of Natural Resource Leases as a result of a 2023 law change that stipulates property owners own the geothermal energy below the surface of their land and can drill or produce that energy and associated resources.

To be consistent with a recently updated Texas Department of Insurance procedural rule, Paragraph 6C(1) is amended to include the option of providing the T-47.1 Declaration (which does not need to be notarized)-in lieu of the T-47 Affidavit-when the Seller furnishes the Buyer an existing survey. In lieu of providing a "no survey required" option, Paragraph 6C(2) is amended to read "Buyer may obtain a new survey" instead of "Buyer shall

obtain a new survey", and adds that if the Buyer ultimately fails to obtain the survey, the Buyer does not have the right to terminate the contract under Paragraph 2B of the Third Party Financing Addendum because the survey was not obtained.

Because Texas law requires a seller to provide a buyer a copy of any mold remediation certificate issued during the five years preceding the sale of the property, new Paragraph 6E(11) is added to provide information regarding this requirement (except in the Unimproved Property Contract).

Paragraph 6E(12) is modified to add specific examples of the types of notices that should be listed in the paragraph and to add a caution that Seller's failure to provide required notices may provide Buyer with certain remedies, like the ability to terminate the contract.

In light of recent discussions surrounding broker compensation, Paragraph 12A(1)(a) and 12A(2) adds that each party pays the brokerage fees that they each have agreed to pay. Paragraph 12A(1)(b) is amended to allow for a specific seller contribution to the buyer's brokerage fees. A new Paragraph 12A(1)(c) has been added to separately address other seller contributions (that was previously in Paragraph 12A(1)(b)) and the prior language that specified the order in which any contribution was to be paid, as well as a limitation on the type of fee that could be paid, is removed. Conforming changes are also made in the Amendment to Contract.

The title of Paragraph 20 is changed to "Federal Requirements" from "Federal Tax Requirements." In new Paragraph 20B of the Farm and Ranch contract, information regarding the obligations related to the federal Agriculture Foreign Investment Disclosure Act has been added.

The compensation disclosure in the Broker Information section of the contracts (except for the Farm and Ranch Contract) has been modified to remove the parenthetical referencing the MLS and to add checkboxes to allow for the fee to be reflected either as a percentage or a dollar amount.

In the Third Party Financing Addendum, to ensure the buyer is terminating appropriately, Paragraph 2A, Buyer Approval, has been changed to require both a notice of termination and a copy of a written statement of the lender's determination like in Paragraph 2B, Property Approval. The language in Paragraph 2B is modified because the language related to notice of termination timing was different than in other contract provisions and was causing confusing. "Requirements" in Paragraph 4 is made singular and a conforming change is made to a paragraph citation.

In the Unimproved Property contract, Paragraph 3D is amended to include the same sales price adjustment language as in the Farm and Ranch contract. A dollar sign is also added to Paragraph 3D in the Farm and Ranch contract.

Out of concern about confusion and improper use of Paragraph 11, Special Provisions, by license holders, the Addendum for "Back-Up" Contract is modified to provide more clarity on the timing and payment of the earnest money and option fee by incorporating similar language from Paragraph 5 of the contract and by addressing timing and payment of additional fees.

The committee drafted a new Addendum for Section 1031 Exchange that allows the seller or buyer to disclose an intent to use the subject property as a 1031 exchange and includes a statement that the parties will reasonably cooperate with one another. Providing this as an addendum, rather than in the contract, allows the parties to use it when applicable without causing unnecessary confusion. A reference to the new Addendum for Section 1031 Exchange is also added to Paragraph 22 of the contract.

The committee met on October 11, 2024 and reviewed and discussed the 341 comments received on the proposed changes in total, including a comment from Texas Realtors. Eight of those comments expressed support for all of the proposed changes, while two comments were opposed to all proposed changes.

Regarding the changes to Paragraph 3D of the Unimproved Property contract, two comments were in support of the changes while one comment was opposed to the changes. The committee discussed the comments and declined to make changes at this time to ensure consistency with the Farm and Ranch contract.

Regarding the proposed changes to Paragraph 6C of the contract, 20 comments were received. Three comments were in support of the proposed changes (one noting concern about copyright issues) and one comment supported generally the idea of the T-47.1 declaration. Eight comments asked clarifying questions about the difference between the T-47 affidavit and the T-47.1 declaration. One comment asked clarifying questions regarding a specific fact scenario. Seven comments requested clarifying language changes, including what constitutes a "survey", adding a receipt line for the title company, changing termination timelines, formatting changes, and removing a reference to the Third Party Financing Addendum. The committee reviewed the comments and declined to make changes at this time, noting in particular that further education on the new T-47.1 will help alleviate confusion.

Four comments were received regarding the proposed changes to Paragraph 6E(11), with most noting concerns with the requirements of the statute. The committee declined to make changes at this time, noting that the language mirrored the statutory requirements.

Regarding the proposed changes to Paragraphs 6E(4), (7), and (9) which removed references to a separate related addendum, one commenter requested the deleted sentences be added back. The committee agreed and decided to retain the previously struck last sentences to better inform the parties. One comment had concerns regarding the statutory requirement. Regarding the proposed changes to Paragraph 6E(12), one comment was in support of the changes. One comment requested checkboxes be added to indicate whether the notice was received. Two comments found the caution statement insufficient, ambiguous, or wanted more details to be included. The committee discussed, but ultimately declined to make changes at this time.

Regarding the proposed change to Paragraph 8B to add the phrase "Broker fees are not set by law and are negotiable", one comment was in support of the proposed change. Three comments requested a clarifying change to the proposed language. Three comments wanted the language to be removed because of concerns of confusion and redundancy. One commenter made a general statement. After consideration of the comments and discussion, the committee decided to remove the proposed language.

The majority of the comments - 258 in total-were regarding the proposed changes to Paragraph 12. 12 comments were in support of the proposed Paragraph 12 changes generally, while four comments were generally opposed. One commenter was generally opposed to the concept of seller contributions. 170 comments (most with an identical comment) believed that

compensation should be addressed in a manner similar to that of the Farm and Ranch contract or the Texas Realtors' commercial contracts. Five commenters requested that the language be swapped for the language found in the Texas Realtors' Agreement Between Brokers form, including one comment which stated the changes should wait until after the settlement is finalized. 26 comments found the changes to be confusing, many specifically noting that it was unclear whether the amount in Paragraph 12A(1)(c) was exclusive of the amount in Paragraph 12A(1)(b) and one comment questioning what "brokerage fees" consists of in Paragraph 12A(1)(b). One commenter believed that the clauses within Paragraph 12 should be moved to separate paragraphs for clarity. Four comments believed the proposed change to Paragraph 12A(1)(b) to be unnecessary, while one comment stated that title companies would benefit from this information. Five comments stated that because of familiarity with the current order of the paragraph, the order of subparagraphs (b) and (c) should be reversed. Three comments took the position that broker compensation should not be addressed in the contract forms at all or should only be addressed in a separate addendum, while four comments were in favor of having compensation addressed only in the contract (not in an addendum). Six comments wanted the language in Paragraph 12 to be expanded to address or disclose other compensation scenarios, including what a seller may pay the listing broker, what a buyer may pay the buyer's broker, and if a buyer were to contribute to the seller's brokerage fees. One comment took the position that brokers should only be paid by their respective principal. Eight comments asked questions about how the proposed changes would apply to a particular scenario. Two comments were concerned that parties may think contributions are required or wanted language to indicate this was optional. Two comments were concerned about unintended consequences, like obligations to pay beyond what is already agreed upon. One comment believed that the language in Paragraph 12 should be moved to the Third Party Financing Addendum. One comment requested information be shared regarding federal tax requirements. The committee reviewed the comments and had extensive discussion on these changes. The committee declined to make changes at this time, but noted that discussions will continue, particularly as the industry evolves in this area. The committee did make non-substantive formatting changes to Paragraph 12B(1)(a)-(c).

Two comments were received on the proposed changes to Paragraph 20. One commenter requesting deadlines be added to the language, while the other commenter requested that the Commission promulgate a notice regarding the federal requirements and providing timeframes. The committee declined to make changes at this time, noting concerns regarding the complexity of the federal law.

Eight comments were received on the proposed changes to Paragraph 22, with the majority seeking the addition of a Texas Realtors form to the list. The committee believed it is not appropriate to include non-Commission forms, but noted there is a blank checkbox that could be used to address this.

Twenty-nine comments were received on the proposed changes to the compensation disclosure on the Broker Information page of the contracts. 17 comments wanted the disclosure to be removed altogether, while six comments wanted the disclosure to be replaced with the compensation language found in the Farm and Ranch contract. Several commenters wanted clarifying changes, ranging from the addition of the word "written" or to use "compensation" in lieu of "commission" to wanting to broaden the disclosure to include what the seller is paying the listing broker. Texas Realtors requested a change that would reflect the possibility of a seller paying the other broker directly. One commenter asked a question of how bonuses would be notated under the proposed changes. The committee elected to not make changes at this time, but will consider changes, including the possible removal of the disclosure, at a subsequent meeting.

Regarding the proposed new form-the Addendum for Section 1031 Exchange-five comments were in support of the new form, one was against, and one commenter asked a clarifying question regarding liability. The committee declined to make any changes at this time.

One comment was in support of the proposed changes to the Amendment to Contract.

Regarding the Addendum for "Back-Up" Contract, four comments supported the proposed changes. One commenter did not like repeating of language found within the contract itself. Four commenters raised concerns about how the option fee or additional option fee is handled. One commenter wanted a definition of "Escrow Agent" in this form and all others that use the term. The committee discussed the comments and declined to make changes at this time, but did decide to capitalize "effective date" in Paragraph J.

Eleven comments were received on the Third Party Financing Addendum. Five comments were generally in support of the proposed changes and one comment was against the changes. The remaining comments sought changes to the proposed language, like increasing the time periods and combining the buyer approval and property approval paragraphs. The committee discussed, but ultimately declined to make changes as a result of the comments.

The committee recommended the Commission adopt the forms as modified.

The amendments and new rule are adopted under Texas Occupations Code, §1101.151, which authorizes the Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments and rules are also adopted under Texas Occupations Code, §1101.155, which authorizes the Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the committee and adopted by the Commission.

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

Filed with the Office of the Secretary of State on November 5, 2024.

TRD-202405323
Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Effective date: January 3, 2025
Proposal publication date: September 6, 2024
For further information, please call: (512) 936-3057

22 TAC §537.39

The Texas Real Estate Commission (Commission) adopts amendments to 22 TAC §537.39, Standard Contract Form TREC No. 32-4, Condominium Resale Certificate in Chapter 537, Professional Agreements and Standard Contracts, without changes to the rule text or form adopted by reference, as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6965), and will not be republished. The form adopted by reference is available through the Commission's website at www.trec.texas.gov.

Texas real estate license holders are generally required to use forms promulgated by the Commission when negotiating contracts for the sale of real property. These forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee (the "committee"), an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by the Commission, and one public member appointed by the governor. The committee recommended revisions to the contract form adopted by reference under the proposed amendment.

The Condominium Resale Certificate is amended to conform the language in Paragraphs K and L with section 82.157, Texas Property Code.

One commenter requested a clarifying change in Paragraph K of the Condominium Resale Certificate. The committee declined to make changes at this time for form consistency

The committee recommended the Commission adopt the form as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments and rules are also adopted under Texas Occupations Code, §1101.155, which authorizes the Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the committee and adopted by the Commission.

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

Filed with the Office of the Secretary of State on November 5, 2024.

TRD-202405324
Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Effective date: November 25, 2024
Proposal publication date: September 6, 2024
For further information, please call: (512) 936-3057

♦ ♦ ♦

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745. LICENSING

SUBCHAPTER K. INSPECTIONS, INVESTIGATIONS, AND CONFIDENTIALITY

DIVISION 1. OVERVIEW OF INSPECTIONS AND INVESTIGATIONS

26 TAC §745.8401, §745.8411

The Texas Health and Human Services Commission (HHSC) adopts amendments to §745.8401, concerning Who is responsible for inspecting or investigating an operation under this division, and §745.8411, concerning What are an operation's responsibilities when an authorized representative inspects or investigates the operation.

The amendment to §745.8401 is adopted without changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5312). This rule will not be republished.

The amendment to §745.8411 is adopted with changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5312). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to implement House Bill (H.B.) 4696, 88th Legislature, Regular Session, 2023. H.B. 4696 placed the responsibility for investigating an allegation of abuse, neglect, and exploitation of an elderly person or adult with a disability who resides in a residential child-care facility in Texas Human Resources Code (HRC) §48.251(a)(3) and §48.252(b) and (c), which correspond with the investigatory authority of HHSC Long-Term Care Regulation Provider Investigations. Accordingly, because HHSC Child Care Regulation (CCR) also conducts investigations at residential child-care facilities, CCR is adopting amended rules that clarify what authorized entities may inspect or investigate according to Title 26, Chapter 745, Subchapter K, Division 1, and responsibilities an operation has when an authorized entity conducts an inspection or investigation.

COMMENTS

The 31-day comment period ended August 19, 2024. During this period, HHSC received one comment from one commenter representing the Texas Alliance of Child and Family Services. A summary of the comment relating to the rules and the response from HHSC follows.

Comment: The commenter did not have feedback on the text of the rules but suggested that HHSC provide more background information in the rule's preamble and on state agency websites regarding the underlying and complex statutory changes that occur over time. The commenter indicated it can be difficult to ascertain which entity has jurisdiction for which function when there is so much in regulatory overlap among departments and agencies that conduct investigations or inspections at residential child-care operations.

Response: HHSC appreciates the general feedback from the commenter, but HHSC disagrees that it did not provide enough background information in the rule proposal preamble or on the HHSC website. In August 2023, HHSC emailed to residential providers and posted online a communication that included a summary of H.B. 4696, the specific operation types the bill applies to, and what rule changes that HHSC would later propose.

In the July 19, 2024, issue of the *Texas Register*, HHSC included the following information in the rule proposal preamble: (1) the specific statutes that H.B. 4696 amended; (2) the bill's purpose in amending those statutes; (3) what rule amendments CCR is generally proposing to implement the bill; and (4) a section-by-section summary of each proposed rule amendment. Additionally, HHSC emailed providers a link to that *Texas Register* issue and posted a news story on the CCR website with that link. HHSC will continue to make every effort to clearly communicate rule proposals to stakeholders and the public.

Minor editorial changes were made to §745.8411 to eliminate the use of first-person ("I," "me," "we," or "us") and second-person ("you," "your," or "yours") pronouns and possessive determinators, and to correct one capitalization error.

STATUTORY AUTHORITY

The amendments 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 §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Texas Government Code Chapter 531. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§745.8411. What are an operation's responsibilities when an authorized representative inspects or investigates the operation?

(a) An operation must ensure that no one at the operation interferes with an inspection or investigation by Child Care Regulation (CCR), another department of the Texas Health and Human Services Commission (HHSC), or the Department of Family and Protective Services (DFPS).

(b) For an inspection or investigation described in subsection (a), the operation must ensure that the operation:

(1) Admits authorized representatives involved in conducting the inspection or investigation;

(2) Provides access to all areas of the operation;

(3) Provides access to all records; and

(4) Does not delay or prevent authorized representatives from conducting an inspection or investigation.

(c) If anyone at the operation refuses to admit, refuses access, or prevents or delays an authorized representative of CCR, another department of HHSC, or DFPS from visiting, inspecting, or investigating the operation, any or all of the following may occur:

(1) CCR may issue the operation a deficiency;

(2) CCR may recommend an enforcement action as specified in Subchapter L of this chapter (relating to Enforcement Actions); or

(3) CCR, DFPS, or HHSC may seek a court order granting access to the operation and records maintained by the operation.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405408

Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 22, 2024
Proposal publication date: July 19, 2024
For further information, please call: (512) 438-3269

♦ ♦ ♦

CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

26 TAC §748.303

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §748.303, concerning When must a general residential operation (GRO) report and document a serious incident.

The amendment to §748.303 is adopted with changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5317). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to implement House Bill (H.B.) 4696, 88th Legislature, Regular Session, 2023. H.B. 4696 placed the responsibility for investigating an allegation of abuse, neglect, and exploitation of an elderly person or adult with a disability who resides in a residential child-care facility in Texas Human Resources Code (HRC) §48.251(a)(3) and §48.252(b) and (c), which correspond with the investigatory authority of HHSC Long-Term Care Regulation Provider Investigations. Accordingly, because HHSC Child Care Regulation (CCR) also conducts investigations at residential child-care facilities, CCR is adopting an amended rule to clarify that a report must be made to HHSC through the Texas Abuse and Neglect Hotline if there is reason to believe an adult resident has been abused, neglected, or exploited.

COMMENTS

The 31-day comment period ended August 19, 2024. During this period, HHSC received one comment from one commenter representing the Texas Alliance of Child and Family Services. A summary of the comment relating to the rule and the response from HHSC follows.

Comment: The commenter did not have feedback on the text of the rule but suggested that HHSC provide more background information in the rule's preamble and on state agency websites regarding the underlying and complex statutory changes that occur over time. The commenter indicated it can be difficult to ascertain which entity has jurisdiction for which function when there is so much in regulatory overlap among departments and agencies that conduct investigations or inspections at residential child-care operations.

Response: HHSC appreciates the general feedback from the commenter, but HHSC disagrees that it did not provide enough background information in the rule proposal preamble or on the HHSC website. In August 2023, HHSC emailed to residential

providers and posted online a communication that included a summary of H.B. 4696, the specific operation types the bill applies to, and what rule changes that HHSC would later propose. In the July 19, 2024, issue of the *Texas Register*, HHSC included the following information in the rule proposal preamble: (1) the specific statutes that H.B. 4696 amended; (2) the bill's purpose in amending those statutes; (3) what rule amendment CCR is generally proposing to implement the bill; and (4) a detailed summary of the proposed rule amendment. Additionally, HHSC emailed providers a link to that *Texas Register* issue and posted a news story on the CCR website with that link. HHSC will continue to make every effort to clearly communicate rule proposals to stakeholders and the public.

Minor editorial changes were made to §748.303 to eliminate the use of most first-person ("I," "me," "we," or "us") and second-person ("you," "your," or "yours") pronouns and possessive determinators, including non-substantive changes to make the resulting wording consistent, and change "Licensing" to "Child Care Regulation."

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 §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Texas Government Code Chapter 531. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§748.303. When must a general residential operation (GRO) report and document a serious incident?

(a) A GRO must report and document the following types of serious incidents involving a child in its care. The reports must be made to the following entities, and the reporting and documenting must be within the specified time frames:
Figure: 26 TAC §748.303(a)

(b) If there is a medically pertinent incident that does not rise to the level of a serious incident, a GRO does not have to report the incident but the GRO must document the incident in the same manner as for a serious incident, as described in §748.311 of this division (relating to How must I document a serious incident?).

(c) If a child returns before the required reporting timeframe outlined in (a)(8) - (10) in Figure: 26 TAC §748.303(a), the GRO is not required to report the absence as a serious incident. Instead, the GRO must document within 24 hours after becoming aware of the unauthorized absence in the same manner as for a serious incident, as described in §748.311 of this division.

(d) If there is a serious incident involving an allegation of abuse, neglect, or exploitation of an elderly adult or an adult with a disability in a residential child-care operation, the GRO must document the incident in the same manner as a serious incident. The GRO must also report the incident to:

(1) The Department of Family and Protective and Services intake through:

(A) The Texas Abuse and Neglect Hotline (1-800-252-5400); or

(B) Online at https://www.txabusehotline.org;

(2) Law enforcement, if there is a fatality; and

(3) The parent, if the adult resident is not capable of making decisions about the resident's own care.

(e) A GRO must report and document the following types of serious incidents involving the GRO, an employee, a professional level service provider, contract staff, or a volunteer to the following entities within the specified time frames:
Figure: 26 TAC §748.303(e)

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405409
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 22, 2024
Proposal publication date: July 19, 2024
For further information, please call: (512) 438-3269

♦ ♦ ♦

CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

26 TAC §749.503

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §749.503, concerning When must a child-placing agency (CPA) report and document a serious incident.

The amendment to §749.503 is adopted with changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5318). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to implement House Bill (H.B.) 4696, 88th Legislature, Regular Session, 2023. H.B. 4696 placed the responsibility for investigating an allegation of abuse, neglect, and exploitation of an elderly person or adult with a disability who resides in a residential child-care facility in Texas Human Resources Code (HRC) §48.251(a)(3) and §48.252(b) and (c), which correspond with the investigatory authority of HHSC Long-Term Care Regulation Provider Investigations. Accordingly, because HHSC Child Care Regulation (CCR) also conducts investigations at residential child-care facilities, CCR is adopting an amended rule to clarify that a report must be made to HHSC through the Texas Abuse and Neglect Hotline if there is reason to believe an adult resident has been abused, neglected, or exploited.

COMMENTS

The 31-day comment period ended August 19, 2024. During this period, HHSC received one comment from one commenter representing the Texas Alliance of Child and Family Services. A

summary of the comment relating to the rule and the response from HHSC follows.

Comment: The commenter did not have feedback on the text of the rule but suggested that HHSC provide more background information in the rule's preamble and on state agency websites regarding the underlying and complex statutory changes that occur over time. The commenter indicated it can be difficult to ascertain which entity has jurisdiction for which function when there is so much in regulatory overlap among departments and agencies that conduct investigations or inspections at residential child-care operations.

Response: HHSC appreciates the general feedback from the commenter, but HHSC disagrees that it did not provide enough background information was included in the rule proposal preamble or on the HHSC website. In August 2023, HHSC emailed to residential child-care providers and posted online a communication that included a summary of H.B. 4696, the specific operation types the bill applies to, and what rule changes that HHSC would later propose. In the July 19, 2024, issue of the *Texas Register*, HHSC included the following information in the rule proposal's preamble: (1) the specific statutes that H.B. 4696 amended; (2) the bill's purpose in amending those statutes; (3) what rule amendment CCR is generally proposing to implement the bill; and (4) a detailed summary of the proposed rule amendment. Additionally, HHSC emailed providers a link to that *Texas Register* issue and posted a news story on the CCR website with that link. HHSC will continue to make every effort to clearly communicate rule proposals to stakeholders and the public.

Minor editorial changes were made to §749.503 to eliminate the use of most first-person ("I," "me," "we," or "us") and second-person ("you," "your," or "yours") pronouns and possessive determinators, including non-substantive changes to make the resulting wording consistent, and change "Licensing" to "Child Care Regulation."

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 §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Texas Government Code Chapter 531. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§749.503. When must a child-placing agency (CPA) report and document a serious incident?

(a) A CPA must report and document the following types of serious incidents involving a child in the CPA's care. The reports must be made to the following entities, and the reporting and documenting must be within the specified timeframes:
Figure: 26 TAC §749.503(a)

(b) If there is a medically pertinent incident that does not rise to the level of a serious incident, a CPA does not have to report the incident but the CPA must document the incident in the same manner as for a serious incident, as described in §749.511 of this division (relating to How must I document a serious incident?).

(c) If a child returns before the required reporting timeframe outlined in (a)(8) - (10) in Figure: 26 TAC §749.503(a), the CPA is not required to report the absence as a serious incident. Instead, the CPA must document within 24 hours after the CPA becomes aware of the unauthorized absence in the same manner as for a serious incident, as described in §749.511 of this division.

(d) If there is a serious incident involving an allegation of abuse, neglect, or exploitation of an elderly adult or an adult with a disability in a residential child-care operation, the CPA must document the incident in the same manner as a serious incident. The CPA must also report the incident to:

(1) The Department of Family and Protective Services intake through:

(A) The Texas Abuse and Neglect Hotline (1-800-252-5400); or

(B) Online at https://www.txabusehotline.org;

(2) Law enforcement, if there is a fatality; and

(3) The parent, if the adult resident is not capable of making decisions about the resident's own care.

(e) A CPA must report and document the following types of serious incidents involving the CPA, one of its foster homes, an employee, professional level service provider, contract staff, or a volunteer to the following entities within the specified timeframe:
Figure: 26 TAC §749.503(e)

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405410
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 22, 2024
Proposal publication date: July 19, 2024
For further information, please call: (512) 438-3269

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER TT. ALL-PAYOR CLAIMS DATABASE

28 TAC §§21.5401, 21.5403 - 21.5406

The commissioner of insurance adopts amendments to 28 TAC §21.5401 and §§21.5403 - 21.5406, concerning the all-payor claims database. The amendments to the rule text are adopted with changes to the proposed text published in the August 16, 2024, issue of the *Texas Register* (49 TexReg 6158). The commissioner adopts §§21.5401, 21.5404, and 21.5406 without changes to the proposed text. These rules will not be republished. The commissioner adopts §21.5403 and §21.5405 with a nonsubstantive change to the proposed text. These rules will be republished. Changes have also been made to the Texas APCD CDL version 3.0.1, referenced in §21.5403.

REASONED JUSTIFICATION. The amendments make changes in accordance with House Bill 3414, 88th Legislature, 2023, which made amendments to Insurance Code Chapter 38, including revisions to the definition of "payor" in Insurance Code §38.402, the membership of the stakeholder advisory group in §38.403, and permissible data collection in Insurance Code §38.404. A nonsubstantive amendment to §21.5401 is made to conform with House Bill 4611, 88th Legislature, 2023, which changed the location of statutes concerning Medicaid managed care programs in the Government Code. Other amendments are made in accordance with House Bill 2090, 87th Legislature, 2021. The amendments include a new version of the Texas APCD Common Data Layout (CDL) to conform with changes to the national CDL and other changes to support the purpose and mission of the APCD.

The CDL is a technical and natural language description of the file format that payors are required to use to submit data to the APCD. The CDL details the data structure and organization necessary for successful file submissions. Clear technical instructions--including definitions of data fields, required headers, and descriptions--in the CDL are necessary to ensure the integrity and validity of the APCD data. Periodic updates to the technical instructions ensure the CDL's long-term usability and relevance by allowing clarifications that improve payor understanding of the CDL requirements and accommodating technological improvements or changes in claim standards.

In addition, the amendments enhance clarity, streamline the sections, and make the text consistent with current agency drafting style and plain language preferences. These nonsubstantive changes include adding rule cross-references; deleting unnecessary statutory citations; and otherwise improving wording, such as by replacing "such" with "this" and "said" with "the." These amendments are not noted in the following descriptions of the amendments unless it is necessary or appropriate to provide additional context or explanation.

Descriptions of the sections' amendments follow.

Section 21.5401. The amendments to §21.5401 revise subsection (b) to clarify that the listing of payors required to submit data files is not exclusive but includes any payor subject to Insurance Code Chapter 38. Self-insurance funds established under Government Code Chapter 2259, concerning Self-Insurance by Governmental Units, are added to the listing to clarify applicability to those payors, and subsequent paragraphs are renumbered to reflect this addition. In paragraph (19), the citation to the Government Code for Medicaid managed care plans is changed to Title 4, Subtitle I, instead of Chapter 533, because of a change in the citation to these programs in Insurance Code §38.402(7) made in Section 2.117 of HB 4611.

Section 21.5403. An amendment to §21.5403(a) updates the CDL version that a payor is required to follow. The Texas APCD CDL has been updated to align with the national CDL. It identifies the types of data a payor is required to report by listing the standardized data elements for each data file identified in §21.5404(c) and identifying whether the data element is required. For each data element, it also identifies data quality standards and provides technical guidance describing the information payors must submit, including the source of the information and coding standards. In response to comments, CDL version 3.0.1 has been modified to change the reporting threshold for data elements CDLPV021 and CDLMC142 from 100% to 90%.

Amendments to subsection (b) permit the Center for Health Care Data at the University of Texas Health Science Center at Houston (Center) to adopt future versions of the Texas APCD CDL, as long as no additional data elements are required beyond those required in version 3.0.1 and no data elements are required that fall outside the scope of Insurance Code Chapter 38, Subchapter I. TDI modifies the first sentence in subsection (b) to avoid a double negative for clarity. This will streamline the Center's ability to update technical guidance and will reduce confusion by payors, clarifying that such guidance can be incorporated in the Texas APCD CDL, rather than in a separate document. It will also allow the Center to monitor changes taking place across the country to maximize uniformity with other states' APCDs, which is more cost-effective for the payors subject to reporting. Any addition of required data elements would occur only through TDI rulemaking. If the Center publishes an updated version of the Texas APCD CDL, it will communicate an implementation deadline and provide at least 90 days for payors to transition to the new version of the Texas APCD CDL.

Section 21.5404. An amendment to subsection (a)(1) updates the cross-reference to §21.5401 to conform with changes to numbering in that section. An amendment in subsection (b) clarifies that the requirement to register applies to payors or their designees that are subject to the subchapter where §21.5404 is located. An amendment removes paragraph (1) from subsection (d) to eliminate the option to use a USB drive because it is less efficient to administer, and no payors have chosen to use this option. Subsequent paragraphs are renumbered to reflect this change. The prohibition against using data with a unique coding system is eliminated from subsection (k) because it duplicates language in subsection (m).

Section 21.5405. The amendments to subsection (a) modify the monthly due date of payor reporting, reducing the time to submit the data from 90 days post-adjudication to 30 days. This change will provide more timely data to researchers and will allow the APCD to better and more timely support infectious disease monitoring efforts in coordination with the Texas Epidemic Public Health Institute. The updated submission timeframe will also allow the APCD, at the aggregate-geographic-region level, to support other state agency epidemiological monitoring of acute health conditions or events like pandemics or natural disasters.

Former subsection (b) is deleted because its provisions relating to the original commencement of APCD reporting are no longer necessary. A new subsection (b) is added to clarify the circumstances in which payors must submit test data files. TDI made a nonsubstantive change to subsection (b)(3) as proposed to replace "TX" with "Texas" when referencing the APCD CDL. This change is needed to be consistent with the term as defined in §21.5402(15).

Former subsections (c) and (e) are deleted, and their exception and extension provisions have been incorporated into former subsection (d), which is redesignated as subsection (c). The text of redesignated subsection (c) is also revised to allow payors to submit requests for exceptions and extensions 15 days in advance rather than 30 days, and to clarify that the deadline for data submissions is tolled while the Center considers a request for exception or extension. Redesignated subsection (c) authorizes payors to request temporary exceptions or extensions for up to 12 months if they demonstrate that compliance would impose an unreasonable cost or burden relative to the public value that would be gained from full compliance. To ensure APCD reporting is not a barrier to new payors entering the market, the

subsection allows an extension for a payor's first required reporting if the payor registers with the Center and demonstrates it has fewer than 10,000 covered lives across all plans subject to reporting. This approach ensures that the Center can make reasonable accommodations to help payors comply with APCD reporting obligations. To assist with the oversight and enforcement required by Insurance Code §38.409(a)(3), redesignated subsection (c) is also amended to add an annual reporting requirement for the Center to share information with TDI about payor compliance, exceptions, and extensions.

Former subsections (f) and (g) are redesignated as subsections (d) and (e).

A new subsection (f) is added. It states that payors must provide reasonable follow-up information requested by the Center, limited to ensuring that the payor submitted complete and correct information.

Former subsections (h) and (i) are redesignated as subsections (g) and (h).

A new subsection (i) is added. It provides the starting date for the new data submission time frames found in subsection (a).

Section 21.5406. New subsection (d) is added, establishing a one-year term of office for the new advisory member representing an institution of higher education, as required by HB 3414. New subsection (e) is added, limiting terms of office to no more than six consecutive years, except as provided by current subsection (d), which is redesignated as subsection (f). An amendment to redesignated subsection (f) changes the required designation of a replacement member to serve the remainder of a term to a permissive designation.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on September 16, 2024.

Commenters: TDI received comments from three commenters. The Center commented in support of the proposal. Commenters in support of the proposal with changes, were the Texas Association of Health Plans and the Texas Medical Association. Consistent with Insurance Code §38.409(a), TDI has consulted with the Center regarding these comments.

Comments on §21.5401

Comment. A commenter supports the changes as they appropriately clarify the application of the law concerning certain health benefit plans and address changes made by HB 3414.

Agency Response. TDI appreciates the support.

Comments on §21.5403

Comment. A commenter strongly supports and urges the adoption of the rule changes. The commenter states that the changes will bring the Texas APCD CDL into better alignment with the standard CDL maintained by the APCD Council, which will facilitate future academic research allowing for robust comparisons between states and help multistate companies maintain compliance. The commenter further states that the changes will provide additional flexibility to correct citations and provide clarifying updates, which are crucial to the technical document. On the other hand, the commenter agrees that it is appropriate that, should new fields be added to the CDL, a rulemaking process should be pursued.

Agency Response. TDI appreciates the support.

Comment. A commenter believes the proposed language strikes an appropriate balance between flexibility and fair notice of substantive changes and notes that aligning with national standards typically reduces administrative burden. However, the commenter notes that plans have had difficulty meeting the 100% reporting threshold for one item in the CDL (CDLPV021), which requires reporting of the National Uniform Claim Committee Health Care Provider Taxonomy (specialty) code (which is included in a standard claim). The commenter requests that the threshold for reporting this field be 95%.

Agency Response. TDI agrees with the commenter. In addition, according to information provided to TDI by the Center, plans have had similar difficulties reporting field CDLMC142, which is for the referring provider specialty. The plans rely on providers to provide this information, and plans currently must seek an exception if they do not have data in the field 100% of the time. Because the data is sometimes not provided to the plans, TDI, with the agreement of the Center, is changing the threshold for reporting these fields in the CDL from 100% to 90%. Plans must still report any data that they have for these fields but will not have to seek exceptions as often when they lack data. The Center believes that this change will not compromise data quality. TDI is revising Texas APCD CDL v3.0.1 to make changes to fields CDLPV021 and CDLMC142.

Comment. A commenter notes that the proposed rule authorizes the Center to adopt subsequent versions of the CDL despite the statutory requirement for TDI to adopt rules specifying the types of data required. The commenter states that the rule would authorize the Center to alter data elements and collect new data elements even if not specified in TDI rule without checks on the Center's authority, such as public comment or TDI review. The commenter adds that the Center could collect any information, including information on patients, physicians, and other health care providers, as long as a payor agreed. The commenter notes that decisions on the collection of health care data should be discussed in a public forum and in a manner that precludes even the potential appearance of impropriety. The commenter also states that the rule permits the Center to specify new technical requirements in the CDL, but the statute does not authorize the Center to unilaterally specify the manner or layout of data submissions, such as provisions that a payor uses to determine what data to provide. The commenter states that the rule should clearly differentiate between data collection procedure guidance and types of data and/or manner of providing data.

Agency Response. The proposed rule appropriately addresses the responsibilities the Legislature placed with TDI while leaving discretion to the Center on the matters the Legislature left to it. TDI first notes that the statutes creating the APCD in Insurance Code Chapter 38 largely contemplate a supporting role by TDI to the Center. Section 38.404(a) begins with the requirement that TDI "collaborate with the center under this subchapter to aid in the center's establishment of the database." The section then focuses on what data the Center should and should not require to be submitted. Subsection (c) also focuses on the Center: "In determining the information a payor is required to submit to the center . . . , the center must consider . . . ." Subsection (c-1) then qualifies that "the center may not require a payor" to collect data that is not on a standard claim form, but "the center may require submission of such data if it is otherwise collected by the payor . . . ." Finally, subsection (d) states that each payor "shall submit the required data under Subsection (c) at the schedule and frequency determined by the center and adopted by the commissioner by rule." Then, in §38.409, the Legislature set out TDI's

rulemaking authority, requiring TDI to adopt rules "specifying the types of data a payor is required to provide to the center under Section 38.404." This does not require TDI to specify all aspects concerning the specific data that must be provided, but only the "types" of data. TDI's rule proposal does this by adopting the CDL with the agreement of the Center and by leaving future updates and clarifications of the CDL to the Center, with the limitation that TDI is not requiring payors to provide any additional data elements in future iterations of the CDL adopted by the Center unless they fall within both TDI's adopted version referenced in §21.5403 and within the scope of Chapter 38, Subchapter I.

It is also notable that §38.409 only requires TDI to adopt rules that specify the type of data a payor is "required" to provide the Center. The subchapter does not address the ability of TDI or the Center to permit payors to provide additional information that is not required, and it does not require TDI's rules to limit the types of data the APCD may collect from payors on a voluntary basis.

Aside from TDI's determination by rule of the categories of information that are required to be provided, the Center is given broad authority under the statute regarding the actual collection of the information. Section 38.403 provides that the stakeholder advisory group will assist the Center with "establishing and updating the standards, requirements, policies, and procedures relating to the collection" of the data. Section 38.404 requires that the Center "establish" and "update" its data collection procedures. While §38.409 does require TDI's rules to also address data submission schedules and provisions relating to "data submission," the Legislature clearly did not intend for every detail of data submission to be articulated by rule. TDI's rules provide an appropriate balance in TDI's support of the Center's mission.

Comments on §21.5405

Comment. A commenter states that they strongly support the proposed changes, which are extremely important updates that will permit the Texas APCD to better supplement Texas' wastewater monitoring program. The commenter also supports the continued ability of the Center to grant temporary exemptions and exceptions, which will enable the Center to work with carriers for the benefit of the public without impairing the affordability that may be offered by small plans. The commenter welcomes the elimination of submission by USB drive and secure courier, as no payors use those methods.

Agency Response. TDI appreciates the support.

Comment. A commenter supports the changes. While the commenter does not believe that it is necessary for the Center to report exceptions and extensions to TDI, the commenter is not concerned about the information that will be provided and has heard positive feedback from health plans about the Center's administration of the extension and exception processes.

Agency Response. TDI appreciates the support.

Comment. A commenter states that TDI lacks authority to grant exceptions or extensions from any submission requirements and requests clarification on why there is an ongoing need for exceptions or extensions. The commenter also states that the rule would permit the Center to grant extensions allowing payors to provide data less frequently than quarterly, as required by §38.409(a)(2)(A) and that there is no authority to permit an extension of a payor's first required reporting for up to 12 months.

Agency Response. TDI disagrees with the commenter's statement that TDI lacks statutory authority to grant exceptions and extensions. TDI notes that the Legislature granted TDI broad authority in Insurance Code §38.409 in 2021 to specify "the schedule, frequency, and manner in which a payor must provide data," while emphasizing that TDI's rules should be "reasonable and cost-effective for payors." While the Legislature amended the statutes in 2023 in HB 3414, it chose not to address rulemaking generally or any issues of exceptions and extensions.

Comment. A commenter objects to the rule allowing exceptions or extensions for payors of any size and notes that there is no description of what constitutes an unreasonable cost or burden relative to the public value or what factors would be considered. The commenter also says that the rule would authorize exceptions from any requirements not contained in the statute, but it is unclear whether the rule prevents the Center from granting exceptions for any requirement described by §38.404(c) or if it only prevents the Center from granting an exception for any requirement actually listed in the nonexclusive list because §38.404(c) requires submission of useful information, so all the data requirements are contained in it. The commenter also notes that, if data is not collected, the public value of the APCD's data could be reduced.

Agency Response. TDI's rule proposal does not substantively change the ability of the Center to grant exceptions and extensions set forth in the existing APCD rules that were adopted by TDI in June of 2022. The rule, as adopted, permits the Center to grant an exception from a requirement, but the Center may not grant an exception to a requirement contained in Chapter 38, Subchapter I. The Center would not be able to grant an exception to reporting of the data elements listed in §38.404(c). While the Center could grant an extension to the reporting of any data if immediate compliance would impose an unreasonable cost or burden relative to the public value, the data would nevertheless have to be reported once the extension expires. This flexibility ensures that the data required by the Legislature is provided, while also complying with the statutory mandate to adopt rules that are reasonable and cost-effective for payors. For instance, it might be reasonable under this standard to grant a payor of any size an extension if its computer operations were impacted by a severe weather event.

Comment. A commenter objects to the 12-month extension available to small payors with fewer than 10,000 covered lives and suggests narrowing the threshold to payors with fewer than 1,000 lives. The commenter also asks TDI to clarify whether, if a payor has multiple plans and one is less than 10,000, then would the payor qualify entirely for an extension or just the one plan.

Agency Response. TDI's proposal does not change the Center's ability under the existing rule to grant a year's extension to a new payor with under 10,000 lives. TDI declines to narrow the threshold, as this extension continues to provide important flexibility for new payors. Smaller payors entering the market may need additional time to create the computer processes to properly submit the required data. The threshold for this extension looks at enrollment at the issuer level, such that enrollment in all plans subject to reporting are counted towards the 10,000 life threshold. The rule as adopted clarifies that a payor "that registers with the Center and demonstrates that it has fewer than 10,000 covered lives in plans subject to [the] subchapter qualifies for an extension." TDI notes that the most recent APCD biennial report (https://sph.uth.edu/research/centers/center-for-health-care-data/assets/tx-apcd/TX-APCD-Biennial%20Report-2022.pdf) from September 2022, prior to the APCD receiving any data, estimated that the APCD would

receive data on almost 15 million individuals. In this context, granting a temporary extension for a plan with under 10,000 lives will not materially impact the quality of the APCD's data.

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.5401 and §§21.5403 - 21.5406 under Insurance Code §38.409 and §36.001.

Insurance Code §38.409 provides that the commissioner adopt rules specifying the types of data a payor is required to provide to the Center and also specifying the schedule, frequency, and manner in which a payor must provide data to the Center. It also requires the commissioner to adopt rules establishing oversight and enforcement mechanisms to ensure the submission of data.

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.

§21.5403. Texas APCD Common Data Layout and Submission Guide.

(a) Payors must submit complete and accurate data files for all applicable plans as required by this subchapter and consistent with the data elements and technical requirements found in the Texas APCD CDL v3.0.1. The Texas APCD CDL v3.0.1 is available on the Center's website.

(b) If the Center adopts subsequent versions of the Texas APCD CDL, payors must submit data consistent with the requirements of each subsequent version, but this subchapter does not require the submission by payors of additional data elements unless they are both required in the Texas APCD CDL v3.0.1 and within the scope of Insurance Code Chapter 38, Subchapter I, concerning Texas All Payor Claims Database. The Center will communicate to payors an implementation deadline for use of an updated version of the Texas APCD CDL that is not less than 90 days after the updated version has been published by the Center in its final form.

(c) The Center will establish, evaluate, and update data collection procedures within a submission guide, consistent with Insurance Code §38.404(f), concerning Establishment and Administration of Database. Notwithstanding subsection (b) of this section, in the event of an inconsistency between this subchapter and the submission guide, this subchapter controls.

§21.5405. Timing and Frequency of Data Submissions.

(a) Payors must submit monthly data files according to the following schedule:

(1) January data must be submitted no later than March 7 of that year;

(2) February data must be submitted no later than April 7 of that year;

(3) March data must be submitted no later than May 7 of that year;

(4) April data must be submitted no later than June 7 of that year;

(5) May data must be submitted no later than July 7 of that year;

(6) June data must be submitted no later than August 7 of that year;

(7) July data must be submitted no later than September 7 of that year;

(8) August data must be submitted no later than October 7 of that year;

(9) September data must be submitted no later than November 7 of that year;

(10) October data must be submitted no later than December 7 of that year;

(11) November data must be submitted no later than January 7 of the following year; and

(12) December data must be submitted no later than February 7 of the following year.

(b) Payors must submit test data files as provided in the submission guide:

(1) after registering for the first time with the Center as a payor that is subject to reporting under this subchapter;

(2) after a merger, acquisition, divestiture, or other change of ownership that requires an update to a payor's registration; and

(3) before the effective date of a new version of the Texas APCD CDL, consistent with §21.5403 of this title (relating to Texas APCD Common Data Layout and Submission Guide) that contains additional data elements.

(c) A payor may request a temporary exception or extension of time from complying with one or more requirements of this subchapter or the Texas APCD CDL by submitting a request to the Center, as provided in the submission guide posted on https://go.uth.edu/DSG, no less than 15 calendar days before the date the payor is otherwise required to comply with the requirement.

(1) The Center may grant an exception or extension for good cause for not more than 12 consecutive months, if the payor demonstrates that compliance would impose an unreasonable cost or burden relative to the public value that would be gained from full compliance. An exception may not be granted from any requirement contained in Insurance Code Chapter 38, Subchapter I, concerning Texas All Payor Claims Database.

(2) A payor that registers with the Center and demonstrates that it has fewer than 10,000 covered lives in plans subject to this subchapter qualifies for an extension under this subsection for the payor's first required reporting. The Center may grant an extension for new payors for not more than 12 consecutive months.

(3) The Center may request additional information from a payor in order to make a determination on an exception or extension request. A request for additional information must be in writing and must be submitted to the payor within 14 calendar days from the date the payor's request is received. The deadline for data submission is tolled while the Center makes a determination on an exception or extension request.

(4) A request for an exception or extension that is neither accepted nor rejected by the Center within 14 calendar days from the date the payor's request is received will be deemed accepted. If the Center has requested additional information from a payor under paragraph (3) of this subsection, the 14-day timeline begins the day after the payor submits the information. If a payor does not respond to or fails to provide the Center with additional information as requested, the payor's request for an exception or extension may be deemed withdrawn by the Center at the end of the 14-day period.

(5) In order to assist TDI's oversight and enforcement required by Insurance Code §38.409, the Center will provide TDI on or before July 1st of each year for the prior year:

(A) the names of payors that timely reported data;

(B) information about payors that did not report data and either requested an exception or extension that the Center did not grant or otherwise failed to demonstrate an exemption from reporting under this subchapter;

(C) information about payors that obtained exceptions and extensions, including the nature of the exceptions and amount of extensions granted;

(D) information about payors that failed to report timely without obtaining an exception or extension, including the filing due dates and the dates of actual filing; and

(E) information about payors that otherwise failed to materially comply with the requirements of Insurance Code Chapter 38, Subchapter I, or this subchapter.

(d) The Center will assess each data submission to ensure the data files are complete, accurate, and correctly formatted.

(e) The Center will communicate receipt of data within 14 calendar days, inform the payor of the data quality assessments, and specify any required data corrections and resubmissions.

(f) Payors must provide reasonable follow-up information requested by the Center, limited to ensuring that the payor submitted complete and correct information.

(g) Upon receipt of a resubmission request, the payor must respond within 14 calendar days with either a revised and corrected data file or an extension request.

(h) If a payor fails to submit required data or fails to correct submissions rejected due to errors or omissions, the Center will provide written notice to the payor. If the payor fails to provide the required information within 30 calendar days following receipt of the written notice, the Center will notify the department of the failure to report. The department may pursue compliance with this subchapter via any appropriate corrective action, sanction, or penalty that is within the authority of the department.

(i) The reporting schedule under subsection (a) of this section applies to monthly data submissions due on or after March 7, 2025, containing data for months beginning January 1, 2025. Payors must submit data for November and December 2024 at the same time as January 2025 data.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405444
Jessica Barta
General Counsel
Texas Department of Insurance
Effective date: November 28, 2024
Proposal publication date: August 16, 2024
For further information, please call: (512) 676-6555

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 4. SCHOOL LAND BOARD

CHAPTER 155. LAND RESOURCES

SUBCHAPTER A. COASTAL PUBLIC LANDS

31 TAC §155.15

The School Land Board (Board) is adopting amendments to §155.15 relating to rent and fees for residential, commercial, and industrial activities on coastal public lands. The amendments include changes to the text of §155.15 and to the related graphics in section 155.15(b)(1)(C)(i), 155.15(b)(1)(C)(ii), 155.15(b)(1)(C)(iii), and 155.15(b)(1)(C)(iv). The amendments were published in the June 14, 2024, edition of the *Texas Register* (49 TexReg 4418). No comments were received, and the text is being adopted as previously published, without changes.

BACKGROUND AND JUSTIFICATION

Under Texas Natural Resources Code (TNRC) Chapter 33, the Board has the authority to grant certain interests in coastal public land, including leases for public purposes, easements connected with littoral ownership, cabin permits, and other interests for any purpose that the Board determines is in the best interest of the State. The Board may also prescribe fees and adopt rules for granting leases, easements, permits, and other interests in or rights to use coastal public land. Leases and easements may authorize structures such as breakwaters, jetties, and piers, as well as for open encumbrances, dredging, and fill placement.

Currently, the rent and fees for many coastal easements and leases issued by the Board are tied to the appraised market value of the adjacent littoral property. Recently, market values have increased at an unprecedented rate, resulting in rate increases that are unreasonable and often inconsistent with market conditions. The Board is adopting these amendments due to the rapid increase in real estate appraised values during the past five years. The amendments will ensure that rent and fees on the Texas coast are reasonable and more accurately reflect market value. In addition, some residential rent and fee rates are being revised in consideration of the environmental benefits of certain structures.

Rent and fees for residential coastal easements and leases are set based on the specifications in the graphics attached to §155.15 in subsections §155.15(b)(1)(C)(i), §155.15(b)(1)(C)(ii), and §155.15(b)(1)(C)(iii). The Board is adopting a decrease in the annual rent for breakwaters, jetties, and groins from 20 cents per square foot to 3 cents per square foot. The rent decrease is being adopted in consideration of the benefit these structures provide in the coastal environment, including the creation of habitat for small fish, crabs, and other animals. They also provide a hard substrate for oysters, barnacles, mussels, and other sessile animals. In addition, when breakwaters are a component of a living shoreline, which is an alternative to traditional shoreline armoring that incorporates nature-based features, no rent is assessed. Reducing the rents for all breakwaters is appropriate since they serve similar environmentally beneficial functions even if they are not part of a living shoreline. In addition, reducing rent may encourage more of these structures, adding environmental protection and coastal resiliency, eventually increasing revenue to the PSF.

The Board is also adopting an amendment that adjusts the fees for fill for residential use to address the recent unreasonably high rates caused by the rising assessed value of adjacent littoral property. This amendment will result in residential fill fees of either $0.10 per square foot, or an amount based on the fill formula, whichever is greater, as the baseline for annual rent,

not to exceed $1.00 per square foot. Annual rent below $1.00 per square foot will escalate in accordance with the terms currently in the rule, not to exceed $1.00 per square foot. This rate also aligns with the new rate for commercial fill, which will start at a $1.00 per square foot and increase based on the Consumer Price Index for All Urban Consumers (CPI-U). In addition, the phrase "no minimum rent" is being changed to "no rent" for clarity in all of the graphics.

The Board is also adopting changes to the Commercial and Industrial Activity rent and fees graphic that include the elimination of the basin formula, which ties rental fees to the assessed value of the adjacent littoral property. In its place, the Board adopts a component formula, which charges a separate rental fee to each component of the leased premises, standardizing the fees for most commercial leases and mitigating the impact of rising property values.

In addition, the Board is adopting an amendment that would require an update to the published fee schedule every five years. The fee schedule update would be based on the Consumer Price Index for All Urban Consumers (CPI-U). Rent and fees for Commercial and Industrial Activity will be based on the updated fee schedule in effect at the time of the execution of a new agreement or a renewal. The adopted changes will result in reduced revenue for the Permanent School Fund (PSF) initially; however, updating the fee schedule based on the CPI-U every five years ensures fees will adjust to inflation over time, stabilizing and potentially increasing long-term revenue. Standardizing fee calculations and aligning them with market conditions also attracts consistent lessees, enhancing occupancy rates and lease income. The lower initial rent benefits the public by making coastal commercial leases more affordable, promoting economic activity and job creation, and supporting local economies. Eliminating the basin formula and standardizing fee structures makes the rent and fees for commercial industries more predictable and transparent.

Other adopted adjustments aim to ensure consistent rates across all coastal commercial leases. These include the removal of the Submerged Land Discount, which is linked to the Basin Formula, setting a uniform fill rate at $1.00 per square foot, and decreasing the fee for Clear Lake Marina from $4.00 to $3.00 per linear foot of boatslip to align with the rates charged in other coastal counties. The adopted amendment standardizes fee structures across different uses of submerged lands and aligns them with market conditions and regulatory standards, thereby ensuring consistent, predictable, and transparent pricing for coastal commercial leases.

The graphic attached to §155.15(b)(1)(C)(iv) lists the fees for commercial and industrial activity. The adopted amended graphic has been edited with the above changes and also to reflect a previously implemented rate increase from $0.20 per square foot to $0.32 per square foot of proposed fill. This increase was approved in 2022 but was inadvertently omitted from the graphic due to a scrivener's error. Footnote 3 is also being updated to remove language about whether existing fill was placed under the authority of a permit since it is no longer applicable. The phrase "no minimum rent" is being changed to "no rent" for clarity in all of the attached graphics. The rule is also being revised to make the text consistent with the amendments to the rent and fees graphics and to make minor administrative, non-substantive edits to the text of the rule.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the amendments.

STATUTORY AUTHORITY

The amendments to §155.15 are adopted under TNRC §33.063 relating to the Board's authority to charge fees for leases, easements, permits, and other interests in or rights to use coastal public land, and §33.064 providing that the Board may adopt rules necessary to carry out the provisions of TNRC Chapter 33. TNRC §§33.101-33.136 are affected by the amendments. The adopted amendments affect no other code, article, or statute. The Board certifies that the amendments have been reviewed by legal counsel and found to be within the Board's authority to adopt.

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

Filed with the Office of the Secretary of State on November 6, 2024.

TRD-202405353
Jennifer Jones
Chief Clerk, Deputy Land Commissioner
School Land Board
Effective date: November 26, 2024
Proposal publication date: June 14, 2024
For further information, please call: (512) 475-1859

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

The Texas Water Development Board (TWDB) adopts 31 Texas Administrative Code §§363.2, 363.12, 363.13, 363.14, 363.17, 363.19, 363.33, and 363.41.

Sections 363.2, 363.12, 363.13, 363.14, 363.17, 363.19, 363.33, and 363.41 are adopted without changes as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6709) and will not be republished. A correction of error for Section 363.33(a)(3) was published in the In Addition section of the September 27, 2024, issue of the *Texas Register* (49 TexReg 7995).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

The adopted amendments to 31 TAC Chapter 363, containing the agency's rules related to the Financial Assistance Programs, implements legislative changes from Senate Bill (SB) 28, SB 30, and SJR 75 by modernizing the language, providing consistency with TWDB's general financial assistance programs' rules, and clarifying requirements for borrowers for the water loan assistance program.

The adopted amendments implement legislation and clarify the method in which interest rates will be set for loans when the source of funding is other than bond proceeds.

In addition, the 88th Texas Legislature enacted House Bill 1565, amending Tex. Water Code §17.276(d), Action on Application, to add new subsections relating to TWDB's review and approval or

disapproval plans and specifications for all wastewater projects funded by the TWDB. The new legislation allows the Board to adopt, by rule, an alternative standard of review and approval of design criteria for plans and specifications for sewage collection, treatment, and disposal systems.

This rulemaking includes substantive and non-substantive changes and updates to make this chapter more consistent with TWDB rules and to clarify requirements for TWDB borrowers.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Section 363.2. Definitions of Terms.

The adopted amendment adds the definition of community water system consistent with 30 TAC Chapter 290, Subchapter D.

The adopted amendment adds the definition of rural political subdivision to reflect the amendment of §365.2(6) and includes as a rural political subdivision those municipalities with a population of 10,000 or less.

The adopted amendment adds the definition of risk-based review to implement HB 1565. The adopted amendment allows the use of different standards of review and approval of design criteria for plans and specifications for sewage collection, treatment, and disposal systems.

The adopted amendment adds the definition WIF for the water infrastructure fund for Texas.

The adopted amendment adds the definition WLAF for the water loan assistance fund for Texas.

The remaining sections in §363.2 are renumbered to accommodate the addition of §363.32(9).

Section 363.12. General, Legal, and Fiscal Information.

The adopted amendment updates the financial requirements for applicants receiving funding to make the requirements consistent with other TWDB rules.

Section 363.13. Preliminary Engineering Feasibility Report.

The adopted amendment adds authority for the board to waive or modify the requirements of the preliminary engineering feasibility report for programs or categories of applications for the agency's financial assistance programs.

Section 363.14. Environmental Assessment.

The adopted amendment adds authority for the board to waive or modify the requirements of the environmental assessment for programs or categories of applications for the agency's financial assistance programs.

Section 363.17. Grants from Water Loan Assistance Fund.

The adopted amendment adds water conservation projects as eligible projects to receive grant funds from the water loan assistance fund and adds the definition of conservation for those projects.

The adopted amendment updates outdated references to other titles and sections of the TAC and modernizes the rule language.

Section 363.19. Priority of Projects.

The adopted amendment clarifies that this section only applies to water infrastructure fund projects.

Section 363.33. Interest Rates for Loans and Purchase of Board's Interest in State Participation and Board Participation Projects.

The adopted amendments update the title of the rule, reflecting that the rule is for setting interest rates for certain of the Board's state financial assistance programs, modernize the rule language, and update how the Board sets interest rates for financial assistance to better align with the process used for other programs offered by the Board.

Section 363.41. Engineering Design Approvals.

The adopted amendment seeks to authorize the risk-based review method of review of plans, specifications, and related documents for certain sewage collection, treatment, and disposal system projects that are compliant with existing state statutes and good public health engineering practices pursuant to §17.276(d).

REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the 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 eligibility, requirements, and methodology for TWDB borrowers. 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 adopted solely under the general powers of the agency, but rather Texas Water Code §§6.101 and 16.053. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this 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 require additional information related to large water supply projects in the regional water plans. The rule will substantially advance this stated purpose by requiring the regional water planning groups to include new information related to the implementation status

of large water management strategies that are listed in the regional water plan.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation as required by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that collects, analyzes, and disseminates water-related data and provides other services necessary to aid in planning and managing the state's water resources.

Nevertheless, the TWDB further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject 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. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

The following comments were received from the Lago Vista, Texas community.

Regarding

§363.12. General, Legal, and Fiscal Information.

Comment

The Lago Vista, Texas community commented that small communities could be burdened by the lack of resources and costs of preparing a full audit by a CPA for application submissions for TWDB funding. The Lago Vista, Texas community requested an alternative approval method or flexibility in audit submission requirements for small communities to reduce potential burdens for small communities.

Response

TWDB appreciates this comment. The amendment updates the financial requirement for applicants to make the requirements consistent with other TWDB rules. The TWDB notes that in many cases an audit is already required by Chapter 103, Local Government Code, and 31 TAC §363.12(x) provides for an executive administrator approved alternative method of establishing a reliable accounting of the financial records of the applicant that could address this concern for some applicants. No changes were made in response to this comment.

Comment

The Lago Vista, Texas community commented that TWDB's rules propose a complicated application process that disproportionately affects small communities.

Response

TWDB appreciates this comment. The amendment updates the financial requirements for applicants receiving funding to make the requirements consistent with other TWDB rules. No changes were made in response to this comment.

Regarding

§363.13. Preliminary Engineering Feasibility Report.

Comment

The Lago Vista, Texas community commented that the application process disproportionately affects small communities with complex requirements such as detailed engineering reports can be a significant hurdle for small municipalities with limited staff and resources. The Lago Vista, Texas community commented that creating a specific section within these rules that streamlines support for such communities would enhance participation in these vital programs.

Response

TWDB appreciates this comment. No changes were made in response to this comment.

Comment

The Lago Vista, Texas community commented that the TWDB's rules allow the TWDB Board to waive or modify requirements without clear criteria for when waivers or modifications might be granted causing uncertainty and inconsistency in decision-making. The Lago Vista, Texas community commented that the TWDB should provide clear criteria for when and under what conditions the Board will waive or modify requirements to ensure fairness and transparency.

Response

TWDB appreciates this comment. The amendment provides authority for the Board to waive or modify the requirements of the preliminary engineering feasibility report for the agency's financial assistance programs to assist programs or categories of applications in the application process. Because the board can only grant a waiver of its rules in an open meeting transparency is not an issue and members of the public would have the opportunity to comment on the waiver in the public meeting. No changes were made in response to this comment.

Regarding

§363.14. Environmental Assessment.

Comment

The Lago Vista, Texas community commented that the TWDB's rules allow the TWDB Board to waive or modify requirements without clear criteria for when waivers or modifications might be granted causing uncertainty and providing an argument for some of an unfair process if a waiver or modification leads to one applicant receiving assistance over another.

Response

TWDB appreciates this comment. The amendment provides authority for the Board to waive or modify the requirements of the environmental assessment for the agency's financial assistance programs to assist programs or categories of applications in the application process. Because the board can only grant a waiver of its rules in an open meeting transparency is not an issue and members of the public would have the opportunity to comment on the waiver in the public meeting. No changes were made in response to this comment.

Comment

The Lago Vista, Texas community commented that the application process disproportionately affects small communities with complex requirements such as environmental assessments can be a significant hurdle for small municipalities with limited staff and resources.

Response

TWDB appreciates this comment. No changes were made in response to this comment.

Regarding

§363.41. Engineering Design Approvals.

Comment

The Lago Vista, Texas community commented that the TWDB's rules allow the TWDB Board to waive or modify requirements without clear criteria for when waivers or modifications might be granted causing uncertainty and providing an argument for some of an unfair process if a waiver or modification leads to one applicant receiving assistance over another.

Response

TWDB appreciates this comment. Because the board can only grant a waiver of its rules in an open meeting transparency is not an issue and members of the public would have the opportunity to comment on the waiver in the public meeting. No changes were made in response to this comment.

Comment

The Lago Vista, Texas community commented that the risk-based review process requires clarification on the definition of risk, precisely how risk will be assessed, and whether smaller, lower-risk projects in communities will benefit from streamlined approvals.

Response

The amendment provides authority for the Executive Administrator to use the risk-based review method of review of plans, specifications, and related documents for certain sewage collection, treatment, and disposal system projects that are compliant with existing state statutes and good public health engineering practices pursuant to §17.276(d). The amendment outlines when the Executive Administrator may perform a risk-based review and the requirements for designs that qualify for a risk-based review. Guidance can be found in the staff issued memo titled "Alternate Standards for Review and Approval of P&S for WW Projects" dated December 8, 2023. No changes were made in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §363.2

STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendment is adopted under the authority of Texas Water Code §§6.101, 15.439, 16.342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapters 15, 16, and 17.

This rulemaking affects Water Code, Chapters 15, 16, and 17.

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

Filed with the Office of the Secretary of State on November 6, 2024.

TRD-202405360
Ashley Harden
General Counsel
Texas Water Development Board
Effective date: November 26, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 475-1673

♦ ♦ ♦

DIVISION 2. GENERAL APPLICATION PROCEDURES

31 TAC §§363.12 - 363.14, 363.17, 363.19

STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendments are adopted under the authority of Texas Water Code §§6.101, 15.439, 16.342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapters 15, 16, and 17.

This rulemaking affects Water Code, Chapters 15, 16, and 17.

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

Filed with the Office of the Secretary of State on November 6, 2024.

TRD-202405361
Ashley Harden
General Counsel
Texas Water Development Board
Effective date: November 26, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 475-1673

♦ ♦ ♦

DIVISION 3. FORMAL ACTION BY THE BOARD

31 TAC §363.33

STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendments are adopted under the authority of Texas Water Code §§6.101, 15.439, 16.342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapters 15, 16, and 17.

This rulemaking affects Water Code, Chapters 15, 16, and 17.

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

Filed with the Office of the Secretary of State on November 6, 2024.

TRD-202405362

Ashley Harden
General Counsel
Texas Water Development Board
Effective date: November 26, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 475-1673

♦ ♦ ♦

DIVISION 4. PREREQUISITES TO RELEASE OF STATE FUNDS

31 TAC §363.41

STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendments are adopted under the authority of Texas Water Code §§6.101, 15.439, 16.342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapters 15, 16, and 17.

This rulemaking affects Water Code, Chapters 15, 16, and 17.

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

Filed with the Office of the Secretary of State on November 6, 2024.

TRD-202405363
Ashley Harden
General Counsel
Texas Water Development Board
Effective date: November 26, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 475-1673

♦ ♦ ♦

CHAPTER 375. CLEAN WATER STATE REVOLVING FUND
SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL

31 TAC §375.82

The Texas Water Development Board (TWDB) adopts 31 Texas Administrative Code (TAC) §375.82. The proposal is adopted without changes as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6718). The rule will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

The 88th Texas Legislature enacted House Bill 1565, amending Tex. Water Code §17.276(d), Action on Application, to add new subsections relating to TWDB's review and approval or disapproval of plans and specifications for all wastewater projects funded by the TWDB. The new legislation allows the Board to adopt, by rule, an alternative standard of review and approval of design criteria for plans and specifications for sewage collection, treatment, and disposal systems.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

§375.82. Contract Documents: Review and Approval.

The amendment authorizes the risk-based review method of review of plans, specifications, and related documents for certain sewage collection, treatment, and disposal system projects that are compliant with existing state statutes and good public health engineering practices pursuant to §17.276(d).

Remaining subsections are renumbered to accommodate the new provision.

REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the adopted 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 eligibility, requirements, and methodology for TWDB borrowers.

Even if the adopted 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 adopted solely under the general powers of the agency, but rather Texas Water Code §17.956. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this adopted 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 eligibility, requirements, and methodology for TWDB borrowers. The adopted rules would substantially advance this stated purpose by aligning the rule's definitions and permissible use of funds with Water Code, Chapter 17, clarifying how the risk-based review analysis will be used for TWDB borrowers, and providing greater consistency between TWDB program rules.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted 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 implements the applicable financial assistance programs, including the risk-based review.

Nevertheless, the TWDB further evaluated this adopted rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted 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 is merely an amendment to conform with statutory changes and clarify program methodology. It does not require regulatory compliance by any persons or political subdivisions. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

The public comment period ended September 30, 2024. No comments were received, and no changes were made.

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is adopted 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 §17.276.

This rulemaking affects Water Code, Chapter 17.

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

Filed with the Office of the Secretary of State on November 6, 2024.

TRD-202405359
Ashley Harden
General Counsel
Texas Water Development Board
Effective date: November 26, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 475-1673

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALUATION PROCEDURES

34 TAC §9.4037

The Comptroller of Public Accounts adopts the repeal of §9.4037, concerning the use of electronic communications for transmittal of property tax information, without changes to the proposed text as published in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8067). The rule will not be republished. The comptroller repeals existing §9.4037 to replace it with new §9.4037. The repeal of §9.4037 will be effective the date the new §9.4037 takes effect.

The comptroller did not receive any comments regarding adoption of the repeal.

This repeal is adopted under Tax Code, §1.085, which provides the comptroller with the authority to prescribe a form, to adopt rules relating to acceptable media, formats, content, and methods for the electronic delivery of communications under Tax Code, Title 1, and to adopt guidelines for tax officials to implement the form and rules.

The repeal implements Tax Code, §1.085.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405404
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Effective date: November 27, 2024
Proposal publication date: October 4, 2024
For further information, please call: (512) 475-2220

♦ ♦ ♦

34 TAC §9.4037

The Comptroller of Public Accounts adopts new §9.4037, concerning electronic delivery of communications between tax officials and property owners, without changes to the proposed text as published in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8068). The rule will not be republished. The new section replaces existing §9.4037, concerning use of electronic communications for transmittal of property tax information, which the comptroller is repealing. New §9.4037 implements House Bill 1228, 88th Legislature, R.S., 2023, which amended Tax Code, §1.085 (Electronic Delivery of Communication), allowing a property owner or person designated by the property owner to elect to exchange communications with a tax official electronically.

Subsection (a) describes when electronic communications are required.

Subsection (b) lists acceptable methods and formats for electronic communications.

Subsection (c) describes the required form for electing electronic communications.

Subsection (d) describes the guidelines for implementation of this section by tax officials.

The comptroller did not receive any comments regarding adoption of the new section.

This section is adopted under Tax Code, §1.085 (Electronic Delivery of Communication), which provides the comptroller with the authority to prescribe by rule acceptable media, formats, content, and methods for the electronic delivery of communications, adopt guidelines for implementation and prescribe a form. The form and guidelines were not adopted by reference, but are available on the comptroller's website at https://comptroller.texas.gov/taxes/property-tax/.

This section implements Tax Code, §1.085 (Electronic Delivery of Communication).

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405406
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Effective date: November 27, 2024
Proposal publication date: October 4, 2024
For further information, please call: (512) 475-2220

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 341. GENERAL STANDARDS FOR JUVENILE PROBATION DEPARTMENTS
SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

37 TAC §341.306

The Texas Juvenile Justice Department (TJJD) adopts new 37 TAC §341.306, Providing Information to TJJD, without changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6723). The new rule will not be republished.

JUSTIFICATION

The new §341.306 requires juvenile probation departments to annually submit to TJJD information on gaps in resources, programs, and services for juveniles that, had they been available, might have allowed the juveniles to remain in the community rather than being committed to TJJD.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The new section is adopted under §203.0185, Human Resources Code (as added by SB 1727, 88th Legislature, Regular Session), which requires the board to adopt rules requiring juvenile probation departments to report to TJJD relevant information on gaps in resources, programs, and services that, if available in the community, may allow children to be kept closer to home as an alternative to commitment to TJJD.

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

Filed with the Office of the Secretary of State on November 5, 2024.

TRD-202405326
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: December 1, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 490-7278

♦ ♦ ♦

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES
SUBCHAPTER B. TREATMENT
DIVISION 1. PROGRAM PLANNING

37 TAC §380.8703

The Texas Juvenile Justice Department (TJJD) adopts amendments to §380.8703, Rehabilitation Program Stage Requirements and Assessment, without changes to the proposed text as published in the September 13, 2024, issue of the *Texas Register* (49 TexReg 7314). The amended rule will not be republished.

JUSTIFICATION

The amended §380.8703: 1) adds that a youth's stage in the rehabilitation program may be lowered when the youth has been unresponsive to intervention attempts over an extended period of time and the youth's current stage does not reflect the youth's current progress; 2) for Stage 1, adds that youth are expected to review their own unique vulnerabilities with the case manager; 3) for Stage 2, clarifies that the goal is for youth to become *interpersonally* successful in the future; 4) for Stage 2, adds that youth are expected to identify a long-term success plan; 5) for Stage 2, clarifies that youth are expected to explore patterns in thoughts, feelings, attitudes, beliefs and *vulnerabilities* (rather than values); 6) for Stage 2, removes requirements for youth to make progress toward personalized goals, to present and discuss progress with the treatment team, and to complete case plan objectives; 7) for Stage 4, adds that completing case plan objectives includes the ability to articulate plans for successful community reentry; 8) for all stages, clarifies that youth are expected to participate *safely*, (rather than just participate) in various areas of programming; 9) removes the requirement for youth to receive a stage assessment based on current behavior and progress upon being returned to a high- or medium-restriction facility for disciplinary reasons or upon receiving an additional commitment, and adds that such youth will be placed on the most appropriate stage as specified by written procedure manuals; and 10) clarifies that one of the situations in which a youth's stage may be lowered is when the youth *receives an additional commitment* (rather than being recommitted).

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The amended section is adopted under §242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

Filed with the Office of the Secretary of State on November 5, 2024.

TRD-202405327
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: December 1, 2024
Proposal publication date: September 13, 2024
For further information, please call: (512) 490-7278

♦ ♦ ♦

CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS
SUBCHAPTER B. INTERACTION WITH THE PUBLIC

37 TAC §385.8103

The Texas Juvenile Justice Department (TJJD) adopts new 37 TAC §385.8103, Board Proceedings, without changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6724). The new rule will not be republished.

JUSTIFICATION

The new §385.8103 establishes provisions relating to the Texas Juvenile Justice Board's organization, powers and responsibilities, and meetings.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The new section is adopted under §202.008, Human Resources Code, which requires the board to adopt rules regulating the board's proceedings.

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

Filed with the Office of the Secretary of State on November 5, 2024.

TRD-202405328
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: December 1, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 490-7278

♦ ♦ ♦


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

Office of the Attorney General

Title 1, Part 3

The Office of the Attorney General of Texas (OAG) files this notice of its intent to review Chapter 63, concerning Public Information, in accordance with Texas Government Code §2001.039. An assessment will be made by the OAG as to whether the reasons for adopting or readopting the chapter continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the OAG. Comments on the review may be submitted electronically to the OAG's Open Records Division by email to *openrecordsassistance@oag.texas.gov* or by mail to Open Records Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548. Comments must be received within 30 days after the publication of this rule review notice to be considered.

TRD-202405474
Justin Gordon
General Counsel
Office of the Attorney General
Filed: November 8, 2024

♦ ♦ ♦

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this Notice of Intent to Review to consider for re-adoption, revision, or repeal the chapters listed below, in their entirety, contained in Title 16, Part 4, of the Texas Administrative Code. This review is being conducted in accordance with Texas Government Code §2001.039.

Rule Chapters Under Review

Chapter 76, Water Well Drillers and Water Well Pump Installers

Chapter 84, Driver Education and Safety

Chapter 85, Vehicle Storage Facilities

Chapter 86, Vehicle Towing and Booting

Chapter 91, Dog or Cat Breeders Program

Chapter 100, General Provisions for Health-Related Programs

Chapter 110, Athletic Trainers

Chapter 111, Speech-Language Pathologists and Audiologists

Chapter 112, Hearing Instrument Fitters and Dispensers

Chapter 114, Orthotists and Prosthetists

Chapter 115, Midwives

Chapter 116, Dietitians

During the review, the Department will assess whether the reasons for adopting or readopting the rules in these chapters continue to exist. The Department will review each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current Department procedures. This review is required every four years.

Written comments regarding the review of these chapters may be submitted electronically on the Department's website at *https://ga.tdlr.texas.gov:1443/form/gcerules* (select the appropriate chapter name for your comment); by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication of this notice in the *Texas Register.*

No changes to the rules in these chapters are being proposed at this time. If the Department determines that changes to the rules are necessary as a result of this rule review, the proposed changes will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment before final adoption by the Texas Commission of Licensing and Regulation, the Department's governing body, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-202405500
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Filed: November 13, 2024

♦ ♦ ♦

Texas Department of Insurance

Title 28, Part 1

The Texas Department of Insurance (TDI), under Texas Government Code §2001.039, will review and consider for readoption the following chapters of 28 Texas Administrative Code Part 1:

- Chapter 5, Property and Casualty Insurance;

- Chapter 6, Captive Insurance;

- Chapter 7, Corporate and Financial Regulation;

- Chapter 9, Title Insurance;

- Chapter 13, Miscellaneous Insurers and Other Regulated Entities;

- Chapter 19, Licensing and Regulation of Insurance Professionals;

- Chapter 21, Trade Practices;

- Chapter 22, Privacy;

- Chapter 25, Insurance Premium Finance;

- Chapter 26, Employer-Related Health Benefit Plan Regulations;

- Chapter 28, Supervision and Conservation;

- Chapter 33, Continuing Care Providers; and

- Chapter 34, State Fire Marshal.

TDI will consider whether the reasons for initially adopting these rules continue to exist and determine whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed in a separate rulemaking document and published in the *Texas Register* under the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TDI will consider any written comments on the rule review that are received by TDI no later than 5:00 p.m., central time, on December 23, 2024. Send your comments to *ChiefClerk@tdi.texas.gov*; or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

TRD-202405471
Jessica Barta
General Counsel
Texas Department of Insurance
Filed: November 8, 2024

♦ ♦ ♦

Adopted Rule Reviews

Texas Health and Human Services Commission

Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 1, Part 15, of the Texas Administrative Code (TAC):

Chapter 354, Medicaid Health Services

Notice of the review of this chapter was published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3937). HHSC received four comments concerning this chapter. A summary of comments and HHSC's responses follows.

Comment: One commenter recommended amending the rules to allow physician assistants (PAs) prescriptive signing authority to prevent backlog due to having to wait for the signature of the attending physician. The commenter also expressed that it would be helpful to facilitate care more promptly and prevent any potential delay of care for patients. The commenter did not reference a specific rule section within chapter 354, and HHSC believes the commenter is generally referring to the prescriptive signing authority of PAs.

Response: HHSC acknowledges the feedback and will consider the commenter's recommendation in a future rule making project.

Comment: One commenter expressed support of amendments to allow advanced practice nurses (APRNs) and physician assistants (PAs) to sign physical therapy orders. The commenter did not reference a specific rule section within chapter 354, and HHSC believes the commenter is referring to §354.1291, Physical Therapists' Services which requires a physician prescription for physical therapy services covered by Texas Medicaid.

Response: HHSC thanks the commenter for their feedback and will consider the commenter's recommendation in a future rule making project.

Comment: One commenter wrote on behalf of three associations suggesting updates to §354.1291 to bring the rule in alignment with recent federal changes and other rule adoptions by HHSC. The commenter asserted there is a conflict between subsection (a)(5)(C) of §354.1039, relating to Benefits and Limitations of Home Health Services, and §354.1291.

Response: HHSC disagrees that a conflict exists. The provisions in §354.1291 apply generally to physical therapy services and currently require a physician prescription in subsection (b)(4). The provisions in §354.1039(a)(5)(C) apply specifically to physical therapy services provided as a home health benefit. These provisions were amended in 2022 to reflect that PAs, nurse practitioners (NPs) and clinical nurse specialists (CNSs) are allowed to order physical therapy when provided as a home health benefit, consistent with federal Medicaid regulations.

HHSC will consider the commenter's suggestion to amend §354.1291 in a future rulemaking project.

Comment: One commenter suggested that HHSC amend rule language in §354.1291(b) to allow prescriptive authority to APRNs and PAs for physical therapy services to align with previous rule changes to §354.1039(a)(5)(C) which allows physician assistants (PAs), nurse practitioners (NPs) and clinical nurse specialists (CNSs) to order physical therapy as a home health benefit, in addition to physicians. The commenter further provided that state delegation laws and federal legislation have changed while §354.1291 remains outdated and potentially increases healthcare costs for vulnerable patients in Texas. The commenter expressed the requirement of a physician signature for physical therapy services paperwork to initiate therapy creates delays within the healthcare system and is burdensome.

Response: HHSC thanks the commenter for their feedback and will consider the commenter's recommendation to amend the physical therapy rules in a future rule making project.

HHSC has reviewed Chapter 354 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting rules in the chapter continue to exist and readopts Chapter 354 except for:

§354.1151, Freedom of Choice;

§354.1153, Subrogation;

§354.1155, Confidentiality of Information;

§354.1157, Potential Fraud, Program Abuse, and Other Misutilization;

§354.1159, Utilization Review;

§354.1351, Coordinated Care Pilot Project;

§354.1416, Eligibility Criteria; and

§354.1417, Definitions for Wellness Services

The repeals identified by HHSC in the rule review and any amendments, if applicable, to Chapter 354 will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 1 TAC Chapter 354 as required by the Texas Government Code §2001.039.

TRD-202405473
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: November 8, 2024

♦ ♦ ♦

Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 228, Retail Food Establishments

Notice of the review of this chapter was published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 7059). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 228 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 228. Any amendments, if applicable, to Chapter 228 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register.*

This concludes HHSC's review of 25 TAC Chapter 228 as required by Texas Government Code §2001.039.

TRD-202405370
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: November 7, 2024

♦ ♦ ♦

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 40, Alternative Dispute Resolution Procedure, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3938).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 40 implement TGC, Chapter 2009, Alternative Dispute Resolution (ADR) for Use by Governmental Bodies ("Governmental Dispute Resolution Act," enacted 1997). TGC, §2009.051 authorizes each governmental body to develop and use ADR (primarily mediation) procedures, and further provides that if an agency that is subject to TGC, Chapter 2001, adopts an ADR procedure, it may do so by rule. TCEQ is subject to TGC, Chapter 2001, also known as the Administrative Procedure Act. TGC, §2009.002 provides that disputes before governmental bodies are to be resolved as fairly and *expeditiously* as possible and that each governmental body support this policy by developing and using ADR procedures in appropriate aspects of the governmental body's operations and programs. TGC, Chapter 2009 not only authorizes each agency to adopt its own ADR procedures but encourages agencies to do so. TCEQ's policy is to provide ADR/mediation opportunities to those persons and entities who interact with TCEQ in the commission's daily operations. Most of the ADR/mediation matters involve permit applications subject to an opportunity for a contested case hearing under TGC, Chapter 2001 and the rules of the commission. The readoption of the rules in Chapter 40 support this policy by administering and providing procedural framework for the ADR program at TCEQ, which continues to offer the public and regulated community an efficient, less costly and time-consuming alternative to the contested case process.

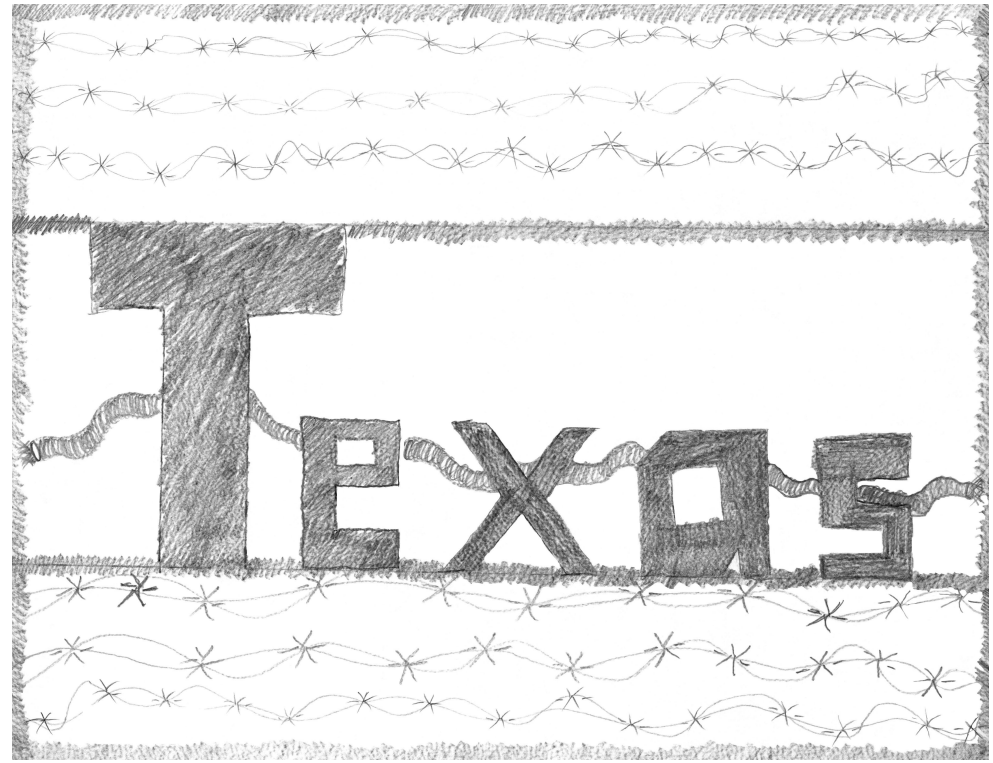
Public Comment

The public comment period closed on July 1, 2024. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 40 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202405417
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 8, 2024

♦ ♦ ♦


TEXAS

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: 25 TAC §221.14(c)(10)(B)(i)

Time-Temperature Combinations for Meat Products to Achieve Lethality

Temperatures stated are the minimum internal temperatures that must be met in all parts of the meat product for the total dwell time listed to achieve a 7-log reduction. An establishment must ensure both time and temperature parameters are met. Meat Safety Assurance recommends limiting the total time product temperature is between 50 and 130°F to 6 hours or less.

Degrees Fahrenheit	Dwell Time
130	121 minutes
131	97 minutes
132	77 minutes
133	62 minutes
134	47 minutes
135	37 minutes
136	32 minutes
137	24 minutes
138	19 minutes
139	15 minutes
140	12 minutes
141	10 minutes
142	8 minutes
143	6 minutes
144	5 minutes
145	4 minutes
146	182 seconds
147	144 seconds
148	115 seconds
149	91 seconds
150	72 seconds
151	58 seconds
152	46 seconds
153	37 seconds
154	29 seconds
155	23 seconds
156	19 seconds
157	15 seconds
158	0 seconds
159	0 seconds
160	0 seconds

~~Figure: 25 TAC §221.14(b)(11)(B)(i)~~

~~Internal Temperature~~	~~Time~~
~~157° F and up~~	~~10 seconds~~
~~156° F~~	~~13 seconds~~
~~155° F~~	~~16 seconds~~
~~154° F~~	~~20 seconds~~
~~153° F~~	~~26 seconds~~
~~152° F~~	~~32 seconds~~
~~151° F~~	~~41 seconds~~
~~150° F~~	~~1 minute~~
~~145° F~~	~~4 minutes~~
~~144° F~~	~~5 minutes~~
~~143° F~~	~~6 minutes~~
~~142° F~~	~~8 minutes~~
~~141° F~~	~~10 minutes~~
~~140° F~~	~~12 minutes~~
~~139° F~~	~~15 minutes~~
~~138° F~~	~~19 minutes~~
~~137° F~~	~~24 minutes~~
~~136° F~~	~~32 minutes~~
~~135° F~~	~~37 minutes~~

~~134° F~~	~~47 minutes~~
~~133° F~~	~~62 minutes~~
~~132° F~~	~~77 minutes~~
~~131° F~~	~~97 minutes~~
~~130° F~~	~~121 minutes~~

Figure: 25 TAC §221.14(c)(10)(B)(ii)

Time-Temperature Combinations for Poultry Products to Achieve Lethality

Dwell times for given temperatures and fat levels that are needed to obtain a 7-Log reduction of Salmonella in poultry products. Temperatures stated are the minimum internal temperatures that must be met in all parts of the poultry product for the total dwell time listed.

Degrees Fahrenheit	1% fat	2% fat	3% fat	4% fat	5% fat	6% fat	7% fat	8% fat	9% fat	10% fat	11% fat	12% fat
136	64 min	64.5 min	65.7 min	67 min	68.4 min	69.9 min	71.4 min	73 min	74.8 min	76.7 min	78.9 min	81.4 min
137	51.9 min	52.2 min	52.4 min	53.2 min	54.3 min	55.5 min	56.8 min	58.2 min	59.7 min	61.4 min	63.3 min	65.5 min
138	42.2 min	42.5 min	42.7 min	43 min	43.4 min	44.2 min	45.3 min	46.4 min	47.7 min	49.2 min	50.9 min	52.9 min
139	34.4 min	34.6 min	34.9 min	35.1 min	35.4 min	35.8 min	36.2 min	37.2 min	38.3 min	39.6 min	41.1 min	43 min
140	28.1 min	28.3 min	28.5 min	28.7 min	29 min	29.3 min	29.7 min	30.2 min	30.8 min	32 min	33.4 min	35 min
141	23 min	23.2 min	23.3 min	23.5 min	23.8 min	24.1 min	24.2 min	24.9 min	25.5 min	26.2 min	27.1 min	28.7 min
142	18.9 min	19 min	19.1 min	19.3 min	19.5 min	19.8 min	20.1 min	20.5 min	21.1 min	21.7 min	22.6 min	23.7 min
143	15.5 min	15.6 min	15.7 min	15.9 min	16.1 min	16.3 min	16.6 min	17 min	17.4 min	18 min	18.8 min	19.8 min
144	12.8 min	12.8 min	12.9 min	13 min	13.2 min	13.4 min	13.7 min	14 min	14.4 min	15 min	15.7 min	16.6 min
145	10.5 min	1.6 min	10.6 min	10.7 min	10.8 min	11 min	11.3 min	11.5 min	11.9 min	12.4 min	13 min	13.8 min
146	8.7 min	8.7 min	8.7 min	8.8 min	8.9 min	9 min	9.2 min	9.5 min	9.8 min	10.2 min	10.8 min	11.5 min
147	7.1 min	7.1 min	7.1 min	7.2 min	7.3 min	7.4 min	7.5 min	7.7 min	8 min	8.4 min	8.8 min	9.4 min
148	5.8 min	5.8 min	5.8 min	5.8 min	5.9 min	6 min	6.1 min	6.3 min	6.5 min	6.8 min	7.2 min	7.7 min
149	4.7 min	4.7 min	4.7 min	4.7 min	4.7 min	4.8 min	4.9 min	5 min	5.2 min	5.4 min	5.8 min	6.2 min
150	3.8 min	3.7 min	3.7 min	3.7 min	3.7 min	3.8 min	3.9 min	4 min	4.1 min	4.3 min	4.5 min	4.9 min
151	3 min	2.9 min	2.9 min	2.9 min	2.9 min	2.9 min	3 min	3.1 min	3.2 min	3.3 min	3.5 min	3.8 min
152	2.3 min	2.3 min	2.3 min	2.3 min	2.3 min	2.3 min	2.3 min	2.3 min	2.4 min	2.5 min	2.7 min	2.8 min
153	1.8 min	1.8 min	1.9 min	1.9 min	1.9 min	1.9 min	1.9 min	1.9 min	1.9 min	1.9 min	1.9 min	2.1 min
154	1.5 min	1.5 min	1.5 min	1.5 min	1.5 min	1.5 min	1.5 min	1.5 min	1.5 min	1.6 min	1.6 min	1.6 min
155	1.2 min	1.2 min	1.2 min	1.2 min	1.2 min	1.2 min	1.2 min	1.3 min	1.3 min	1.3 min	1.3 min	1.3 min
156	59 sec	59.3 sec	59.5 sec	59.8 sec	1 min	1 min	1 min	1 min	1 min	1 min	1 min	1 min
157	47.9 sec	48.1 sec	48.3 sec	48.5 sec	48.8 sec	49 sec	49.2 sec	49.5 sec	49.7 sec	49.9 sec	50.2 sec	50.4 sec
158	38.8 sec	39 sec	39.2 sec	39.4 sec	39.6 sec	39.8 sec	40 sec	40.1 sec	40.3 sec	40.5 sec	40.7 sec	40.9 sec
159	31.5 sec	31.7 sec	31.8 sec	32 sec	32.1 sec	32.3 sec	32.4 sec	32.6 sec	32.7 sec	32.9 sec	33 sec	33.2 sec
160	25.6 sec	25.7 sec	25.8 sec	26 sec	26.1 sec	26.2 sec	26.3 sec	26.4 sec	26.6 sec	26.7 sec	26.8 sec	26.9 sec
161	20.8 sec	20.9 sec	21 sec	21.1 sec	21.2 sec	21.3 sec	21.4 sec	21.5 sec	21.6 sec	21.7 sec	21.8 sec	21.9 sec
162	16.9 sec	16.9 sec	17 sec	17.1 sec	17.2 sec	17.3 sec	17.3 sec	17.4 sec	17.5 sec	17.6 sec	17.7 sec	17.7 sec
163	13.7 sec	13.7 sec	13.8 sec	13.9 sec	13.9 sec	14 sec	14.1 sec	14.1 sec	14.2 sec	14.3 sec	14.3 sec	14.4 sec
164	11.1 sec	11.2 sec	11.2 sec	11.3 sec	11.3 sec	11.4 sec	11.4 sec	11.5 sec	11.5 sec	11.6 sec	11.6 sec	11.7 sec
165	0 sec	0 sec	0 sec	0 sec	0 sec	0 sec	0 sec	0 sec	0 sec	0 sec	0 sec	0 sec

~~Figure: 25 TAC §221.14(b)(11)(B)(ii)~~

~~Internal Temperature~~	~~Time~~
~~145° F and up~~	~~instantly~~
~~144° F~~	~~5 minutes~~
~~143° F~~	~~6 minutes~~
~~142° F~~	~~8 minutes~~
~~141° F~~	~~10 minutes~~
~~140° F~~	~~12 minutes~~
~~139° F~~	~~15 minutes~~
~~138° F~~	~~19 minutes~~
~~137° F~~	~~24 minutes~~
~~136° F~~	~~32 minutes~~
~~135° F~~	~~37 minutes~~
~~134° F~~	~~47 minutes~~
~~133° F~~	~~62 minutes~~
~~132° F~~	~~77 minutes~~
~~131° F~~	~~97 minutes~~
~~130° F~~	~~121 minutes~~

Figure: 26 TAC §748.303(a)

Serious Incident	(i) To Child Care Regulation? (ii) If so, when?	(i) To Parents? (ii) If so, when?	(i) To Law enforcement? (ii) If so, when?
(1) A child dies while in the GRO's care.	(A)(i) YES. (A)(ii) As soon as possible, but no later than 2 hours after the child's death.	(B)(i) YES. (B)(ii) As soon as possible, but no later than 2 hours after the child's death.	(C)(i) YES. (C)(ii) Immediately, but no later than 1 hour after the child's death.
(2) A substantial physical injury or critical illness that a reasonable person would conclude needs treatment by a medical professional or hospitalization.	(A)(i) YES. (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES. (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO. (C)(ii) Not Applicable.
(3) Allegations of abuse, neglect, or exploitation of a child; or any incident where there are indications that a child in care may have been abused, neglected, or exploited.	(A)(i) YES. (A)(ii) As soon as the GRO becomes aware of it.	(B)(i) YES. (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO. (C)(ii) Not applicable.
(4) Physical abuse committed by a child against another child. For the purpose of this subsection, physical abuse occurs when there is substantial physical injury, excluding any accident; or failure to make a reasonable effort to prevent an action by another person that results in substantial physical injury to a child.	(A)(i) YES. (A)(ii) As soon as the GRO becomes aware of it.	(B)(i) YES. (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO. (C)(ii) Not applicable.

(5) Sexual abuse committed by a child against another child. For the purpose of this subsection, sexual abuse is: conduct harmful to a child's mental, emotional or physical welfare, including nonconsensual sexual activity between children of any age, and consensual sexual activity between children with more than 24 months difference in age or when there is a significant difference in the developmental level of the children; or failure to make a reasonable effort to prevent sexual conduct harmful to a child.	(A)(i) YES. (A)(ii) As soon as the GRO becomes aware of it.	(B)(i) YES. (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO. (C)(ii) Not applicable.
(6) A child is indicted, charged, or arrested for a crime; or when law enforcement responds to an alleged incident at the GRO that could result in criminal charges being filed against the child.	(A)(i) YES. (A)(ii) As soon as possible, but no later than 24 hours after the GRO becomes aware of it.	(B)(i) YES. (B)(ii) As soon as the GRO becomes aware of it.	(C)(i) NO. (C)(ii) Not applicable.
(7) A child is issued a ticket at school by law enforcement or any other citation that does not result in the child being detained.	(A)(i) NO. (A)(ii) Not applicable.	(B)(i) YES. (B)(ii) As soon as possible, but no later than 24 hours after the GRO becomes aware of it.	(C)(i) NO. (C)(ii) Not applicable.

(8) The unauthorized absence of a child who is developmentally or chronologically under 6 years old.	(A)(i) YES. (A)(ii) Within 2 hours of notifying law enforcement.	(B)(i) YES. (B)(ii) Within 2 hours of notifying law enforcement.	(C)(i) YES. (C)(ii) Immediately upon determining the child is not on the premises and the child is still missing.
(9) The unauthorized absence of a child who is developmentally or chronologically 6 to 12 years old.	(A)(i) YES. (A)(ii) Within 2 hours of notifying law enforcement, if the child is still missing.	(B)(i) YES. (B)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.	(C)(i) YES. (C)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.
(10) The unauthorized absence of a child who is 13 years old or older.	(A)(i) YES. (A)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, the GRO must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or the GRO believes the child has been abducted or has no intention of returning to the GRO.	(B)(i) YES. (B)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, the GRO must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or the GRO believes the child has been abducted or has no intention of returning to the GRO.	(C)(i) YES. (C)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, the GRO must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or the GRO believes the child has been abducted or has no intention of returning to the GRO.

(11) A child in the GRO's care contracts a communicable disease that the law requires the GRO to report to the Texas Department of State Health Services (DSHS) as specified in 25 TAC Chapter 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after the GRO becomes aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after the GRO becomes aware of the communicable disease.	(C)(i) NO. (C)(ii) Not applicable.
(12) A suicide attempt by a child.	(A)(i) YES. (A)(ii) As soon as the GRO becomes aware of the incident.	(B)(i) YES. (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO. (C)(ii) Not applicable.

Figure: 26 TAC §748.303(e)

Serious Incident	(i) To Child Care Regulation? (ii) If so, when?	(i) To Parents? (ii) If so, when?
(1) Any incident that renders all or part of the GRO unsafe or unsanitary for a child, such as a fire or a flood.	(A)(i) YES. (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES. (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(2) A disaster or emergency that requires the GRO to close.	(A)(i) YES. (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES. (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(3) The GRO must temporarily do the following to comply with a declared state of disaster under Chapter 418, Government Code: • Move the GRO to a new location that is not noted on the GRO's permit; or • Provide care to any child at a location not noted on the permit (for example providing care to a child that needs to be quarantined at a different location from other children).	(A)(i) YES. (A)(ii) As soon as possible, but no later than 24 hours after temporarily moving to or providing care at any location not noted on the permit.	(B)(i) YES. (B)(ii) As soon as possible, but no later than 24 hours after temporarily moving to or providing care at any location not noted on the permit.

(4) An adult who has contact with a child in care contracts a communicable disease noted in 25 TAC 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after the GRO becomes aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after the GRO becomes aware of the communicable disease.
(5) An allegation that a person under the auspices of the GRO who directly cares for or has access to a child in the GRO has abused drugs within the past seven days.	(A)(i) YES. (A)(ii) Within 24 hours after learning of the allegation.	(B)(i) NO. (B)(ii) Not applicable.
(6) An investigation of abuse or neglect by an entity (other than the Texas Department of Family and Protective Services Child Care Investigations division) of an employee, professional level service provider, contract staff, volunteer, or other adult at the GRO.	(A)(i) YES. (A)(ii) As soon as possible, but no later than 24 hours after the GRO becomes aware of the investigation.	(B)(i) NO. (B)(ii) Not applicable.
(7) Any of the following relating to an employee, professional level service provider, contract staff, volunteer, or other adult at the GRO alleging commission of any crime as provided in §745.661 of this title (relating to What types of criminal convictions may affect a subject's ability to be present at an operation?): • An arrest; • An indictment; • An information regarding an official complaint accepted by a county or district attorney; or • An arrest warrant executed by law enforcement.	(A)(i) YES. (A)(ii) As soon as the GRO becomes aware of the situation.	(B)(i) NO. (B)(ii) Not applicable.
(8) A search warrant is executed by law enforcement at the GRO.	(A)(i) YES. (A)(ii) As soon as the GRO becomes aware of the situation.	(B)(i) NO. (B)(ii) Not applicable.

(9) An allegation that an employee or caregiver: • Used a prohibited emergency behavior intervention technique, as outlined in §748.2451(b) of this chapter (relating to What types of emergency behavior intervention may I administer?); • Used a prohibited personal restraint technique, as outlined in §748.2605 of this chapter (relating to What personal restraint techniques are prohibited?); or • Used an emergency behavior intervention inappropriately, as outlined in §748.2463 of this chapter (relating to Are there any purposes for which emergency behavior intervention cannot be used?), §748.2705 of this chapter (What mechanical and other restraint devices are prohibited?), or §748.2801 of this chapter (relating to What is the maximum length of time that an emergency behavior intervention can be administered to a child?).	(A)(i) YES. (A)(ii) As soon as possible but no later than 24 hours after the GRO becomes aware of the incident.	(B)(i) YES. (B)(ii) As soon as possible but no later than 24 hours after the GRO becomes aware of the incident.

Figure: 26 TAC §749.503(a)

Serious Incident	(i) To Child Care Regulation? (ii) If so, when?	(i) To Parents? (ii) If so, when?	(i) To Law enforcement? (ii) If so, when?
(1) A child dies while in the CPA's care.	(A)(i) YES. (A)(ii) As soon as possible, but no later than 2 hours after the child's death.	(B)(i) YES. (B)(ii) As soon as possible, but no later than 2 hours after the child's death.	(C)(i) YES. (C)(ii) Immediately, but no later than 1 hour after the child's death.
(2) A substantial physical injury or critical illness that a reasonable person would conclude needs treatment by a medical professional or hospitalization.	(A)(i) YES. (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES. (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO. (C)(ii) Not Applicable.
(3) Allegations of abuse, neglect, or exploitation of a child; or any incident where there are indications that a child in care may have been abused, neglected, or exploited.	(A)(i) YES, including whether the CPA plans to move the child until the investigation is complete. (A)(ii) As soon as the CPA becomes aware of it.	(B)(i) YES, including whether the CPA plans to move the child until the investigation is complete. (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO. I(C)(ii) Not applicable.
(4) Physical abuse committed by a child against another child. For the purpose of this subsection, physical abuse occurs when there is substantial physical injury, excluding any accident; or failure to make a reasonable effort to prevent an action by another person that	(A)(i) YES. (A)(ii) As soon as the CPA becomes aware of it.	(B)(i) YES. (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO. (C)(ii) Not applicable.

results in substantial physical injury to the child.			
(5) Sexual abuse committed by a child against another child. For the purpose of this subsection, sexual abuse is: conduct harmful to a child's mental, emotional or physical welfare, including nonconsensual sexual activity between children of any age, and consensual sexual activity between children with more than 24 months difference in age or when there is a significant difference in the developmental level of the children; or failure to make a reasonable effort to prevent sexual conduct harmful to a child.	(A)(i) YES. (A)(ii) As soon as the CPA becomes aware of it.	(B)(i) YES. (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO. (C)(ii) Not applicable.
(6) A child is indicted, charged, or arrested for a crime; or when law enforcement responds to an alleged incident at the foster home that could result in criminal charges being filed against the child.	(A)(i) YES. (A)(ii) As soon as possible, but no later than 24 hours after the CPA becomes aware of it.	(B)(i) YES. (B)(ii) As soon as the CPA becomes aware of it.	(C)(i) NO. (C)(ii) Not applicable.
(7) A child is issued a ticket at school by law enforcement or any other citation that does not result in the child being detained.	(A)(i) NO. (A)(ii) Not applicable.	(B)(i) YES. (B)(ii) As soon as possible, but no later than 24 hours after the CPA becomes aware of it.	(C)(i) NO. (C)(ii) Not applicable.

(8) The unauthorized absence of a child who is developmentally or chronologically under 6 years old.	(A)(i) YES. (A)(ii) Within 2 hours of notifying law enforcement.	(B)(i) YES. (B)(ii) Within 2 hours of notifying law enforcement.	(C)(i) YES. (C)(ii) Immediately upon determining the child is not on the premises And the child is still missing.
(9) The unauthorized absence of a child who is developmentally or chronologically 6 to 12 years old.	(A)(i) YES. (A)(ii) Within 2 hours of notifying law enforcement, if the child is still missing.	(B)(i) YES. (B)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.	(C)(i) YES. (C)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.
(10) The unauthorized absence of a child who is 13 years old or older.	(A)(i) YES. (A)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, the CPA must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or the CPA believes the child has been abducted or has intention of turning to the foster home.	(B)(i) YES. (B)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, the CPA must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or the CPA believes the child has been abducted or has no intention of returning to the foster home.	(C)(i) YES. (C)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, the CPA must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or the CPA believes the child has been abducted or has no intention of returning to the foster home.

(11) A child in the CPA's care contracts a communicable disease that the law requires the CPA to report to the Texas Department of State Health Services (DSHS) as specified in 25 TAC 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after the CPA becomes aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after the CPA becomes aware of the communicable disease.	(C)(i) NO. (C)(ii) Not applicable.
(12) A suicide attempt by a child.	(A)(i) YES. (A)(ii) As soon as the CPA becomes aware of the incident.	(B)(i) YES. (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO. (C)(ii) Not applicable.

Figure: 26 TAC §749.503(e)

Serious Incident	(i) To Child Care Regulation? (ii) If so, when?	(i) To Parents? (ii) If so, when?
(1) Any incident that renders all or part of the CPA or a foster home unsafe or unsanitary for a child, such as a fire or a flood.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(2) A disaster or emergency that requires a foster home to close.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(3) The CPA must temporarily do the following to comply with a declared state of disaster under Chapter 418, Government Code: • Move the CPA to a new location that is not noted on the CPA's permit; • Move a foster home to a new location that is not noted on the verification; • Allow a foster home to provide care to any child at a location not noted on the verification (for example providing care to children that need to be quarantined at a different location from other children in the foster home noted on the verification).	(A)(i) YES. (A)(ii) As soon as possible, but no later than 24 hours after: • The CPA temporarily moves to a new location that is not noted on the permit; • A foster home temporarily moves to a new location that is not noted on the verification; or • A foster home temporarily provides care to any child at a location not noted on the verification.	(B)(i) YES. (B)(ii) As soon as possible, but no later than 24 hours after: • The CPA temporarily moves to a new location that is not noted on the CPA's permit; • A foster home temporarily moves to a new location that is not noted on the verification; or • A foster home temporarily provides care to any child at a location not noted on the verification.
(4) An adult who has contact with a child in care contracts a communicable disease noted in	(A)(i) YES, unless the information is	(B)(i) YES, if their child has contracted the communicable disease or

25 TAC Chapter 97, Subchapter A, (relating to Control of Communicable Diseases).	confidential. (A)(ii) As soon as possible, but no later than 24 hours after the CPA becomes aware of the communicable disease.	has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after the CPA becomes aware of the communicable disease.
(5) An allegation that a person under the auspices of the CPA who directly cares for or has access to a child in the setting has abused drugs within the past seven days.	(A)(i) YES. (A)(ii) Within 24 hours after learning of the allegation.	(B)(i) NO. (B)(ii) Not applicable.
(6) An investigation of abuse or neglect by an entity (other than the Texas Department of Family and Protective Services Child Care Investigations division) of an employee, professional level service provider, foster parent, contract staff, volunteer, or other adult at the agency.	(A)(i) YES. (A)(ii) As soon as possible, but no later.	(B)(i) NO. (B)(ii) Not applicable.
(7) Any of the following relating to an employee, professional level service provider, foster parent, contract staff, volunteer, or other adult at the agency alleging commission of any crime as provided in §745.661 of this title (relating to What types of criminal convictions may affect a subject's ability to be present at an operation?): • An arrest; • An indictment; • Information regarding an official compliant accepted by a county or district attorney; or	(A)(i) YES. (A)(ii) As soon as the CPA becomes aware of the situation.	(B)(i) NO. (B)(ii) Not applicable.

• An arrest warrant executed by law enforcement.		
(8) A search warrant is executed by law enforcement at the CPA or a foster home.	(A)(i) YES. (A)(ii) As soon as the CPA becomes aware of the situation.	(B)(i) NO. (B)(ii) Not applicable.
(9) An allegation that an employee or caregiver: • Used a prohibited emergency behavior intervention technique, as outlined in §749.2051(b) of this chapter (relating to What types of emergency behavior intervention may I administer?); • Used a prohibited personal restraint technique, as outlined in §749.2205 of this chapter (relating to What personal restraint techniques are prohibited?); or • Used an Emergency Behavior Intervention inappropriately, as outlined in §749.2063 of this chapter (relating to Are there any purposes for which emergency behavior intervention cannot be used?) or §749.2281 of this chapter (relating to What is the maximum length of time that an emergency behavior intervention can be administered to a child?).	(A)(i) YES. (A)(ii) As soon as possible but no later than 24 hours after the CPA becomes aware of the incident.	(B)(i) YES. (B)(ii) As soon as possible but no later than 24 hours after the CPA becomes aware of the incident.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Health and Safety Code and Texas Water Code
Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to Section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. TPC Group, Inc. and TPC Group LLC;* Cause No. D-1-GN-20-001042; in the 250th Judicial District, Travis County, Texas.

Background: In 2019, a catastrophic explosion leveled TPC's chemical manufacturing facility in Port Neches, Texas (the "Site"). TPC continues to operate a chemical products terminal at the Site, using it to ship and store chemical products like butadiene and raffinate. TPC operates two Vapor Combustion Units ("VCUs") whose emissions are authorized by a Standard Permit. But the VCUs do not perform as TPC represented they would in the Company's permit application. The parties have negotiated a permanent injunction requiring compliance by a date certain and applying a penalty that accounts for violations through that date that appropriately addresses TPC's pattern of noncompliance.

Proposed Settlement: The Agreed Final Judgment requires TPC to pay $12,600,000 in penalties and fees to resolve the company's post-bankruptcy[1] liability for air emissions at its Port Neches Plant. The Judgment includes a Permanent Injunction that requires that within 18 months after the Effective Date of the Agreed Judgment, TPC shall submit written certification to TCEQ that it has repaired or replaced VCU 1 and/or 2, and that the Pollution Control Device(s) it intends to use at PNO meet applicable hourly NOx emission limits in any then-applicable Clean Air Act authorizations.

The State also provides courtesy notice of its resolution of pre-bankruptcy matters in this suit and in the separate suit against TPC related to violations at the company's chemical manufacturing facility in Houston, Texas, *State of Texas v. TPC Group, Inc. and TPC Group LLC,* No. D-1-GN-22-000865 in the 201st Judicial District, Travis County, Texas. Violations alleged in these suits that pre-date December 16, 2022, fall within the scope of the Bankruptcy Court's jurisdiction in the cause *In re: Port Neches Fuels, LLC,* No. 22-10500 (CTG) (Bankr. D. De.). On August 31, 2024, the bankruptcy Trustee filed a Stipulation and Notice of Subordination Agreement in which the Trustee agrees that the total value of TCEQ's pre-bankruptcy petition claims are $150 million. The State agreed to voluntarily subordinate its claim for penalties behind other unsecured creditors to ensure individuals harmed by the 2019 explosion are made whole to the greatest extent allowed under bankruptcy law.

For a complete description of the proposed settlement, the agreed judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Carl Myers and Katie Hobson, Assistant Attorneys General, Office of the Attorney General of Texas, P.O. Box 12548, MC 066, Austin, Texas 78711-2548; (512) 463-2012; facsimile (512) 320-0911; email Carl.Myers@oag.texas.gov and Katie.Hobson@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

[1] The Company filed for bankruptcy in the wake of its catastrophic 2019 explosion and the bankruptcy court confirmed TPC's reorganization plan on December 16, 2022. The proposed judgment concerns only violations that occurred after the bankruptcy court's confirmation date.

TRD-202405357
Justin Gordon
General Counsel
Office of the Attorney General
Filed: November 6, 2024

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/18/24-11/24/24 is 18.00% for consumer[1] credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/18/24-11/24/24 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-202405498
Leslie L. Pettijohn
Consumer Credit Commissioner
Office of Consumer Credit Commissioner
Filed: November 12, 2024

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 30, 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 30, 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: Aqua Texas, Incorporated; DOCKET NUMBER: 2024-0554-PWS-E; IDENTIFIER: RN102684040; LOCATION: Needville, Fort Bend County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of the facility's Well Number 2; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: $1,450; ENFORCEMENT COORDINATOR: De'Shaune Blake, (210) 403-4033; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(2) COMPANY: AT&T CORPORATION dba AT&T Adams 1 Frisco; DOCKET NUMBER: 2024-0259-PST-E; IDENTIFIER: RN103138988; LOCATION: Frisco, Collin County; TYPE OF FACILITY: emergency generator; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Eunice Adegelu, (512) 239-5082; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: BERRY UTILITY CONTRACTORS LLC; DOCKET NUMBER: 2024-0711-WOC-E; IDENTIFIER: RN110770526; LOCATION: Waco, McClennan County; TYPE OF FACILITY: service provider; RULES VIOLATED: 30 TAC §30.5(a) and §30.381(a), TWC, §37.003, and Texas Health and Safety Code, §341.034(a), by failing to hold a valid water operations company registration prior to operating a public water supply on a contract basis; PENALTY: $1,034; ENFORCEMENT COORDINATOR: Daphne Greene, (903) 535-5157; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Braskem America, Incorporated; DOCKET NUMBER: 2024-0401-IWD-E; IDENTIFIER: RN102888328; LOCATION: La Porte, Harris County; TYPE OF FACILITY: plastics manufacturing plant; RULES VIOLATED: 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay fees and/or any associated late fees for TCEQ Financial Administration Account Number 91011175; and 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0002107000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $39,375; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $15,750; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: CAMP OLYMPIA, INCORPORATED; DOCKET NUMBER: 2024-0299-MWD-E; IDENTIFIER: RN101515435; LOCATION: Trinity, Trinity County; TYPE OF FACILITY: sports and recreational camp; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014261001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $3,825; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: City of Chandler; DOCKET NUMBER: 2024-0663-PWS-E; IDENTIFIER: RN101270395; LOCATION: Chandler, Henderson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(o)(3) and 290.45(h)(1), by failing to adopt and submit to the Executive Director a complete Emergency Preparedness Plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $50; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(7) COMPANY: City of Huntington; DOCKET NUMBER: 2024-0638-PWS-E; IDENTIFIER: RN101184638; LOCATION: Huntington, Angelina County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(i), Texas Health and Safety Code, §341.0315(c), and TCEQ Agreed Order Docket Number 2019-0927-MLM-E, Ordering Provision Number 2.e, by failing to provide two or more wells having a total capacity of 0.6 gallons per minute per connection; PENALTY: $220; ENFORCEMENT COORDINATOR: Ilia Perez-Ramirez, (713) 767-3743; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: FEDERAL AVIATION ADMINISTRATION; DOCKET NUMBER: 2024-1480-PST-E; IDENTIFIER: RN104533971; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection for the underground storage tank system; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Adriana Fuentes, (956) 430-6057; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: H2ECO Bulk LLC; DOCKET NUMBER: 2023-0608-PWS-E; IDENTIFIER: RN106489800; LOCATION: Austin, Travis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(c) and (e), by failing to collect and report the results of nitrate and nitrite sampling to the Executive Director for the January 1, 2021 - December 31, 2021 and the January 1, 2022 - December 31, 2022, monitoring periods; PENALTY: $1,259; ENFORCEMENT COORDINATOR: Kaisie Hubschmitt, (512) 239-1482; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(10) COMPANY: Harris County Municipal Utility District Number 8; DOCKET NUMBER: 2023-0750-PWS-E; IDENTIFIER: RN102975547; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to provide a water purchase contract that authorizes a maximum

daily purchase rate, or a uniform purchase rate in the absence of a specified daily purchase rate, plus the actual production capacity of the system of at least 0.6 gallons per minute per connection, as required by the alternative capacity requirement approved by the Executive Director; 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; and 30 TAC §290.110(c)(5)(D)(i), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; PENALTY: $1,599; ENFORCEMENT COORDINATOR: Kaisie Hubschmitt, (512) 239-1482; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(11) COMPANY: Kevin Drover dba Shafter Mine and Aurcana Silver Corporation dba Shafter Mine; DOCKET NUMBER: 2024-0552-PWS-E; IDENTIFIER: RN100812502; LOCATION: Marfa, Presidio County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's public drinking water well into service; 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; 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 §290.46(e)(4)(A) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of an operator who holds an applicable, valid Class D or higher license issued by the executive director (ED); and 30 TAC §290.46(f)(2) and (3)(A)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; PENALTY: $6,241; ENFORCEMENT COORDINATOR: Ilia Perez-Ramirez, (713) 767-3743; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Lithia CM, Incorporated dba All American Chevrolet of Midland; DOCKET NUMBER: 2023-0771-PST-E; IDENTIFIER: RN102281342; LOCATION: Midland, Midland County; TYPE OF FACILITY: car dealership with underground storage tanks (UST) to refuel vehicles; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued 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; 30 TAC §334.48(g)(1)(A)(ii), (B), (h)(1)(A)(i)and (B)(iii), and TWC, §26.3475(c)(2), by failing to conduct a walkthrough inspection for the spill prevention equipment every 30 days, and failing to conduct annual walkthrough inspections of the submersible turbine pump and under dispenser areas that do not have containment sumps, also, failing to test the spill prevention equipment at least once every three years, and in addition, failing to inspect the overfill prevention equipment at least once every three years to ensure it is set to activate at the correct level and will activate when a regulated substance reaches that level; 30 TAC §334.49(c)(2)(C) and (4)(C) and TWC, §26.3475(d), by failing to inspect the impressed corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly, and failing to test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.50(b)(1)(A) and (2)(B)(i)(I) and TWC, §26.3475(b) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the suction piping associated with the UST system; PENALTY: $16,418; ENFORCEMENT COORDINATOR: Celicia A. Garza, (210) 657-8422; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(13) COMPANY: Nerro Supply, LLC; DOCKET NUMBER: 2024-0469-PWS-E; IDENTIFIER: RN102680311; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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; PENALTY: $150; ENFORCEMENT COORDINATOR: De'Shaune Blake, (210) 403-4033; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(14) COMPANY: New Braunfels Utilities; DOCKET NUMBER: 2023-0431-MWD-E; IDENTIFIER: RN101607786; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010232003, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of sewage into or adjacent to any water in the state; PENALTY: $18,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $18,750; ENFORCEMENT COORDINATOR: Madison Stringer, (512) 239-1126; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(15) COMPANY: Realty Capital Argyle 114, Ltd.; DOCKET NUMBER: 2023-0947-WQ-E; IDENTIFIER: RN111692380; LOCATION: Argyle, Denton County; TYPE OF FACILITY: commercial development; 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: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(16) COMPANY: REPUBLIC WASTE SERVICES OF TEXAS, LTD. dba Republic Services of Lubbock; DOCKET NUMBER: 2024-0363-MSW-E; IDENTIFIER: RN105920185; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: municipal solid waste (MSW) transfer facility; RULE VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: RPM Water Supply Corporation; DOCKET NUMBER: 2024-0847-PWS-E; IDENTIFIER: RN102687860; LOCATION: Edom, Van Zandt County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(o)(3) and §290.45(h)(1), by failing to adopt and submit to the Executive Director a complete Emergency Preparedness Plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $50; ENFORCEMENT COORDINATOR: Taner Hengst, (512) 239-1143; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(18) COMPANY: South Texas Aggregates, Incorporated; DOCKET NUMBER: 2023-0363-EAQ-E; IDENTIFIER: RN103991352; LO-

CATION: Sabinal, Uvalde County; TYPE OF FACILITY: aggregate production operation; 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: $13,400; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $3,220; ENFORCEMENT COORDINATOR: Megan Crinklaw, (512) 239-1129; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(19) COMPANY: Syed Nooridun Hyder; DOCKET NUMBER: 2022-0746-MWD-E; IDENTIFIER: RN102097789; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011778001, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of sewage into or adjacent to any water in the state; 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0011778001, Monitoring and Reporting Requirements Number 7.b.i, by failing to report unauthorized discharges orally to the Regional Office within 24 hours of becoming aware of the noncompliance, and in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; and 30 TAC §317.2(c)(5)(F), by failing to use a sanitary sewer cover for all sewer manholes; PENALTY: $8,126; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(20) COMPANY: Undine Texas, LLC; DOCKET NUMBER: 2024-0092-MLM-E; IDENTIFIER: RN101283505; LOCATION: Livingston, Polk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(O) and §290.42(m), by failing to provide an intruder-resistant fence or well house around each water treatment plant, well unit, and related appurtenances that remains locked during periods of darkness and when the facility is unattended; 30 TAC §290.42(i) and TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of industrial wastewater into or adjacent to water in the state; 30 TAC §290.43(c)(1), by failing to provide the ground storage tank (GST) with a gooseneck roof vent or a roof ventilator designed by an engineer and installed in strict accordance with American Water Works Association standards and equipped with a corrosion-resistant 16-mesh or finer screen; 30 TAC §290.43(c)(4), by failing to provide all GSTs with a liquid level indicator; 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gpm per connection; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(f)(2) and (3)(D)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; and 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; PENALTY: $14,250; ENFORCEMENT COORDINATOR: Kaisie Hubschmitt, (512) 239-1482; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(21) COMPANY: Undine Texas, LLC; DOCKET NUMBER: 2024-0462-PWS-E; IDENTIFIER: RN101232197; LOCATION: Rosharon, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(f)(1)(E)(ii)(I), by failing to provide adequate containment for all liquid chemical storage tanks; and 30 TAC §290.45(b)(1)(A)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a well capacity of 1.5 gallons per minute per connection; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Emerson Rinewalt, (512) 239-1131; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(22) COMPANY: US Ecology Texas, Incorporated; DOCKET NUMBER: 2024-0503-IHW-E; IDENTIFIER: RN101445666; LOCATION: Robstown, Nueces County; TYPE OF FACILITY: commercial industrial, hazardous waste, and non-hazardous waste treatment, storage, and disposal facility; RULES VIOLATED: 30 TAC §305.125(1) and Industrial Hazardous Waste Permit Number 50052, Permit Provision Numbers II.A.2.-Duty to Comply, IV.A.-Waste Analysis Plan and IV.B.3.b.-Authorized Wastes, by failing to comply with all permit conditions; PENALTY: $29,383; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $11,753; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(23) COMPANY: Washburn Community Water Supply Corporation; DOCKET NUMBER: 2024-0660-PWS-E; IDENTIFIER: RN101459204; LOCATION: Claude, Armstrong County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of each of the facility's two wells; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $1,920; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(24) COMPANY: WICHITA VALLEY Water Supply Corporation; DOCKET NUMBER: 2023-1710-PWS-E; IDENTIFIER: RN101273902; LOCATION: Holliday, Wichita County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(2)(E) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(2)(G) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; 30 TAC §290.45(f)(5) and THSC, §341.0315(c), by failing to provide a water purchase contract that authorizes a maximum hourly purchase rate plus the actual service pump capacity of at least 2.0 gallons per minute (gpm) per connection or at least 1,000 gpm and be able to meet peak hourly demands, whichever is less; and 30 TAC §291.93(3)(A) and TWC, §13.139(d), by failing to provide a written planning report for a utility possessing a Certificate of Convenience and Necessity that has reached or exceeded 85% of all or part of its capacity; PENALTY: $3,925; ENFORCEMENT COORDINATOR: Rachel Frey, (512) 239-4330; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(25) COMPANY: ZAFAR, INCORPORATED dba SW Fondren Shell; DOCKET NUMBER: 2024-1285-PST-E; IDENTIFIER: RN100711639; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(e)(2), by failing to accurately fill out the underground storage tank (UST) registration form; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Lauren Little, (817) 588-5888; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202405468
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: November 8, 2024

♦ ♦ ♦

Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application No. 40342

Application. Strategic Materials, Inc. has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40342, to construct and operate a Type V municipal solid waste transfer station with recovery operations. The proposed facility, Strategic Materials Transfer Station, will be located at 3240 Robinson Rd, Midlothian, Texas 76065 in Ellis County. The Applicant is requesting authorization to accept municipal solid waste for processing and recycling. The recycling rate will be a minimum of 10% of incoming waste streams. The registration application is available for viewing and copying at the Meadows Public Library, 922 South 9th Street, Midlothian, Texas 76065. The application, including any updates and notices, is available electronically at the following webpage: 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/04ifn50. For exact location, refer to the 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 el idioma de español está disponible en www.tceq.texas.gov/goto/wasteapps.

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 reviewing 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 people 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 Strategic Materials, Inc. at the mailing address 3240 Robinson Rd, Midlothian, Texas 76065 or by calling Mr. Jason Plummer at (262) 581-7132.

Issued Date: November 4, 2024

TRD-202405505
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 13, 2024

♦ ♦ ♦

Notice of Opportunity to Comment on a Default 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 Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the

procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 30, 2024.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 30, 2024.** The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: Angel Solorzano; DOCKET NUMBER: 2023-0331-LII-E; TCEQ ID NUMBER: RN105854137; LOCATION: 4508 County Road 913 near Joshua, Johnson County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: TWC, §37.003, Texas Occupations Code, §1903.251, and 30 TAC §30.5(a), by failing to hold an irrigator license prior to selling, designing, installing, maintaining, altering, repairing, servicing, or providing consulting services relating to an irrigation system, or connecting an irrigation system to any water supply; PENALTY: $864; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202405489
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: November 12, 2024

♦ ♦ ♦

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

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 30, 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 30, 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 Tenaha; DOCKET NUMBER: 2022-0960-MWD-E; TCEQ ID NUMBER: RN102844560; LOCATION: adjacent to Hillard Creek, approximately 2,400 feet south of United States Highway 84 and 400 feet east of United States Highway 96 near Tenaha, Shelby County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (17) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010818001, Sludge Provisions, Section III, G, by failing to submit a complete annual sludge report to the TCEQ by September 30th of each year; 30 TAC §305.125(1) and (11)(B) and §319.7(a) and (c) and TPDES Permit Number WQ0010818001, Monitoring and Reporting Requirements Number 3.b, by failing to maintain monitoring and reporting records at the facility and make them readily available for review by a TCEQ representative for a period of three years; 30 TAC §305.125(1) and (5) and §317.3(a) and (e)(5) and TPDES Permit Number WQ0010818001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010818001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; TWC, §26.121(a)(1), 30 TAC §305.125(1) and (5) and §317.4(b)(4), and TPDES Permit Number WQ0010818001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010818001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010818001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §317.4(a)(8) and §317.7(i), by failing to provide atmospheric vacuum breakers on all potable water washdown hoses; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010818001, Other Requirements Number 6, by failing to submit quarterly progress reports to show the steps that have been taken towards ensuring continued compliance with the total suspended solids, carbonaceous biological oxygen demand, ammonia-nitrogen, and Escherichia coli permit limits; TWC, §26.121(a)(1), 30 TAC §305.125(1) and (4), and TPDES Permit Number WQ0010818001, Permit Conditions Number 2.d, by failing to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment; 30 TAC §305.125(1) and §319.11(d) and TPDES Permit Number WQ0010818001, Monitoring and Reporting Requirements Number 5, by failing to have automatic flow measuring devices ac-

curately calibrated by a trained person at plant start-up and thereafter not less often than annually; 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0010818001, Monitoring and Reporting Requirements Number 7.c, by failing to report to the TCEQ in writing, any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of noncompliance; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010818001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; and TWC, §26.121(a)(1), 30 TAC §305.125(1) and (5), and TPDES Permit Number WQ0010818001, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of sewage into or adjacent to any water in the state; PENALTY: $161,825; Supplemental Environmental Project offset amount of $161,825 applied to Shelby County Clarifier Construction; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202405488
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: November 12, 2024

♦ ♦ ♦

Notice of Opportunity to Comment on Shutdown/Default Orders of an Administrative Enforcement Action

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill, and overfill prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 30, 2024**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 30, 2024**. The commission's attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone number; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Najwa M. Hammad dba BJ's Food Store; DOCKET NUMBER: 2022-0748-PST-E; TCEQ ID NUMBER: RN102235645; LOCATION: 1201 West Rev Dr. Ransom Howard Street, Port Arthur, Jefferson County; TYPE OF FACILITY: temporarily out-of-service UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(c)(4)(C) and §334.54(b)(3), by failing to have the corrosion protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; TWC, §26.3475(d) and 30 TAC §334.49(a)(2), by failing to ensure the UST corrosion protection system is operated and maintained in a manner that will provide continuous corrosion protection to all underground metal components of the UST system; 30 TAC §334.54(c)(1), by failing to either properly empty the UST system or monitor the temporarily out-of-service UST system in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §37.867(a), by failing to empty the UST system no later than 90-days after insurance coverage or other financial assurance had terminated; PENALTY: $4,340; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: SORT Valley LLC dba Mini Max 4; DOCKET NUMBER: 2022-0849-PST-E; TCEQ ID NUMBER: RN102279163; LOCATION: 6215 North Doffing Road, Mission, Hidalgo County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST in a manner which will detect a release at a frequency of at least once every 30 days; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.606, by failing to maintain required operator training certification documentation on-site and make it available for inspection upon request by agency personnel; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $6,619; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: SORT Valley LLC dba Minimax 2; DOCKET NUMBER: 2024-0296-PST-E; TCEQ ID NUMBER: RN102719382; LOCATION: 101 North Tom Gill Road, Penitas, Hidalgo County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; and 30 TAC §334.606, by failing to maintain required operator training certification documentation on-site and make it available for inspection upon request by agency personnel; PENALTY: $6,620; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Harlingen Regional

Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-202405487
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: November 12, 2024

♦ ♦ ♦

Notice of Public Meeting Air Quality Standard Permit for Concrete Batch Plants Proposed Registration No. 176289

Application. Verti-Crete Houston, LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration No. 176289, which would authorize construction of a specialty concrete batch plant located at 953 Pheasant Valley Drive, Missouri City, Fort Bend County, Texas 77489. 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. **AVISO DE IDIOMA ALTERNATIVO.** El aviso de idioma alternativo en espanol está disponible en https://www.tceq.texas.gov/permitting/air/newsourcereview/airpermits-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=-95.526592,29.619497&level=13. The proposed facility will 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 May 8, 2024. The executive director has completed the administrative and technical reviews of the application and determined that the application meets all of the requirements of a standard permit authorized by 30 Texas Administrative Code §116.611, which would establish the conditions under which the plant must operate. The executive director has made a preliminary decision to issue the registration because it meets all applicable rules.

Public Comment/Public Meeting. *You may submit public comments to the Office of the Chief Clerk at the address below.* The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, December 12, 2024, at 6:00 p.m.

Houston Community College - Missouri City Campus

1600 Texas Parkway

Missouri City, Texas 77489

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, executive director's preliminary decision, and standard permit will be available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and at the Fort Bend Chamber of Commerce, 445 Commerce Green Boulevard, Sugar Land, Fort Bend County, Texas 77478. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas. Visit www.tceq.texas.gov/goto/cbp to review the standard permit. Further information may also be obtained from Verti-Crete Houston, LLC, 931 Pheasant Valley Drive, Missouri City, Texas 77489-1322 or by calling Ms. Anna De La Garza, Principal Consultant, Edge Engineering and Science at (832) 772-3000.

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: November 8, 2024

TRD-202405506
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 13, 2024

♦ ♦ ♦

Notice of Public Meeting for an Air Quality Standard Permit for Permanent Rock and Concrete Crushers Proposed Air Quality Registration Number 176835

APPLICATION. Asphalt Inc., LLC, 11675 Jollyville Road Suite 150, Austin, Texas 78759-4108 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration Number 176835, which would authorize construction of a permanent rock and concrete crusher. The facility is proposed to be located at 3221 Farm to Market Road 3509, Burnet, Burnet County, Texas 78611. 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=-98.3169,30.7227&level=13. This application was submitted to the TCEQ on July 3, 2024. The executive director has determined the application was technically complete on August 20, 2024.

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.

The Public Meeting is to be held:

Tuesday, December 10, 2024, at 7:00 p.m.

Hill Country Fellowship

200 Houston Clinton Drive

Burnet, Texas 78611

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 Web site 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 executive director shall approve or deny the application not later than 30 days after the end of the public comment period, 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 Austin Regional Office, located at 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753-1808, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday.

Further information may also be obtained from Asphalt Inc., LLC, 11675 Jollyville Road Suite 150, Austin, Texas 78759-4108, by calling Mrs. Melissa Fitts, Senior Vice President, Westward Environmental at (830) 249-8284.

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: November 8, 2024

TRD-202405507
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 13, 2024

♦ ♦ ♦

Notice of Request for Public Comment and Notice of a Public Meeting for Draft Implementation Plan for One Total Maximum Daily Load for Indicator Bacteria in the Cotton Bayou Watershed

Aviso de Solicitud de Comentarios Públicos y Aviso de Reunión Pública Sobre El Borrador Del Plan De Implementación De Una Carga Diaria Máxima Total Para Bacterias Indicadoras En La Cuenca De Cotton Bayou

The Texas Commission on Environmental Quality (TCEQ) has made available for public comment the draft Implementation Plan (I-Plan) for one Total Maximum Daily Load (TMDL) for indicator bacteria in the Cotton Bayou watershed, of the Trinity River Basin, within Chambers County.

The purpose of the meeting is to provide the public an opportunity to comment on the draft I-Plan for one assessment unit: Cotton Bayou Tidal 0801C_01.

The I-Plan, developed by regional stakeholders, is a flexible tool that the governmental and non-governmental participants involved in TMDL implementation will use to guide their actions and practices. The commission requests comment on each of the major components of the I-Plan: management measures, implementation strategy and tracking, review strategy, and communication strategy.

After the public comment period, TCEQ may revise the draft I-Plan if appropriate. The final I-Plan will then be considered by the Commission for approval. Upon approval of the I-Plan by the Commission, the final I-Plan and a response to all comments received will be made available on TCEQ's website.

Public Meeting and Testimony. The public meeting for the draft I-Plan will be held at the **Sam & Carmena Goss Memorial Branch Library, 1 John Hall Dr., Mont Belvieu, Texas 77580,** on **December 10, 2024, at 6:00 p.m.**

Please periodically check the project website before the meeting date for related updates. *https://www.tceq.texas.gov/waterquality/tmdl/nav/124-cottonbayou-bacteria.*

During this meeting, individuals will have the opportunity to present oral statements. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all oral statements have been received.

Written Comments. Please choose one of the methods provided to submit your written comments. Written comments on the draft I-Plan may be submitted to Lauren Dawson, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or eFaxed to (512) 239-1414. 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 written comments must be received at TCEQ by midnight on December 30, 2024, and should reference *Implementation Plan for One Total Maximum Daily Load for Indicator Bacteria in the Cotton Bayou Watershed.*

For further information regarding the draft I-Plan, please contact Lauren Dawson at *Lauren.Dawson@tceq.texas.gov.* The draft I-Plan can be obtained via TCEQ's website at *https://www.tceq.texas.gov/waterquality/tmdl/nav/124-cottonbayou-bacteria.*

Persons with disabilities who have special communication or other accommodation needs who are planning to participate in the meeting should contact Lauren Dawson at *Lauren.Dawson@tceq.texas.gov.* Requests should be made as far in advance as possible.

Para la versión en español de este documento, visite *https://www.tceq.texas.gov/waterquality/tmdl/nav/124-cottonbayou-bacteria.*

TRD-202405451
Charmaine K. Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 8, 2024

♦ ♦ ♦

Notice of Request for Public Comment and Notice of a Public Meeting on Draft Implementation Plan for Two Total Maximum Daily Loads for Indicator Bacteria in Big Creek

Aviso de Solicitud de Comentarios Públicos y Aviso de Reunión Pública Sobre el Borrador del Plan de Implementación de Dos Cargas Máximas Diarias Totales para Microorganismos Indicadores en Big Creek

The Texas Commission on Environmental Quality (TCEQ) has made available for public comment the draft Implementation Plan (I-Plan) for two Total Maximum Daily Loads (TMDLs) for indicator bacteria in Big Creek, of the Brazos River Basin in Fort Bend County.

The purpose of the meeting is to provide the public an opportunity to comment on the draft I-Plan in two assessment units in Big Creek: 1202J_01 and 1202J_02.

The I-Plan, developed by regional stakeholders, is a flexible tool that the governmental and non-governmental participants involved in TMDL implementation will use to guide their actions and practices. The commission requests comment on each of the major components of the I-Plan: management measures, implementation strategy and tracking, review strategy, and communication strategy.

After the public comment period, TCEQ may revise the draft I-Plan if appropriate. The final I-Plan will then be considered by the commission for approval. Upon approval of the I-Plan by the commission, the final I-Plan and a response to all comments received will be made available on TCEQ's website.

Public Meeting and Testimony. The public meeting for the draft I-Plan will be held at the **George Memorial Library, Room 2A - Fort Bend County Libraries, 1001 Golfview Dr., Richmond, Texas 77469, on December 12, 2024, at 6:00 p.m.**

Please periodically check the project website before the meeting date for related updates. *https://www.tceq.texas.gov/waterquality/tmdl/nav/122-bigcreekbacteria.*

During this meeting, individuals will have the opportunity to present oral statements. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all oral statements have been received.

Written Comments. Please choose one of the methods provided to submit your written comments. Written comments on the draft I-Plan may be submitted to Daniela Mejia, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or eFaxed to (512) 239-1414. 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 written comments must be received at TCEQ by midnight on December 30, 2024, and should reference *Implementation Plan for Two Total Maximum Daily Loads for Indicator Bacteria in Big Creek.*

For further information regarding the draft I-Plan, please contact Daniela Mejia at *Daniela.Mejia@tceq.texas.gov*. The draft I-Plan can be obtained via TCEQ's website at *https://www.tceq.texas.gov/waterquality/tmdl/nav/122-bigcreekbacteria.*

Persons with disabilities who have special communication or other accommodation needs who are planning to participate in the meeting should contact Daniela Mejia at *Daniela.Mejia@tceq.texas.gov.* Requests should be made as far in advance as possible.

Para la versión en español de este documento, visite *https://www.tceq.texas.gov/waterquality/tmdl/nav/122-bigcreekbacteria.*

TRD-202405442
Charmaine K. Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 8, 2024

♦ ♦ ♦

Notice of Request for Public Comment and Notice of a Public Meeting On Draft Implementation Plan for Two Total Maximum Daily Loads for Indicator Bacteria in the Oyster Creek Watershed

Aviso De Solicitud De Comentarios Públicos Y Aviso De Reunión Pública Sobre El Borrador Del Plan De Implementación De Dos Cargas Máximas Diarias Totales Para Microorganismos Indicadores En Oyster Creek

The Texas Commission on Environmental Quality (TCEQ) has made available for public comment the draft Implementation Plan (I-Plan) for two Total Maximum Daily Loads (TMDLs) for indicator bacteria in the Oyster Creek Watershed, of the San Jacinto-Brazos Coastal Basin in Brazoria and Fort Bend counties.

The purpose of the meeting is to provide the public an opportunity to comment on the draft I-Plan for two assessment units: Oyster Creek Tidal (1109_01) and Oyster Creek Above Tidal (1110_01).

The I-Plan, developed by regional stakeholders, is a flexible tool that the governmental and non-governmental participants involved in TMDL implementation will use to guide their actions and practices. The commission requests comment on each of the major components of the I-Plan: management measures, implementation strategy and tracking, review strategy, and communication strategy.

After the public comment period, TCEQ may revise the draft I-Plan if appropriate. The final I-Plan will then be considered by the Commission for approval. Upon approval of the I-Plan by the Commission, the final I-Plan and a response to all comments received will be made available on TCEQ's website.

Public Meeting and Testimony. The public meeting for the draft I-Plan will be held at the **Angleton Public Library, 401 E Cedar St, Angleton, Texas 77515,** on **December 11, 2024, at 6:00 p.m.**

Please periodically check the project website before the meeting date for related updates. *https://www.tceq.texas.gov/waterquality/tmdl/nav/114-oystercreek-bacteria.*

During this meeting, individuals will have the opportunity to present oral statements. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all oral statements have been received.

Written Comments. Please choose one of the methods provided to submit your written comments. Written comments on the draft I-Plan may be submitted to Jazmyn Milford, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or eFaxed to (512) 239-1414. 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 written comments must be received at TCEQ by midnight on December 30, 2024, and should reference *Implementation Plan for Two Total Maximum Daily Loads for Indicator Bacteria in the Oyster Creek Watershed.*

For further information regarding the draft I-Plan, please contact Jazmyn Milford at *Jazmyn.Milford@tceq.texas.gov.* The draft I-Plan can be obtained via TCEQ's website at *https://www.tceq.texas.gov/waterquality/tmdl/nav/114-oystercreek-bacteria.*

Persons with disabilities who have special communication or other accommodation needs who are planning to participate in the meeting should contact Jazmyn Milford at *Jazmyn.Milford@tceq.texas.gov.* Requests should be made as far in advance as possible.

Para la versión en español de este documento, visite *https://www.tceq.texas.gov/waterquality/tmdl/nav/114-oystercreek-bacteria.*

TRD-202405452
Charmaine K. Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 8, 2024

♦ ♦ ♦

General Land Office

Coastal Boundary Survey A-121 Jamaica Beach

Surveying Services

Coastal Boundary Survey

Project: E Hall-Levi Jones, A-121-Jamaica Beach, SOTLS 265 & 266

Project No: CEPRA Project No. 1482

Project Manager: Carver Wray, PM, Amy Nunez, Dianna Ramirez, Coastal Field Operations

Surveyor: Jim M. Naismith, Licensed State Land Surveyor

Description: Coastal Boundary Survey. Being the Littoral Boundary line along the Mean High Water (MHW) lines of the Gulf of Mexico, being a portion of the Southerly boundary line of the Hall & Jones Survey, Abstract No. 121, same being the Northerly boundary line of the Gulf of Mexico and State Submerged Tract No.'s 265 and 266, Galveston County, Texas, in connection with CEPRA Project No. 1482. Centroid coordinates 29.179825° N, 94.974226° W, WGS84. A copy of the survey has been filed under Instrument No. 2024028613, Official Public Records of Galveston County, Texas.

A Coastal Boundary Survey for the above-referenced project has been reviewed and accepted by Surveying Services; upon completion of public notice requirements, the survey will be filed in the Texas General Land Office, Archives and Records, in accordance with provisions of the Tex. Nat. Res. Code §33.136.

by:

Signed: David Klotz, Staff Surveyor

Date: November 4, 2024

Pursuant to Tex. Nat. Res. Code §33.136, the herein described Coastal Boundary Survey is approved by Dawn Buckingham, M.D., Commissioner of the Texas General Land Office.

by:

Signed: Jennifer Jones, Chief Clerk and Deputy Land Commissioner

Date: November 7, 2024

Filed as: Galveston County, NRC Article 33.136 Sketch No. 95

Tex. Nat. Res. Code §33.136

TRD-202405493
Jennifer Jones
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: November 12, 2024

♦ ♦ ♦

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 21, 2024 to November 6, 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, November 15, 2024. The public comment period for this project will close at 5:00 p.m. on Sunday, December 15, 2024.

Federal Agency Activities:

Applicant: National Oceanic and Atmospheric Administration

Location: The project alternatives are located along the coast of Texas.

Project Description: *Draft Restoration Plan 4 and Environmental Assessment: Fish and Water Column Invertebrates and Sea Turtles* (herein referred to as RP4/EA) was prepared by the Open Ocean Trustee Implementation Group (Open Ocean TIG or the TIG). The Open Ocean TIG includes Trustees from four federal agencies: the National Oceanic and Atmospheric Administration (NOAA); the United States Department of the Interior (DOI); the United States Department of Agriculture (USDA); and the United States Environmental Protection Agency (USEPA). The Open Ocean TIG is responsible for restoring natural resources and services in the Open Ocean Restoration Area that were injured or lost as a result of the *Deepwater Horizon* (DWH) oil spill.

The Open Ocean TIG reviewed 87 restoration project ideas proposed by individual members of the public, non-governmental organizations, and local, state, and federal agencies, ultimately identifying 12 project alternatives for full evaluation in the RP/EA. The Draft RP/EA #4 also evaluates a no-action alternative. The ten preferred project alternatives are listed below:

Fish and Water Column Invertebrates Restoration Type

- Return 'Em Right: Species and Area Expansion (Reduction of Postrelease Mortality from Barotrauma in Gulf of Mexico Reef Fish Recreational Fisheries)

- Next Generation Fishing

- Communication Networks and Mapping Tools to Reduce Fish Mortality

- Reduction of Diverse Threats to Fish and Water Column Invertebrates

- Education and Stewardship Partnerships with Charter Anglers

- Communication, Adaptive Management, Planning, and Integration

Sea Turtle Restoration Type

- Sea Turtle Nesting Habitat Protection Expansion in Florida (Long Term Nesting Habitat Protection for Sea Turtles)

- Gulf-Wide Sea Turtle Bycatch Reduction

- Gulf-Wide Sea Turtle Vessel Strike Reduction

- Gulf-Wide Sea Turtle Stranding Network and Emergency Response Enhancements

Type of Application: Draft Restoration Plan/Environmental Assessment titled: "Open Ocean Trustee Implementation Group Draft Restoration Plan 4 and Environmental Assessment: Fish and Water Column Invertebrates and Sea Turtles" (Draft RP4/EA).

CMP Project No: 25-1039-F2

Applicant: National Oceanic and Atmospheric Administration (NOAA) Marine Debris Program

Location: The applicant proposes five project site locations with one located within the coastal zone in Hunting Bayou, Harris County, Texas.

Latitude and Longitude:

Hunting Bayou 29.76899, -95.2269

Project Description: The proposed project will install litter booms in non-navigable Houston waterways to intercept and remove trash. The device will be anchored to shore using either no-damage tree brindles or buried T-posts with minimal impact to the site location. No heavy equipment is required. The floating litter boom device does not impede the flow of water or restrict movement of wildlife. Routine cleanout and maintenance is done by hand up to twice monthly. It is estimated this project will remove up to 1,500 pounds of debris per site per year. Best management practices will be applied to avoid and minimize impacts to sensitive habitats and protected resources.

Type of Application: NOAA's Marine Debris Program will be providing a grant to Galveston Bay Foundation for litter interception and removal in Houston, Texas.

CMP Project No: 25-1040-F2

Federal License and Permit Activities:

Applicant: INEOS Styrolution America, LLC

Location: The project site is located in wetlands adjacent to Galveston Bay, at 12222 Port Road, in Pasadena, Harris County, Texas.

Latitude and Longitude: 29.595372, -95.015377

Project Description: This is an After-the-Fact permit application request. The applicant proposes to retain unauthorized discharges of fill material into jurisdictional waters of the U.S. for the purpose of industrial development. Such activities included clearing, grading and filling 11.17 acres of scrub shrub wetlands with approximately 8,950 cubic yards of soil, rock and concrete. The applicant stated that the inadvertent impacts will be utilized for parking and support facilities for the existing facilities. The applicant proposed to mitigate for the proposed impacts by purchasing 28.9 total Functional Capacity Units from an approved mitigation bank.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2018-00613. This application will be reviewed pursuant to Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

Applicant: Iron Horse Terminals, LLC

Location: The project site is located in

Latitude and Longitude:

Project Description:

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2021-00152. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 25-1055-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-202405494
Jennifer Jones
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: November 12, 2024

♦ ♦ ♦

Office of the Governor

Notice of Inflation Rate for Termination of Defunding Municipality Determination during Fiscal Year 2025

Pursuant to Texas Local Government Code Section 109.006(a)(2), the Criminal Justice Division (CJD) of the Office of the Governor publishes this notice to all persons regarding the inflation rate used for termination of a defunding municipality determination during fiscal year 2025. As required by law, the CJD has computed the inflation rate using a price index that accurately reports changes in the purchasing power of the dollar for municipalities in this state. This computation is based on economic data evaluating the difference in the Consumer Price Index (CPI) between September 2024 and September 2023 and made available by the Texas Comptroller's Office available at Key Eco-

nomic Indicators (texas.gov). The CJD has determined an inflation rate of 2.1% for fiscal year 2025.

Filed: November 6, 2024

TRD-202405364
Aimee Snoddy
Executive Director, Public Safety Office
Office of the Governor
Filed: November 6, 2024

♦ ♦ ♦

Texas Health and Human Services Commission

Public Notice - Methodology for Determining Caseload Reduction Credit for the Temporary Assistance for Needy Families (TANF) Program for Federal Fiscal Year 2025

The Texas Health and Human Services Commission (HHSC) announces its intent to seek comments from the public on its estimate and methodology for determining the Temporary Assistance for Needy Families (TANF) Program caseload reduction credit for Federal Fiscal Year (FFY) 2025. HHSC will base the methodology on caseload reduction occurring from FFY 2005 to FFY 2024. This methodology and the resulting estimated caseload reduction credit will be submitted for approval to the United States Department of Health and Human Services, Administration for Children and Families.

Section 407(b)(3) of the Social Security Act provides for a TANF caseload reduction credit, which gives a state credit for reducing its TANF caseload between a base year and a comparison year. To receive the credit, a state must complete and submit a report that, among other things, describes the methodology and the supporting data that the state used to calculate its caseload reduction estimates. *See* 45 C.F.R. Section 261.41(b)(5). Prior to submitting the report, the state must provide the public with an opportunity to comment on the estimate and methodology. *See* 45 C.F.R. Section 261.41(b)(6).

As the state agency that administers the TANF program in Texas, HHSC believes it is eligible for a caseload reduction credit and has developed the requisite estimate and methodology. HHSC hereby notifies the public of the opportunity to submit comments.

HHSC will post the methodology and the estimated caseload reduction credit on the HHSC website for FFY 2025 at *https://www.hhs.texas.gov/about/records-statistics/data-statistics/temporary-assistance-needy-families-tanf-statistics* by November 22, 2024. The public comment period begins November 22, 2024, and ends December 6, 2024.

Written Comments Written comments may be sent by U.S. mail, fax, or email.

U.S. Mail

Texas Health and Human Services Commission

Attention: Aisha Crawford

701 W. 51st Street

MC 2106

Austin, Texas 78751

Phone number for package delivery: (512) 915-0519

Fax

Attention: Access and Eligibility Services - Program Policy, Aisha Crawford

Fax Number: (512) 438-2355

Email

aisha.crawford@hhs.texas.gov

TRD-202405491
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: November 12, 2024

♦ ♦ ♦

Public Notice - Proposed Update to 1 TAC §355.8052, concerning Inpatient Hospital Reimbursement, and §355.8061, concerning Outpatient Hospital Reimbursement

High Cost Drugs Rule Hearing: The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on December 3, 2024, at 9:00 a.m., to receive public comments on proposed rule change that allows for hospitals to be reimbursed for High-Cost Clinician Administered Drugs and Biologics (HCCADs), long-acting reversible contraceptives and Donor Human Milk Services.

This hearing will be conducted online only, there is no physical location for this hearing. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

Registration URL: https://attendee.gotowebinar.com/register/3035089041097014111

After registering, you will receive a confirmation email containing information about joining the webinar hearing. Instructions for dialing-in by phone will be provided after you register.

If you are new to GoToWebinar, please download the GoToMeeting app at https://global.gotomeeting.com/install/626873213 before the hearing starts.

A recording of the hearing will be archived and can be accessed 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.

Proposal. The effective date of the proposed updates to the rules presented during the rule hearing is as follows:

Effective March 1, 2025:

-§355.8052, concerning Inpatient Hospital Reimbursement, and

-§355.8061, concerning Outpatient Hospital Reimbursement.

Rule Hearing Packet. Interested parties may obtain a copy of the proposed preambles and rule amendments in the November 22, 2024, issue of the *Texas Register* at https://www.sos.texas.gov/texreg/index.shtml or by contacting Provider Finance by telephone at (737) 867-7817; by fax at (512) 730-7475; or by e-mail at PFD_Hospitals@hhsc.state.tx.us.

Written Comments. Written comments regarding the proposed amendments may be submitted instead of, or in addition to, oral testimony until 5:00 p.m. on December 30, 2024, for the Inpatient Hospital Reimbursement and Outpatient Hospital Reimbursement. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by email to pfd_hospitals@hhsc.state.tx.us. In addition, written comments may be sent

by overnight mail or hand delivered to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 W. Guadalupe St., Austin, Texas 78751.

Preferred Communication. For quickest response please use e-mail or phone, if possible, 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 call Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202405504
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: November 13, 2024

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for Astiva Health of Texas, a domestic Health Maintenance Organization (HMO). The home office is in Austin, Texas.

Application for incorporation in the state of Texas for Ambetter Health of Texas, Inc., a domestic Health Maintenance Organization (HMO). The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Andrew Guerrero, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202405508
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: November 13, 2024

♦ ♦ ♦

Notice of Public Hearing

Consideration of a Request to Change the

Title Insurance Basic Premium Rates

Docket No. 2851

On November 1, 2024, the Texas Land Title Association (TLTA) requested that the commissioner hold a public hearing under Insurance Code §2703.202 to consider title insurance premium rates.

The commissioner will accept written and oral comments on title insurance premium rates in a public hearing under Docket No. 2851 at 2:00 p.m. on Tuesday, January 21, 2025, in Room 2.035 of the Barbara Jordan Building, 1601 Congress Ave., Austin, Texas 78701.

The commissioner will take all comments into consideration and will consider each matter presented in the hearing. The commissioner will announce all decisions on the matter in a public hearing at 2:00 p.m. on Thursday, February 6, 2025, in Room 2.034 of the Barbara Jordan Building, 1601 Congress Ave., Austin, Texas 78701.

You can review or get copies of TLTA's request and supporting documentation:

- Online: Go to www.tdi.texas.gov/rules/2024/exrules.html.

- By mail: Write to the Texas Department of Insurance, Office of the Chief Clerk, MC: GC-CCO, P.O. Box 12030, Austin, Texas 78711.

- In person: You can review the filing at the Texas Department of Insurance, Office of the Chief Clerk, 1601 Congress Ave., Austin, Texas 78701 during regular business hours. To schedule a time to review the materials in person, please email ChiefClerk@tdi.texas.gov.

To comment on title insurance premium rates in writing, TDI must receive your comment by 5:00 p.m. on January 21, 2025. You can send written comments:

- Online: To ChiefClerk@tdi.texas.gov.

- By mail: Write to Texas Department of Insurance, Office of the Chief Clerk, MC: GC-CCO, P.O. Box 12030, Austin, Texas 78711.

- In person: You can hand deliver comments directed to the Texas Department of Insurance, Office of the Chief Clerk, 1601 Congress Ave., Austin, Texas 78701 during regular business hours.

TRD-202405477
Jessica Barta
General Counsel
Texas Department of Insurance
Filed: November 8, 2024

♦ ♦ ♦

Texas Department of Licensing and Regulation

Course of Organized Instruction (COI) for Driving Safety

The Texas Department of Licensing and Regulation publishes the adopted changes to the Course of Organized Instruction (COI) for Driving Safety. The COI for Driving Safety is incorporated by reference and to be considered with the adopted amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §84.2 and §84.3; Subchapter C, §§84.40, 84.43, 84.44, 84.46; Subchapter D, §84.50; Subchapter E, §84.60 and §84.63; Subchapter G, §84.80; and Subchapter N, §84.600 and §84.601; new rules at Subchapter D, §84.51 and §84.52; Subchapter M, §§84.500-84.505; and the repeal of existing rules at Subchapter D, §84.51 and §84.52; and Subchapter M, §§84.500-84.502 and §84.504 regarding the Driver Education and Traffic S afety (DES) p rogram, a s p ublished i n the adopted rules section of this issue of the *Texas Register.*

COURSE OF ORGANIZED INSTRUCTION (COI) FOR DRIVING SAFETY

December 2024

6-Hour Driving Safety Course
(COI-Driving Safety)

Texas Department of Licensing and Regulation, Education and Examination Division www.tdlr.texas.gov

Table of Contents

NOTICE

The Course of Organized Instruction (COI) is not curriculum. It is a manual created for providers, that includes the required course content for the driver safety education course. Providers using a third-party source, or their own curriculum will use that with the COI, and Driver Education & Safety laws and rules to create a strong driver safety education course.

COURSE OF ORGANIZED INSTRUCTION FOR SIX-HOUR DRIVING SAFETY

Chapter One: Course Introduction

1.1 Introduction. This guide details the required course content and minimum instruction requirements for the instruction for six-hour Driving Safety programs in Texas, as prescribed by the Texas Education Code (TEC) and the Texas Administrative Code (TAC). All course content and instructional material shall include current statistical data, references to law, driving procedures, and traffic safety methodology. Laws and statistical data presented must be Texas-specific. Course providers may employ national data and statistics, where appropriate, for comparative purposes during instruction.

Course content, minimum instruction requirements, and administrative guidelines for Driving Safety classroom instruction shall include the instructional objectives established by the Department. Further, providers must meet the requirements of the Texas Administrative Code and the statutes authorizing those codes.

Lesson lengths stated in this COI for the chapters expressed herein are to be determined by the provider to maximize effective instructional techniques and student mastery of course content. It may be necessary to extend the training time by repeating lessons to ensure the student demonstrates mastery over course content contained in each section. Breaks to students during instruction are to be given in accordance with 16 TAC §84.500(b)(1)(B).

If there is a conflict with the information contained in this guide and applicable law, the law shall control. Failure to comply with the requirements contained in this guide, applicable law, rule or order of the Commission for the Texas Department of Licensing and Regulation (TDLR), or the TDLR executive director may subject the licensee to administrative penalties and/or sanctions pursuant to 16 TAC §84.400.

Questions regarding the guide should be directed to the Texas Department of Licensing and Regulation, Education and Examination Division, P.O. Box 12157, Austin, Texas 78711, or www.tdlr.texas.gov, or call (800)803-9202.

Chapter Two: Course Options

The following course options are authorized by the Texas Department of Licensing and Regulation (TDLR):

2.1 Traditional Course. A six-hour curriculum attended in person by the student at an approved driving safety school classroom location. In a traditional classroom location, the licensee is responsible to ensure sufficient seating that allows students the ability to comprehend instructional aids.

2.2 Alternative Delivery Method (ADM). A six-hour curriculum that does not require the student to be present in a physical classroom location. The curriculum shall be instructed through the alternative method approved by the Department.

2.3 Chapter Exams or Comprehensive Exam. To evaluate the student's knowledge and understanding and measure progress (mastery equals 70 percent or above after each Chapter or a Comprehensive Exam at the end of the course).

2.4 Sequencing of Topics. Course Provider may teach Chapter Topics Two through Twelve in any order but, at a minimum, must instruct each Topic in full.

Chapter Three: Instructional Objectives

3.1 Educational Objective of Driving Safety Courses. The educational objectives of driving safety courses shall include, but not be limited to, information relating to human trafficking prevention; promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; implementation of law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act information relating to the Texas Driving with Disabilities Program (Senate Bill 2304, 88th Regular Legislature (2023)); the proper use of child passenger safety seat systems; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; motivating continuing development of traffic-related competencies; the

passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; and safely operating a vehicle around an oversize or overweight vehicle, including safe following distances and safe passing methods.

Chapter Four: Curriculum Instruction Characteristics

4.1 General. Driving Safety course content, including video and multimedia, shall include current statistical data, references to law, driving procedures, and traffic safety methodology. A driving safety course shall include, as a minimum, materials adequate to assure the student masters the following topics. Laws and statistical data presented must be Texas-specific. Course providers may employ national data and statistics, where appropriate, for comparative purposes during instruction.

4.2 Driving Safety Topics of Instruction.

Total instruction time must be a minimum of five (5) hours, excluding breaks, and at minimum, include the Topics listed below.

4.2.1 Topic One: Course Introduction

Objective: The student recognizes the value of legal and responsible reduced-risk driving practices and accepts driving as a privilege with responsibilities, obligations, and potential consequences.

4.2.1.1 Instruction, at minimum, must address the following topics:

(A) purpose and benefits of the course;

(B) course and facilities orientation;

(C) requirements for receiving course credit; and

(D) department provided information on course content.

4.2.2 Topic Two: The Traffic Safety Problem

Objective: To develop an understanding of the nature of the traffic safety problem and to instill in each student a sense of responsibility for its solution.

4.2.2.1 Instruction, at minimum, must address the following topics:

(A) identification of the overall traffic problem in Texas, specifically, and comparatively, the United States;

(B) death, injuries, and economic losses resulting from motor vehicle crashes in Texas; and

(C) the top five contributing factors of motor vehicle crashes in Texas as identified by the Texas Department of Transportation.

4.2.3 Topic Three: Factors Influencing Driver Performance

Objective: To identify the characteristics and behaviors of drivers and how they affect driving performance.

4.2.3.1 Instruction, at minimum, must address the following topics:

(A) attitudes, habits, feelings, and emotions (aggressive driving, etc.);

(B) physical condition (drowsy driving, etc.);

(C) knowledge of driving laws and procedures; and

(D) understanding the driving task.

4.2.4 Topic Four: Traffic Laws and Procedures

Objective: To identify the requirements of, and the rational for, applicable Texas driving laws and procedures and to influence drivers compliance.

4.2.4.1 Instruction, at minimum, must address the following topics:

(A) passing;

(B) right-of-way, and knowledge and application of procedure to yield right-of-way to emergency vehicles described in Transportation Code §545.157, school buses, and pedestrians;

(C) turns;

(D) stops;

(E) speed limits;

(F) railroad crossings safety, including statistics, causes, and evasive actions;

(G) categories of traffic signs, signals, and highway markings;

(H) pedestrians;

(I) improved shoulders;

(J) intersections;

(K) occupant restraints;

(L) anatomical gifts;

(M) litter prevention;

(N) law enforcement and emergency vehicles "Move Over and Slow Down Law" (HB 3319, 87th Regular Legislature 2021);

(O) law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act (Senate Bill 30, 85th Regular Legislature (2017));

(P) Texas Driving with Disabilities Program. Curriculum is expected to instruct the student on the following:

1. How to participate in the program;

2. How to identify which diagnoses may be considered a "Communication Impediment" for the Texas Driving with Disability Program;

3. Identify which form the student should have their doctor fill out and take to DPS to have "Communication Impediment" added to the front of their Driver License or Texas State ID card;

4. Explain where to find the Communication Impediment with a Peace Officer on a Driver License or a Texas State ID card; and

5. Identify which forms a student would need to complete with the Texas Department of Motor Vehicles to disclose their Communication Impediment or Deaf/Hard of Hearing in The Texas Law Enforcement Telecommunication System (TLETS); and

(Q) other laws as applicable (i.e., financial responsibility/compulsory insurance).

4.2.5 Topic Five: Special Skills for Difficult Driving Environments

Objective: To identify how special conditions affect driver and vehicle performance and identify techniques for management of these conditions.

4.2.5.1 Instruction, at minimum, must address the following topics:

(A) inclement weather;

(B) traffic congestion;

(C) city, urban, rural, and expressway/freeway environments;

(D) reduced visibility conditions--hills, fog, curves, light conditions (darkness, glare, etc.), and

(E) roadway conditions.

4.2.6 Topic Six: Physical Forces That Influence Driver Control

Objective: To identify the physical forces that affect driver control and vehicle performance.

4.2.6.1 Instruction, at minimum, must address the following topics:

(A) speed control (acceleration, deceleration, etc.);

(B) traction (friction, hydroplaning, stopping distances, centrifugal force, etc.); and

(C) force of impact (momentum, kinetic energy, inertia, etc.).

4.2.7 Topic Seven: Perceptual Skills Needed for Driving

Objective: To identify the factors of perception and how the factors affect driver performance.

4.2.7.1 Instruction, at minimum, must address the following topics:

(A) visual interpretations;

(B) hearing;

(C) touch;

(D) smell;

(E)reaction abilities (simple and complex); and

(F) judging speed and distance.

4.2.8 Topic Eight: Defensive Driving Strategies

Objective: To identify the concepts of defensive driving and demonstrate how they can be employed by drivers to reduce the likelihood of crashes, deaths, injuries, and economic losses.

4.2.8.1 Instruction, at minimum, must address the following topics:

(A) trip planning;

(B) evaluating the traffic environment;

(C) anticipating the actions of others;

(D) decision making;

(E) implementing necessary maneuvers;

(F) compensating for the mistakes of other drivers;

(G) avoiding common driving errors;

(H) interaction with other road users (motorcycles, bicycles, trucks, pedestrians, etc.);

(I) safe operation of a motor vehicle near an oversize or overweight vehicle, including safe following distances and safe passing methods;

(J) motorcycle awareness, including the dangers of failing to yield the right-of-way to a motorcyclist and the need to share the road with motorcyclist;

(K) distractions relating to the effect of using a wireless communication device, including texting or engaging in other actions that may distract a driver from the safe or effective operation of a motor vehicle; and

(L) understand the dangers of speed and its impact on reduced-risk driving practices; must include the dangers and consequences of street racing in violation of Transportation Code §545.420.

4.2.9 Topic Nine: Driving Emergencies

Objective: To identify common driving emergencies and their countermeasures.

4.2.9.1 Instruction, at minimum, must address the following topics:

(A) collision traps (front, rear, and sides);

(B) off road recovery, paths of least resistance; and

(C) mechanical malfunctions (tires, brakes, steering, power, lights, etc.)

4.2.10 Topic Ten: Occupant Restraints and Protective Equipment

Objective: To identify the rationale for having and using occupant restraints and protective equipment.

4.2.10.1 Instruction, at minimum, must address the following topics:

(A) legal aspects;

(B) vehicle control;

(C) crash protection;

(D) operational principles (active and passive);

(E) helmets and other protective equipment;

(F) proper use of child passenger safety seat systems; and

(G) dangers involved in locking or leaving children in vehicles unattended.

4.2.11 Topic Eleven: Alcohol and Traffic Safety

Objective: To identify the effects of alcohol on roadway users.

4.2.11.1 Classroom instruction shall address the following topics:

(A) physiological effects;

(B) psychological effects;

(C) legal aspects; and

(D) synergistic effects.

4.2.12 Topic Twelve: Human Trafficking

Objective: Recognize the key indicators of human trafficking.

4.2.12.1 Instruction, at minimum, must address the following topics:

(A) activities commonly associated with human trafficking;

(B) recognition of potential victims of human trafficking; and

(C) methods for assisting victims of human trafficking, including how to report human trafficking.

4.2.13 Topic Thirteen: Comprehensive Examination or Unit Examination

Objective: The student reduces risk by legally and responsibly completing a Progress Assessment to evaluate classroom knowledge and understanding and measure progress (mastery equals 70 percent or above).

NOTICE

The Course of Organized Instruction (COI) is not curriculum. It is a manual created for providers, that includes the required course content for the driver safety education course. Providers using a third-party source, or their own curriculum will use that with the COI, and Driver Education & Safety laws and rules to create a strong driver safety education course.

TRD-202405464
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Filed: November 8, 2024

♦ ♦ ♦

Program of Organized Instruction (POI) for Driver Education and Traffic Safety

The Texas Department of Licensing and Regulation publishes the adopted changes to the Course of Organized Instruction (COI) for Driving Safety. The COI for Driving Safety is incorporated by reference and to be considered with the adopted amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §84.2 and §84.3; Subchapter C, §§84.40, 84.43, 84.44, 84.46; Subchapter D, §84.50; Subchapter E, §84.60 and §84.63; Subchapter G, §84.80; and Subchapter N, §84.600 and §84.601; new rules at Subchapter D, §84.51 and §84.52; Subchapter M, §§84.500-84.505; and the repeal of existing rules at Subchapter D, §84.51 and §84.52; and Subchapter M, §§84.500-84.502 and §84.504 regarding the Driver Education and Traffic S afety (DES) p rogram, a s p ublished i n the adopted rules section of this issue of the *Texas Register.*

PROGRAM OF ORGANIZED INSTRUCTION (POI) FOR DRIVER EDUCATION AND TRAFFIC SAFETY

December 2024

Exclusively for Adults 6-Hour Course
(POI-Adult Six-Hour)

Texas Department of Licensing and Regulation, Education and Examination Division
www.tdlr.texas.gov

Table of Contents

NOTICE

The Program of Organized Instruction (POI) is not curriculum. It is a manual created for providers, that includes the required course content for the six hour classroom instruction for the adult driver education course. Providers using a third-party source, or their own curriculum will use that with the POI, Driver Education & Safety laws and rules, and the current Texas Driver Handbook to create a strong driver education course.

PROGRAM OF ORGANIZED INSTRUCTION FOR ADULT SIX-HOUR DRIVER EDUCATION AND TRAFFIC SAFETY

Chapter One: Program Introduction

1.1 General. This guide details the required course content and minimum instruction requirements for the classroom instruction phase for the Exclusively for Adults driver education programs in Texas, as prescribed by the Texas Education Code (TEC) and the Texas Administrative Code (TAC). All course content and instructional material shall include current statistical data, references to law, driving procedures, and traffic safety methodology.

Course content, minimum instruction requirements, and administrative guidelines for Adult Driver Education and Traffic Safety classroom instruction shall include the instructional objectives, knowledge and skills, and student expectations established by the Department. Further, programs and instructors must meet the requirements of the Texas Administrative Code and the statutes authorizing those codes.

Lesson lengths for the topics expressed herein are to be determined by the provider to maximize effective instructional techniques and student mastery of course content. It may be necessary to extend the training time by repeating lessons to ensure the student demonstrates mastery over course content contained in each section. Schools are allowed to give breaks to students during instruction in accordance with 16 TAC §84.500(b)(1)(B).

If there is a conflict with the information contained in this guide and applicable law, the law shall control. Failure to comply with the requirements contained in this guide, applicable law, rule or order of the Commission for the Texas Department of Licensing and Regulation (TDLR), or the TDLR executive director may subject the licensee to administrative penalties and/or sanctions pursuant to 16 TAC §84.400.

Questions regarding the guide should be directed to the Texas Department of Licensing and Regulation, Education and Examination Division, P.O. Box 12157, Austin, Texas 78711, or www.tdlr.texas.gov, or call (800) 803-9202.

Chapter Two: Course Options

The following course options are authorized by the Texas Department of Licensing and Regulation (TDLR):

2.1 Traditional Course. An Adult six-hour curriculum attended in person by the student at an approved driver education school classroom location. In a traditional classroom location, the licensee is responsible to ensure sufficient seating and desks or tables that allows students to comprehend classroom instruction.

2.2 Online Course. An Adult six-hour curriculum that does not require the student to be present in a classroom location. The curriculum shall be instructed online as approved by the Department.

DRIVER EDUCATION AND TRAFFIC SAFETY
ADULT SIX HOUR COURSE

Chapter Three: Instructional Objectives

3.1 General. In Texas, the **Driver Education and Traffic Safety Program** provides new drivers the foundation of knowledge, understanding, skills, and experiences necessary for new drivers to drive legally and safely. This foundation is provided by licensed instructors, parents, guardians, or adult mentors through a classroom of culturally responsive instructional techniques that include knowledge assessment, skill assessment, guided observation, and parental/mentor involvement.

3.2 Educational Objective of this Course. The student legally and responsibly recognizes the necessity for reduced risk driving practices by accepting driving as a privilege with responsibilities, obligations, and potential consequences; and applying knowledge and understanding about alcohol and drug awareness. The educational objectives of driver training courses must include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of driver education and citizens;

instruction on law enforcement procedures for traffic stops in accordance with provisions of the Community Safety Education Act; information relating to human trafficking prevention in accordance with the provisions of the Julia Wells Act (Senate Bill 1831, Section 3, 87th Regular Legislature (2021)); information relating to the Texas Driving with Disabilities Program (Senate Bill 2304, 88th Regular Legislature (2023)); litter prevention; anatomical gifts; safely operating a vehicle near oversize or overweight vehicles; the passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; leaving children in vehicles unattended; distractions; motorcycle awareness; alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle; recreational water safety; reducing traffic violations, injuries, deaths, and economic losses; the proper use of child passenger safety seat systems; and motivating development of traffic-related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

Chapter Four: Minimum Course Content

4.1 Driving Safety Topics of Instruction. The driver education course exclusively for adults shall consist of six clock hours of classroom instruction that meets the following topics.

4.1.1 Topic One: Course Introduction

Objective: The student recognizes the value of legal and responsible reduced-risk driving practices and accepts driving as a privilege with responsibilities, obligations, and potential consequences.

4.1.1.1 Classroom Instruction Requirements:

(A) recognize how an Adult Driver Education course provides a novice driver the foundation of knowledge, understanding, skills, and experiences necessary to continue the life-long learning process of reduced-risk driving;

(B) know that basic knowledge of traffic laws provides a driver the foundation to formulate informed, legal, and responsible decisions to reduce risk; and

(C) recognize that driving is a privilege with risk, responsibilities, obligations, and potential consequences requiring the knowledge, understanding, and application of legal and responsible reduced-risk driving practices; and reduce risk by recognizing the value of legal and responsible reduced-risk driving practices and accepting driving as a privilege with responsibilities, obligations, and potential consequences.

4.1.2 Topic Two: Your License to Drive

Objective: The student reduces risk and accepts driving as a privilege by legally and responsibly possessing a driver license, registering a motor vehicle, and obeying the Safety Responsibility Act.

Resource: Texas Driver Handbook, Chapters 1-3

4.1.2.1 Classroom Instruction Requirements:

(A) describe the process, responsibility, and obligation of obtaining, possessing, and renewing a Texas driver license including the instruction permit;

(B) recognize driver license types, restrictions, endorsements, and special information;

(C) list and describe suspensions and revocations placed on driving privileges;

(D) list and describe guidelines and procedures to inspect and register a motor vehicle in Texas;

(E) recognize the benefits and obligations of the Safety Responsibility Act;

(F) reduce risk and accept driving as a privilege by legally and responsibly possessing a driver license, registering a motor vehicle, and obeying the Safety Responsibility Act; and

(G) explain the Texas Drivers with Disabilities Program and its underlying purposes and policies and the procedure by which a driver may participate in the program to place a notice on a driver license.

4.1.3 Topic Three: Right-of-Way

Objective: The student reduces risk by legally and responsibly accepting or yielding the right-of-way.

Resource: Texas Driver Handbook, Chapter 4

4.1.3.1 Classroom Instruction Requirements:

(A) define right-of-way and list the responsibilities, obligations, and potential consequences for failure to accept or yield the right-of-way, including yielding the right-of-way to motorcyclists;

(B) define traditional and non-traditional intersections;

(C) describe when and the procedures to accept or yield the right-of-way at controlled intersections, uncontrolled intersections, intersecting roads with lesser or greater number of lanes, intersecting roads with different pavement surfaces, T-intersections, controlled-access roads, railroad grade crossings, turns (left and right), and entering a public road from a private road;

(D) know when and the procedure to yield the right-of-way to emergency vehicles "Move Over and Slow Down Law" (HB 3319, 87th Regular Legislature 2021), as described in Transportation Code §545.157, school buses, and pedestrians;

(E) state the law and describe risk-reducing procedures when passing an emergency vehicle stopped on or by a roadway;

(F) know how the basic knowledge of right-of-way laws provides a driver the foundation to formulate and implement informed, legal, and responsible decisions to reduce risk; and

(G) reduce risk by legally and responsibly accepting or yielding the right-of-way.

4.1.4 Topic Four: Traffic Control Devices

Objective: The student reduces risk by legally and responsibly applying knowledge and understanding of traffic control devices.

Resource: Texas Driver Handbook, Chapter 5

4.1.4.1 Classroom Instruction Requirements:

(A) list and explain the meanings of the colors and shapes of signs, signals, and pavement markings;

(B) recognize and describe the purpose and appropriate response for traffic control devices including signs, signals, and pavement markings based on law, consequences, and driving conditions;

(C) recognize how basic knowledge of traffic control devices provides a driver the foundation to formulate and implement informed, legal, and responsible decisions to reduce risk; and

(D) reduce risk by legally and responsibly responding to traffic control devices.

4.1.5 Topic Five: Controlling Traffic Flow

Objective: The student reduces risk by legally and responsibly applying knowledge and understanding of laws and procedures for controlling traffic flow.

Resource: Texas Driver Handbook, Chapters 6-9

4.1.5.1 Classroom Instruction Requirements:

(A) define traffic flow;

(B) relate how traffic flow is managed by traffic control devices, law enforcement, and other persons;

(C) explain the appropriate communication to indicate a change in speed or position;

(D) state the laws for passing and being passed, basic and special turning situations, and for stopping, standing, parking, leaving a space, backing, and coasting;

(E) define and explain how to avoid blind spot driving;

(F) know the importance and how to establish a safe following interval;

(G) relate speed to stopping a vehicle based on roadway conditions;

(H) know the importance of adjusting speed, route planning, or not driving during poor driving conditions including traffic, weather, visibility, roadway, vehicle, and driver;

(I) state the legal minimum and maximum speed limits for Texas roadways and beaches;

(J) state the law and purpose of vehicle lights;

(K) state the laws and potential dangers for freeway entry, travel, and exit;

(L) know the importance of avoiding driving when fatigued including highway (roadway) hypnosis;

(M) describe procedures for managing a vehicle breakdown;

(N) describe procedures for controlling a vehicle in a skid, brake failure, running off pavement, blowout, or driving down a steep hill;

(O) explain potential dangers and countermeasures associated with winter driving; and

(P) reduce risk by legally and responsibly applying knowledge and understanding of laws and procedures for controlling traffic flow.

4.1.6 Topic Six: Alcohol and Other Drugs

Objective: The student legally and responsibly performs reduced-risk driving practices by adopting zerotolerance driving and lifestyle practices related to the use of alcohol and other drugs, and applying knowledge and understanding of alcohol and other drug laws, regulations, penalties, and consequences.

Resource: Texas Driver Handbook, Chapter 10

4.1.6.1 Classroom Instruction Requirements:

(A) know the legal definition of intoxication in Texas;

(B) summarize how alcohol and other drugs affect driving ability;

(C) know laws, regulations, and penalties applicable to adults, over 21, for Improper Use of a Driver License, Driving Under the Influence, Public Intoxication, Driving While Intoxicated, Intoxication Assault, and Intoxication Manslaughter violations;

(D) know laws, regulations, and penalties applicable to minors and under 21 for Improper Use of a Driver License, Driving Under the Influence by a Minor, Public Intoxication, Minor in Possession, Driving While Intoxicated, Intoxication Assault, and Intoxication Manslaughter violations;

(E) know laws, regulations, and penalties applicable to minors and adults for Open Container Law, and Open Container Enhancement Law;

(F) know laws, regulations, and penalties applicable to minors and adults for Administrative License Revocation and Implied Consent violations; and

(G) reduce risk by legally and responsibly performing reduced-risk driving practices and adopt zerotolerance practices related to the use of alcohol and other drugs by applying knowledge and understanding of alcohol and other drug laws, regulations, penalties; and consequences to driving and lifestyles.

4.1.7 Topic Seven: Cooperating with Other Roadway Users

Objective: The student reduces risk by legally and responsibly cooperating with law enforcement and other roadway users including vulnerable roadway users in emergency and potential emergency situations, and safely operating a motor vehicle near an oversize or overweight vehicle, including safe following distances and safe passing methods.

Resource: Texas Driver Handbook, Chapters 11-14

4.1.7.1 Classroom Instruction Requirements:

(A) summarize and categorize roadway users;

(B) understand the Good Samaritan Law and responsibilities at the scene of a traffic crash including aiding the injured;

(C) list the laws and responsibilities of sharing the road with other roadway users such as bicyclists, trucks, motorcyclists, light rail, person on horseback, horse driven conveyance, slow-moving vehicles, work zone/construction workers, and pedestrians;

(D) describe the responsibilities of a defensive driver;

(E) state the laws and responsibilities regarding occupant restraints and open truck beds;

(F) describe the responsibilities if stopped by law enforcement;

(G) show and explain the Community Education Safety Act (Senate Bill 30) video and instructional materials;

(H) define aggressive driving and list ways to avoid personal or other roadway users aggressive driving;

(I) explain the responsibilities for transporting cargo, using safety chains, and towing;

(J) list the causes and consequences of carbon monoxide poisoning and state avoidance procedures;

(K) reduce risk by legally and responsibly cooperating with law enforcement and other roadway users including vulnerable roadway users including emergency and potential emergency situations;

(L) reduce risk by safely operating a motor vehicle near an oversize or overweight vehicle, including safe following distances and safe passing methods; and

(M) explain the Texas Driving with Disabilities Program. Curriculum is expected to instruct the student on the following:

1. How to participate in the program;

2. How to identify which diagnoses may be considered a "Communication Impediment" for the Texas Driving with Disability Program;

3. Identify which form the student should have their doctor fill out and take to DPS to have "Communication Impediment" added to the front of their Driver License or Texas State ID card;

4. Explain where to find the Communication Impediment with a Peace Officer on a Driver License or a Texas State ID card; and

5. Identify which forms a student would need to complete with the Texas Department of Motor Vehicles to disclose their Communication Impediment or Deaf/Hard of Hearing in The Texas Law Enforcement Telecommunication System (TLETS).

4.1.8 Topic Eight: Managing Risk

Objective: The student reduces and manages risk by legally and responsibly understanding the issues commonly associated with motor vehicle collisions, including poor decision-making, risk taking, impaired driving, distractions, speed, failure to use a safety belt, driving at night, and using a wireless communications device while operating a vehicle.

4.1.8.1 Classroom Instruction Requirements:

(A) recognize the value of responsible reduced-risk driving practices to manage issues commonly associated with motor vehicle collisions;

(B) recognize how poor decision-making and risk-taking increase the possibility of a collision;

(C) understand the dangers of impaired driving including but not limited to; mental, emotional, and physical fatigue and illnesses;

(D) list distractions that affect driving including but not limited to; vehicle navigation systems, music systems, vehicle controls, mobile phones, passengers and pets;

(E) understand the dangers of speed and its impact on reduced-risk driving practices, including the dangers and consequences of street racing in violation of Transportation Code §545.420;

(F) recognize how failure to use a safety belt while driving increases risk;

(G) explain the potential dangers associated with driving at night;

(H) understand the effect of using a wireless communications device or engaging in other actions that may distract a driver on the safe or effective operation of a motor vehicle including but not limited to; text messaging while driving, eating & drinking while driving, personal grooming, multi-tasking, working in the vehicle, reading while driving;

(I) reduce risk by legally and responsibly applying knowledge, understanding and safe driving practices to manage issues commonly associated with motor vehicle collisions; and

(J) recognize the key indicators of human trafficking by:

- identifying activities commonly associated with human trafficking;
- recognizing of potential victims of human trafficking; and
- learning methods for assisting victims of human trafficking, including how to report human trafficking.

4.1.9 Topic Nine: Classroom Progress Assessment

Objective: Texas Department of Public Safety Highway Sign and Traffic Law examination. The student reduces risk by legally and responsibly completing a Progress Assessment to evaluate classroom knowledge and understanding and measure progress (mastery equals 70 percent or above).

Required Exam: Texas Department of Public Safety Highway Sign and Traffic Law Examination

NOTICE

The Program of Organized Instruction (POI) is not curriculum. It is a manual created for providers, that includes the required course content for the six hour classroom instruction for the adult driver education course. Providers using a third-party source, or their own curriculum will use that with the POI, Driver Education & Safety laws and rules, and the current Texas Driver Handbook to create a strong driver education course.

TRD-202405465
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Filed: November 8, 2024

♦ ♦ ♦

Program of Organized Instruction (POI) for Driver Education and Traffic Safety (POI-DE)

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cum-

bersome, expensive, or otherwise inexpedient," the figure in this miscellaneous document is not included in the print version of the Texas Register. The figure is available in the on-line version of the November 22, 2024, issue of the Texas Register.)

The Texas Department of Licensing and Regulation publishes the adopted changes to the Program of Organized Instruction for Driver Education and Traffic Safety (POI-DE). The POI-DE is incorporated by reference and to be considered with the adopted amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §84.2 and §84.3; Subchapter C, §§84.40, 84.43, 84.44, 84.46; Subchapter D, §84.50; Subchapter E, §84.60 and §84.63; Subchapter G, §84.80; and Subchapter N, §84.600 and §84.601; new rules at Subchapter D, §84.51 and §84.52; Subchapter M, §§84.500 - 84.505; and the repeal of existing rules at Subchapter D, §84.51 and §84.52; and Subchapter M, §§84.500 - 84.502 and §84.504 regarding the Driver Education and Traffic Safety (DES) program, as published in the adopted rules section of this issue of the *Texas Register*.

TRD-202405466
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Filed: November 8, 2024

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 2624 "$5 MILLION ROYALE"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2624 is "$5 MILLION ROYALE". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2624 shall be $50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2624.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, $50.00, $100, $150, $200, $500, $1,000, $10,000 and $5,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2624 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON

32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
$50.00	FFTY$

$100	ONHN
$150	ONFF
$200	TOHN
$500	FVHN
$1,000	ONTH
$10,000	10TH
$5,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2624), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 2624-0000001-001.

H. Pack - A Pack of the "$5 MILLION ROYALE" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 020 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "$5 MILLION ROYALE" Scratch Ticket Game No. 2624.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "$5 MILLION ROYALE" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eighty-six (86) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly eighty-six (86) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly eighty-six (86) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the eighty-six (86) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eighty-six (86) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to forty (40) times.

D. All non-winning YOUR NUMBERS Play Symbols will be different.

E. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

F. All WINNING NUMBERS Play Symbols will be different.

G. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. On all Tickets, a Prize Symbol will not appear more than seven (7) times, except as required by the prize structure to create multiple wins.

I. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

J. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 50 and $50).

K. On winning and Non-Winning Tickets, the top cash prizes of $1,000, $10,000 and $5,000,000 will each appear at least one (1) time, except on Tickets winning forty (40) times and with respect to other parameters, play action or prize structure.

L. The "2X" (DBL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

M. The "2X" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

N. The "2X" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

O. The "2X" (DBL) Play Symbol will never appear more than two (2) times on a Ticket.

P. The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Q. The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

R. The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

S. The "5X" (WINX5) Play Symbol will never appear more than one (1) time on a Ticket.

T. The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

U. The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

V. The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

W. The "10X" (WINX10) Play Symbol will never appear more than one (1) time on a Ticket.

X. The "20X" (WINX20) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Y. The "20X" (WINX20) Play Symbol will never appear on a Non-Winning Ticket.

Z. The "20X" (WINX20) Play Symbol will win 20 TIMES the prize for that Play Symbol and will win as per the prize structure.

AA. The "20X" (WINX20) Play Symbol will never appear more than one (1) time on a Ticket.

BB. The "2X" (DBL), "5X" (WINX5), "10X" (WINX10) and "20X" (WINX20) will never appear on the same Ticket with the exception of the "5X" (WINX5) and "10X" (WINX10) which may appear on the same Ticket with each other as indicated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "$5 MILLION ROYALE" Scratch Ticket Game prize of $50.00, $100, $150, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100, $150, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$5 MILLION ROYALE" Scratch Ticket Game prize of $1,000 or $10,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If

the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "$5 MILLION ROYALE" Scratch Ticket Game top level prize of $5,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers in Austin, Dallas, Fort Worth, Houston or San Antonio, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification and proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). The Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "$5 MILLION ROYALE" Scratch Ticket Game prize, including the top level prize of $5,000,000, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "$5 MILLION ROYALE" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "$5 MILLION ROYALE" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2624. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2624 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$50.00	600,000	10.00
$100	450,000	13.33
$150	300,000	20.00
$200	180,000	33.33
$500	102,500	58.54
$1,000	5,640	1,063.83
$10,000	110	54,545.45
$5,000,000	4	1,500,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.66. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2624 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2624, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202405495
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 12, 2024

♦ ♦ ♦

Scratch Ticket Game Number 2637 "$50, $100 OR $500!"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2637 is "$50, $100 OR $500!". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2637 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2637.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, MONEY BAG SYMBOL, $50.00, $100 and $500.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2637 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON

32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
MONEY BAG SYMBOL	WIN$
$50.00	FFTY$
$100	ONHN
$500	FVHN

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2637), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2637-0000001-001.

H. Pack - A Pack of the "$50, $100 OR $500!" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "$50, $100 OR $500!" Scratch Ticket Game No. 2637.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "$50, $100 OR $500!" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-six (56) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "MONEY BAG" Play Symbol, the player wins the PRIZE for that symbol instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-six (56) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-six (56) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifty-six (56) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-six (56) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: There will be no matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. KEY NUMBER MATCH: There will be no matching WINNING NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: A Ticket may have up to ten (10) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

F. KEY NUMBER MATCH: The "MONEY BAG" (WIN$) Play Symbol may appear up to five (5) times on winning Tickets, unless restricted by other parameters, play action or prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "$50, $100 OR $500!" Scratch Ticket Game prize of $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "$50, $100 OR $500!" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "$50, $100 OR $500!" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "$50, $100 OR $500!" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 10,080,000 Scratch Tickets in Scratch Ticket Game No. 2637. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2637 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$50.00	806,400	12.50
$100	252,000	40.00
$500	10,080	1,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 9.43. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2637 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2637, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202405482
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 12, 2024

♦ ♦ ♦

Scratch Ticket Game Number 2648 "SUPER LOTERIA"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2648 is "SUPER LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2648 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2648.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: ARMADILLO SYMBOL, BAT SYMBOL, BLUEBONNET SYMBOL, BOAR SYMBOL, CARDINAL SYMBOL, CHERRIES SYMBOL, CHILE PEPPER SYMBOL, CORN SYMBOL, COVERED WAGON SYMBOL, COWBOY HAT SYMBOL, COWBOY SYMBOL, FIRE SYMBOL, GUITAR SYMBOL, HEN SYMBOL, HORSE SYMBOL, HORSESHOE SYMBOL, JACKRABBIT SYMBOL, LIZARD SYMBOL, LONE STAR SYMBOL, MARACAS SYMBOL, MOCKINGBIRD SYMBOL, MOONRISE SYMBOL, MORTAR PESTLE SYMBOL, NEWSPAPER SYMBOL, OIL RIG SYMBOL, PECAN TREE SYMBOL, PIÑATA SYMBOL, RATTLESNAKE SYMBOL, ROADRUNNER SYMBOL, SADDLE SYMBOL, SHOES SYMBOL, SPEAR SYMBOL, SPUR SYMBOL, STRAWBERRY SYMBOL, SUNSET SYMBOL, WHEEL SYMBOL, WINDMILL SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00,

$100, $200, $500, $5,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2648 - 1.2D

PLAY SYMBOL	CAPTION
ARMADILLO SYMBOL	ARMADILLO
BAT SYMBOL	BAT
BLUEBONNET SYMBOL	BLUEBONNET
BOAR SYMBOL	BOAR
CARDINAL SYMBOL	CARDINAL
CHERRIES SYMBOL	CHERRIES
CHILE PEPPER SYMBOL	CHILE PEPPER
CORN SYMBOL	CORN
COVERED WAGON SYMBOL	COVERED WAGON
COWBOY HAT SYMBOL	COWBOY HAT
COWBOY SYMBOL	COWBOY
FIRE SYMBOL	FIRE
GUITAR SYMBOL	GUITAR
HEN SYMBOL	HEN
HORSE SYMBOL	HORSE
HORSESHOE SYMBOL	HORSESHOE
JACKRABBIT SYMBOL	JACKRABBIT
LIZARD SYMBOL	LIZARD
LONE STAR SYMBOL	LONE STAR
MARACAS SYMBOL	MARACAS
MOCKINGBIRD SYMBOL	MOCKINGBIRD
MOONRISE SYMBOL	MOONRISE
MORTAR PESTLE SYMBOL	MORTAR PESTLE
NEWSPAPER SYMBOL	NEWSPAPER
OIL RIG SYMBOL	OIL RIG
PECAN TREE SYMBOL	PECAN TREE
PIÑATA SYMBOL	PIÑATA

RATTLESNAKE SYMBOL	RATTLESNAKE
ROADRUNNER SYMBOL	ROADRUNNER
SADDLE SYMBOL	SADDLE
SHOES SYMBOL	SHOES
SPEAR SYMBOL	SPEAR
SPUR SYMBOL	SPUR
STRAWBERRY SYMBOL	STRAWBERRY
SUNSET SYMBOL	SUNSET
WHEEL SYMBOL	WHEEL
WINDMILL SYMBOL	WINDMILL
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$5,000	FVTH
$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be:

0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2648), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2648-0000001-001.

H. Pack - A Pack of the "SUPER LOTERIA" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "SUPER LOTERIA"

Scratch Ticket Game No. 2648.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements

set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. Each Scratch Ticket contains exactly fifty-two (52) Play Symbols. A prize winner in the "SUPER LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose Play Symbols as follows: PLAYBOARD: 1) The player completely scratches the CALLER'S CARD area to reveal 21 symbols. 2) The player scratches ONLY the symbols on the PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. 3) If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. BONUS GAMES: The player scratches ONLY the symbols on the BONUS GAMES that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals 4 symbols in the same GAME, the player wins the PRIZE for that GAME. TABLA DE JUEGO: 1) El jugador raspa completamente la CARTA DEL GRITÓN para revelar 21 símbolos. 2) El jugador SOLAMENTE raspa los símbolos en la TABLA DE JUEGO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. 3) Si el jugador revela una línea completa, horizontal, vertical o diagonal, el jugador gana el premio para esa línea. JUEGOS DE BONO: El jugador SOLAMENTE raspa los símbolos de los JUEGOS DE BONO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. Si el jugador revela 4 símbolos en el mismo JUEGO, el jugador gana el PREMIO para ese JUEGO. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-two (52) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play

Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted

Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-two (52) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifty-two (52) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-two (52) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to six (6) times in accordance with the prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. GENERAL: There will be no identical Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

D. PLAYBOARD/TABLA DE JUEGO: At least eight (8), but no more than twelve (12), CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will match a symbol on the PLAYBOARD/TABLA DE JUEGO play area on a Ticket.

E. PLAYBOARD/TABLA DE JUEGO: No identical Play Symbols are allowed on the

PLAYBOARD/TABLA DE JUEGO play area.

F. BONUS GAMES/JUEGOS DE BONO: Every BONUS GAMES/JUEGOS DE BONO Grid will match at least one (1) Play Symbol to the CALLER'S CARD/CARTA DEL GRITÓN play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "SUPER LOTERIA" Scratch Ticket Game prize of $5.00, $10.00, $15.00,

$20.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SUPER LOTERIA" Scratch Ticket Game prize of $5,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUPER LOTERIA" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "SUPER LOTERIA" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "SUPER LOTERIA" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 60,000,000 Scratch Tickets in Scratch Ticket Game No. 2648. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2648 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	7,200,000	8.33
$10.00	6,000,000	10.00
$15.00	800,000	75.00
$20.00	800,000	75.00
$50.00	800,000	75.00
$100	250,500	239.52
$200	41,000	1,463.41
$500	6,000	10,000.00
$5,000	150	400,000.00
$100,000	30	2,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.77. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2648 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2648, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202405496
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 12, 2024

♦ ♦ ♦

Scratch Ticket Game Number 2670 "MONEY MONEY MONEY"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2670 is "MONEY MONEY MONEY". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2670 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2670.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, COIN SYMBOL, STACK OF CASH SYMBOL, POT OF GOLD

SYMBOL, $5.00, $10.00, $20.00, $50.00, $100, $250, $500, $1,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2670 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV

28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
COIN SYMBOL	WIN$

STACK OF CASH SYMBOL	WIN$100
POT OF GOLD SYMBOL	WINALL
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$250	TOFF
$500	FVHN
$1,000	ONTH
$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2670), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2670-0000001-001.

H. Pack - A Pack of the "MONEY MONEY MONEY" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse; i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "MONEY MONEY MONEY" Scratch Ticket Game No. 2670.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "MONEY MONEY MONEY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-five (55) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "COIN" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "STACK OF CASH" Play Symbol, the player wins $100 instantly. If the player reveals a "POT OF GOLD" Play Symbol, the player WINS ALL 25 PRIZES INSTANTLY! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-five (55) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-five (55) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifty-five (55) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-five (55) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to twenty-five (25) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $1,000 and $100,000 will each appear at least one (1) time, except on Tickets winning twenty-five (25) times or with the "POT OF GOLD" (WINALL) Play Symbol and with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Spots as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

I. The "POT OF GOLD" (WINALL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

J. The "POT OF GOLD" (WINALL) Play Symbol will instantly win all twenty-five (25) prize amounts and will win only as per the prize structure.

K. The "POT OF GOLD" (WINALL) Play Symbol will never appear more than one (1) time on a Ticket.

L. The "POT OF GOLD" (WINALL) Play Symbol will never appear on a Non-Winning Ticket.

M. On Tickets winning with the "POT OF GOLD" (WINALL) Play Symbol, the YOUR NUMBERS Play Symbols will not match any of the WINNING NUMBERS Play Symbols.

N. The "STACK OF CASH" (WIN$100) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

O. The "STACK OF CASH" (WIN$100) Play Symbol will win $100 instantly and will win only as per the prize structure.

P. The "STACK OF CASH" (WIN$100) Play Symbol will never appear more than one (1) time on a Ticket.

Q. The "STACK OF CASH" (WIN$100) Play Symbol will never appear on a Non-Winning Ticket.

R. The "COIN" (WIN$) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

S. The "COIN" (WIN$) Play Symbol will instantly win the prize for that Play Symbol.

T. The "COIN" (WIN$) Play Symbol will never appear more than one (1) time on a Ticket.

U. The "COIN" (WIN$) Play Symbol will never appear on a Non-Winning Ticket.

V. The "POT OF GOLD" (WINALL) Play Symbol, the "COIN" (WIN$) Play Symbol and the "STACK OF CASH" (WIN$100) Play Symbol will never appear on the same Ticket.

W. On Tickets winning with the "COIN" (WIN$) Play Symbol, the YOUR NUMBERS Play Symbols will not match any of the WINNING NUMBERS Play Symbols.

X. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 5 and $5, 10 and $10, 20 and $20, and 50 and $50).

Y. On all Tickets, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.

Z. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

AA. The "STACK OF CASH" (WIN$100) Play Symbol will only appear with the $100 Prize Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY MONEY MONEY" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $50.00, $100, $250 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONEY MONEY MONEY" Scratch Ticket Game prize of $1,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY MONEY MONEY" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "MONEY MONEY MONEY" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "MONEY MONEY MONEY" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2670. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2670 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	752,000	9.57
$10.00	672,000	10.71
$20.00	208,000	34.62
$50.00	96,000	75.00
$100	27,000	266.67
$250	2,560	2,812.50
$500	2,100	3,428.57
$1,000	50	144,000.00
$100,000	6	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.09. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2670 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2670, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202405497
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 12, 2024

♦ ♦ ♦

Scratch Ticket Game Number 2672 "ROYAL RICHES"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2672 is "ROYAL RICHES". The play style is "slots".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2672 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2672.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: MONEY BAG SYMBOL, BAR SYMBOL, BILL SYMBOL, BOW SYMBOL, CAR SYMBOL, CHEST SYMBOL, CHIP SYMBOL, DICE SYMBOL, FIREWORKS SYMBOL, FLAG SYMBOL, HEART SYMBOL, KEY SYMBOL, LUGGAGE SYMBOL, MOON SYMBOL, NECKLACE SYMBOL, PLANE SYMBOL, RAINBOW SYMBOL, RING SYMBOL, SPADE SYMBOL, STAR SYMBOL, SUN SYMBOL, TROPHY SYMBOL, VAULT SYMBOL, WISHBONE SYMBOL, CROWN SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2672 - 1.2D

PLAY SYMBOL	CAPTION
MONEY BAG SYMBOL	BAG
BAR SYMBOL	BAR
BILL SYMBOL	BILL
BOW SYMBOL	BOW
CAR SYMBOL	CAR
CHEST SYMBOL	CHEST
CHIP SYMBOL	CHIP
DICE SYMBOL	DICE
FIREWORKS SYMBOL	FIREWKS
FLAG SYMBOL	FLAG
HEART SYMBOL	HEART
KEY SYMBOL	KEY
LUGGAGE SYMBOL	LUGGAGE
MOON SYMBOL	MOON
NECKLACE SYMBOL	NECKLACE
PLANE SYMBOL	PLANE
RAINBOW SYMBOL	RAINBOW
RING SYMBOL	RING
SPADE SYMBOL	SPADE
STAR SYMBOL	STAR
SUN SYMBOL	SUN
TROPHY SYMBOL	TROPHY
VAULT SYMBOL	VAULT
WISHBONE SYMBOL	WISHBONE
CROWN SYMBOL	DBL
$2.00	TWO$
$4.00	FOR$

$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$1,000	ONTH
$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2672), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2672-0000001-001.

H. Pack - A Pack of the "ROYAL RICHES" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "ROYAL RICHES" Scratch Ticket Game No. 2672.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "ROYAL RICHES" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose thirty-two (32) Play Symbols. If a player reveals 3 matching Play Symbols in the same SPIN, the player wins the prize for that SPIN. If the player reveals 2 matching Play Symbols and a "CROWN" Play Symbol in the same SPIN, the player wins DOUBLE the prize for that SPIN. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly thirty-two (32) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly thirty-two (32) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the thirty-two (32) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the thirty-two (32) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to eight (8) times in accordance with the prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. There will be no matching non-winning SPINs on a Ticket. SPINs are considered matching if they have the same Play Symbols in the same spots.

E. No three (3) or more matching non-winning Play Symbols will appear in adjacent positions diagonally or vertically.

F. The "CROWN" (DBL) Play Symbol will only appear on winning Tickets and will appear on winning SPINs as dictated by the prize structure.

G. No more than two (2) matching non-winning Play Symbols will appear in one (1) SPIN.

H. Non-winning Prize Symbols will never appear more than three (3) times on a Ticket.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

2.3 Procedure for Claiming Prizes.

A. To claim a "ROYAL RICHES" Scratch Ticket Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "ROYAL RICHES" Scratch Ticket Game prize of $1,000 or $30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "ROYAL RICHES" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No lia-

bility for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "ROYAL RICHES" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "ROYAL RICHES" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,120,000 Scratch Tickets in Scratch Ticket Game No. 2672. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2672 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	948,480	9.62
$4.00	729,600	12.50
$5.00	145,920	62.50
$10.00	109,440	83.33
$20.00	72,960	125.00
$50.00	60,800	150.00
$100	4,940	1,846.15
$1,000	76	120,000.00
$30,000	5	1,824,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.40. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket

Game No. 2672 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2672, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202405499
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 12, 2024

♦ ♦ ♦

Texas Parks and Wildlife Department

Notice of a Public Comment Hearing and Extension to the Public Comment Period on an Application for a Sand and Gravel Permit

Real County/Citizens of Real County Partnership have applied to the Texas Parks and Wildlife Department (TPWD) for a General Permit pursuant to Texas Parks and Wildlife Code, Chapter 86, to remove or disturb fifty cubic yards of sedimentary material within the Frio River in Real County. The purpose is the extension of an existing low water crossing on County Road Camino Bajo. The location is on County Road Camino Bajo approximately 1/10 mile west of the intersection of County Road Camino Bajo and County Road Camino Alto in Real County. The Latitude/Longitude is 29.725097, -99.747989. This notice is being published pursuant to 31 TAC §69.105(d).

TPWD previously provided notice of a public comment hearing regarding the application. That hearing will take place at 10 am on November 15, 2024, at TPWD headquarters in Austin. The publication of that notice began a 30-day public comment period which is set to expire on November 24, 2024.

In response to design modifications submitted by the applicant, TPWD is now extending the public comment period for an additional 30 days from the publication of this notice, until December 22, 2024. Additionally, TPWD will hold an additional public comment hearing regarding the application at 10 a.m. on December 19, 2024, at TPWD headquarters, located at 4200 Smith School Road, Austin, Texas 78744. A remote participation option will be available upon request. Potential attendees should contact Beth Bendik at (512) 389-8521 or beth.bendik@tpwd.texas.gov for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comments will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than December 22, 2024. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: TPWD Sand and Gravel Program by mail: Attn: Beth Bendik, Texas Parks and Wildlife Department, Inland Fisheries Division, 4200 Smith School Road, Austin, Texas 78744; or via e-mail: sand.gravel@tpwd.texas.gov.

TRD-202405502
James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: November 13, 2024

♦ ♦ ♦

Permian Basin Regional Planning Commission

Request for Proposals - Banking Services

The Permian Basin Regional Planning Commission (PBRPC) is seeking proposals from qualified banking institutions to provide banking services.

The Request for Proposals **(RFP)** may be obtained by downloading the **RFP** and attachments from PBRPC's website at pbrpc.org/procurement-and-bid-opportunities. Proposals must be received by 12:00 p.m. (CDT), December 5, 2024, at the PBRPC office.

TRD-202405358
Virginia Belew
Executive Director
Permian Basin Regional Planning Commission
Filed: November 6, 2024

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application For Recovery of Universal Service Funding

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on November 12, 2024, for recovery of universal service funding under Public Utility Regulatory Act (PURA) § 56.025 and 16 Texas Administrative Code (TAC) §26.406.

Docket Style and Number: Application of Border to Border Communications, Inc. to Recover Funds from the Texas Universal Service Fund under PURA § 56.025 and 16 TAC §26.406 For Calendar Year 2024, Docket Number 57282.

The Application: Border to Border Communications, Inc. seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Border to Border Communications, Inc. for 2024. Border to Border Communications, Inc. requests that the Commission allow recovery of funds from the TUSF in the amount of $1,376,741 for 2024 to replace the projected reduction in FUSF revenue.

Persons wishing to intervene or comment on the action sought should contact the Commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 57282.

TRD-202405509
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2024

♦ ♦ ♦

Texas Department of Transportation

Notice of Agreement on Identification of Future Transportation Corridors Within Montgomery County

The Texas Department of Transportation and Montgomery County, Texas, have entered into an agreement that identifies future transportation corridors within Montgomery County in accordance with Transportation Code, Section 201.619. Copies of the agreement and all plans referred to by the agreement are available at the department's Houston District Office, 7600 Washington Avenue, Houston, Texas 77007.

TRD-202405396
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: November 7, 2024

♦ ♦ ♦

Statewide Transportation Improvement Program November 2024 Revision

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, December 17, 2024, at 10:00 a.m. Central Standard Time (CST) to receive public comments on the November 2024 Quarterly Revision to Statewide Transportation Improvement Program (STIP) for FY 2025 - 2028. The hearing will be conducted via electronic means. Instructions for accessing the hearing will be published on the department's website at: *https://www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html*.

The STIP reflects the federally funded transportation projects in the FY 2025 - 2028 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Dallas-Fort Worth, El Paso, Houston and San Antonio. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed November 2024 Quarterly Revision to the FY 2025 - 2028 STIP will be available for review, at the time the notice of hearing is published, on the department's website at: *https://www.txdot.gov/inside-txdot/division/transportation-planning/stips.html*.

Persons wishing to speak at the hearing may register in advance by notifying Enyu Li, Transportation Planning and Programming Division, at (512) 416-2298 no later than 12:00 p.m. CST on Monday, December 16, 2024. Speakers will be taken in the order registered and will be limited to three minutes. Speakers who do not register in advance will be taken at the end of the hearing. Any interested person may offer comments or testimony; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

The public hearing will be conducted in English. Persons who have special communication or accommodation needs and who plan to participate in the hearing are encouraged to contact the Transportation Planning and Programming Division, at (512) 484-9813. Requests should be made at least three working days prior to the public hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to participate in the hearing may submit comments regarding the proposed November 2024 Quarterly Revision to the FY 2025 - 2028 STIP to Humberto Gonzalez, P.E., Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. CST on Monday, December 23, 2024.

TRD-202405486
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: November 12, 2024

♦ ♦ ♦

Texas Windstorm Insurance Association

Request for Qualifications Claims Service Providers

Texas Windstorm Insurance Association (TWIA) and Texas FAIR Plan Association (TFPA)

Request for Qualifications Posted - Texas Windstorm Insurance Association and Texas FAIR Plan Association

TWIA/TFPA invites all qualified Respondents to submit a completed qualifications form in accordance with the requirements outlined in the below-listed Request for Qualifications (RFQ) issued by TWIA/TFPA.

The purpose of this RFQ is to obtain information from qualified Respondents to provide professional services related to Claims Residential and Commercial Desk and Field Adjusting.

A copy of the RFQ will be posted to https://www.twia.org/vendor-requests/ on December 2, 2024.

For more information and/or questions on the requirements for Claims Service Providers' qualifications to be submitted by interested Respondents, please contact the Vendor and Contract Manager at vendormanagement@twia.org. There will be no formal Respondent question submission period for this sourcing event.

Important deadlines pertaining to the RFQ are as follows:

RFQ Title	RFQ Issuance Date	Qualifications Due Date	Anticipated Provisional RFQ Award Date
Claims Service Providers RFQual Q4 2024	December 2, 2024	January 3, 2025	February 14, 2025

TRD-202405478 ♦ ♦ ♦
Brooke Adam
Vendor and Contract Manager
Texas Windstorm Insurance Association
Filed: November 11, 2024

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "49 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 49 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7 a.m. to 7 p.m., Central Time, Monday through Friday. Subscription cost is $991 annually for first-class mail delivery and $669 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7 a.m. to 7 p.m., Central Time, Monday through Friday.

Phone: (800) 833-9844
Fax: (518) 487-3584
E-mail: customer.support@lexisnexis.com
Website: www.lexisnexis.com/printcdsc

LexisNexis