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# TEXAS REGISTER

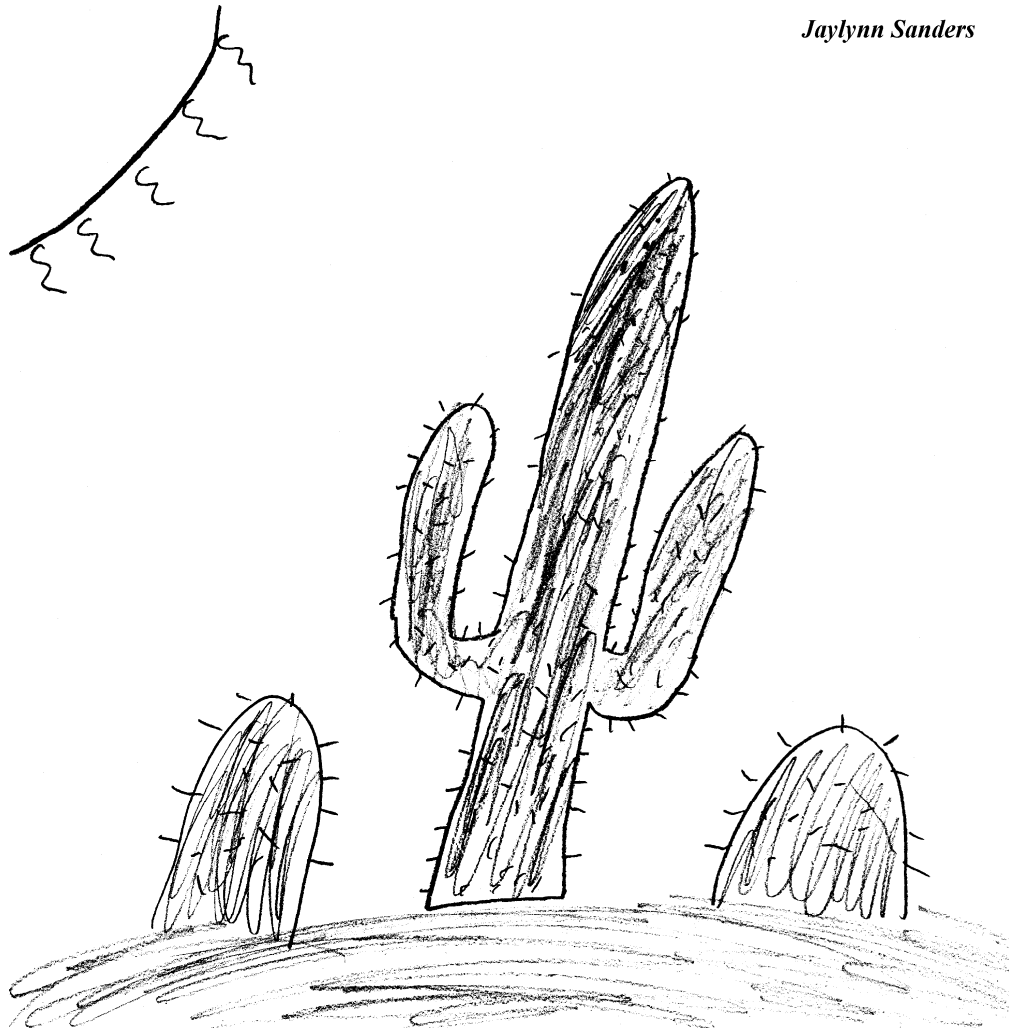
*Volume 43 Number 33*

*August 17, 2018*

*Pages 5317 - 5442*

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*Jaylynn Sanders*



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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***Texas Register*, (ISSN 0362-4781, USPS 12-0090)**, is published weekly (52 times per year) for \$297.00 (\$438.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P O Box 1710, Latham, NY 12110.

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

**POSTMASTER:** Send address changes to the *Texas Register*, 136 Carlin Rd., Conklin, N.Y. 13748-1531.

# TEXAS REGISTER

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

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# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: [register@sos.texas.gov](mailto:register@sos.texas.gov)

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://texasattorneygeneral.gov/og/open-government>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.texas.gov>

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**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. 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: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

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## Requests for Opinions

### **RQ-0240-KP**

#### **Requestor:**

The Honorable Russell W. Malm  
Midland County Attorney  
500 North Loraine, Suite 1103  
Midland, Texas 79701

Re: Whether a county may provide funding to a school district for grounds maintenance, a library, and law enforcement and funding to a hospital district for purchase of a mental health facility (RQ-0240-KP)

#### **Briefs requested by August 29, 2018**

### **RQ-0241-KP**

#### **Requestor:**

The Honorable Charles Schwertner  
Chair, Committee on Health and Human Services

Texas State Senate

P.O. Box 12068

Austin, Texas 78711-2068

Re: Whether a groundwater conservation district may define "agricultural crop" as "food or fiber commodities grown for resale of commercial purposes that provide food, clothing, or animal feed" and utilize that definition to determine the applicable fee rate for "irrigating agricultural crops" (RQ-0241-KP)

#### **Briefs requested by August 21, 2018**

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-201803415

Amanda Crawford

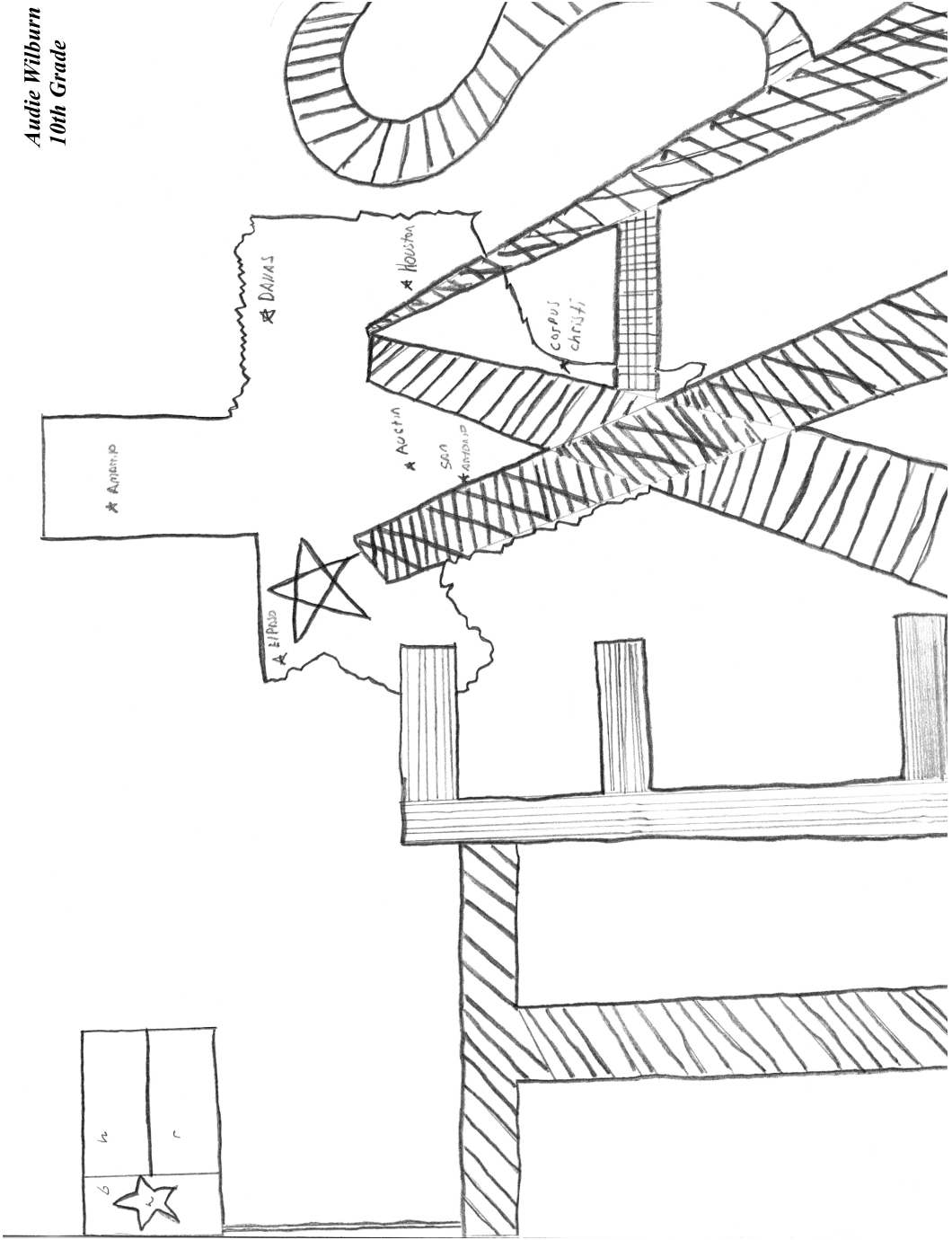
General Counsel

Office of the Attorney General

Filed: August 7, 2018



*Audie Wilburn*  
*10th Grade*





# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 2. TEXAS ETHICS COMMISSION

#### CHAPTER 16. FACIAL COMPLIANCE REVIEWS AND AUDITS

##### 1 TAC §§16.1 - 16.11

The Texas Ethics Commission (the commission) proposes new Ethics Commission Chapter 16, Rules §§16.1 - 16.11, regarding facial compliance reviews (FCRs) and audits performed by the Commission.

Gov't Code §571.069(a) requires the Commission to review randomly selected statements and reports for facial compliance. In an FCR, Commission staff randomly select reports for review without a complaint. Under this process, the Commission may vote to initiate a full audit or initiate a complaint if the criteria set out in Section 571.069(b) of the Government Code are met, including failing to file a proper correction or provide requested information within a certain period of time. The draft rules set out a process for conducting FCRs and audits and are intended to provide clarity in the FCR and audit process, provide a greater amount of time for filers to correct reports without receiving a fine, and allow filers to submit documentation to show that a report was filed correctly. The draft rules also set out procedures for performing FCRs and initiating an audit or preliminary review for failure to comply with an FCR or audit and specify that any report subject to review must be randomly selected by Commission staff. The rules would largely codify the current practices of staff in performing FCRs but would also allow filers additional time to correct reports in good faith without receiving a late fine.

Seana Willing, Executive Director, has determined that for the first five-year period the proposed new rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed new rules.

Ms. Willing has also determined that for each year of the first five years the proposed new rules are in effect the public benefit will be clarity and fairness in the FCR and audit process. There will not be an effect on small businesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed new rules.

The Executive Director has determined that during the first five years that the proposed new rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase 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 rules' applicability; or positively or adversely affect this state's economy. The rules are new and therefore create new regulations. However, section 571.069 requires the Commission to perform FCRs and these new rules would establish uniform and consistent guidelines for performing them. The rules would also provide clear deadlines for filers subject to a FCR to file corrections without receiving a late fine.

The Texas Ethics Commission invites comments on the proposed new rules from any member of the public. A written statement should be emailed to [public\\_comment@ethics.state.tx.us](mailto:public_comment@ethics.state.tx.us), or mailed or delivered to Seana Willing, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed new rules may do so at any commission meeting during the agenda item relating to the proposed new rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

The new rules §§16.1 - 16.11 are proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new rules §§16.1 - 16.11 affect section 571.069 of the Government Code.

##### §16.1. Definitions.

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

(1) Deficiency--An error, omission, inaccuracy, or violation of a law or rule administered and enforced by the commission that is apparent on the face of a statement or report filed with the commission.

(2) Compliance review report--A report sent to a filer detailing deficiencies in a report that is the subject of a facial compliance review.

(3) Facial compliance review--A review conducted under section 571.069 of the Government Code of the information disclosed on a report, randomly selected in accordance with §16.2 of this title, filed with the commission for facial completeness, accuracy, reliability, and compliance with the law.

(4) Report--A personal financial statement, lobby registration, lobby activities report, or campaign finance report filed with the commission.

##### §16.2. Random Selection.

The report subject to a facial compliance review must be randomly selected from a list of all reports filed by a particular filer type for a specific filing deadline.

§16.3. Corrected or Amended Report Filed During a Facial Compliance Review; Late Fines.

(a) A correction filed for the report that is subject to the facial compliance review will not be subject to a late fine if:

(1) the correction is filed not later than the 30th day after the date the filer receives the compliance review report;

(2) the corrected information complies with the law; and

(3) the original report was filed in good faith and without an intent to mislead or misrepresent the information contained in the report.

(b) A late fine will not be assessed for corrections filed to correct reporting errors made in any report filed prior to the report that is subject to the facial compliance review if:

(1) the filer learned of the errors through the facial compliance review;

(2) the correction is filed not later than the 30th day after the date the filer receives the compliance review report;

(3) the corrections comply with the law; and

(4) the original report was filed in good faith and without an intent to mislead or misrepresent the information contained in the report.

(c) A correction filed in accordance with this section will not be considered a prior late offense for purposes of determining the waiver or reduction of a fine under chapter 18 of this title.

§16.4. Additional Documents and Information Submitted in Response to a Facial Compliance Review; Timeliness.

(a) The commission may request from a filer documentation and other information used by the filer to compile a report that is subject to a facial compliance review.

(b) Documentation and other information requested by the commission is timely submitted if received by the commission not later than the 30th day after the date the filer receives the request for additional documentation.

§16.5. Commission Initiated Preliminary Review or Audit Resulting from a Facial Compliance Review.

(a) The commission may initiate a preliminary review as authorized by §571.124 of the Government Code or perform a complete audit of a report that is subject to a facial compliance review under §571.069 of the Government Code if:

(1) a correction is not resubmitted to the commission in accordance with §16.3 of this title;

(2) documentation or other information requested by the commission during a facial compliance review is not submitted to the commission in accordance with §16.4 of this title; or

(3) the commission has determined by a vote of at least six commission members that the correction filed in response to a compliance review report, does not comply with the law.

§16.6. Notice of Audit of Report.

The commission shall notify a filer that the commission will perform a complete audit of a report that is the subject of a facial compliance review not later than the seventh day after the date the commission votes to initiate the audit.

§16.7. Supporting Documentation in Response to Audit; Timeliness.

(a) A filer must submit to the commission, upon request and where applicable, supporting documentation in the possession, custody, or control of the filer or filer's agents that contains information necessary for filing the report that is subject to the audit, such as:

(1) bank statements;

(2) cancelled checks;

(3) receipts;

(4) credit card statements;

(5) invoices;

(6) loan documents;

(7) books or ledgers;

(8) employee timesheets and payroll records;

(9) certificates of formation or other business documents;

and

(10) real property records.

(b) A filer must submit to the commission the supporting documentation in response to an audit not later than the 30th business day from the date the filer receives notice of the audit.

§16.8. Complete Audit Report.

(a) Commission staff must complete a draft audit report not later than the 30th day after the commission receives from the filer the documentation requested under §16.7 of this title.

(b) The filer must have an opportunity to confer and object in writing to any findings in the draft audit report before it is submitted to the commission for approval.

(c) Commission staff must consider the filer's objections before submitting the draft audit report to the commission for approval.

(d) Upon approval of an audit, the commission shall send to the filer a final audit report that includes:

(1) a notification that the commission has determined the report that was subject to the audit complies with the law; or

(2) required corrective actions that the filer must take to cure any deficiency found in the report that is subject to the audit.

(e) A filer must correct or amend a report to correct all deficiencies identified in a complete audit report not later than the 30th day from the date the filer receives the complete audit report.

§16.9. Representation by Attorney.

(a) A filer has the right to be represented by an attorney retained by the filer during a facial compliance review or an audit initiated by the commission as a result of a facial compliance review.

(b) A letter of representation must be submitted to the commission if the filer is represented by an attorney.

§16.10. Extension of Deadlines.

The executive director may extend all deadlines related to this chapter except as provided by §571.069(a) of the Government Code (relating to when a corrected or amended report is considered filed as of the date the report was originally filed).

§16.11. Waiver of Delivery by Certified Mail.

A filer may waive the right under §571.032 of the Government Code to receive written notices related to a facial compliance review or audit by registered or certified mail, restricted delivery, return receipt requested,

and may agree to receive written notices by first class mail, electronic mail, or other means.

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 August 17, 2018.

TRD-201803298

Seana Willing

Executive Director

Texas Ethics Commission

Earliest possible date of adoption: September 16, 2018

For further information, please call: (512) 463-5800



## CHAPTER 18. GENERAL RULES CONCERNING REPORTS

### 1 TAC §18.7

The Texas Ethics Commission (the Commission) proposes an amendment to Texas Ethics Commission Rule §18.7, regarding the late filing of a report when the Commission's office is closed. The amendment provides that a report required to be filed with the Commission is not late if the Commission's office is closed on the filing deadline due to weather or other emergency and the report is filed by midnight on the next regular business day when the Commission's office is open, not including a legal holiday.

Seana Willing, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

The Executive Director has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be that a report required to be filed with the Commission will not be late in circumstances in which certain events outside the filer's control cause the report to be filed after the due date and the report is filed promptly during the next business day. There will not be an effect on small businesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

The Executive Director has determined that during the first five years that the proposed amendment is in effect, it will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase 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 this state's economy.

The Texas Ethics Commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to [public\\_comment@ethics.state.tx.us](mailto:public_comment@ethics.state.tx.us), or mailed or delivered to Seana Willing, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item relating to the proposed amendment. Information concerning the date, time,

and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

The amendment to rule §18.7 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Election Code.

The proposed amendment affects Subchapters E and F of Chapter 571 of the Government Code.

#### *§18.7. Timely Reports and Complete Reports.*

(a) A report is timely if it is complete and is filed by the applicable deadline using the reporting method required by law.

(b) The deadline for any report filed electronically with the commission is midnight Central Time Zone on the last day for filing the report under the law requiring the filing of the report.

(c) A report is late if it is:

- (1) incomplete;
- (2) not filed by the applicable deadline; or

(3) not filed by computer diskette, modem, or other means of electronic transfer and the filer is required by law to file using one of these methods.

(d) A report filed electronically is not late if:

(1) the commission's office is closed on the deadline and the report is filed by midnight, Central Time Zone, on the next regular business day, excluding a legal holiday, when the commission's office is open; or

(2) the commission cannot accept reports on the deadline because the agency filing system is not accessible or the agency network is inoperable, and the report is filed by midnight, Central Time Zone, on the next regular business day, excluding a legal holiday, that the commission is able to accept reports.

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

Filed with the Office of the Secretary of State on July 31, 2018.

TRD-201803297

Seana Willing

Executive Director

Texas Ethics Commission

Earliest possible date of adoption: September 16, 2018

For further information, please call: (512) 463-5800



## TITLE 13. CULTURAL RESOURCES

### PART 9. TEXAS HOLOCAUST AND GENOCIDE COMMISSION

#### CHAPTER 191. COMMISSION PROCEDURES

##### 13 TAC §191.8

###### PREAMBLE

The Texas Holocaust and Genocide Commission (THGC or Commission) proposes amendments to §191.8, concerning the administration of the THGC Grant Program.

Grant applications are reviewed by a panel and the reimbursement for grant projects is paid out when the project is complete. The proposed amendments to §191.8 add language concerning the composition of the review panel and give an opportunity for applicants to seek partial reimbursement before the project is complete.

The first proposed amendment to §191.8 adds language to subsection (g), which creates the composition of the grant application review panel. The scoring process for grant applications is conducted by a panel comprised of representatives from the commission, Friends of THGC, and commission staff. The proposed amendment adds language that will allow any combination of the before mentioned participants to comprise the grant scoring panel.

The second proposed amendment to §191.8 adds language to subsection (h), which details when applicants are reimbursed during the project cycle. Applicants receive reimbursement at the end of the project cycle after the submission of a project report and acceptable proof of incurred allowable expenses. The proposed amendment adds language that allows grant applicants to be reimbursed half way through the project cycle with the proper required documentation.

**FISCAL NOTE.** Matt Verdugo, Executive Director, has determined that for the first five-year period the amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering these amendments, as proposed. The proposed amendments do not impose a cost on regulated persons, a special district, or a local government.

**PUBLIC BENEFIT/COST NOTE.** Mr. Verdugo has also determined that for the first five-year period the amended rules are in effect, the public benefit will be the education of Holocaust and Genocide Studies by increasing access to grant funds to smaller non-profits in a timelier manner. There is no foreseeable economic cost to persons required to comply with the amendments because they do not adversely affect access to THGC grant funds.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES.** Mr. Verdugo has also determined that there will be no impact on rural communities, small or micro-businesses as a result of implementing these amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

**LOCAL ECONOMY IMPACT.** THGC has determined that the proposed amendments will not affect a local economy under Texas Government Code §2001.022 because they only alter the composition of the grant applications review panel and the timing of grant reimbursement.

**GOVERNMENT GROWTH IMPACT STATEMENT.** THGC staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specific in Texas Government Code, §2001.0221. Because the proposed amendments only alter the composition of the grant applications review panel and the timing of grant reimbursement, THGC does not anticipate any impact on the size or scope of government operations. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease

in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** Because the proposed amendments only alter the composition of the grant applications review panel and the timing of grant reimbursement, THGC has determined that no private real property interests are affected by this proposal and 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.

**REQUEST FOR PUBLIC COMMENT.** Comments on the proposed amendments may be submitted to Matt Verdugo, Executive Director, Texas Holocaust and Genocide Commission, P.O. Box 12276, Austin, Texas 78701-2276. Comments will be accepted for 30 days after publication in the *Texas Register*.

**STATUTORY AUTHORITY.** These amendments are proposed under the authority of Texas Government Code §449.052(c), which provides the Commission with the authority to adopt rules as necessary for its own procedures; and Texas Government Code §449.052(e), which authorizes the commission to provide matching grants to assist in the implementation of the commission's goals and objectives.

**CROSS REFERENCE TO STATUTE.** These amendments are proposed under the authority of Texas Government Code §449.052(c), which provides the Commission with the authority to adopt rules as necessary for its own procedures; Texas Government Code §449.052(e), which authorizes the commission to provide matching grants to assist in the implementation of the commission's goals and objectives. The proposed amendments implement §449.052 of the Texas Government Code. No other statutes, articles, or codes are affected by these amendments.

§191.8. *Grant Program.*

(a) The purpose of this grant program is to provide funds for organizations and projects that support the Texas Holocaust and Genocide Commission's (THGC) mission.

(b) Only nonprofit and educational organizations are eligible to apply for funds. Organizations must meet all program requirements to be eligible for grants.

(c) Grants may fund costs for staff, equipment, supplies, professional services, and other operating expenses, as permitted by the Uniform Grant Management Standards.

(d) Except as specifically provided in this section, competitive grants may not fund the following costs:

- (1) building construction or renovation;
- (2) food, beverages, awards, honoraria, prizes, or gifts;
- (3) equipment or technology not specifically needed to carry out the goals of the grant;
- (4) transportation/travel for project participants or non-grant funded personnel; or
- (5) advertising or public relations costs, unless identified by recipient and approved by the THGC.

(e) Applicants eligible to receive grant assistance may be required to provide a minimum of 50% of the project's costs. In-kind services may be counted toward the one-to-one match.

(f) To be considered for the grant program, organizations must submit an application form.

(1) Application schedules and deadlines will be set by the commission. Application forms must be received by the THGC by these deadlines or will be returned unopened to the sender.

(2) To be eligible for grants, applicants must complete the grant application form and include all required attachments as stated in the grant application.

(3) Grant applications that are incomplete or received after the application deadline are ineligible for funding.

(g) Representatives from any combination of the commission, THGC Friends, and commission staff will evaluate grant applications.

(1) Applications will be scored using the following process:

(A) The reviewers will review all complete and eligible grant applications forwarded to them by agency staff and complete a rating form for each. Each reviewer will evaluate the proposals in relation to the specific requirements of the criteria and will assign a numerical value, depending on the points assigned to each criterion.

(B) No reviewer who is associated with an applicant or with an application, or who stands to benefit directly from an application, may participate in the evaluation of applications for that grant. Any reviewer who feels unable to evaluate a particular application fairly may withdraw from the review process for that grant.

(C) Panel members must make their own individual decisions regarding the applications. The panel may discuss applications and make recommendations as the result of a collective decision or vote after the initial scoring of applications is complete.

(D) Reviewers may not discuss proposals with any applicant before the reviewing and scoring process is completed. Agency staff is available to provide technical assistance to reviewers. Agency staff will conduct all negotiations and communication with the applicants.

(E) Reviewers may recommend setting conditions for funding a given application or group of applications (e.g., adjusting the project budget, revising project objectives, modifying the timetable, amending evaluation methodology, etc.). The recommendation must include a statement of the reasons for setting such conditions.

(2) General selection criteria include:

- (A) relevance to THGC mission;
- (B) qualifications of the applying organization;
- (C) potential impact of proposed project;
- (D) project feasibility;
- (E) estimated cost;
- (F) timetable for project; and
- (G) geographic diversity.

(h) All payments of grant funds are made on a reimbursable basis upon completion of the project, submission of a project report, and acceptable proof of incurred allowable expenses; a partial reimbursement may be requested by the applicant six (6) months after the grant project commences.

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 August 2, 2018.

TRD-201803343

Matt Verdugo

Executive Director

Texas Holocaust and Genocide Commission

Earliest possible date of adoption: September 16, 2018

For further information, please call: (512) 463-8815

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## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 190. DISCIPLINARY GUIDELINES

##### SUBCHAPTER C. SANCTION GUIDELINES

###### 22 TAC §190.14

The Texas Medical Board (Board) proposes amendments to §190.14, concerning Disciplinary Sanction Guidelines.

The proposed amendments to §190.14 are made to correct the sanction guidelines chart and add violation categories that were inadvertently deleted from the Texas Administrative Code due to a filing error. The Board recently adopted amendments to §190.14(9) in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4754). When filing this recent adoption notice with the *Texas Register*, only the amended sections were included in the graphic and subsequently only the amended portion of the graphic was published in the *Texas Register*. This resulted in the inadvertent omission of the remaining portion of the graphic. Therefore portions of the graphic are not included in the current version of the Texas Administrative Code.

All of the sanction guidelines shown in the proposed graphic have been previously submitted to stakeholders, published for comment, and adopted by the Board in previous meetings, including the June 2018 meeting.

The proposed amendment to §190.14 simply replaces the current graphic and reflects the sanction guidelines previously adopted by the Board and inadvertently deleted from the Texas Administrative Code through publication of the Board's amendments adopted at the June 2018 meeting.

Scott Freshour, General Counsel for the Board has determined that for the first five-year period the section is in effect there will be no cost to state or local governments as a result of enforcing and administering the section as proposed. Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

Mr. Freshour has also 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 this proposal will be to provide guidance to Board members to achieve consistency in assessing violations and recommending disciplinary sanctions or remedial action.

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

- (1) The proposed rule does not create or eliminate a government program.
- (2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
- (4) The proposed rule does not require an increase or decrease in fees paid to the agency.
- (5) The proposed rule does not create a new regulation as they are simply re-publishing previously adopted guidelines.
- (6) The proposed rule does not expand, limit, or repeal an existing regulation.
- (7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rule does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

*§190.14. Disciplinary Sanction Guidelines.*

These disciplinary sanction guidelines are designed to provide guidance in assessing sanctions for violations of the Medical Practice Act. The ultimate purpose of disciplinary sanctions is to protect the public, deter future violations, offer opportunities for rehabilitation if appropriate, punish violators, and deter others from violations. These guidelines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

(1) - (8) (No change.)

(9) The following standard sanctions shall apply to violations of the Act:

~~Figure: 22 TAC §190.14(9)~~

~~[Figure: 22 TAC §190.14(9)]~~

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 August 3, 2018.

TRD-201803363

Stephen "Brint" Carlton, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: September 16, 2018

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

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**TITLE 34. PUBLIC FINANCE**

**PART 3. TEACHER RETIREMENT  
SYSTEM OF TEXAS**

**CHAPTER 25. MEMBERSHIP CREDIT**

**SUBCHAPTER B. COMPENSATION**

**34 TAC §25.26**

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.26, concerning annual compensation creditable for benefit calculation in Chapter 25, Subchapter B of TRS' rules. Chapter 25 concerns membership credit, and Subchapter B addresses various types of compensation typically paid to public education employees, whether such compensation is creditable for TRS benefit calculation purposes, and the contributions that must be made to TRS on the compensation. Section 25.26 establishes how TRS will determine a member's annual compensation for benefit calculation purposes.

The proposed amendments to §25.26 permit TRS to credit an additional month of compensation to a TRS member who loses a month of salary credit due to an employer changing payroll reporting dates to comply with TRS' "report when paid" rule, contained in §25.28. In 2014, TRS amended §25.26(e) to address anticipated consequences of TRS standardizing its employer reporting to require that all employers report compensation in the same month it is paid. TRS anticipated that, when the "report when paid" rule went into effect, TRS members could lose one month of compensation credit in the year of transition. Thus, in 2014, TRS adopted amendments to §25.26(e) that allowed TRS to attribute an additional month of compensation to a member in the 2014-2015 school year for purposes of benefit calculation. However, TRS' attribution of an additional month of compensation was limited only to the 2014-2015 school year.

Following the implementation of its new employer reporting system in the fall of 2017, TRS discovered that some employers had not yet complied with the "report when paid" rule. Amendments to §25.26(e) are being proposed to encourage employers to comply with the "report when paid" rule and ensure that no TRS member loses a month of salary credit due to an employer changing payroll reporting dates to comply with the "report when paid" rule. The proposed amendments to §25.26 do not limit TRS' ability to attribute an additional month of compensation to any particular time period.

Don Green, Chief Financial Officer, has determined that for each year of the first five years the proposed amended rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rule. Mr. Green also has determined that for each year of the first five years the proposed amended rule will be in effect, the public benefit anticipated as a result of adopting the proposed amended rule will be to provide notice and guidance and enhance efficiency and flexibility in administering the

provisions concerning the standardized school year, which determines annual compensation for benefit calculation purposes.

In addition, Mr. Green has determined that there is no economic cost to entities or persons as a result of the proposed amended rule. Mr. Green has determined that there will be no effect on a local economy because of the proposed amended rule. Therefore, no local employment impact statement is required under §2001.022, Government Code. Further, Mr. Green has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities within TRS' regulatory authority as a result of the proposed amended rule. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002, Government Code.

Mr. Green has also determined that for the first five years the proposed amended rule will be in effect, it will have the following impact on government growth: Implementation of the proposed amended rule will not create or eliminate a government program; require the creation or elimination of employee positions; require an increase or decrease in future legislative appropriations to TRS; require an increase or decrease in fees paid to TRS; create a new regulation; expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the amended rule's applicability; or affect the state's economy. In addition, Mr. Green has determined that since there are no private real property interests affected by the proposed amended rule, a takings impact assessment is not required under §2007.043, Government Code. Finally, Mr. Green has determined that §2001.0045, Government Code does not apply to the proposed amended rule because the fiscal note for this notice of proposed rule does not impose a cost on regulated persons.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendments to §25.26 are proposed under the authority of §825.102, Government Code, which authorizes the TRS Board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The proposed amendments to §25.26 affect Chapter 824, Subchapter C, Government Code, concerning service retirement benefits.

*§25.26. Annual Compensation Creditable for Benefit Calculation.*

(a) Except as provided in subsections (b), (g) and (h) of this section, for the purpose of computing the amount of a retirement benefit or a death benefit under §824.402, Government Code, annual compensation means creditable compensation for service paid to a member of the retirement system during a 12-month period beginning September 1 and ending August 31 of the next calendar year for service rendered during no more than a 12-month period.

(b) For the purpose of computing the amount of a retirement benefit or a death benefit under §824.402, Government Code, for retirements or deaths before April 1, 2015, annual compensation paid prior to September 1, 2012 is the greater of:

(1) the amount of creditable compensation for service paid to a member of the retirement system during a 12-month school year as defined in §25.133(a) of this title (relating to School Year); or

(2) the amount of creditable compensation paid to the member during a 12-month period beginning September 1 and ending August 31 of the next calendar year.

(c) Unless otherwise provided by law or this chapter, a member shall receive credit only for annual compensation actually received.

(d) Compensation from which deductions for an Optional Retirement Program annuity were made shall not be included in annual compensation for benefit calculation purposes.

(e) If an employer changes their payroll reporting to comply with [as a result of the requirement in] §25.28(c) of this title (relating to Payroll Report Dates) and, as a result of this payroll reporting change, [to report compensation in the month that it is paid rather than the month it is earned] a member has only 11 months of salary credited by TRS in a school year, then TRS will attribute an additional month of salary for purposes of benefit calculation if [in the 2014-2015 school year and] that school year of compensation would have been [one of the years of compensation] used in calculating the member's highest average salary for benefit calculation purposes[, TRS will attribute an additional month of salary in the 2014-2015 school year for purposes of benefit calculation]. The amount of compensation that TRS will attribute for the additional month is equal to [of salary is] the amount [of compensation] that would have been reported for the [missing] month that was excluded as a result of the payroll reporting change [if the requirement in §25.28(e) of this title to report compensation in the month that it is paid was not in place and instead the employer reported the compensation earned in the missing month].

(f) For the purpose of computing the amount of retirement benefit or a death benefit under §824.402, Government Code, for retirements or deaths after March 31, 2015, annual compensation shall be calculated as follows:

(1) for the 2013-2014 school year and thereafter, annual compensation is the amount of creditable compensation for service paid to a member of the retirement system during a 12-month period beginning September 1 and ending August 31 of the next calendar year;

(2) for the 2012-2013 school year, annual compensation is the greater of:

(A) the amount of creditable compensation for service paid to a member of the retirement system during the 12-month school year as defined in §25.133(a) of this title (relating to School Year); or

(B) the amount of creditable compensation paid to the member during a 12-month period beginning September 1, 2012 and ending August 31, 2013.

(3) for school years prior to the 2012-2013 school year annual compensation shall be the amount of creditable compensation for service paid to a member of the retirement system during the 12-month school year as defined in §25.133(a) of this title (relating to School Year).

(g) Effective with the 2015-2016 school year, annual compensation for the school year in which the member retires is the highest total of compensation received during a 12 consecutive month period that occurs during a 14 consecutive month period provided:

(1) the member completes the full contract period for the final year;

(2) the 14 consecutive month period includes the months of September through August of the school year in which the member retires;

(3) the 14 consecutive month period does not include months prior to the month in which the member's contract for the final year began;

(4) the annual compensation under this subsection does not include compensation earned after retirement, except that as provided in §25.24(e) of this title (relating to Performance Pay), creditable annual compensation earned by the date of retirement but not yet paid at the date of retirement is included in the annual compensation for that year;

(5) the annual compensation under this subsection does not include performance pay credited by TRS as annual compensation in a prior school year;

(6) the annual compensation for the school year in which the member retires is subject to all applicable Internal Revenue Code limits for that school year;

(7) the member does not receive credit for more than 12 months of compensation in the annual compensation for the final school year; and

(8) the member's compensation in the final year before retirement is not paid out in fewer than 12 months.

(h) If due to an error of the employer, compensation earned by the retiree in the final school year before retirement is not paid and/or not reported before the first annuity payment is issued, upon notice to TRS and the submission of all required corrected reports and member and employer contributions on the compensation, TRS shall adjust its records. If the additional compensation results in increased benefits payable on behalf of the retiree, the adjusted benefit shall be paid beginning in the month TRS receives the additional contributions and the corrected reports. In no event may an error be corrected under this subsection after the end of the school year following the school year in which the member retired.

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 August 2, 2018.

TRD-201803344

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: September 16, 2018

For further information, please call: (512) 542-6513



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 20. TEXAS WORKFORCE COMMISSION**

#### **CHAPTER 800. GENERAL ADMINISTRATION**

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter A. General Provisions, §800.2

Subchapter B. Allocations, §800.78

#### **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

Chapter 800 is being revised to align the definition of Adult Education and Literacy (AEL) services with the definition found in the Workforce Innovation and Opportunity Act (WIOA) and to align the deobligation periods for AEL funds more appropriately with the AEL enrollment cycle.

WIOA was signed into law on July 22, 2014, replacing the Workforce Investment Act (WIA) of 1998. Title II of WIOA includes substantial changes to definitions relating to AEL. As previous definitions within Chapter 800 reflected WIA, the enactment of WIOA renders those definitions out-of-date. Accordingly, the definition of "Adult Education and Literacy (AEL)" and other definitions in §800.2 shall be amended to align with the definitions in WIOA.

After several years of program operations at TWC, there is a need to reevaluate the rules by which AEL funds are deobligated based on the expenditure trends of AEL grant recipients. Like many education sector institutions, AEL grant recipients typically experience a majority of their enrollments during the first three months of the program year (July - September). When AEL grant recipients experience low enrollment during these months when highest enrollment is expected, program delivery statistics demonstrate the unlikelihood of increases later in the year being sufficient to offset initial low enrollment. Low enrollment numbers correlate to lower expenditure thresholds. Establishing expenditure thresholds based on enrollment in months four, five, six, or seven will enable TWC to deobligate the funds of grant recipients that have low expenditures earlier in the program year. As a result, TWC will have adequate time to reallocate funds to other AEL grant recipients with demonstrated higher enrollment and expenditures. Reallocation of funds earlier in the program year will also give grant recipients adequate time to educate and train participants, and participants will have adequate time to achieve outcomes.

#### **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

##### **SUBCHAPTER A. GENERAL PROVISIONS**

TWC proposes the following amendments to Subchapter A:

##### **§800.2. Definitions**

Section 800.2(1) is amended to align the definition of "Adult Education and Literacy (AEL)" with the definition in WIOA §203(1). AEL is now defined as "academic instruction and education services below the postsecondary level that increase an individual's ability to read, write, and speak in English and perform mathematics or other activities necessary for the attainment of a secondary school diploma or its recognized equivalent; participate in job training and retraining programs or transition to postsecondary education and training; and obtain and retain employment."

Sections 800.2(15)(E) and 800.2(16) are removed because Project Reintegration of Offenders (Project RIO) is no longer operational. However, Local Workforce Development Boards (Boards) will continue their ongoing efforts to serve ex-offenders through other program activities and services, as appropriate.

Throughout this section, references and citations pertaining to the repealed WIA have been updated to align with WIOA.

Paragraphs and subparagraphs have been renumbered and relettered as necessary.



## SUBCHAPTER B. ALLOCATIONS

TWC proposes the following amendments to Subchapter B:

### §800.78. Midyear Deobligation of AEL Funds

To improve the deobligation of AEL funds by aligning deobligation with the AEL enrollment cycle, §800.78(a)(1) is amended to change the months when expenditure thresholds are evaluated from the end of months five, six, seven, or eight of the program year (that is, midyear) to the end of months four, five, six, or seven (October, November, December, or January) of the program year. Changing the months of evaluation will allow recipients of reallocated funds additional time to enroll participants, educate and train them adequately to achieve outcomes, and fully spend the reallocated funds.

## PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as set forth in Texas Government Code §2001.0045, does not apply to this rulemaking.

### Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to align the definition of Adult Education and Literacy (AEL) services with the definition found in the Workforce Innovation and Opportunity Act

(WIOA) and to align the deobligation periods for AEL funds more appropriately with the AEL enrollment cycle.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

### Government Growth Impact Statement

TWC has determined that during the first five years the proposed amendments will be in effect:

--the proposed amendments will not create or eliminate a government program;

--implementation of the proposed amendments will not require the creation or elimination of employee positions;

--implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to TWC;

--the proposed amendments will not require an increase or decrease in fees paid to TWC;

--the proposed amendments will not create a new regulation;

--the proposed amendments will not expand, limit, or eliminate an existing regulation;

--the proposed amendments will not change the number of individuals subject to the rules; and

--the proposed amendments will not positively or adversely affect the state's economy.

### Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as these proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to give AEL grant recipients that receive reallocated funds additional time to enroll participants, educate and train them adequately to achieve outcomes, and fully spend the reallocated funds.

## PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards. TWC provided the concept paper regarding these rule amendments to the AEL grant recipients for consideration and review on May 22, 2018. TWC also conducted a conference call with AEL grantees on May 24, 2018, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Program Policy, Attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §800.2

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

The proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

#### §800.2. Definitions.

The following words and terms, when used in this part, relating to the Texas Workforce Commission, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adult Education and Literacy (AEL)--Academic instruction and education services below the postsecondary level that increase an individual's ability to [Services designed to provide adults with sufficient basic education that enables them to effectively]:

(A) read, write, and speak in English and perform mathematics or other activities necessary for the attainment of a secondary school diploma or its recognized equivalent [acquire the basic educational skills necessary for literate functioning];

(B) participate in job training and retraining programs or transition to postsecondary education and training; and

(C) obtain and retain employment.[; and]

~~(D) continue their education to at least the level of completion of secondary school and preparation for postsecondary education.]~~

(2) Agency--The unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code [Annotated], Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this part, [or] unless otherwise defined, relating to the Texas Workforce Commission [that are adopted after February 1, 2001].

(3) Allocation--The amount approved by the Commission for expenditures to a local workforce development area during a specified program year, according to specific state and federal requirements.

(4) Board--A Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the governor pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Innovation and Opportunity Act (WIOA) §107 (29 USC §3122) [Workforce Investment Act §117 (29 U.S.C.A. §2832)], including those functions required of a youth standing committee [Youth Council], as provided for under WIOA §107(i) [Workforce Investment Act §117(i)]. The definition of Board shall apply to all uses of the term in the rules contained in this part, or unless otherwise defined, relating to the Texas Workforce

Commission [that are adopted after February 1, 2001]. Boards are subrecipients as defined in OMB Circular A-133.

(5) Child Care--Child care services funded through the Commission, which may include services funded under the Child Care and Development Fund, WIOA [WIA], and other funds available to the Commission or a Board to provide quality child care to assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.

(6) Choices--The employment and training activities created under §31.0126 of the Texas Human Resources Code and funded under Temporary Assistance for Needy Families (TANF) (42 USC 601 et seq.) [TANF (42 U.S.C.A. 601 et seq.)] to assist individuals [persons] who are receiving temporary cash assistance, transitioning off, or at risk of becoming dependent on temporary cash assistance or other public assistance in obtaining and retaining employment.

(7) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The definition of Commission shall apply to all uses of the term in rules contained in this part, [or] unless otherwise defined, relating to the Texas Workforce Commission [that are adopted after February 1, 2001].

(8) Formal Measures--Workforce development services performance measures adopted by the governor and developed and recommended through the Texas Workforce Investment Council (TWIC).

(9) Employment Service--A program to match qualified job seekers with employers through a statewide network of one-stop career centers. ([The] Wagner-Peyser Act of 1933 (Title 29 USC [U.S.C.], Chapter 4B) as amended by WIOA (PL 113-128)) [the Workforce Investment Act of 1998 (P.L. 105-220)].

(10) Executive Director--The individual appointed by the Commission to administer the daily operations of the Agency, which may include an individual [a person] delegated by the Executive Director to perform a specific function on behalf of the Executive Director.

(11) Local Workforce Development Area (workforce area)--Workforce areas designated by the governor pursuant to Texas Government Code §2308.252 and functioning as a Local Workforce Investment Area, as provided for under WIOA §106 and §189(i)(1) (29 USC §3121 and §3249) [Workforce Investment Act §116 and §189(i)(2) (29 U.S.C.A., §2831 and §2939)].

(12) One-Stop Service Delivery Network--A one-stop-based network under which entities responsible for administering separate workforce investment, educational, and other human resources programs and funding streams collaborate to create a seamless network of service delivery that shall enhance the availability of services through the use of all available access and coordination methods, including telephonic and electronic methods--also known as Texas Workforce Solutions.

(13) Performance Measure--An expected performance outcome or result.

(14) Performance Target--A contracted numerical value setting the acceptable and expected performance outcome or result to be achieved for a performance measure, including Core Outcome Formal Measures. Achievement between 95 and 105 percent of the established target is considered meeting the target.

(15) Program Year--The twelve-month period applicable to the following as specified:

(A) Child Care: October 1 - September 30;

(B) Choices: October 1 - September 30;

(C) Employment Service: October 1 - September 30;

(D) Supplemental Nutrition Assistance Program Employment and Training: October 1 - September 30;

~~(E) Project RIO: October 1 - September 30;~~

~~(E) [(F)] Trade Act services: October 1 - September 30;~~

~~(F) [(G)] WIOA [Workforce Investment Act (WIA)] Adult, Dislocated Worker, and Youth formula funds: July 1 - June 30;~~

~~(G) [(H)] WIOA [WIA] Alternative Funding for Statewide Activities: October 1 - September 30;~~

~~(H) [(H)] WIOA [WIA] Alternative Funding for One-Stop Enhancements: October 1 - September 30; and~~

~~(I) [(H)] Adult Education and Literacy: July 1 - June 30.~~

~~[(16) Project Reintegration of Offenders (RIO)--A program that prepares and transitions ex-offenders released from Texas Department of Criminal Justice or Texas Juvenile Justice Department incarceration into gainful employment as soon as possible after release, consistent with provisions of the Texas Labor Code, Chapter 306; Texas Government Code §2308.312; and the Memorandum of Understanding with the Texas Department of Criminal Justice and the Texas Juvenile Justice Department.]~~

(16) [(17)] Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T)--A program to assist SNAP recipients to become self-supporting through participation in activities that include employment, job readiness, education, and training, activities authorized and engaged in as specified by federal statutes and regulations (7 USC §2011) [(7 U.S.C.A. §2011)], and Chapter 813 of this title relating to Supplemental Nutrition Assistance Program Employment and Training.

(17) [(18)] TANF--Temporary Assistance for Needy Families, which may include temporary cash assistance and other temporary assistance for eligible individuals, as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended 7 USC §2011 (et seq.) [(7 U.S.C.A. §2011 et seq.)] and the TANF statutes and regulations (42 USC §601 et seq. [(42 U.S.C.A. §601 et seq.)], 45 Code of Federal Regulations (CFR) [(C.F.R.)] Parts 260 - 265). TANF may also include the TANF State Program (TANF SP), relating to two-parent families, which is codified in Texas Human Resources Code, Chapter 34.

(18) [(19)] Trade Act Services--Programs authorized by the Trade Act of 1974, as amended (and 20 CFR [(C.F.R.)] Part 617) providing services to dislocated workers eligible for Trade benefits through Workforce Solutions Offices.

(19) [(20)] TWIC--Texas Workforce Investment Council, appointed by the governor pursuant to Texas Government Code §2308.052 and functioning as the State Workforce Investment Board, as provided for under WIOA §101(e) (29 USC 3111(e)) [Workforce Investment Act §111(e) (29 U.S.C.A. §2821(e))]. In addition, pursuant to WIOA §193(a)(5) (29 USC (3253(a)(5))) [the Workforce Investment Act §194(a)(5) (29 U.S.C.A. §2944(a)(5))], TWIC maintains the duties, responsibilities, powers, and limitations as provided in Texas Government Code §§2308.101 - 2308.105.

(20) [(21)] WIOA-Workforce Innovation and Opportunity Act--(PL 113 - 128, 29 USC §3101 et seq.). [WIA--Workforce Investment Act (P.L. 105-220, 29 U.S.C.A. §2801 et seq.)] References to WIOA [WIA] include references to WIOA [WIA] formula-allocated funds unless specifically stated otherwise.

(21) [(22)] WIOA [WIA] Formula-Allocated Funds--Funds allocated by formula to workforce areas for each of the following separate categories of services: WIOA [WIA] Adult, Dislocated Worker, and Youth (excluding the Secretary's and Governor's [governor's] reserve funds and rapid response funds).

(22) [(23)] Workforce Solutions Offices Partner--An entity that carries out a workforce investment, educational, or other human resources program or activity, and that participates in the operation of the One-Stop Service Delivery Network in a workforce area consistent with the terms of a memorandum of understanding entered into between the entity and the Board.

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

Filed with the Office of the Secretary of State on August 3, 2018.

TRD-201803352

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Earliest possible date of adoption: September 16, 2018

For further information, please call: (512) 680-1655



## SUBCHAPTER B. ALLOCATIONS

### 40 TAC §800.78

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

The proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.78. *Midyear Deobligation of AEL Funds.*

(a) The Commission may deobligate funds from an AEL grant recipient during the program year if an AEL grant recipient is not meeting the expenditure thresholds set forth in subsection (b) of this section, provided, however, that the requirements of subsection (d) of this section are satisfied.

(1) AEL grant recipients that fail to meet the expenditure thresholds set forth in subsection (b) of this section at the end of months four, five, six, or seven (October, November, December, or January) [five, six, seven, or eight of the program year (i.e., midyear)] will be reviewed to determine the causes for the underexpenditure of funds, except as set forth in subsection (e) of this section.

(2) The Commission shall not deobligate more than the difference between an AEL grant recipient's actual expenditures and the amount corresponding to the relative proportion of the program year.

(3) The Commission shall not deobligate funds from an AEL grant recipient that failed to meet the expenditure thresholds set forth in subsection (b) of this section, if within 60 days prior to the potential deobligation period the Commission executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category.

(b) The Commission may deobligate funds from an AEL grant recipient midyear, as set forth in subsection (a) of this section, if an AEL grant recipient fails to achieve the expenditure of an amount corresponding to 90 percent or more of the relative proportion of the program year.

(c) An AEL grant recipient subject to deobligation for failure to meet the requirements set forth in this section shall, upon request by the Commission, submit a written justification. For an AEL consortium, a copy must be provided to all AEL consortium members. The written justification shall provide sufficient detail regarding the actions an AEL grant recipient will take to address its deficiencies, including:

- (1) expansion of services proportionate to the available resources;
- (2) projected service levels and related performance;
- (3) reporting outstanding obligations; and
- (4) any other factors an AEL grant recipient would like the Commission to consider.

(d) Any amounts deobligated from an AEL grant recipient must be made available as a first priority to any other AEL grant recipient(s) providing AEL services within the same workforce area that meet the requirements of §800.80(a) of this subchapter, upon receipt and approval by the Commission of an acceptable plan.

(e) To the extent this section may be found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.

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 August 3, 2018.

TRD-201803353

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Earliest possible date of adoption: September 16, 2018

For further information, please call: (512) 680-1655



## CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

### SUBCHAPTER D. AGENCY MONITORING ACTIVITIES

#### 40 TAC §802.67

The Texas Workforce Commission (TWC) proposes amendments to Chapter 802, Subchapter D, Agency Monitoring Activities, §802.67, relating to Integrity of the Texas Workforce System.

#### PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Chapter 802 is revised to broaden the definition of the types of Local Workforce Development Board (Board) oversight issues that TWC may need to evaluate and to more accurately reflect TWC's intent to ensure that Boards are able to address any oversight issues at the local level.

Texas Labor Code §302.048 requires TWC, in consultation with the Boards, to establish criteria for evaluating each Board's overall capacity to oversee and manage local funds and the delivery of local workforce services.

On October 21, 2015, TWC's three-member Commission (Commission) adopted amendments to §802.67 that allow TWC to change the criteria used for evaluating a Board's oversight capacity on an as-needed basis. Section 802.67, as amended states that TWC shall evaluate, at least annually, each Board's oversight capacity, including the Board's ability to:

--develop, maintain, and upgrade comprehensive fiscal management systems;

--hire, train, and retain qualified staff to carry out the Board's oversight activities;

--select and oversee workforce service providers to improve the delivery of workforce services;

--oversee and improve the operations of Workforce Solutions Offices served by the Board.

--manage each workforce service provider's performance across multiple Board programs; and

--identify and resolve long-standing Board oversight problems and workforce service provider performance issues.

#### PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

#### SUBCHAPTER D. AGENCY MONITORING ACTIVITIES

TWC proposes the following amendments to Subchapter D:

#### §802.67. Commission Evaluation of Board Oversight Capacity

Section 802.67(b)(6) adds the words "or severe" to more accurately reflect TWC's intent to ensure Boards' ability to address any oversight problems at the local level. The definition of the terms "long-standing" and "severe" in the context of this rule are also added. The term "severe" is defined as an issue serious enough to warrant a sanction or intent-to-sanction as described in §802.122 and §802.123. The term "long-standing" is defined as an issue that persists for more than one review period to ensure that Boards are given notice and an opportunity to correct a deficiency during an initial review period.

#### PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as set forth in Texas Government Code §2001.0045, does not apply to this rulemaking.

#### Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to broaden the definition of the types of Local Workforce Development Board (Board) oversight issues that TWC may need to evaluate and to more accurately reflect TWC's intent to ensure that Boards are able to address any oversight issues at the local level.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

#### Government Growth Impact Statement

TWC has determined that during the first five years the amendment will be in effect:

- the amendment will not create or eliminate a government program;
- implementation of the amendment will not require the creation or elimination of employee positions;
- implementation of the amendment will not require an increase or decrease in future legislative appropriations to TWC;
- the amendment will not require an increase or decrease in fees paid to TWC;
- the amendment will not create a new rule;
- the amendment will not expand, limit, or repeal an existing rule;
- the amendment will not change the number of individuals subject to the rule; and

--the amendment will not positively or adversely affect the state's economy.

#### Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as these proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Interim Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to ensure Boards' ability to address any oversight problems at the local level.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

#### PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Boards. TWC provided the concept paper regarding these rules to the Boards for consideration and review on May 8, 2018. TWC also conducted a conference call with Board executive directors and Board staff on May 11, 2018, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Program Policy, Attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rules are proposed under Texas Labor Code §302.048, Assessment of local workforce development board's capacity to oversee and manage local funds and delivery of services and §§301.0015 and 302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

#### §802.67. *Commission Evaluation of Board Oversight Capacity.*

(a) This section outlines the process used by the Commission to evaluate Board oversight capacity related to the management of local funds and the delivery of local workforce services.

(b) The Agency shall evaluate, at least annually, each Board's oversight capacity, including the Board's ability to:

- (1) develop, maintain, and upgrade comprehensive fiscal management systems;
- (2) hire, train, and retain qualified staff to carry out the Board's oversight activities;
- (3) select and oversee workforce service providers to improve the delivery of workforce services;

(4) oversee and improve the operations of Workforce Solutions Offices in [served by] the Board's service area [Board];

(5) manage each workforce service provider's performance across multiple Board programs; and

(6) identify and resolve long-standing or severe Board oversight problems and workforce service provider performance issues. In the context of this section, the term "severe" is defined as an issue serious enough to warrant a sanction or intent-to-sanction, as described in §802.122 and §802.123, and the term "long-standing" is defined as an issue that persists for more than one review period.

(c) The Commission shall approve, in an open meeting, specific criteria to be used in its evaluation of Board oversight capacity and shall communicate these criteria to Boards through issuance of a Workforce Development Letter. The Commission shall approve, in an open meeting, on an as-needed basis, updates to the criteria used to evaluate Board oversight capacity.

(d) Notwithstanding any other provision of this section, the Commission may consider any extraordinary situation related to any of the factors identified in subsection (b) of this section, including natural disasters.

(e) Annually, the Commission shall post the results of its evaluation of each Board and each Board's performance on its website with an explanation of the rating, rating criteria, and performance measures in a format that is readily accessible to and understandable by a member of the public.

(1) The explanation shall include specifically how each of the criteria was applied for each Board.

(2) Evaluations shall be performed using information at the Commission's disposal at the time of the evaluation. If no updated information is available, the Commission is not obligated to schedule a review or visit to confirm or obtain new information.

(3) The Commission may update the Board ratings more often than annually if the Commission determines new information or circumstances warrant consideration.

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 August 3, 2018.

TRD-201803354

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Earliest possible date of adoption: September 16, 2018

For further information, please call: (512) 680-1655



## CHAPTER 805. ADULT EDUCATION AND LITERACY

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 805, relating to Adult Education and Literacy:

Subchapter A. General Provisions, §§805.1 - 805.4

Subchapter B. Staff Qualifications, §805.21

Subchapter C. Service Delivery Structure and Alignment, §§805.41 - 805.43, 805.45

TWC proposes the repeal of the following sections of Chapter 805, relating to Adult Education and Literacy:

Subchapter A. General Provisions, §805.5

Subchapter D. Other Provisions, §805.62

PART I. PURPOSE AND BACKGROUND

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed amendments to Chapter 805 is to align Adult Education and Literacy (AEL) provisions and definitions with the Workforce Innovation and Opportunity Act (WIOA) Title II, clarify language, delete obsolete terms, and extend the allowable terms of AEL advisory committee members.

WIOA was signed into law on July 22, 2014, replacing the Workforce Investment Act of 1998. Title II of WIOA includes substantial changes to definitions relating to AEL, participant eligibility, and eligible providers, as well as changes to the overall intent of the law. TWC staff has evaluated TWC Chapter 805 Adult Education and Literacy rules and determined that definitions must be updated and rules amended to align with WIOA.

Additionally, staff has identified the need to amend and repeal certain parts of Chapter 805 based on management of the program and the addition of new rules in the Texas Education Code (TEC).

In 2013, the AEL program and its appropriate rules were transferred from the Texas Education Agency (TEA) to TWC. One of the transferred rules relates to the awarding of diplomas to adults based on the secondary school curriculum, course credit requirements, and tests designated by the commissioner of education. That rule was not relevant to TWC operations, as it pertained to graduation criteria for secondary students who are adults. In 2017, legislation established specific requirements for adult high school diploma requirements, but limited the application of those requirements to nonprofit charter schools. Accordingly, based on TWC operations and the change in state law, there is a no longer a need for diploma requirements that were included when AEL was transferred to TWC. Proposed amendments would repeal §805.5 and defer diploma requirements for adults to the TEA.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§805.1. Purpose

Section 805.1(b) is amended to align with the purpose of AEL as outlined in WIOA §203(1)(a) and (b). In §805.1(b), the term "basic education" is replaced by "academic instruction and education services below the postsecondary level," and "enables them to effectively" is replaced with "increase an individual's ability to." Section 805.1(b)(1) is amended to state, "read, write, and speak in English and perform mathematics or other activities necessary for the attainment of a secondary school diploma or its recognized equivalent." Amended §805.1(b)(2) adds "or transition to postsecondary education and training." Section 805.1(b)(4) is removed.

§805.2. Definitions

Section 805.2(1) is amended to align the definition of "adult education" with the definition at WIOA §203(2), which is "programs, activities, and services that include adult education, literacy, workplace adult education and literacy activities, family literacy activities, English language acquisition activities, integrated English literacy and civics education, workforce preparation activities, or integrated education and training." Sections 805.2(1)(A), 805.2(1)(B), and 805.2(1)(C) are repealed.

In §805.2(10), the definition of "contact time" is amended to distinguish between testing and assessment services by adding "testing services," specifying "except for testing services used to determine eligibility."

The current definition of an eligible grant recipient in §805.2(11) is amended to align with the definition of an eligible provider in WIOA §203(5), adding that eligible grant recipients "are organizations that have demonstrated effectiveness in providing adult education and literacy activities." The list of eligible grant recipients in current §805.2(11)(A) - (I) is amended as follows:

--Section 805.2(11)(B) is modified to replace the phrase "of demonstrated effectiveness" with "or faith-based organization."

--The phrase "of demonstrated effectiveness" is removed from §805.2(11)(C).

--Section 805.2(11)(H) is amended to specify that literacy services are AEL services, and "adults and families" is replaced with "eligible individuals."

--Current §805.2(11)(I) is amended to add "or coalition" after "consortium."

--New §805.2(11)(J) adds "a partnership between an employer and an entity described in any of subparagraphs (A) through (I)" as an eligible grant recipient.

### §805.3. Federal and State AEL Funds

Section 805.3 is amended to align with the description of an individual in AEL programs for which federal AEL funds may be used to the definition of an eligible individual under WIOA. Amended §805.3(a) removes "out-of-school." Section 805.3(a)(1) replaces "lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society," with "are basic skills deficient." Section 805.3(a)(3) replaces "are unable to speak, read, or write the English language" with "are English language learners."

Section 805.3(b)(1) replaces "lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society," with "are basic skills deficient." Section 805.3(b)(3) replaces "are unable to speak, read, or write the English language" with "are English language learners."

Section 805.3(d) is amended to remove language that states that the use of AEL funds is for specific student populations.

### §805.4. Essential Program Components

Section 805.4 is amended to align the essential AEL program components to the allowable and required AEL activities in WIOA. The current six essential program components are expanded and revised as follows:

--Section 805.4(1) is amended to remove "basic" from "adult basic education."

--Section 805.4(2) is amended to replace "programs for adults of limited English proficiency" with "literacy."

--Section 805.4(3) is amended to replace "adult secondary education, including programs leading to a high school equivalency certificate or a high school diploma" with "workplace adult education and literacy activities."

--Section 805.4(4) is amended to replace "instructional services to improve student proficiencies necessary to function effectively in adult life, including accessing further education, employment-related training, or employment" with "family literacy activities."

--Section 805.4(5) is renumbered as §805.4(9) and "paragraphs (1) - (4) of this section" is changed to "paragraphs (1) - (8) of this section."

--Section 805.4(6) is renumbered as §805.4(10).

--New §805.4(5) is added to include "English language acquisition services."

--New §805.4(6) adds "integrated English literacy and civics education."

--New §805.4(7) adds "workforce preparation activities."

--New §805.4(8) adds "integrated education and training."

### §805.5. Diploma Requirements

Section 805.5 is repealed because these rules on diploma requirements are no longer relevant to AEL.

## SUBCHAPTER B. STAFF QUALIFICATIONS

TWC proposes the following amendments to Subchapter B:

### §805.21. Staff Qualifications and Training

Section 805.21(1) is amended by adding "instructional" before "aides," to clarify that instructional aides who provide direct instruction shall receive 15 hours of professional development each year. Section 805.21(6) adds "including instructional aides."

## SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

TWC proposes the following amendments to Subchapter C:

### §805.41. Procurement and Contracting

Section §805.41(b) is amended to replace "request for proposals (RFP)" with "grant solicitation" to align with TWC's direction on AEL competition process and requirements.

### §805.42. Program Delivery System

Section 805.42(c)(2) is amended to replace "career training" with "workforce training," to align with WIOA policy on postsecondary education and training.

### §805.43. Advisory Committees

Section 805.43(1)(C) replaces "one term" with "no more than two terms. The Commission shall provide direction when appointing a member to a second term," to expand Statewide Advisory Committee term limits to ensure allowable consistency and continuity on committee projects.

### §805.45. Tuition and Fees

Section 805.45 adds a provision to align to 2 CFR §200.305(b)(5), specifying that funds generated by tuition and fees "must be expended before federal and state grant funds."

## SUBCHAPTER D. OTHER PROVISIONS

TWC proposes the following amendments to Subchapter D:

## §805.62. Evaluation of Programs

Section 805.62 is repealed, as WIOA requires that funds provided under WIOA §231 be used on state leadership activities, including monitoring and evaluating the quality of and improvement in AEL activities.

### PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as set forth in Texas Government Code §2001.0045, does not apply to this rulemaking.

#### Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to align AEL provisions and definitions with WIOA Title II, clarify language, delete obsolete terms, and extend the allowable terms of AEL advisory committee members.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the

proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

#### Government Growth Impact Statement

TWC has determined that during the first five years the proposed amendments will be in effect:

--the proposed amendments will not create or eliminate a government program;

--implementation of the proposed amendments will not require the creation or elimination of employee positions;

--implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to TWC;

--the proposed amendments will not require an increase or decrease in fees paid to TWC;

--the proposed amendments will not create a new regulation;

--the proposed amendments will not expand, limit, or eliminate an existing regulation;

--the proposed amendments will not change the number of individuals subject to the rules; and

--the proposed amendments will not positively or adversely affect the state's economy.

#### Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as these proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure delivery of AEL services in accordance with current federal standards.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

### PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards. TWC provided the concept paper regarding these rule amendments to AEL grant recipients for consideration and review on May 22, 2018. TWC also conducted a conference call with AEL grantees on May 24, 2018, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Program Policy, Attn: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

## SUBCHAPTER A. GENERAL PROVISIONS



#### 40 TAC §§805.1 - 805.4

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

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

##### §805.1. Purpose.

(a) The rules contained in this chapter may be cited as the Adult Education and Literacy (AEL) rules.

(b) The purpose of the AEL programs is to provide adults with sufficient academic instruction and education services below the post-secondary level to increase an individual's ability to [basic education that enables them to effectively]:

(1) read, write, and speak in English and perform mathematics or other activities necessary for the attainment of a secondary school diploma or its recognized equivalent [acquire the basic educational skills necessary for literate functioning];

(2) [(4)] participate in job training and retraining programs or transition to postsecondary education and training; and [;]

(3) obtain and retain employment.[; and ]

[(4) continue their education to at least the level of completion of secondary school.]

##### §805.2. Definitions.

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

(1) Adult education--Programs, activities, and services that include adult education, literacy, workplace adult education and literacy activities, family literacy activities, English language acquisition activities, integrated English literacy and civics education, workforce preparation activities, or integrated education and training. [Basic and secondary instruction and services for adults. ]

[(A) Adult basic education (ABE)--Instruction in reading, writing, and speaking and comprehending English, and solving quantitative problems, including functional context, designed for adults who:]

[(i) have minimal competence in reading, writing, and solving quantitative problems;]

[(ii) are not sufficiently competent to speak, read, or write the English language; or]

[(iii) are not sufficiently competent to meet the requirements of adult life in the United States, including employment commensurate with the adult's real ability.]

[(B) Adult secondary education (ASE)--Comprehensive secondary instruction below the college credit level in reading, writing and literature, mathematics, science, and social studies, including functional context, and instruction for adults who do not have a high school diploma or its equivalent.]

[(C) English literacy education (EL)--Instruction designed to help adults with limited English proficiency achieve competence in the English language.]

(2) AEL consortium--A partnership of educational, workforce development, social service entities, and other public and private organizations that agree to partner, collaborate, plan, and apply

for funding to provide AEL and related support services. Consortium members shall include an AEL grant recipient, AEL fiscal agent, an AEL lead organization of a consortium, and AEL service provider(s). Consortium members may serve in one or more of the functions in accordance with state statutes and Commission rules.

(3) AEL fiscal agent--An entity that is assigned financial management duties as outlined in an Agency-AEL contract or is assigned this function as a member of an AEL consortium.

(4) AEL grant recipient--An eligible grant recipient within a local workforce development area (workforce area), as defined in §800.2(11) of this title, that is awarded AEL funds by the Agency. The AEL grant recipient also may act as an AEL lead organization of a consortium, AEL fiscal agent, or AEL service provider as designated in an agreement with an AEL consortium.

(5) AEL lead organization of a consortium--An organization designated as the AEL consortium manager in a written agreement between AEL consortium members. The AEL lead organization of a consortium is responsible for planning and leadership responsibilities as outlined in the written agreement and also may serve as an AEL grant recipient, AEL fiscal agent, or AEL service provider. If a consortium does not identify the lead organization of a consortium through a written agreement, the AEL grant recipient will be presumed to assume the responsibility of the lead organization of the consortium.

(6) AEL service provider--An entity that is eligible to provide AEL services as specified in 20 USC §9202 and Texas Labor Code §315.003.

(7) Assessment services--The processes, administration, review, and consultation provided to individuals in accordance with the AEL assessment procedure and other agency guidance that direct placement, progress, achievement, and overall program accountability in AEL and other services, including the identification of potential academic or support service needs.

(8) Clock hour--60 minutes.

(9) College and career transitional support--Support that may include, but is not limited to, recruiting and outreach, intensive individual case management, career and academic counseling, enrollment and financial aid support, self-advocacy skills development, academic and career support strategies, college and workforce system capacity building, student data records management, and providing access to other support and employment services.

(10) Contact time--The cumulative sum of minutes during which an eligible adult student receives instructional, counseling, [or] assessment, or testing services (except for testing services used to determine eligibility) from [by] a staff member supported by federal and state AEL funds as documented by local attendance and reporting records.

(A) Student contact time generated by volunteers may be accrued by the AEL program when volunteer services are verifiable by attendance and reporting records and volunteers meet requirements under §805.21 of this title (relating to Staff Qualifications and Training).

(B) A student contact hour is 60 minutes.

(11) Eligible grant recipient--An entity, as specified in state and federal law, that is eligible to receive AEL program funding. Eligible grant recipients are organizations that have demonstrated effectiveness in providing adult education and literacy activities, and may include:

(A) a local educational agency;

(B) a community-based organization or faith-based organization [~~of demonstrated effectiveness~~];

(C) a volunteer literacy organization [~~of demonstrated effectiveness~~];

(D) an institution of higher education;

(E) a public or private nonprofit agency;

(F) a library;

(G) a public housing authority;

(H) a nonprofit institution that is not described in any of subparagraphs (A) through (G) of this paragraph [~~(A) - (G) of this paragraph~~] and has the ability to provide adult education and literacy services to eligible individuals; [~~adults and families; and~~]

(I) a consortium or coalition of the agencies, organizations, institutions, libraries, or authorities described in any of subparagraphs (A) through (H) of this paragraph; and [~~(A) - (G) of this paragraph.~~]

(J) a partnership between an employer and an entity described in any of subparagraphs (A) through (I) of this paragraph.

(12) Literacy--An individual's ability to read, write, and speak in English, and to compute and solve problems at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

(13) Principles of adult learning--A wide variety of research-based professional development topics that include instructional and advising characteristics specific to adults, and support the range of knowledge, skills, and abilities adults need to understand and use information, express themselves, act independently, effectively manage a changing world, and meet goals and objectives related to career, family, and community participation. Instructional principles include, but are not limited to, engaging adults and customizing instruction on subjects that have immediate relevance to their career and personal goals and objectives, building on their prior knowledge and experience, and supporting them in taking responsibility for their learning.

(14) Proctoring--Support in the administration of tests or pretests under the guidance of a staff member who oversees program assessment services and/or accountability assessment.

(15) Professional development--Encompasses all types of facilitated learning activities for instructors and staff of AEL programs and organizations participating in AEL programs and services. Professional development can be face-to-face or virtual and can be a workshop, lecture, presentation, poster session, roundtable discussion, study circle, or demonstration that meets for a minimum of one hour and upwards in increments of one half (0.5) [~~(.5)~~] hour (that is [~~i.e.~~]), the hours assigned for purposes of tracking AEL staff professional development requirements in TEAMS, the Texas Educating Adults Management System) to accomplish a predetermined educational or learning outcome.

(16) Program year--The AEL program year is July 1 through June 30.

(17) Substitute--An instructor who works on call, does not have a full-time assignment, and does not assume permanent responsibilities for class instruction. An individual is considered a substitute if he or she instructs a particular class for four or fewer consecutive class meetings.

(18) Support services--Services such as transportation, child care, dependent care, housing, and needs-related payments,

which are necessary to enable an individual to participate in activities as defined in Workforce Innovation and Opportunity Act (WIOA) §2.

(19) Workforce training--Services described in WIOA §134(c)(3)(D), including the following:

(A) occupational skills training, including training for nontraditional employment;

(B) on-the-job training;

(C) incumbent worker training;

(D) programs that combine workplace training with related instruction, which may include cooperative education programs;

(E) training programs operated by the private sector;

(F) skill upgrading and retraining;

(G) entrepreneurial training;

(H) transitional jobs;

(I) job readiness training provided in combination with services described in any of subparagraphs (A) through (H) of this paragraph;

(J) AEL activities, including activities of English language acquisition and integrated education and training programs, provided concurrently or in combination with services described in any of subparagraphs (A) through (G) of this paragraph; and

(K) customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training.

#### §805.3. Federal and State AEL Funds.

(a) Federal AEL funds may be used for AEL programs for [~~out-of-school~~] individuals who have attained 16 years of age and who are not enrolled or required to be enrolled in secondary school under state law and:

(1) are basic skills deficient [~~lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society~~];

(2) do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or

(3) are English language learners [~~are unable to speak, read, or write the English language~~].

(b) State AEL funds are to be used for AEL programs for out-of-school individuals who are beyond the compulsory age of attendance unless specifically exempted from compulsory school attendance by Texas Education Code §25.086 and:

(1) are basic skills deficient [~~lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society~~];

(2) do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or

(3) are English language learners [~~are unable to speak, read, or write the English language~~].

(c) The proportion of students served who meet the requirements of subsection (a) of this section, but do not meet the requirements of subsection (b) of this section, shall not exceed the grant recipient's percentage of federal funds to the total allocation.

(d) The Commission shall establish annual performance benchmarks for the use of AEL funds, [in serving specific student populations, including the population of students receiving other workforce services or coenrolled in postsecondary education or training.]

§805.4. *Essential Program Components.*

An AEL grant recipient shall ensure [that AEL programs provide] the following essential program components are provided:

- (1) Adult [~~Adult basic~~] education;
- (2) Literacy [~~programs for adults of limited English proficiency~~];
- (3) Workplace adult education and literacy activities [~~adult secondary education, including programs leading to a high school equivalency certificate or a high school diploma~~];
- (4) Family literacy activities [~~instructional services to improve student proficiencies necessary to function effectively in adult life, including accessing further education, employment-related training, or employment~~];
- (5) English language acquisition services;
- (6) Integrated English literacy and civics education;
- (7) Workforce preparation activities;
- (8) Integrated education and training;
- (9) [(5)] Assessment [assessment] and guidance services related to paragraphs (1) - (8) [(4) - (4)] of this section; and
- (10) [(6)] Collaboration [~~collaboration~~] with multiple partners in the community to expand the services available to adult learners and to prevent duplication of services.

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 August 3, 2018.

TRD-201803355

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Earliest possible date of adoption: September 16, 2018

For further information, please call: (512) 680-1655



**40 TAC §805.5**

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

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§805.5. *Evaluation of Programs*

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

Filed with the Office of the Secretary of State on August 3, 2018.

TRD-201803375

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Earliest possible date of adoption: September 16, 2018

For further information, please call: (512) 680-1655



**SUBCHAPTER B. STAFF QUALIFICATIONS**

**40 TAC §805.21**

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

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§805.21. *Staff Qualifications and Training.*

The requirements of this section shall apply to all AEL staff hired after July 1, 2013, excluding clerical and janitorial staff.

(1) AEL instructional aides, administrative, data entry, proctoring staff, and staff providing support or employment services to students shall have at least a high school diploma or high school equivalency certificate.

(2) AEL directors, supervisors, and staff that oversee [~~oversees~~] program assessment services and/or overall program accountability, and instructors in the content areas of reading, writing, mathematics, and English language acquisition, including substitutes, shall possess at least a bachelor's degree.

(3) Workforce training instructors must meet the requirements of the institution and/or the associated accrediting or credentialing entity, if applicable.

(4) Requests for exemptions for staff qualification requirements in individual cases:

(A) may be submitted to the Agency for approval with a justification outlining extenuating circumstances; and

(B) shall be submitted and approved prior to an individual being placed in the position in question.

(5) All AEL directors and supervisors, and other staff with program oversight or coordination responsibilities shall receive 15 clock hours of professional development each program year with the following exception: Staff hired on or after January 1 of a program year may require half of the professional development time required for that program year.

(6) All AEL instructional staff, including instructional aides, except substitutes, paid with AEL grant funds or who acquire student contact hours, including volunteers, shall receive at least 15 clock hours of professional development each program year, with the following specifications:

(A) Instructors in the content areas of reading, writing, mathematics, and English language acquisition shall:

(i) receive three clock hours of training in principles of adult learning;

(ii) receive six clock hours in relevant areas of literacy instruction; and

(iii) receive the remaining six clock hours of training in content areas at the discretion of the program, but consisting of content related to the AEL program's purpose, which is to provide adults with sufficient basic education that enables them to effectively:

(I) acquire the basic educational skills necessary for literate functioning;

(II) participate in job training and retraining programs;

(III) obtain and retain employment; and

(IV) continue their education to at least the level of secondary school completion and postsecondary education preparation; or

(iv) waive six clock hours of content area in staff professional development for individuals who have 18 or more college semester undergraduate or graduate credit hours in relevant areas of literacy instruction.

(B) Staff, as described in subparagraph (A) of this paragraph, hired on or after January 1 of a program year, may require half of the professional development time required for that program year. For instructors in the content areas of reading, writing, mathematics, and English language acquisition, these hours must include three clock hours of training in principles of adult learning and three clock hours in the relevant areas of literacy instruction.

(C) Staff described in paragraph (6) of this subsection shall receive at least six clock hours of the required professional development outlined in paragraph (6)(A)(i) - (iii) of this subsection within 30 calendar days of providing instructional activities, if new to AEL or to direct student service delivery. The six hours include the required three hours of principles of adult learning and three hours of the relevant areas of literacy instruction. Waiving of the requirements for staff new to direct student services must be approved by Agency AEL staff prior to the individual providing any instructional services.

(7) All staff providing support services or college and career transitional support who are paid through an AEL grant shall receive at least three clock hours of professional development each program year.

(8) AEL staff assigned test proctoring or data entry duties shall receive at least three clock hours of professional development related to their primary job duties each program year.

(9) The requirements for professional development may be reduced by grant recipients in individual cases in which exceptional circumstances prevent employees from completing the required hours of professional development. Exceptional circumstances can include absence from the program or work due to personal health reasons or emergency familial responsibilities, including maternity/paternity. Documentation justifying these circumstances shall be available for monitoring and as requested by AEL staff.

(10) Records of staff qualifications and professional development shall be maintained by each grant recipient and shall be available for monitoring.

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 August 3, 2018.  
TRD-201803356

Jason Vaden

Director, Workforce Program Policy  
Texas Workforce Commission

Earliest possible date of adoption: September 16, 2018

For further information, please call: (512) 680-1655

## SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

### 40 TAC §§805.41 - 805.43, 805.45

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

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

#### §805.41. Procurement and Contracting.

(a) Beginning with Program Year 2014, eligible grant recipients shall compete for funding through a statewide procurement process conducted in accordance with federal and state procurement requirements. AEL funding shall be allocated as set forth in §800.68 of this title.

(b) Eligible grant recipients shall apply directly to the Agency using the grant solicitation [request for proposals (RFP)] process, and shall meet all deadlines, requirements, and guidelines set forth in the grant solicitation [RFP].

(c) Contracts awarded to AEL grant recipients shall be limited to two years, with the option of three one-year renewals, at the Commission's discretion. In considering a renewal, the Commission shall take into account performance and other factors.

(1) Renewals for years three, four, and five are not automatic, and are based on meeting or exceeding performance and expenditure benchmarks, or other factors as determined by the Commission.

(2) At the completion of the five-year maximum contract term, the Agency shall conduct a new competitive statewide procurement, including those contracts that have been in effect for less than the maximum five-year contract term.

(d) Determinations by the Agency in the statewide procurement process will be based on the indicated ability of the eligible grant recipient to effectively perform all services and activities needed to fully comply with contract performance requirements and all contract terms and conditions, and may be influenced by factors used to determine the allocation of AEL funds or other objective data or criteria.

#### §805.42. Program Delivery System.

(a) There shall be a statewide AEL program delivery system that provides AEL services on a coordinated basis within each workforce area.

(b) An eligible grant recipient must apply directly to the Agency for AEL funding.

(c) Each eligible grant recipient must demonstrate an ability to:

(1) plan and develop a service delivery strategy that includes a broad analysis of the educational, economic, and workforce development trends across the entire workforce area to provide eligible AEL students with comprehensive and locally responsive services; and

(2) expand, improve, and coordinate delivery of education, workforce training, ~~career training,~~ workforce development, and support services.

(d) Each eligible grant recipient applying for AEL funding on behalf of an AEL consortium must:

(1) meet the requirements set forth in subsection (c)(1) - (2) of this section;

(2) designate an entity to serve as the AEL lead organization of the consortium; and

(3) designate an entity to serve as AEL fiscal agent for the AEL consortium. The AEL fiscal agent is responsible for making and filing all financial reports to the AEL grant recipient that will review all reports and submit to the Agency on behalf of the consortium.

(e) An AEL grant application must reflect service delivery strategies for the workforce area. In workforce areas that are heavily populated or have large service regions, the Agency may elect to contract with more than one AEL grant recipient within a workforce area.

(f) An AEL grant recipient, awarded AEL funds by the Agency, shall be responsible for performing all services and activities required to fully comply with contract performance requirements and all contract terms and conditions. Responsibilities include, but are not limited, to the following:

(1) Communication.

(A) The AEL grant recipient shall serve as the point of contact with the Agency.

(B) For an AEL consortium, on behalf of AEL consortium members, the AEL grant recipient shall:

(i) transmit questions and grant-related needs for AEL consortium members to the Agency; and

(ii) carry out the programmatic functions of an AEL grant by communicating regularly with members of the AEL consortium and by sharing information, policy or procedural changes, and technical assistance provided by the Agency to oversee the grant.

(2) Monitoring. The AEL grant recipient shall:

(A) monitor programmatic and fiscal progress against goals and project deliverables; and

(B) timely notify the Agency of problems related to achievement of programmatic and fiscal goals of the grant in accordance with appropriate systems to receive and compile outcome measures and fiscal reports.

(3) Technical assistance. The AEL grant recipient shall carry out the programmatic and reporting functions of an AEL grant by providing or requesting technical assistance for its program, or in an AEL consortium for AEL consortium members, related to the design, implementation, and internal evaluation of their AEL services or support services.

(4) Professional development. The AEL grant recipient shall plan and coordinate the provision of necessary professional development opportunities for its program, or in an AEL consortium to the AEL consortium members.

(5) Reporting. The AEL grant recipient shall:

(A) collect and compile all fiscal and programmatic information regarding the activities, expenses, and performance outputs and outcomes of the AEL grant; and

(B) submit this information to the Agency.

(6) Workforce area coverage.

(A) The AEL grant recipient shall ensure that services are provided to the portion of the workforce area designated in the AEL grant application, whether through in-person services or distance learning, or a combination of methods.

(B) For an AEL consortium, the AEL grant recipient shall ensure that services are provided to the portion of the workforce area, as designated for the consortium in the AEL grant application, whether through in-person services or distance learning, or a combination of methods.

(i) If a consortium member fails to perform in accordance with the AEL consortium's coordinated service delivery plan, the AEL grant recipient shall provide technical assistance, as appropriate;

(ii) If a consortium member withdraws from a consortium, the AEL grant recipient shall ensure that a letter of intent to withdraw is provided to the Agency's grant contract manager. The AEL grant recipient shall coordinate with remaining consortium members to develop an alternative proposal for service delivery and submit it to the Agency for approval;

(iii) If an AEL lead organization of a consortium withdraws from a consortium or from its role as the lead organization of the consortium, the AEL grant recipient must ensure that a letter of intent to withdraw is provided to the Agency contract manager. The AEL grant recipient must coordinate with remaining consortium members to identify an alternative lead organization of the consortium and submit it to the Agency for approval; and

(iv) If, in a workforce area with multiple consortiums that cover the entire workforce area, one or more consortiums withdraws, the AEL grant recipient shall ensure that a letter of intent to withdraw is provided to the Agency's grant contract manager. The Agency will coordinate with the remaining consortiums to develop an alternative proposal for service delivery for the entire workforce area.

(g) For an AEL consortium, the Agency reserves the right to reevaluate an AEL grant in light of any change in the AEL consortium membership based on the consortium's continued ability to meet the terms of the original grant award as demonstrated through an alternative proposal. The Agency's reevaluation may include termination of all awards under the AEL consortium if deemed appropriate.

(1) If an AEL consortium or AEL consortium member withdraws, the funds and activities committed to in the application shall not be shifted to another AEL consortium, AEL consortium member, or a new institution without written Agency approval.

(2) The AEL grant recipient shall contact the Agency's grant contract manager to discuss options for replacement grants within the AEL consortium.

*§805.43. Advisory Committees.*

Statewide Advisory Committee. The Commission shall establish a statewide AEL advisory committee, composed of no more than nine members appointed by the Commission.

(1) Committee members shall:

(A) have AEL expertise and may include adult educators, providers, advocates, current or former AEL students, and leaders in the nonprofit community engaged in literacy promotion efforts;

(B) include at least one representative of the business community and at least one representative of a Local Workforce Development Board (Board); and

(C) serve for staggered two-year terms and be limited to no more than two terms. The Commission shall provide direction when appointing a member to a second term [one term].

(2) Membership shall be reviewed when a member's employment changes to determine whether the individual continues to meet the requirements for membership.

(3) The committee shall meet at least quarterly and submit a written report to the Commission on an annual basis.

(4) The committee shall select a presiding officer as required by Texas Government Code, Chapter 2110.

(5) The committee shall advise the Commission on:

(A) the development of:

(i) policies and program priorities that support the development of an educated and skilled workforce in the state;

(ii) statewide curriculum guidelines and standards for AEL services that ensure a balance of education and workplace skills development;

(iii) a statewide strategy for improving student transitions to postsecondary education and career and technical education training; and

(iv) a centralized system for collecting and tracking comprehensive data on AEL program performance outcomes;

(B) the exploration of potential partnerships with entities in the nonprofit community engaged in literacy-promotion efforts, entities in the business community, and other appropriate entities to improve statewide literacy programs; and

(C) any other issue the Commission considers appropriate.

*§805.45. Tuition and Fees.*

Tuition and fees shall not be charged unless the entity charging them is statutorily authorized to do so. Funds generated by tuition and fees shall be used for the AEL instructional programs, and must be expended before federal and state grant funds, in accordance with 2 CFR §200.305(b)(5).

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 August 3, 2018.

TRD-201803357

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Earliest possible date of adoption: September 16, 2018

For further information, please call: (512) 680-1655



## SUBCHAPTER D. OTHER PROVISIONS

### 40 TAC §805.62

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

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

### §805.62 Evaluation of Programs.

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

Filed with the Office of the Secretary of State on August 3, 2018.

TRD-201803376

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Earliest possible date of adoption: September 16, 2018

For further information, please call: (512) 680-1655



## CHAPTER 809. CHILD CARE SERVICES

The Texas Workforce Commission (TWC) proposes amendments to Chapter 809, relating to Child Care Services, Subchapter A, General Provisions, §809.2 and Subchapter G, Texas Rising Star Program, §§809.131, 809.132, and 809.134.

### PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 809 amendments is to clarify the consequences of certain deficiencies cited by Child Care Licensing (CCL) and adjust the time frame for which consequences are applied to a provider's Texas Rising Star (TRS) certification rating. The amendments also will align the professional development and continuing education requirements of TRS assessors and mentors with the minimum annual professional development and continuing education requirements of the child care center directors they assess and mentor.

Texas Government Code §2308.3155(b)(2), regarding the TRS program, requires TWC's three-member Commission (Commission) to adopt a timeline and process for regularly reviewing and updating the quality standards used to determine the TRS rating system. The statute requires Commission consideration of input from interested parties regarding the quality standards. To meet this requirement, a workgroup composed of workforce system and community stakeholders was convened on February 20, 2018, to discuss TWC's quality initiatives, including a review of the standards and rules of the TRS program.

### PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

#### SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

##### §809.2. Definitions

Terminology is added to define "Child Care Licensing (CCL)" and reflect its transition from the Texas Department of Family and Protective Services (DFPS) to the Texas Health and Human Services Commission. "DFPS" is replaced by "CCL" as appropriate, and the paragraphs are renumbered as necessary.

Additionally, renumbered §809.2(9)(B) is amended to use the term "Certificate of High School Equivalency" rather than "General Education Development (GED) credential."

#### SUBCHAPTER G. TEXAS RISING STAR PROGRAM

TWC proposes the following amendments to Subchapter G:

### §809.131. Eligibility for the TRS Program

Terminology is updated to replace "DFPS" with "CCL" as appropriate.

### §809.132. Impact of Certain Deficiencies on TRS Certification

Workgroup feedback expressed concern regarding the TRS certification rating loss incurred by certain CCL deficiencies cited. In response, TWC proposes to amend §809.132(b) so that 4-star TRS providers lose only one star level, rather than the currently required two, if a critical deficiency is identified during the provider's most recent CCL 12-month licensing history. Section 809.132(e) is amended to state that providers losing a star level due to licensing deficiencies shall be reinstated at the former star level if no citations described in §809.132(b) - (d) occur within the six-month reduction time frame.

Additionally, when a provider loses TRS certification due to the number of deficiencies cited, the provider is currently disqualified from eligibility for TRS recertification assessment for at least 12 months following the loss of certification. TWC proposes to amend §809.132(f) to align with the six-month disqualification period incurred by a star-level reduction, as outlined in amended §809.132(e), as long as no current deficiencies are re-cited and no additional licensing deficiencies are cited during the disqualification period.

Furthermore, "DFPS" is replaced by "CCL" as appropriate.

### §809.134. Minimum Qualifications for TRS Assessors and Mentors

TRS assessors and mentors require specific skill sets to assess child care centers for quality in all aspects of operations, as well as to mentor child care directors to achieve a quality designation. Assessors and mentors must stay abreast of professional standards and emerging trends that will benefit child care providers. Currently, the minimum amount of professional development and continuing education required for assessors and mentors is 30 hours annually. However, directors of TRS-certified centers have a requirement of 36 hours of continuing education and professional development annually to maintain TRS certification.

Amended §809.134(e) aligns the professional development and continuing education hours for assessors and mentors with that required of TRS-certified child care center directors.

## PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as set forth in Texas Government Code §2001.0045, does not apply to this rulemaking.

### Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a takings impact analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to amend existing §809.131, §809.132, and §809.134 based on the results of workgroup feedback and review. The amendments include clarifying the consequences of certain deficiencies cited by Child Care Licensing (CCL), adjusting the time frame for which consequences are applied to a provider's Texas Rising Star (TRS) certification rating, and aligning the professional development and continuing education requirements of TRS assessors and mentors with the minimum annual professional development and continuing education requirements of the child care center directors they assess and mentor.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

### Government Growth Impact Statement

TWC has determined that during the first five years the amendments will be in effect:

- the amendments will not create or eliminate a government program;
- implementation of the amendments will not require the creation or elimination of employee positions;
- implementation of the amendments will not require an increase or decrease in future legislative appropriations to TWC;
- the amendments will not require an increase or decrease in fees paid to TWC;
- the amendments will not create a new regulation;

--the amendments will not expand, limit, or eliminate an existing regulation;

--the amendments will not change the number of individuals subject to the rules; and

--the amendments will not positively or adversely affect the state's economy.

#### Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as these rules place no requirements on small businesses or rural communities.

Mariana Vega, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated because of the rules will be to improve access to, and continued participation in, TRS programming by child care providers, and improve the quality of assessments and mentoring activities for child care and early learning centers already participating as TRS providers.

#### PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review on May 8, 2018. TWC also conducted a conference call with Board executive directors and Board staff on May 11, 2018, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 40 TAC §809.2

The rules are proposed under Texas Government Code §2308.3155(b)(2), relating to the process for regular review and update of the quality standards within the Texas Rising Star Program, and Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

##### §809.2. Definitions.

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

(1) Attending a job training or educational program--An individual is attending a job training or educational program if the individual:

(A) is considered by the program to be officially enrolled;

(B) meets all attendance requirements established by the program; and

(C) is making progress toward successful completion of the program as determined by the Board upon eligibility redetermination as described in §809.42(b).

(2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.

(3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and reimbursement process related to child care subsidies, as well as contractors involved in the funding of quality improvement activities as described in §809.16.

(4) Child Care Licensing (CCL)--Division responsible for protecting the health, safety, and well-being of children who attend or reside in regulated child care facilities and homes. Previously a division of the Texas Department of Family and Protective Services (DFPS), CCL is now part of the Texas Health and Human Services Commission (HHSC).

(5) Child care services--Child care subsidies and quality improvement activities funded by the Commission.

(6) [(5)] Child care subsidies--Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child.

(7) [(6)] Child experiencing homelessness--A child who is homeless, as defined in the McKinney-Vento Act (42 USC [U.S.C.] 11434(a)), Subtitle VII-B, §725.

(8) [(7)] Child with disabilities--A child who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities include, but are not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, or breathing; learning; and working.

(9) [(8)] Educational program--A program that leads to:

(A) a high school diploma;

(B) a Certificate of High School Equivalency; [General Educational Development (GED) credential]; or

(C) a postsecondary degree from an institution of higher education.

(10) [(9)] Excessive unexplained absences--More than 40 unexplained absences within a 12-month eligibility period as described in §809.78(a)(3).

(11) [(10)] Family--Two or more individuals related by blood, marriage, or decree of court, who are living in a single residence and are included in one or more of the following categories:

(A) Two individuals, married--including by common-law, and household dependents; or

(B) A parent and household dependents.

(12) [(11)] Household dependent--An individual living in the household who is one of the following:

(A) An adult considered [as] a dependent of the parent for income tax purposes;



(B) A child of a teen parent; or

(C) A child or other minor living in the household who is the responsibility of the parent.

(13) [(42)] Improper payments--Any payment of CCDF grant funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds and includes payments:

- (A) to an ineligible recipient;
- (B) for an ineligible service;
- (C) for any duplicate payment; and
- (D) for services not received.

(14) [(43)] Job training program--A program that provides training or instruction leading to:

- (A) basic literacy;
- (B) English proficiency;
- (C) an occupational or professional certification or license; or
- (D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.

(15) [(44)] Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, CCL [the Texas Department of Family and Protective Services (DFPS)] pursuant to Texas Human Resources Code §42.052(c).

(16) [(45)] Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents. This includes deployed parents in the regular military, military reserves, or National Guard.

(17) [(46)] Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.

(18) [(47)] Protective services--Services provided when:

- (A) a child is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without DFPS Child Protective Services (CPS) intervention;
- (B) a child is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or
- (C) a child has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.

(19) [(48)] Provider--A provider is defined as:

- (A) a regulated child care provider as defined in §809.2(19) [§809.2(48)];
- (B) a relative child care provider as defined in §809.2(20) [§809.2(49)]; or
- (C) a listed family home as defined in §809.2(14) [§809.2(43)], subject to the requirements in §809.91(b).

(20) [(49)] Regulated child care provider--A provider caring for an eligible child in a location other than the eligible child's own residence that is:

- (A) licensed by CCL [DFPS];
- (B) registered with CCL [DFPS]; or
- (C) operated and monitored by the United States military services.

(21) [(20)] Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, one of the following:

- (A) The child's grandparent;
- (B) The child's great-grandparent;
- (C) The child's aunt;
- (D) The child's uncle; or
- (E) The child's sibling (if the sibling does not reside in the same household as the eligible child).

(22) [(21)] Residing with--Unless otherwise stipulated in this chapter, a child is considered to be residing with the parent when the child is living with and physically present with the parent during the time period for which child care services are being requested or received.

(23) [(22)] Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.

(24) [(23)] Texas Rising Star program--A voluntary, quality-based rating system of child care providers participating in Commission-subsidized child care.

(25) [(24)] Texas Rising Star Provider--A provider certified as meeting the TRS program standards. TRS providers are certified as one of the following:

- (A) 2-Star Program Provider;
- (B) 3-Star Program Provider; or
- (C) 4-Star Program Provider.

(26) [(25)] Working--Working is defined as:

- (A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions; or
- (B) participation in Choices or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities.

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 August 3, 2018.

TRD-201803358

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Earliest possible date of adoption: September 16, 2018

For further information, please call: (512) 680-1655



## SUBCHAPTER G. TEXAS RISING STAR PROGRAM

### 40 TAC §§809.131, 809.132, 809.134

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

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

#### §809.131. Eligibility for the TRS Program.

(a) A child care provider is eligible to apply for the TRS program if the provider has a current agreement to serve Commission-subsidized children and:

(1) has a permanent (nonexpiring) license or registration from CCL[DFPS];

(2) has at least 12 months of licensing history with CCL[DFPS], and is not on:

(A) corrective action with a Board pursuant to Subchapter F of this chapter;

(B) a "Notice of Freeze" with the Commission pursuant to Chapter 213 of the Texas Labor Code (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 of the Texas Labor Code (Payment of Wages); or

(C) corrective or adverse action with CCL[DFPS]; or

(3) is regulated by and in good standing with the US Military.

(b) A child care facility is not eligible to apply for the TRS program if, during the most recent 12-month CCL[DFPS] licensing history, the provider had:

(1) any of the critical licensing deficiencies listed in the TRS guidelines;

(2) five or more of the high or medium-high licensing deficiencies listed in the TRS guidelines; or

(3) 10 or more total licensing deficiencies of any type.

#### §809.132. Impact of Certain Deficiencies on TRS Certification.

(a) A TRS provider shall lose TRS certification if the provider:

(1) is placed on corrective action with a Board pursuant to Subchapter F of this chapter;

(2) is under a "Notice of Freeze" with the Commission pursuant to Chapter 213 of the Texas Labor Code (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 of the Texas Labor Code(Payment of Wages);

(3) is placed on corrective or adverse action by CCL[DFPS]; or

(4) had 15 or more total licensing deficiencies of any type during the most recent 12-month licensing history.

(b) TRS providers with any of the critical licensing deficiencies listed in the TRS guidelines during the most recent 12-month CCL[DFPS] licensing history shall have the following consequences:

(1) reduction of a one-star level, so a 4-Star Program Provider is reduced to a [or] 3-Star Program Provider, a 3-Star Program Provider is reduced to a 2-Star Program Provider; or

(2) a 2-Star Program Provider [shall] loses certification.

(c) TRS providers with five or more of the high or medium-high deficiencies listed in the TRS guidelines during the most recent 12-month CCL [DFPS] licensing history shall lose a star level with a 2-Star Program Provider losing certification.

(d) TRS providers with 10 to 14 total licensing deficiencies of any type during the most recent 12-month CCL [DFPS] licensing history shall be placed on a six-month TRS program probationary period. Further:

(1) TRS providers on a six-month probationary period that are re-cited by CCL [DFPS] within the probationary period for any of the same deficiencies shall lose a star level with a 2-Star Program Provider losing certification;

(2) if any new deficiencies--not to exceed 14 total deficiencies--are cited by CCL [DFPS] during the first probationary period, a second six-month probationary period shall be established effective upon the date of final DFPS determination of the deficiencies; and

(3) if any new deficiencies--not to exceed 14 total deficiencies--are cited by CCL [DFPS] during the second six-month probationary period, a provider shall lose TRS certification.

(e) Providers losing a star level due to licensing deficiencies shall be reinstated at the former star level if no citations described in §809.132(b) - (d) occur within the six-month reduction time frame. [the deficiency is not re-cited by DFPS within the next six months.]

(f) Providers losing TRS certification shall [not]be eligible to reapply for certification after six [sooner than 12] months following the loss of the certification, as long as no current deficiencies are re-cited and no additional licensing deficiencies are cited during the disqualification period.

#### §809.134. Minimum Qualifications for TRS Assessors and Mentors.

(a) Boards shall ensure that TRS assessors and mentors meet the minimum education requirements as follows:

(1) Bachelor's degree from an accredited four-year college or university in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science;

(2) Bachelor's degree from an accredited four-year college or university with at least 18 credit hours in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with at least 12 credit hours in child development; or

(3) Associate's degree in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with two years of experience as a director in an early childhood program, with preference given to experience with a provider that is accredited or TRS certified.

(b) The Commission may grant a waiver of no more than two years of the minimum education requirements in subsection (a) of this section if a Board can demonstrate that no applicants in its local workforce development area meet the minimum education requirements.

(c) Boards shall ensure that TRS assessors and mentors meet the minimum work experience requirements of one year of full-time early childhood classroom experience in a child care, Early Head Start, Head Start, or prekindergarten through third-grade school program.

(d) Boards shall ensure that if an individual performs the duties of both an assessor and a mentor, the individual providing TRS mentoring services to a provider does not act as the assessor of that same provider when determining TRS certification.

(e) Boards shall ensure that TRS assessors and mentors are required to complete annual professional development and continuing education consistent with the TRS annual [child care licensing] minimum training hours requirement [requirements] for a TRS-certified child care center director.

(f) Boards shall ensure that TRS assessors and mentors meet the background check requirement consistent with [40 TAC,] Chapter 745 of this title.

(g) Boards shall ensure that TRS assessors and mentors demonstrate:

- (1) knowledge of best practices in early childhood education; and
- (2) understanding of early childhood evaluations, observations, and assessment tools for both teachers and children.

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 August 3, 2018.

TRD-201803359

Jason Vaden

Director, Workforce Program Policy

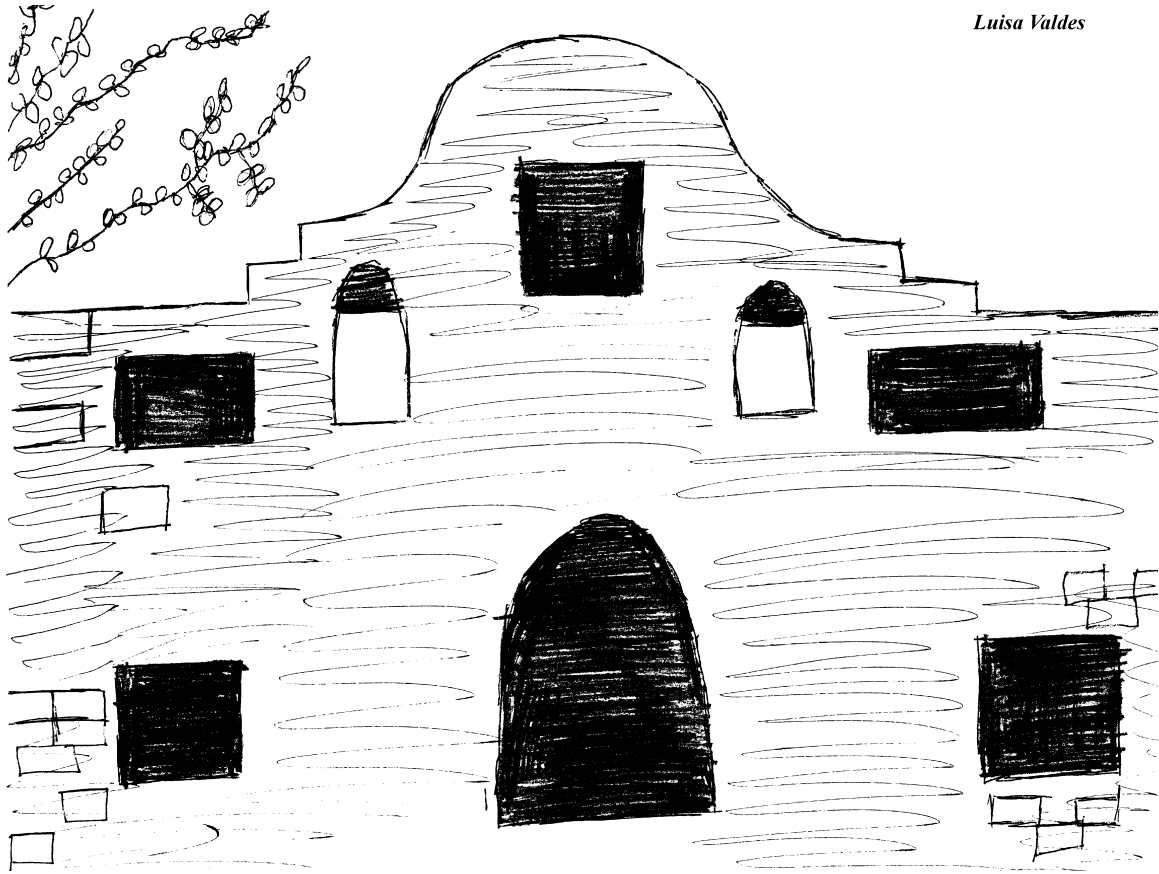
Texas Workforce Commission

Earliest possible date of adoption: September 16, 2018

For further information, please call: (512) 680-1655



Luisa Valdes



# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 25. HEALTH SERVICES

### PART 7. TEXAS MEDICAL DISCLOSURE PANEL

#### CHAPTER 601. INFORMED CONSENT

##### 25 TAC §601.4

The Texas Medical Disclosure Panel withdraws the proposed amended §601.4 which appeared in the March 30, 2018, issue of the *Texas Register* (43 TexReg 1933).

Filed with the Office of the Secretary of State on August 2, 2018.

TRD-201803341

Noah Appel, M.D.

Chairman

Texas Medical Disclosure Panel

Effective date: August 2, 2018

For further information, please call: (512) 776-6972





# ADOPTED RULES

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

## TITLE 1. ADMINISTRATION

### PART 4. OFFICE OF THE SECRETARY OF STATE

#### CHAPTER 87. NOTARY PUBLIC

The Office of the Secretary of State (hereinafter referred to as "the Office") adopts the repeal of current Chapter 87, relating to notaries public, which includes §§87.1 - 87.7, 87.10, 87.11, 87.20 - 87.26, 87.30, 87.40 - 87.44, 87.50, 87.60 - 87.62, and 87.70. The Office also concurrently adopts new Chapter 87, relating to notaries public, which includes §§87.1 - 87.4, 87.10 - 87.15, 87.20 - 87.22, 87.30 - 87.35, 87.40 - 87.44, 87.50 - 87.54, 87.60 - 87.63, 87.70, and 87.71. The repeal of current Chapter 87 and new §§87.2 - 87.4, 87.10 - 87.15, 87.20 - 87.22, 87.30 - 87.35, 87.40 - 87.42, 87.44, 87.50 - 87.54, 87.60 - 87.63, 87.70, and 87.71 are adopted without changes to the proposed text as published in the June 29, 2018, issue of the *Texas Register* (43 TexReg 4271) and will not be republished. New §87.1 and §87.43 are adopted with changes to the proposed text as published in the June 29, 2018, issue of the *Texas Register* (43 TexReg 4271) and will be republished.

The repeal and replacement of Chapter 87 is adopted to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018 (hereinafter referred to as "HB 1217"). The adopted rules provide guidance to the public regarding the process and requirements for being commissioned as an online notary public and for performing online notarizations.

Three sets of comments were received relating to the adoption of Chapter 87.

Kal Tabbara, President of American Association of Notaries, had one comment regarding the proposed rules. Mr. Tabbara expressed concern that §406.110(b) of the Texas Government Code conflicted with §87.41(g) of the proposed rules, and that §406.110(g) of the Texas Government Code requires the notary and principal to see and hear each other during the identity verification process. Section 406.110(b) of the Texas Government Code requires an online notary public to "verify the identity of a person creating an electronic signature at the time that the signature is taken by using two-way video and audio conference technology..." It further provides that: identity "may be verified by: (1) the online notary public's personal knowledge of the person creating the electronic signature; or (2) each of the following: (A) remote presentation by the person creating the electronic signature of a government-issued identification credential, including a passport or driver's license, that contains the signature and a photograph of the person; (B) credential analysis of the credential described by Paragraph (A); and (C)

identity proofing of the person described by Paragraph (A)." Tex. Gov't Code §406.110(b)(1) - (2).

Section 87.41(g), on the other hand, specifies what must be included in the record of the online notarial act. At minimum it is required that the recording include: "(1) confirmation by the notary public that the principal has successfully completed identity proofing and credential analysis; (2) visual confirmation of the identity of the principal through visual inspection of the credential used during credential analysis; and (3) the actual notarial act performed." 1 Texas Administrative Code (TAC) §87.41(g)(1) - (3).

It is the position of the Office that these two provisions are not in conflict and therefore no changes to the administrative rules, as proposed, are necessary. The identity proofing and credential analysis are to be performed by reputable third parties, not by the notary. For the notary to be a part of the identity proofing and credential analysis process may open up the notary to exposure to highly confidential information of the principal. The notary, in accordance with §406.110(b), should, as part of the notarial transaction, verify the identity of the principal by taking the steps specified in 1 TAC §87.41(g) and confirm that the principal has successfully completed identity proofing and credential analysis, visually confirm the identity of the principal through visual inspection of the credential used during credential analysis, and then perform the notarial act.

Michael Chodos, Senior Vice President and General Counsel for Notarize.com, submitted two comments.

The first comment relates to the definition of "credential" in §87.1(1). The comment offers the concern that the current definition could be read to limit the acceptable forms of identification for a real property transaction to foreign passports rather than providing that as an option in addition to the other accepted credentials. The definition was not intended to limit the credential options. Section 87.1(1) has been modified to provide clarification.

The second comment relates to the requirement in §87.70(b)(6) that a principal who has failed his or her first identity proofing quiz retake the quiz with a minimum of 60% of the questions replaced. Mr. Chodos urges that a minimum of 40% of the questions be replaced and indicates that this is consistent with the MISMO standards and the approach taken by the Federal Bridge Certification Authority. As of the drafting of this adoption, it is the understanding of this office that the MISMO standards are not yet finalized and, in a draft provided to the Office, it appears that there is still some discussion relating to whether the number of questions replaced should be 40%, 60% or 100%. In addition, our Office received additional comments suggesting that 100% of the questions be replaced due to fraud concerns. Finally, NIST Knowledge-Based Verification Requirements, found in NIST Special Publication 800-63-A, indicate that the same questions should

not be asked in subsequent attempts. Based on the concerns about preventing fraud in the online notarization process and the lack of consensus among authorities and stakeholders, the Office has decided to keep the requirement that a minimum of 60% of the questions be replaced in the subsequent identity proofing quiz.

Phillip J. Sholar, Director of Underwriting for First American Title, submitted the following comments:

The first comment requests that the Office promulgate "safe harbor" notarial certificates which comply with the requirements of Chapter 406 of the Government Code and Chapter 121 of the Civil Practice and Remedies Code. The Office is already required to provide sample forms for authorized notarial acts under §406.008 of the Government Code and sends out sample forms with each traditional and online commission. The sample forms are also available on the Office's website at <http://www.sos.state.tx.us/statdoc/online-np-educational.shtml#sample>. As a result, it is the position of this Office that it is not necessary to add sample notarial certificates to the rules because they are already made available to each notary public and to the general public.

The second comment relates to the requirement in §87.70(b)(6) that a principal who has failed his or her first identity proofing quiz retake the quiz with a minimum of 60% of the questions replaced. Mr. Sholar suggests that the principal be required to answer an entirely new set of questions if the first identity proofing quiz is failed. For the reasons stated above the Office has decided to keep the requirement that a minimum of 60% of the questions be replaced in the subsequent identity proofing quiz.

The third comment relates to clarifying §87.43 regarding when a notary is authorized to refuse to perform a notarization. As currently drafted, this rule provides discretionary authority for a notary to refuse to perform an online notarization under certain circumstances, including the inability of the notary to properly identify the principal. Mr. Sholar suggests that the rule be clarified to include a provision that the online notary is still required to verify the identity of the principal prior to performing an online notarization. Upon further review, each of the circumstances listed in §87.43 set forth a situation in which a notary not only has the authority to refuse to perform a notarization but must refuse to perform a notarization. Accordingly, the text of the rule is changed to make this clear.

The final comment relates to preventing a notary from performing a notarization if the notary knows that the principal has failed two identity proofing quizzes with a different notary within the last 24 hours. While the administrative rules prohibit a principal from trying more than two times with the same online notary to pass an identify proofing test, an online notary public should not be responsible for managing the activities between a principal and another online notary public. However, online notary providers should make it a best practice to set limits on the ability of a principal to use their system within the same 24 hour period with any online notary when a principal has failed an identity proofing test twice.

## SUBCHAPTER A. NOTARY PUBLIC QUALIFICATIONS

### 1 TAC §§87.1 - 87.7

#### STATUTORY AUTHORITY

The repeal of 1 TAC §§87.1 - 87.7 is adopted under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

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 July 30, 2018.

TRD-201803268

Lindsey Aston

General Counsel

Office of the Secretary of State

Effective date: August 19, 2018

Proposal publication date: June 29, 2018

For further information, please call: (512) 463-5590

## SUBCHAPTER B. REJECTION AND REVOCATION

### 1 TAC §§87.10, §87.11

#### STATUTORY AUTHORITY

The repeal of 1 TAC §87.10 and §87.11 is adopted under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

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 July 30, 2018.

TRD-201803269

Lindsey Aston

General Counsel

Office of the Secretary of State

Effective date: August 19, 2018

Proposal publication date: June 29, 2018

For further information, please call: (512) 463-5590

## SUBCHAPTER C. ADMINISTRATIVE ACTION

### 1 TAC §§87.20 - 87.26

#### STATUTORY AUTHORITY

The repeal of 1 TAC §§87.20 - 87.26 is adopted under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state



to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

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 July 30, 2018.

TRD-201803270  
Lindsey Aston  
General Counsel  
Office of the Secretary of State  
Effective date: August 19, 2018  
Proposal publication date: June 29, 2018  
For further information, please call: (512) 463-5590



## SUBCHAPTER D. REFUSAL TO PERFORM NOTARIAL SERVICES

### 1 TAC §87.30

#### STATUTORY AUTHORITY

The repeal of 1 TAC §87.30 is adopted under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

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 July 30, 2018.

TRD-201803271  
Lindsey Aston  
General Counsel  
Office of the Secretary of State  
Effective date: August 19, 2018  
Proposal publication date: June 29, 2018  
For further information, please call: (512) 463-5590



## SUBCHAPTER E. NOTARY RECORDS

### 1 TAC §§87.40 - 87.44

#### STATUTORY AUTHORITY

The repeal of 1 TAC §§87.40 - 87.44 is adopted under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

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 July 30, 2018.

TRD-201803272  
Lindsey Aston  
General Counsel  
Office of the Secretary of State  
Effective date: August 19, 2018  
Proposal publication date: June 29, 2018  
For further information, please call: (512) 463-5590



## SUBCHAPTER F. CHANGE IN ADDRESS

### 1 TAC §87.50

#### STATUTORY AUTHORITY

The repeal of 1 TAC §87.50 is adopted under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

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 July 30, 2018.

TRD-201803273  
Lindsey Aston  
General Counsel  
Office of the Secretary of State  
Effective date: August 19, 2018  
Proposal publication date: June 29, 2018  
For further information, please call: (512) 463-5590



## SUBCHAPTER G. ELECTRONIC SUBMISSIONS OF NOTARY APPLICATIONS AND BONDS

### 1 TAC §§87.60 - 87.62

#### STATUTORY AUTHORITY

The repeal of 1 TAC §§87.60 - 87.62 is adopted under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

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 July 30, 2018.

TRD-201803274

Lindsey Aston

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Office of the Secretary of State

Effective date: August 19, 2018

Proposal publication date: June 29, 2018

For further information, please call: (512) 463-5590



## SUBCHAPTER H. APPOINTMENT OF QUALIFIED ESCROW OFFICER AS NOTARY PUBLIC

### 1 TAC §87.70

#### STATUTORY AUTHORITY

The repeal of 1 TAC §87.70 is adopted under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

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 July 30, 2018.

TRD-201803275

Lindsey Aston

General Counsel

Office of Secretary of State

Effective date: August 19, 2018

Proposal publication date: June 29, 2018

For further information, please call: (512) 463-5590



## SUBCHAPTER A. GENERAL PROVISIONS

### 1 TAC §§87.1 - 87.4

#### STATUTORY AUTHORITY

The concurrent adoption of new §§87.1 - 87.4 is adopted under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

#### §87.1. Definitions.

Words and terms defined in the Texas Government Code, Chapter 406, shall have the same meaning in this chapter. For the purposes of this chapter the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Credential** means a valid, unexpired identification card or other document issued by the federal government or any state government, as defined by §311.05 of the Government Code, that contains the photograph and signature of the principal. With respect to a deed or other instrument relating to a residential real estate transaction, credential also includes a current passport issued by a foreign country.

(2) **Credential Analysis** means the process which complies with Subchapter H of this chapter by which the validity of a government-issued identification credential is affirmed by a third party through review of public and proprietary data sources.

(3) **Digital Certificate** means a computer-based record or electronic file issued to a notary public or applicant for appointment as a notary public for the purpose of creating an official electronic signature. The digital certificate shall be kept in the exclusive control of the notary public.

(4) **Identity Proofing** means the process which complies with Subchapter H of this chapter by which the identity of an individual is affirmed by a third party through review of public and proprietary data sources.

(5) **Online Notary Public** means an individual commissioned by the secretary of state as an online notary. An online notary has authority:

(A) as a traditional notary public; and

(B) to perform an online notarization as provided by Subchapter C, Chapter 406 of the Government Code and this chapter.

(6) **Personal appearance or personally appear** means:

(A) when performing a notarization other than an online notarization, the principal for whom the notarization is being performed physically appeared before the notary public at the time of the notarization in a manner permitting the notary public and the principal to see, hear, communicate and give identification credentials to each other; and

(B) for an online notarization, the principal for whom the notarization is being performed appears by an interactive two-way audio and video communication that meets the online notarization requirements as provided by Subchapter C, Chapter 406 of the Government Code and this chapter.

(7) **Principal** means an individual:

(A) whose signature is notarized in a traditional or online notarization; or

(B) taking an oath or affirmation from a notary public but not in the capacity of a witness for the online notarization.

(8) **Notary Public** means an individual commissioned by the secretary of state under both Subchapters A and C, Chapter 406 of the Government Code.

(9) **Traditional Notary Public** means an individual commissioned by the secretary of state under Subchapter A, Chapter 406 of the Government Code. A traditional notary public does not have the authority to perform an online notarization unless also commissioned as an online notary 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 July 30, 2018.

TRD-201803276

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Effective date: August 19, 2018  
Proposal publication date: June 29, 2018  
For further information, please call: (512) 463-5590



## SUBCHAPTER B. ELIGIBILITY AND QUALIFICATION

### 1 TAC §§87.10 - 87.15

#### STATUTORY AUTHORITY

The concurrent adoption of new §§87.10 - 87.15 is adopted under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

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 July 30, 2018.

TRD-201803277

Lindsey Aston  
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Office of the Secretary of State

Effective date: August 19, 2018

Proposal publication date: June 29, 2018

For further information, please call: (512) 463-5590



## SUBCHAPTER C. NOTARIES WITHOUT BOND

### 1 TAC §§87.20 - 87.22

#### STATUTORY AUTHORITY

The concurrent adoption of new §§87.20 - 87.22 is adopted under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

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 July 30, 2018.

TRD-201803278

Lindsey Aston  
General Counsel  
Office of the Secretary of State  
Effective date: August 19, 2018  
Proposal publication date: June 29, 2018  
For further information, please call: (512) 463-5590



## SUBCHAPTER D. ADMINISTRATIVE ACTION

### 1 TAC §§87.30 - 87.35

#### STATUTORY AUTHORITY

The concurrent adoption of new §§87.30 - 87.35 is adopted under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

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 July 30, 2018.

TRD-201803279

Lindsey Aston  
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Office of the Secretary of State

Effective date: August 19, 2018

Proposal publication date: June 29, 2018

For further information, please call: (512) 463-5590



## SUBCHAPTER E. NOTARY PROCEDURES

### 1 TAC §§87.40 - 87.44

#### STATUTORY AUTHORITY

The concurrent adoption of new §§87.40 - 87.44 is adopted under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

§87.43. *Reasons to Refuse Online Notarization.*

In addition to those in §87.42 of this title (relating to Refusal of Requests for Notarial Services) in which a notary public is authorized to refuse a notarization, an online notary shall refuse to perform an online notarization if:

(1) The online notary public is unable to verify the identity of the principal using an acceptable means of identification in accordance with Subchapter H;

(2) The online notary public is unable to verify the security of the two way audio visual transmission;

(3) The signature of the principal cannot be attached to the electronic document; or

(4) The digital certificate or electronic seal of the online notary public cannot be attached to the electronic document in a manner that renders any subsequent change or modification to the document evident.

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 July 30, 2018.

TRD-201803280

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Office of the Secretary of State

Effective date: August 19, 2018

Proposal publication date: June 29, 2018

For further information, please call: (512) 463-5590



## SUBCHAPTER F. NOTARY RECORDS

### 1 TAC §§87.50 - 87.54

#### STATUTORY AUTHORITY

The concurrent adoption of new §§87.50 - 87.54 is adopted under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

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 July 30, 2018.

TRD-201803281

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Office of the Secretary of State

Effective date: August 19, 2018

Proposal publication date: June 29, 2018

For further information, please call: (512) 463-5590



## SUBCHAPTER G. CHANGES AFTER COMMISSIONING

### 1 TAC §§87.60 - 87.63

#### STATUTORY AUTHORITY

The concurrent adoption of new §§87.60 - 87.63 is adopted under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and

enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

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 July 30, 2018.

TRD-201803282

Lindsey Aston

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Office of the Secretary of State

Effective date: August 19, 2018

Proposal publication date: June 29, 2018

For further information, please call: (512) 463-5590



## SUBCHAPTER H. MINIMUM REQUIREMENTS FOR ONLINE NOTARIZATIONS

### 1 TAC §§87.70, §87.71

#### STATUTORY AUTHORITY

The concurrent adoption of new §87.70 and §87.71 is adopted under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

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 July 30, 2018.

TRD-201803283

Lindsey Aston

General Counsel

Office of the Secretary of State

Effective date: August 19, 2018

Proposal publication date: June 29, 2018

For further information, please call: (512) 463-5590



## TITLE 13. CULTURAL RESOURCES

### PART 2. TEXAS HISTORICAL COMMISSION

#### CHAPTER 19. TEXAS MAIN STREET PROGRAM

##### 13 TAC §19.3, §19.5

The Texas Historical Commission (THC) adopts amendments to §19.3 and §19.5 of Chapter 19 (Title 13, Part II of the Texas Administrative Code) relating to the Texas Main Street Program ("the program"). The amendments are adopted without changes to the proposed text published in the June 15, 2018, issue of the *Texas Register* (43 TexReg 3852).

The amendments to Chapter 19 permit two new types of statuses for local participating programs, both intended to help participants remain in the program during periods of unexpected challenges. Probationary status allows the staff of the THC and the participating local program to temporarily alter the standard participation requirements, providing time for the local program to address deficiencies or other challenges without leaving the Texas Main Street Program.

A Leave of Absence status permits a local program to temporarily suspend their participation in the Texas Main Street Program. During the Leave of Absence, the local program is not considered to be an officially designated Texas Main Street City. The status will allow the local program to return to full participation upon conclusion of the Leave of Absence without having to reapply.

The amendments include the specification of existing annual fees and polices approved by the THC in 2012. The fee schedule is unchanged and is included to improve public transparency.

No comments were received regarding adoption of the amendment.

#### STATUTORY AUTHORITY

Amendments to §19.3 and §19.5 of Chapter 19 (Title 13, Part II of the Texas Administrative Code) relating to the Texas Main Street Program ("the program") are adopted under §442.005(q) of the Texas Government Code, which provides the THC with the authority to promulgate rules for the effective administration of its programs under the chapter, and under §442.014 of the Texas Government Code which provides THC with the authority to administer the Texas Main Street Program.

No other statutes, articles, or codes are affected by these amendments.

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 August 3, 2018.

TRD-201803360

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: August 23, 2018

Proposal publication date: June 15, 2018

For further information, please call: (512) 463-6092



## CHAPTER 21. HISTORY PROGRAMS

### SUBCHAPTER B. OFFICIAL TEXAS HISTORICAL MARKER PROGRAM

#### 13 TAC §21.7, §21.9

The Texas Historical Commission (Commission) adopts amendments to §21.7, concerning application requirements for Official

Texas Historical Markers, and to §21.9, concerning the application evaluation procedures for Official Texas Historical Markers. These amendments detail historical marker requirements in the Texas Administrative Code. The amendments are adopted without changes to the proposed text, as published in the June 15, 2018, issue of the *Texas Register* (43 TexReg 3854).

The amendment to §21.7 revised wording which indicated that the application fee for Official Texas Historical Marker applications was not required until after applications received an initial evaluation, although the application fee for historical markers is required for submission as part of the application process.

The amendment to §21.9 notes that the Commission's Division of Architecture evaluates Recorded Historic Landmark Designation applications.

These amendments are adopted under the authority of Texas Government Code §442.005(b), which designates the Commission as the agency responsible for the administration of the Antiquities Code of Texas; Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.006(h), which requires the Commission to adopt rules for the historical marker program; Texas Government Code §442.0051, which allows the Commission, by rule, to establish reasonable fees for commission purposes; Texas Natural Resources Code §191.092, which requires the Commission to adopt rules to establish the criteria for designation for publicly-owned landmarks; and Texas Natural Resources Code §191.096, which requires any site on private land which is designated a landmark to be marked as a landmark.

#### STATUTORY AUTHORITY

The amendments implement Texas Government Code §442.006, 442.0051, Texas Natural Resources Code, §191.092 and §191.096.

No other statutes, articles, or codes are affected by these amendments.

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 August 3, 2018.

TRD-201803361

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: August 23, 2018

Proposal publication date: June 15, 2018

For further information, please call: (512) 463-5853



## TITLE 16. ECONOMIC REGULATION

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

#### CHAPTER 65. BOILERS

##### SUBCHAPTER R. TECHNICAL REQUIREMENTS

## 16 TAC §§65.607, §65.611

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code, Chapter 65, Subchapter R, §§65.607 and §65.611, regarding the Boilers program, without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2902). The rules will not be republished.

The adopted rules make a technical clarification and an editorial correction. The American Society of Mechanical Engineers (ASME), made a change in a national standard, the Section 1 rule on power boilers, that makes a rule amendment necessary. In addition, two instances of an editorial change are made to the boiler's expansion tank pressure rating requirement. The adopted rules are necessary to allow for the Texas Department of Licensing and Regulation (Department) to approve the installation of newer boilers built to the new standard and to maintain accurate safety requirements.

The adopted amendments to §65.607 specify that boilers having more than 500 square feet of bare tube water heating surface must have two or more safety valves; and make an editorial correction by changing the language from "lower" to "greater."

The adopted amendment to §65.611 makes an editorial correction by changing the language from "lower" to "greater."

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2902). The deadline for public comment was June 11, 2018. The Department received one comment during the 30-day public comment period. The public comment received is summarized below.

**Comment**—One individual recommended that the proposed change to §65.607(a)(2), which adds the term "bare tube," should be made in three additional portions of the rules.

**Department Response**—The Department agrees that the term "bare tube" should be inserted in §65.608(c)(3) and §65.609(d)(3) to describe the water heating surface. The term is not applicable to feeding boilers and therefore is not appropriate to insert in §65.607(b)(2). The changes to §65.608 and §65.609 must be proposed in a subsequent rulemaking to undergo the public comment process; therefore, the Department has made no change to the rule at this time.

The Board of Boiler Rules (Board) met on July 13, 2018 to discuss the proposed rules and the public comment received. The Board recommended adopting the rules without changes.

At its meeting held on July 20, 2018, the Commission adopted the proposed rules without changes as recommended by the Board and the Department.

The amendments are adopted under Texas Occupations Code, Chapter 51 and Health and Safety Code, Chapter 755, which authorize the Commission, 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 adoption are those set forth in Texas Occupations Code, Chapter 51 and Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adoption.

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

Filed with the Office of the Secretary of State on July 31, 2018.

TRD-201803295

Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

Effective date: September 1, 2018

Proposal publication date: May 11, 2018

For further information, please call: (512) 463-8179

## CHAPTER 114. ORTHOTICS AND PROSTHETICS

### 16 TAC §§114.10, 114.20, 114.23 - 114.30, 114.40, 114.50, 114.66 - 114.69, 114.80, 114.90

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 114, §§114.10, 114.20, 114.23 - 114.30, 114.40, 114.50, 114.66 - 114.69, 114.80, and 114.90, regarding the Orthotics and Prosthetics program. The amendments to Chapter 114, §§114.10, 114.20, 114.23 - 114.26, 114.28 - 114.30, 114.40, 114.50, 114.66 - 114.69, 114.80, and 114.90 are adopted without changes as proposed in the April 13, 2018, issue of the *Texas Register* (43 TexReg 2213). These sections will not be republished. Section 114.27(b), is adopted with changes to include paragraphs "(5) - (12)" which were inadvertently omitted from the proposed text as published in the April 13, 2018, issue of the *Texas Register*, and has been republished in its entirety.

The adopted rules implement House Bill 4007, 85th Legislature, Regular Session (2017), which modified Texas Occupations Code, Chapter 605, which provides statutory authority for the Orthotics and Prosthetics program. The adopted rules implement statutory changes to remove the Texas residency requirement to obtain a license; replace the method for electing the presiding officer of the advisory board with the obligation for the Commission to designate the presiding officer; remove the civil penalty; and update the requirements to obtain a temporary license. Amendments recommended by the Orthotists and Prosthetists Advisory Board (Advisory Board) and The Texas Department of Licensing and Regulation (Department) staff update requirements for accredited facilities, students, and residency programs; and include edits for clarity, consistency, and accuracy. The adopted rules are necessary to implement H. B. 4007 and the recommendations by the Advisory Board.

The adopted amendments to §114.10 remove the "Texas resident" definition and renumber the section accordingly.

The adopted amendments to §114.20 update statutory citations.

The adopted amendments to §114.23 correct a statutory citation and implement the statutory change removing the Texas residency requirement.

The adopted amendment to §114.24 corrects a statutory reference.

The adopted amendments to §114.25 implement the statutory change to the requirements for a temporary license and renumber the section accordingly.

The adopted amendments to §114.26 update and expand the student registration.

The adopted amendments to §114.27 update terminology and increase the time period for a supervisor to sign off on assistants' clinical notes.

The adopted amendment to §114.28 makes applicable to all technicians the prohibition against providing patient care.

The adopted amendments to §114.29 update and clarify the requirements and conditions for accreditation of facilities, and renumber the section accordingly.

The adopted amendments to §114.30 expand student registration; impose obligations on residency programs to ensure that residents hold student registrations; update a statutory reference; and renumber the section accordingly.

The adopted amendments to §114.40 remove the Department's obligation to send renewal notices and application forms; update the requirement for display of the accreditation certificate; correct terminology; and renumber the section accordingly.

The adopted amendments to §114.50 update terminology.

The adopted amendment to §114.66 updates the section heading only.

The adopted amendment to §114.67 updates the section heading only.

The adopted amendments to §114.68 implement the statutory change to the method of designating the presiding officer of the advisory board, and update the section heading.

The adopted amendment to §114.69 updates the section heading only.

The adopted amendments to §114.80 update language and correct a rule citation.

The adopted amendments to §114.90 add an enforcement provision for failing to report violations to the Department; remove the civil penalty; update and correct language, terminology, and citations; and renumber the section accordingly.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the April 13, 2018, issue of the *Texas Register* (43 TexReg 2213). During the 30-day public comment period the Department received comments from one interested individual and three organizations: the Texas Medical Association and the Texas Orthopaedic Association, commenting jointly, and from the Texas Podiatric Medical Association. The public comments are summarized below.

Comment--One individual commented regarding the removal of the requirement to be a Texas resident to obtain a license, and the possible negative consequences of this change to Texas citizens.

*Department Response*--The Texas legislature passed H.B. 4007 in 2017, which removed the requirement to be a resident of Texas from Occupations Code Chapter 605 (The Act). The Department is required to amend the rules to implement the change made in the law. License holders who are residents and non-residents of Texas are equally obligated to comply with both the law and

the rules governing the practice of orthotics and prosthetics in Texas. The Department did not make any changes to the rule in response to this comment.

Comment--Three entities commented that the rules should not authorize orthotists and prosthetists to have direct access to patients to provide services without an order from an authorized medical professional. They comment that the provisions in §114.75(a) that allow for the initial consultation and evaluation, and preliminary measuring, scanning, and casting to be conducted by a licensed orthotist or prosthetist before the written order for an orthosis or prosthesis is received conflict with the law and therefore are not permitted. The commenters assert that the amendments unlawfully expand the authority and scope of practice of orthotists and prosthetists by permitting access to patients and services to patients that are not under a medical professional's order. The commenters also raise concerns about license holders charging for unauthorized services. Two of the commenters provided suggested text changes to the rule. Following the public comment period, the Department received from one of the commenters a request for a public hearing under the Texas Administrative Procedure Act, Gov't. Code Chapter 2001, on proposed new §114.75.

*Department Response*--The Department is not taking action on proposed §114.75 at this time. In accordance with Govt. Code §2001.029, the Department will hold a public hearing on §114.75 and will respond to all public comments received in relation to §114.75, on final adoption of the proposed rule.

Comment--Three entities commented that the provision in §114.75(e) allowing orthotists or prosthetists to perform diagnostic fittings should be removed because diagnosis is not in the scope of their authority. Following the public comment period, the Department received from one of the commenters a request for a public hearing under the Texas Administrative Procedure Act, Gov't. Code Chapter 2001, on proposed new §114.75.

*Department Response*--The Department is not taking action on proposed §114.75 at this time. In accordance with Govt. Code §2001.029, the Department will hold a public hearing on §114.75 and will respond to all public comments received in relation to §114.75, on final adoption of the proposed rule.

Comment--Two entities raised concerns about predatory practices by license holders if services are performed in a patient's residence or in a facility under §114.75. Following the public comment period, the Department received from one of the commenters a request for a public hearing under the Texas Administrative Procedure Act, Gov't. Code Chapter 2001, on proposed new §114.75.

*Department Response*--The Department is not taking action on proposed §114.75 at this time. In accordance with Govt. Code §2001.029, the Department will hold a public hearing on §114.75 and will respond to all public comments received in relation to §114.75, on final adoption of the proposed rule.

The Advisory Board met on June 11, 2018, to discuss the proposed rules and the public comments received. The Advisory Board recommended adopting the rules with changes to §114.75. However, the Texas Podiatric Medical Association requested a public hearing, outside of the public comment period, regarding §114.75.

At its meeting on July 20, 2018, the Commission adopted the rules without changes as recommended by the Advisory Board with exception of §114.75. The Commission has deferred any

action on §114.75 until the Department has held the public hearing.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 605, which authorize the Commission, 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 adoption are those set forth in Texas Occupations Code, Chapters 51 and 605. No other statutes, articles, or codes are affected by the proposal.

§114.27. *Assistant License.*

(a) Qualifications. The applicant must submit evidence satisfactory to the department of having successfully completed either (1) and (2), or (1) and (3), of the following:

(1) Coursework from a college or university accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools that included at a minimum:

- (A) eight (8) credit hours of anatomy and physiology;
- (B) three (3) credit hours of medical terminology;
- (C) three (3) credit hours of physics.

(2) For applicants for a prosthetic assistant or orthotic assistant license, a clinical residency for assistants of not less than 1,000 hours in prosthetics or 1,000 hours in orthotics, respectively, completed in a period of not more than one year, in a facility that is accredited under §114.29, or its equivalent, as approved by the department, or in a facility to which the accreditation requirement does not apply in accordance with §605.260(e) of the Act.

(3) For applicants for the prosthetic/orthotic assistant license, a clinical residency for assistants of not less than 1,500 hours in prosthetics and orthotics, completed in a period of not more than one year, in a facility that is accredited under §114.29, or its equivalent, as approved by the department, or in a facility to which the accreditation requirement does not apply in accordance with §605.260(e) of the Act.

(b) Clinical residency for an assistant.

(1) Before undertaking a clinical residency for an assistant, the supervisor and clinical resident must notify the department by filing a completed supervision agreement with the department with the clinical resident's application for licensure as an assistant and the required fee.

(2) The supervisor shall not allow the clinical residency to begin until approval from the department is received.

(3) The supervisor shall provide the clinical resident and the department with written documentation upon beginning, terminating or completing a clinical residency.

(4) The resident shall work under the direct supervision of a licensed practitioner. The supervisor must be licensed in the same discipline as the course of study being completed by the clinical resident.

(6) The clinical residency shall primarily provide learning opportunities for the clinical resident rather than primarily providing service to the prosthetic or orthotic facility or its patients or clients.

(7) The clinical residency shall include both observation and supervised performance of assistant level work including assisting with patient assessments, measurement, design, fabrication, assembling, fitting, adjusting or servicing prostheses or orthoses or both, as

appropriate to the type of residency. Supervision shall be in the physical presence of the supervisor.

(8) The clinical residency shall include an orientation comparing and contrasting the duties of a licensed assistant with the duties of the licensed practitioner.

(9) The clinical resident shall not independently provide ancillary patient care services of the type performed by a licensed assistant and may not independently engage in prosthetic and orthotic care directly to the patient.

(10) The clinical resident may be only incidentally involved in other duties including, but not limited to, scheduling, medical records, clerical, payroll and accounting, janitorial/housekeeping, transportation, or delivery.

(11) When terminating or completing a residency, the written documentation shall indicate the number of hours satisfying the requirements of this section that were completed by the clinical resident.

(12) Notwithstanding the supervision requirements in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

(c) Scope of practice.

(1) When assistant patient care services are performed by a licensed assistant, the supervising licensed practitioner of that assistant must review and sign off on the clinical note written by the assistant within fifteen working days of the date the service was provided.

(2) The supervisor shall not allow the clinical residency to begin until approval from the department is received.

(3) The supervisor shall provide the clinical resident and the department with written documentation upon beginning, terminating or completing a clinical residency.

(4) The resident shall practice under the direct supervision of a licensed practitioner. The supervisor must be licensed in the same discipline as the course of study being completed by the clinical resident.

(5) The supervising practitioner must review and sign off on patient care notes made by the clinical resident.

(6) The clinical residency shall primarily provide learning opportunities for the clinical resident rather than primarily providing service to the prosthetic or orthotic facility or its patients or clients.

(7) The clinical residency shall include both observation and supervised performance of assistant level work including assisting with patient assessments, measurement, design, fabrication, assembling, fitting, adjusting or servicing prostheses or orthoses or both, as appropriate to the type of residency. Supervision shall be in the physical presence of the supervisor.

(8) The clinical residency shall include an orientation comparing and contrasting the duties of a licensed assistant with the duties of the licensed practitioner.

(9) Assistants may practice only in a facility accredited under §114.29, or in a facility to which the accreditation requirement does not apply in accordance with §605.260(e) of the Act.

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 July 31, 2018.



TRD-201803285  
Brian E. Francis  
Executive Director  
Texas Department of Licensing and Regulation  
Effective date: September 1, 2018  
Proposal publication date: April 13, 2018  
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## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 61. SCHOOL DISTRICTS

##### SUBCHAPTER AA. COMMISSIONER'S

##### RULES ON SCHOOL FINANCE

###### 19 TAC §61.1017

The Texas Education Agency (TEA) adopts new §61.1017, concerning commissioner's rules on school finance. The new section is adopted without changes to the proposed text as published in the June 22, 2018 issue of the *Texas Register* (43 TexReg 3961) and will not be republished. The adopted new rule provides for an alternative compensatory education allotment calculation for certain school districts and open-enrollment charter schools located in counties declared a natural disaster as a result of Hurricane Harvey.

**REASONED JUSTIFICATION.** Texas Education Code (TEC), §42.152(a), specifies that a school district is entitled to an annual compensatory education allotment that is determined using counts of students who are educationally disadvantaged or who do not have a disability and reside in a residential treatment facility not located where the student's parent or legal guardian resides. TEC, §42.152(b), specifies that the number of educationally disadvantaged students is determined by averaging the best six months' numbers of students eligible for enrollment in the National School Lunch Program (NSLP) of free or reduced priced lunches the preceding school year or in a manner provided by commissioner rule.

Adopted new §61.1017 exercises the commissioner's authority under TEC, §42.152(b)(2), to specify how educationally disadvantaged students are determined for the purpose of the compensatory education allotment. The adopted new rule equalizes compensatory education funding for all school districts and open-enrollment charter schools located in counties declared a natural disaster as a result of Hurricane Harvey.

Specifically, the adopted new rule allows school districts and open-enrollment charter schools located in counties declared a natural disaster that did not receive a waiver related to provisions of the NSLP and School Breakfast Program offered by the Texas Department of Agriculture (TDA) to use total student enrollment as reported during the 2017-2018 Fall Texas Student Data System Public Education Information Management System (TSDS PEIMS) Snapshot in place of the number of students reported as eligible for enrollment in free or reduced-price lunches for the month of September 2017 when computing the best six-month average under TEC, §42.152(b)(1), for the 2017-2018 school year. Absent this adopted new rule, school districts and open-enrollment charter schools that did not receive the TDA waiver for the school lunch program would not be able to receive additional compensatory education funding even though their stu-

dents were likely educationally disadvantaged due to the impacts of Hurricane Harvey.

No changes were made to the rule since published as proposed.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES.** The public comment period on the proposal began June 22, 2018, and ended July 23, 2018. A public hearing on the proposed new rule was held on July 9, 2018. Following is a summary of the public comments received and the corresponding agency responses.

**Comment.** An individual commented that the rule fails to address protections to TEA employees who file grievances and fails to hold TEA and district leaders accountable for violation of law and policy.

**Agency Response.** This comment is outside of the scope of the proposed rulemaking.

**Comment.** Fort Bend Independent School District commented in support of the proposed rule.

**Agency Response.** The agency agrees and has adopted new §61.1017 as proposed.

**STATUTORY AUTHORITY.** The new section is adopted under Texas Education Code, §42.152(a)(2), which allows the commissioner to adopt rules for the administration of TEC, §42.152, including the calculation of the number of educationally disadvantaged students.

**CROSS REFERENCE TO STATUTE.** The new section implements Texas Education Code, §42.152.

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 August 2, 2018.

TRD-201803347

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 22, 2018

Proposal publication date: June 22, 2018

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



## CHAPTER 103. HEALTH AND SAFETY

### SUBCHAPTER CC. COMMISSIONER'S

### RULES CONCERNING SAFE SCHOOLS

###### 19 TAC §103.1207

The Texas Education Agency adopts new §103.1207, concerning commissioner's rules on school safety and discipline. The new section is adopted with changes to the proposed text as published in the May 4, 2018 issue of the *Texas Register* (43 TexReg 2695). The adopted new section provides for the implementation of provisions regarding unauthorized persons on property subject to the control of school districts under Texas Education Code (TEC), Chapter 37, Subchapter D, as amended by Senate Bill (SB) 1553, 85th Texas Legislature, Regular Session, 2017.

**REASONED JUSTIFICATION.** SB 1553, 85th Texas Legislature, Regular Session, 2017, amended the TEC, §37.105, to require that the commissioner of education adopt rules to implement pro-

visions regarding unauthorized persons on property subject to the control of school districts, as well as to establish procedures for persons to appeal to school districts' boards of trustees any decisions to refuse persons entry to or eject persons from property subject to the control of school districts. Adopted new 19 TAC §103.1207, Unauthorized Persons: Refusal of Entry, Ejection, Identification, and Appeal, sets forth the provisions of the statute and establishes an appeal process for school districts to adopt as local policies.

In response to public comment, §103.1207(h) was modified at adoption to remove specific requirements for the appeals process and specify that a school district board of trustees shall adopt a policy for appeals under this section that uses the school district's existing grievance process. This change will reduce the burden on school districts by allowing them to use existing policies.

A change was also made in subsection (h) to specify that the appeals policy must permit a person appealing under this section to address the board of trustees in person within 90 days of appealing, unless the appeal is granted before the board of trustees considers the appeal. This change will ensure that appeals are timely considered.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES.** The public comment period on the proposal began May 4, 2018, and ended June 4, 2018. Following is a summary of the public comments received and the corresponding agency responses.

**Comment:** The Texas Association of School Boards (TASB) commented that §103.1207(h) should be clarified to specify that the appeals process applies only to refusal of entry or ejection pursuant to TEC, §37.105.

**Agency Response:** The agency agrees and has added the phrase "under this section" to §103.1207(h) to clarify that the appeals process described in the subsection applies only to individuals refused entry to or ejected from school property.

**Comment:** TASB commented that the proposed requirement that a school board adopt an additional policy for appeals under TEC, §37.105, creates an unnecessary and confusing process for resolving local concerns and is unnecessarily burdensome. TASB recommended that existing local grievance processes, which include grieving at the administrative level rather than beginning at the board of trustee level, be used by school districts.

**Agency Response:** The agency agrees and has modified §103.1207(h) at adoption to specify that a school district board of trustees shall adopt a policy for appeals under this section that uses the school district's existing grievance process.

**STATUTORY AUTHORITY.** The new section is adopted under Texas Education Code (TEC), §37.105, as amended by Senate Bill 1553, 85th Texas Legislature, Regular Session, 2017, which requires that the commissioner of education adopt rules to implement TEC, §37.105, including rules establishing a process for a person to appeal to the board of trustees of the school district a decision to refuse the person's entry to or eject the person from the district's property.

**CROSS REFERENCE TO STATUTE.** The new section implements Texas Education Code, §37.105, as amended by Senate Bill 1553, 85th Texas Legislature, Regular Session, 2017.

*§103.1207. Unauthorized Persons: Refusal of Entry, Ejection, Identification, and Appeal.*

(a) A school administrator, school resource officer, or school district peace officer of a school district may refuse to allow a person to enter on or may eject a person from property under the district's control if the person refuses to leave peaceably on request and:

(1) the person poses a substantial risk of harm to any person; or

(2) the person behaves in a manner that is inappropriate for a school setting; and

(A) the administrator, resource officer, or peace officer issues a verbal warning to the person that the person's behavior is inappropriate and may result in the person's refusal of entry or ejection; and

(B) the person persists in that behavior.

(b) Identification may be required of any person on property under a district's control.

(c) Each school district shall maintain a record of each verbal warning issued under subsection (a)(2)(A) of this section, including the name of the person to whom the warning was issued and the date of issuance.

(d) At the time a person is refused entry to or ejected from a school district's property under this section, the district shall provide to the person written information explaining the appeal process set forth in subsection (h) of this section.

(e) If a parent or guardian of a child enrolled in a school district is refused entry to the district's property under this section, the district shall accommodate the parent or guardian to ensure that the parent or guardian may participate in the child's admission, review, and dismissal committee or in the child's team established under the Rehabilitation Act of 1973, Section 504, (29 United States Code, §794), in accordance with federal law.

(f) The term of a person's refusal of entry to or ejection from a school district's property under this section may not exceed two years.

(g) A school district shall post on the district's Internet website and each district campus shall post on any Internet website of the campus a notice regarding the provisions of this section, including the appeal process set forth in subsection (h) of this section.

(h) A school district's board of trustees shall adopt a policy that uses the school district's existing grievance process to permit a person refused entry to or ejected from property controlled by the school district under this section to appeal such refusal of entry or ejection. The policy must permit a person appealing under this section to address the school district's board of trustees in person within 90 days of the commencement of the appeal, unless the appeal is granted before the school district's board of trustees considers the appeal.

(i) A decision of the board of trustees to grant or deny an appeal under this section is final and may only be further appealed under the applicable provisions of Texas Education Code, §7.057.

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 August 6, 2018.  
TRD-201803367

Cristina De La Fuente-Valadez  
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Texas Education Agency  
Effective date: August 26, 2018  
Proposal publication date: May 4, 2018  
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## TITLE 22. EXAMINING BOARDS

### PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

#### CHAPTER 348. PHYSICAL THERAPY LICENSURE COMPACT

##### 22 TAC §348.1, §348.2

The Texas Board of Physical Therapy Examiners adopts new Chapter 348, Physical Therapy Licensure Compact to Title 22, Part 16, Texas Administrative Code, pursuant to the Senate Bill (SB) 317 addition of Section 453.501, Physical Therapy Licensure Compact of the Occupations Code during the 85th Legislative Session, with changes to correct punctuation in the proposed text as published in the May 25, 2018, issue of the *Texas Register* (43 TexReg 3294).

The addition is adopted in order to define the Physical Therapy Compact and Compact Privilege in §348.1 and to specify violations that could result in disciplinary action in §348.2.

No comments were received regarding the proposed addition.

The new rules are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

##### §348.1. *Definitions.*

(a) Physical Therapy Compact--an agreement between member states to improve access to physical therapy services for the public by increasing the mobility of eligible physical therapy providers to work in multiple states.

(b) Compact Privilege--the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules.

##### §348.2. *Disciplinary Action.*

(a) A licensee from another member state who is providing physical therapy in Texas under a compact privilege must comply with the laws and regulations set forth in:

(1) Title 3, Subtitle H, Chapter 453, Texas Occupations Code (PT Practice Act); and

(2) Title 22, Part 16, Texas Administrative Code (PT Rules).

(b) Any violation of the PT Practice Act and/or the PT Rules could subject the compact privilege holder to disciplinary action by the PT Board and loss of the Compact Privilege.

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 July 30, 2018.

TRD-201803267  
John P. Maline  
Executive Director  
Texas Board of Physical Therapy Examiners  
Effective date: August 19, 2018  
Proposal publication date: May 25, 2018  
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## TITLE 25. HEALTH SERVICES

### PART 7. TEXAS MEDICAL DISCLOSURE PANEL

#### CHAPTER 601. INFORMED CONSENT

##### 25 TAC §§601.2, 601.3, 601.6

The Texas Medical Disclosure Panel (panel) adopts amendments to §§601.2, 601.3 and 601.6, concerning informed consent. Section 601.2 is adopted with changes to the proposed text as published in the March 30, 2018, issue of the *Texas Register* (43 TexReg 1933). Sections 601.3 and 601.6 are adopted without changes and the rule text will not be republished. The panel withdraws the proposed amendment to §601.4.

##### BACKGROUND AND PURPOSE

These amendments are in accordance with the Texas Civil Practice and Remedies Code, §74.102, which requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. Section 601.2 contains the List A procedures requiring full disclosure of specific risks and hazards to patients before being undertaken; §601.3 contains the List B procedures for which no disclosure of specific risks and hazards is required; and §601.6 contains the history. The panel withdraws the proposed changes to §601.4, Disclosure and Consent Form. Only one comment was received related to the proposed consent form and the panel was concerned that not all agencies, associations, or facilities were aware of the proposed change and the decision was made to republish the form at a later date to ensure full public review.

##### SECTION-BY-SECTION SUMMARY

Amendments to §601.2 add procedures and risks and hazards for subsection (f) related to eye treatments and procedures; subsection (g) related to female genital system treatments and procedures; subsection (i) integumentary system treatments and procedures; subsection (j) male genital system; subsection (k) maternity and related cases; subsection (l) musculoskeletal system treatments and procedures; subsection (m) nervous system treatments and procedures; subsection (s) laparoscopic/thoracoscopic surgery; subsection (t) pain management procedures; and subsection (v) plastic surgery.

Amendments to §601.3 add procedures for subsection (i) integumentary system; subsection (j) male genital system; subsection (m) nervous system; subsection (s) endoscopic surgery; and subsection (v) plastic surgery and surgery of the integumentary system.

Amendments to §601.6 add historical information regarding amendments to these rules which became effective in January 2016 and December 2017.

#### PUBLIC COMMENT

The 30-day comment period ended April 30, 2018.

During this period, the panel received comments regarding the proposed rules from two commenters, Baylor Scott & White Health and the Texas Ophthalmological Association.

Comment: Concerning §601.2(f), eye treatments and procedures, the commenter did not agree with the proposed language and stated that the original text should not be modified.

Response: While the panel did make a minor change to §601.2(f)(4)(B), the panel did not agree with the commenter.

Comments: Concerning §601.2(g), female genital system treatments and procedures, the commenter suggested changing "Completion of operation by" to "Need to convert to" under §601.2(g)(1)(F) and §601.2(g)(6)(F). The commenter suggested changing "Failure to obtain" to "Continued fertility if infertility was desired" under §601.2(g)(2)(C) and suggested changing "Failure to obtain" to "Continued sterility if fertility was desired" under §601.2(g)(2)(D). The commenter suggested changing "Failure to remove all" to "Retained (or remaining)" under §601.2(g)(11)(F) and §601.2(g)(12)(B). The commenter suggested adding "(D) Continued fertility" under §601.2(g)(14).

Response: The panel partially agreed with the comments and made changes to these subsections.

Comments: Concerning §601.2(l), musculoskeletal system, the commenter suggested changing "Failure to relieve" to "Continued" under §601.2(l)(6)(G). The commenter suggested adding "(J) Change in limb length" under §601.2(l)(1). The commenter suggested adding "(I) Change in limb length" under §601.2(l)(3) and (4). The commenter suggested changing "Persistent pain (phantom sensation)" to "Pain/phantom sensation in removed limb" under §601.2(l)(8)(A).

Response: The panel partially agreed with the comments and made changes to these subsections.

Comments: Concerning §601.2(m), nervous system treatments and procedures, the commenter suggested removing "Additional" under §601.2(m)(1)(A) and (7)(A).

The commenter suggested removing "Need for permanent breathing tube and/or permanent feeding tube" under §601.2(m)(1)(L), (2)(K), (6)(M) and (7)(J). The commenter suggested removing "Need for prolonged nursing care" under §601.2(m)(2)(J) and (6)(L).

Response: The panel partially agreed with the comments and made changes to these subsections.

#### STATUTORY AUTHORITY

The amendments are authorized under the Texas Civil Practice and Remedies Code, §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the form(s) for the treatments and procedures which do require disclosure.

§601.2. *Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A.*

(a) Anesthesia.

- (1) Epidural.
  - (A) Nerve damage.
  - (B) Persistent back pain.
  - (C) Headache.
  - (D) Bleeding/epidural hematoma.
  - (E) Infection.
  - (F) Medical necessity to convert to general anesthesia.
  - (G) Brain damage.
  - (H) Chronic pain.
- (2) General.
  - (A) Permanent organ damage.
  - (B) Memory dysfunction/memory loss.
  - (C) Injury to vocal cords, teeth, lips, eyes.
  - (D) Awareness during the procedure.
  - (E) Brain damage.
- (3) Spinal.
  - (A) Nerve damage.
  - (B) Persistent back pain.
  - (C) Bleeding/epidural hematoma.
  - (D) Infection.
  - (E) Medical necessity to convert to general anesthesia.
  - (F) Brain damage.
  - (G) Headache.
  - (H) Chronic pain.
- (4) Regional block.
  - (A) Nerve damage.
  - (B) Persistent pain.
  - (C) Bleeding/hematoma.
  - (D) Infection.
  - (E) Medical necessity to convert to general anesthesia.
  - (F) Brain damage.
- (5) Deep sedation.
  - (A) Memory dysfunction/memory loss.
  - (B) Medical necessity to convert to general anesthesia.
  - (C) Permanent organ damage.
  - (D) Brain damage.
- (6) Moderate sedation.
  - (A) Memory dysfunction/memory loss.
  - (B) Medical necessity to convert to general anesthesia.
  - (C) Permanent organ damage.
  - (D) Brain damage.
- (7) Prenatal/Early Childhood Anesthesia. Potential long-term negative effects on memory, behavior, and learning with

prolonged or repeated exposure to general anesthesia/moderate sedation/deep sedation during pregnancy and in early childhood.

(b) Cardiovascular system.

(1) Cardiac.

(A) Surgical.

(i) Coronary artery bypass, valve replacement.

(I) Acute myocardial infarction.

(II) Hemorrhage.

(III) Kidney failure.

(IV) Stroke.

(V) Sudden death.

(VI) Infection of chest wall/chest cavity.

(VII) Valve related delayed onset infection.

(ii) Heart transplant.

(I) Infection.

(II) Rejection.

(III) Death.

(B) Non-Surgical--Coronary angioplasty, coronary stent insertion, pacemaker insertion, AICD insertion, and cardioversion.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Acute myocardial infarction (heart attack).

(iii) Rupture of myocardium (hole in wall of heart).

(iv) Life threatening arrhythmias (irregular heart rhythm).

(v) Need for emergency open heart surgery.

(vi) Sudden death.

(vii) Device related delayed onset infection (infection related to the device that happens sometime after surgery).

(C) Diagnostic.

(i) Cardiac catheterization.

(I) All associated risks as listed under paragraph (2)(B) of this subsection.

(II) Acute myocardial infarction (heart attack).

(III) Contrast nephropathy (injury to kidney function due to use of contrast material during procedure).

(IV) Heart arrhythmias (irregular heart rhythm), possibly life threatening.

(V) Need for emergency open heart surgery.

(ii) Electrophysiologic studies.

(I) Cardiac perforation.

(II) Life threatening arrhythmias.

(III) Injury to vessels that may require immediate surgical intervention.

(iii) Stress testing--Acute myocardial infarction.

(iv) Transesophageal echocardiography--Esophageal perforation.

(2) Vascular.

(A) Open surgical repair of aortic, subclavian, and iliac, artery aneurysms or occlusions, and renal artery bypass.

(i) Hemorrhage.

(ii) Paraplegia.

(iii) Kidney damage.

(iv) Stroke.

(v) Acute myocardial infarction.

(vi) Infection of graft.

(B) Angiography (inclusive of aortography, arteriography, venography) - Injection of contrast material into blood vessels.

(i) Injury to or occlusion (blocking) of artery which may require immediate surgery or other intervention.

(ii) Hemorrhage (severe bleeding).

(iii) Damage to parts of the body supplied by the artery with resulting loss of use or amputation (removal of body part).

(iv) Worsening of the condition for which the procedure is being done.

(v) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head).

(vi) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain).

(vii) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(C) Angioplasty (intravascular dilatation technique).

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Failure of procedure or injury to blood vessel requiring stent (small, permanent tube placed in blood vessel to keep it open) placement or open surgery.

(D) Endovascular stenting (placement of permanent tube into blood vessel to open it) of any portion of the aorta, iliac or carotid artery or other (peripheral) arteries or veins.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Change in procedure to open surgical procedure.

(iii) Failure to place stent/endoluminal graft (stent with fabric covering it).

(iv) Stent migration (stent moves from location in which it was placed).

(v) Vessel occlusion (blocking).

(vi) Impotence (difficulty with or inability to obtain penile erection) (for abdominal aorta and iliac artery procedures).

(E) Vascular thrombolysis (removal or dissolving of blood clots) - percutaneous (mechanical or chemical).

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Increased risk of bleeding at or away from site of treatment (when using medications to dissolve clots).

(iii) For arterial procedures: distal embolus (fragments of blood clot may travel and block other blood vessels with possible injury to the supplied tissue).

(iv) For venous procedures: pulmonary embolus (fragments of blood clot may travel to the blood vessels in the lungs and cause breathing problems or if severe could be life threatening).

(v) Kidney injury or failure which may be temporary or permanent (for procedures using certain mechanical thrombectomy devices).

(vi) Need for emergency surgery.

(F) Angiography with occlusion techniques (including embolization and sclerosis) - therapeutic.

(i) For all embolizations.

(I) Angiography risks (inclusive of aortography, arteriography, venography) - injection of contrast material into blood vessels.

(-a-) Unintended injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention.

(-b-) Hemorrhage (severe bleeding).

(-c-) Damage to parts of the body supplied by the artery with resulting loss of use or amputation (removal of body part).

(-d-) Worsening of the condition for which the procedure is being done.

(-e-) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(-f-) Unintended thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(II) Loss or injury to body parts with potential need for surgery, including death of overlying skin for sclerotherapy/treatment of superficial lesions/vessels and nerve injury with associated pain, numbness or tingling or paralysis (inability to move).

(III) Infection in the form of abscess (infected fluid collection) or septicemia (infection of blood stream).

(IV) Nontarget embolization (blocking of blood vessels other than those intended) which can result in injury to tissues supplied by those vessels.

(ii) For procedures involving the thoracic aorta and/or vessels supplying the brain, spinal cord, head, neck or arms, these risks in addition to those under clause (i) of this subparagraph:

(I) Stroke.

(II) Seizure.

(III) Paralysis (inability to move).

(IV) Inflammation or other injury of nerves.

(V) For studies of the blood vessels of the brain: contrast-related, temporary blindness or memory loss.

(iii) For female pelvic arterial embolizations including uterine fibroid embolization, these risks in addition to those under clause (i) of this subparagraph.

(I) Premature menopause with resulting sterility.

(II) Injury to or infection involving the uterus which might necessitate hysterectomy (removal of the uterus) with resulting sterility.

(III) After fibroid embolization: prolonged vaginal discharge.

(IV) After fibroid embolization: expulsion/delayed expulsion of fibroid tissue possibly requiring a procedure to deliver/remove the tissue.

(iv) For male pelvic arterial embolizations, in addition to the risks under clause (i) of this subparagraph: impotence (difficulty with or inability to obtain penile erection).

(v) For embolizations of pulmonary arteriovenous fistulae/malformations, these risks in addition to those under clause (i) of this subparagraph.

(I) New or worsening pulmonary hypertension (high blood pressure in the lung blood vessels).

(II) Paradoxical embolization (passage of air or an occluding device beyond the fistula/malformation and into the arterial circulation) causing blockage of blood flow to tissues supplied by the receiving artery and damage to tissues served (for example the blood vessels supplying the heart (which could cause chest pain and/or heart attack) or brain (which could cause stroke, paralysis (inability to move) or other neurological injury)).

(vi) For varicocele embolization, these risks in addition to those under clause (i) of this subparagraph.

(I) Phlebitis/inflammation of veins draining the testicles leading to decreased size and possibly decreased function of affected testis and sterility (if both sides performed).

(II) Nerve injury (thigh numbness or tingling).

(vii) For ovarian vein embolization/pelvic congestion syndrome embolization: general angiography and embolization risks as listed in clause (i) of this subparagraph.

(viii) For cases utilizing ethanol (alcohol) injection, in addition to the risks under clause (i) of this subparagraph: shock or severe lowering of blood pressure.

(ix) For varicose vein treatments (with angiography) see subparagraph (L) of this paragraph.

(G) Mesenteric angiography with infusional therapy (Vasopressin) for gastrointestinal bleeding.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Ischemia/infarction of supplied or distant vascular beds (reduction in blood flow causing lack of oxygen with injury or death of tissues supplied by the treated vessel or tissues supplied by blood vessels away from the treated site including heart, brain, bowel, extremities).

(iii) Antidiuretic hormone side effects of vasopressin (reduced urine output with disturbance of fluid balance in the body, rarely leading to swelling of the brain).

(H) Inferior vena caval filter insertion and removal.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Injury to the inferior vena cava (main vein in the abdomen).

(iii) Filter migration or fracture (filter could break and/or move from where it was placed).

(iv) Caval thrombosis (clotting of the main vein in the abdomen and episodes of swelling of legs).

(v) Risk of recurrent pulmonary embolus (continued risk of blood clots going to blood vessels in the lungs despite filter).

(vi) Inability to remove filter (for "optional"/retrievable filters).

(I) Pulmonary angiography.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Cardiac arrhythmia (irregular heart rhythm) or cardiac arrest (heart stops beating).

(iii) Cardiac injury/perforation (heart injury).

(iv) Death.

(J) Percutaneous treatment of pseudoaneurysm (percutaneous thrombin injection versus compression).

(i) Thrombosis (clotting) of supplying vessel or branches in its territory.

(ii) Allergic reaction to thrombin (agent used for direct injection).

(K) Vascular access - nontunneled catheters, tunneled catheters, implanted access.

(i) Pneumothorax (collapsed lung).

(ii) Injury to blood vessel.

(iii) Hemothorax/hemomediastinum (bleeding into the chest around the lungs or around the heart).

(iv) Air embolism (passage of air into blood vessel and possibly to the heart and/or blood vessels entering the lungs).

(v) Vessel thrombosis (clotting of blood vessel).

(L) Varicose vein treatment (percutaneous via laser, RFA, chemical or other method) without angiography.

(i) Burns.

(ii) Deep vein thrombosis (blood clots in deep veins).

(iii) Hyperpigmentation (darkening of skin).

(iv) Skin wound (ulcer).

(v) Telangiectatic matting (appearance of tiny blood vessels in treated area).

(vi) Paresthesia and dysesthesia (numbness or tingling in the area or limb treated).

(vii) Injury to blood vessel requiring additional procedure to treat.

(c) Digestive system treatments and procedures.

(1) Cholecystectomy with or without common bile duct exploration.

(A) Pancreatitis.

(B) Injury to the tube between the liver and the bowel.

(C) Retained stones in the tube between the liver and the bowel.

(D) Narrowing or obstruction of the tube between the liver and the bowel.

(E) Injury to the bowel and/or intestinal obstruction.

(2) Bariatric surgery.

(A) Laparoscopic.

(i) Conversion to open procedure.

(ii) Injury to organs.

(iii) Failure of device requiring additional surgical procedure.

(iv) Obstructive symptoms requiring additional surgical procedure.

(v) Development of gallstones (Roux-En-Y).

(vi) Development of metabolic and vitamin disorders (Roux-En-Y).

(vii) Suture line leak with abscess or fistula formation.

(B) Open.

(i) Failure of wound to heal or wound dehiscence (separation of wound).

(ii) Injury to organs.

(iii) Failure of device requiring additional surgical procedure.

(iv) Obstructive symptoms requiring additional surgical procedure.

(v) Development of gallstones (Roux-En-Y).

(vi) Development of metabolic and vitamin disorders (Roux-En-Y).

(3) Pancreatectomy (subtotal or total).

(A) Pancreatitis (subtotal).

(B) Diabetes (total).

(C) Lifelong requirement of enzyme and digestive medication.

(D) Anastomotic leaks.

(4) Total colectomy.

(A) Permanent ileostomy.

(B) Injury to organs.

(C) Infection.

(5) Subtotal colectomy.

(A) Anastomotic leaks.

(B) Temporary colostomy.

(C) Infection.

(D) Second surgery.

(E) Injury to organs.

(6) Hepatobiliary drainage/intervention including percutaneous transhepatic cholangiography, percutaneous biliary drainage, percutaneous cholecystostomy, biliary stent placement (temporary or permanent), biliary stone removal/therapy.

(A) Leakage of bile at the skin site or into the abdomen with possible peritonitis (inflammation of the abdominal lining and pain or if severe can be life threatening).

(B) Pancreatitis (inflammation of the pancreas).

(C) Hemobilia (bleeding into the bile ducts).

(D) Cholangitis, cholecystitis, sepsis (inflammation/infection of the bile ducts, gallbladder or blood).

(E) Pneumothorax (collapsed lung) or other pleural complications (complication involving chest cavity).

(7) Gastrointestinal tract stenting.

(A) Stent migration (stent moves from location in which it was placed).

(B) Esophageal/bowel perforation (creation of a hole or tear in the tube from the throat to the stomach or in the intestines).

(C) Tumor ingrowth or other obstruction of stent.

(D) For stent placement in the esophagus (tube from the throat to the stomach).

(i) Tracheal compression (narrowing of windpipe) with resulting or worsening of shortness of breath.

(ii) Reflux (stomach contents passing up into esophagus or higher).

(iii) Aspiration pneumonia (pneumonia from fluid getting in lungs) (if stent in lower part of the esophagus).

(iv) Foreign body sensation (feeling like there is something in throat) (for stent placement in the upper esophagus).

(d) Ear treatments and procedures.

(1) Stapedectomy.

(A) Diminished or bad taste.

(B) Total or partial loss of hearing in the operated ear.

(C) Brief or long-standing dizziness.

(D) Eardrum hole requiring more surgery.

(E) Ringing in the ear.

(2) Reconstruction of auricle of ear for congenital deformity or trauma.

(A) Less satisfactory appearance compared to possible alternative artificial ear.

(B) Exposure of implanted material.

(3) Tympanoplasty with mastoidectomy.

(A) Facial nerve paralysis.

(B) Altered or loss of taste.

(C) Recurrence of original disease process.

(D) Total loss of hearing in operated ear.

(E) Dizziness.

(F) Ringing in the ear.

(e) Endocrine system treatments and procedures.

(1) Thyroidectomy.

(A) Acute airway obstruction requiring temporary tracheostomy.

(B) Injury to nerves resulting in hoarseness or impairment of speech.

(C) Injury to parathyroid glands resulting in low blood calcium levels that require extensive medication to avoid serious degenerative conditions, such as cataracts, brittle bones, muscle weakness and muscle irritability.

(D) Lifelong requirement of thyroid medication.

(2) Parathyroidectomy.

(A) Acute airway obstruction requiring temporary tracheostomy.

(B) Injury to nerves resulting in hoarseness or impairment of speech.

(C) Low blood calcium levels that require extensive medication to avoid serious degenerative conditions, such as cataracts, brittle bones, muscle weakness, and muscle irritability.

(3) Adrenalectomy.

(A) Loss of endocrine functions.

(B) Lifelong requirement for hormone replacement therapy and steroid medication.

(C) Damage to kidneys.

(4) Other procedures.

(5) See also Pancreatectomy under subsection (c)(3) of this section (relating to digestive system treatments and procedures).

(f) Eye treatments and procedures.

(1) Eye muscle surgery.

(A) Additional treatment and/or surgery.

(B) Double vision.

(C) Partial or total blindness.

(2) Surgery for cataract with or without implantation of intraocular lens.

(A) Complications requiring additional treatment and/or surgery.

(B) Need for glasses or contact lenses.

(C) Complications requiring the removal of implanted lens.

(D) Partial or total blindness.

(3) Retinal or vitreous surgery.

(A) Complications requiring additional treatment and/or surgery.

(B) Recurrence or spread of disease.

(C) Partial or total blindness.

(4) Reconstructive and/or plastic surgical procedures of the eye and eye region, such as blepharoplasty, tumor, fracture, lacrimal surgery, foreign body, abscess, or trauma.

(A) Blindness.



- (B) Nerve damage with loss of use and/or feeling to eye or other areas of face.
- (C) Painful or unattractive scarring.
- (D) Worsening or unsatisfactory appearance.
- (E) Dry eye.
- (5) Photocoagulation and/or cryotherapy.
  - (A) Complications requiring additional treatment and/or surgery.
  - (B) Pain.
  - (C) Partial or total blindness.
- (6) Corneal surgery, such as corneal transplant, refractive surgery and pterygium.
  - (A) Complications requiring additional treatment and/or surgery.
  - (B) Pain.
  - (C) Need for glasses or contact lenses.
  - (D) Partial or total blindness.
- (7) Glaucoma surgery by any method.
  - (A) Complications requiring additional treatment and/or surgery.
  - (B) Worsening of the glaucoma.
  - (C) Pain.
  - (D) Partial or total blindness.
- (8) Removal of the eye or its contents (enucleation or evisceration).
  - (A) Complications requiring additional treatment and/or surgery.
  - (B) Worsening or unsatisfactory appearance.
  - (C) Recurrence or spread of disease.
- (9) Surgery for penetrating ocular injury, including intraocular foreign body.
  - (A) Complications requiring additional treatment and/or surgery.
  - (B) Possible removal of eye.
  - (C) Pain.
  - (D) Partial or total blindness.
- (g) Female genital system treatments and procedures.
  - (1) Hysterectomy (abdominal and vaginal).
    - (A) Uncontrollable leakage of urine.
    - (B) Injury to bladder.
    - (C) Sterility.
    - (D) Injury to the tube (ureter) between the kidney and the bladder.
    - (E) Injury to the bowel and/or intestinal obstruction.
    - (F) Need to covert to abdominal incision.
    - (G) If a power morcellator in laparoscopic surgery is utilized, include the following risks:
      - (i) If cancer is present, may increase the risk of the spread of cancer.
      - (ii) Increased risk of damage to adjacent structures.
  - (2) All fallopian tube and ovarian surgery with or without hysterectomy, including removal and lysis of adhesions.
    - (A) Injury to the bowel and/or bladder.
    - (B) Sterility.
    - (C) Failure to obtain fertility (if applicable).
    - (D) Failure to obtain sterility (if applicable).
    - (E) Loss of ovarian functions or hormone production from ovary(ies).
    - (F) If performed with hysterectomy, all associated risks under paragraph (1) of this subsection.
    - (G) For fallopian tube occlusion (for sterilization with or without hysterectomy), see subparagraph (14) of this paragraph.
  - (3) Removing fibroids (uterine myomectomy).
    - (A) Injury to bladder.
    - (B) Sterility.
    - (C) Injury to the tube (ureter) between the kidney and the bladder.
    - (D) Injury to the bowel and/or intestinal obstruction.
    - (E) May need to convert to hysterectomy.
    - (F) If a power morcellator in laparoscopic surgery is utilized, include the following risks:
      - (i) If cancer is present, may increase the risk of the spread of cancer.
      - (ii) Increased risk of damage to adjacent structures.
  - (4) Uterine suspension.
    - (A) Uncontrollable leakage of urine.
    - (B) Injury to bladder.
    - (C) Injury to the tube (ureter) between the kidney and the bladder.
    - (D) Injury to the bowel and/or intestinal obstruction.
  - (5) Removal of the nerves to the uterus (presacral neurectomy).
    - (A) Uncontrollable leakage of urine.
    - (B) Injury to bladder.
    - (C) Injury to the tube (ureter) between the kidney and the bladder.
    - (D) Injury to the bowel and/or intestinal obstruction.
    - (E) Hemorrhage (severe bleeding).
  - (6) Removal of the cervix.
    - (A) Uncontrollable leakage of urine.
    - (B) Injury to bladder.
    - (C) Sterility.
    - (D) Injury to the tube (ureter) between the kidney and the bladder.

- (E) Injury to the bowel and/or intestinal obstruction.
- (F) Need to convert to abdominal incision.
- (7) Repair of vaginal hernia (anterior and/or posterior colporrhaphy and/or enterocele repair).
- (A) Uncontrollable leakage of urine.
- (B) Injury to bladder.
- (C) Sterility.
- (D) Injury to the tube (ureter) between the kidney and the bladder.
- (E) Injury to the bowel and/or intestinal obstruction.
- (F) Mesh erosion (with damage to vagina and adjacent tissue).
- (8) Abdominal suspension of the bladder (retropubic urethropexy).
- (A) Uncontrollable leakage of urine.
- (B) Injury to bladder.
- (C) Injury to the tube (ureter) between the kidney and the bladder.
- (D) Injury to the bowel and/or intestinal obstruction.
- (9) Conization of cervix.
- (A) Hemorrhage (severe bleeding) which may result in hysterectomy.
- (B) Sterility.
- (C) Injury to bladder.
- (D) Injury to rectum.
- (10) Dilation and curettage of uterus (diagnostic/therapeutic).
- (A) Possible hysterectomy.
- (B) Perforation (hole) created in the uterus.
- (C) Sterility.
- (D) Injury to bowel and/or bladder.
- (E) Abdominal incision and operation to correct injury.
- (11) Surgical abortion/dilation and curettage/dilation and evacuation.
- (A) Possible hysterectomy.
- (B) Perforation (hole) created in the uterus.
- (C) Sterility.
- (D) Injury to the bowel and/or bladder.
- (E) Abdominal incision and operation to correct injury.
- (F) Failure to remove all products of conception.
- (12) Medical abortion/non-surgical.
- (A) Hemorrhage with possible need for surgical intervention.
- (B) Failure to remove all products of conception.
- (C) Sterility.
- (13) Selective salpingography and tubal reconstruction.
- (A) Perforation (hole) created in the uterus or Fallopian tube.
- (B) Future ectopic pregnancy (pregnancy outside of the uterus).
- (C) Pelvic infection.
- (14) Fallopian tube occlusion (for sterilization with or without hysterectomy).
- (A) Perforation (hole) created in the uterus or Fallopian tube.
- (B) Future ectopic pregnancy (pregnancy outside of the uterus).
- (C) Pelvic infection.
- (D) Failure to obtain sterility.
- (15) Hysteroscopy.
- (A) Perforation (hole) created in the uterus.
- (B) Fluid overload/electrolyte imbalance.
- (C) Possible hysterectomy.
- (D) Abdominal incision to correct injury.
- (h) Hematic and lymphatic system.
- (1) Transfusion of blood and blood components.
- (A) Serious infection including but not limited to Hepatitis and HIV which can lead to organ damage and permanent impairment.
- (B) Transfusion related injury resulting in impairment of lungs, heart, liver, kidneys, and immune system.
- (C) Severe allergic reaction, potentially fatal.
- (2) Splenectomy.
- (A) Susceptibility to infections and increased severity of infections.
- (B) Increased immunization requirements.
- (i) Breast surgery (non-cosmetic).
- (1) Radical or modified radical mastectomy.
- (A) Limitation of movement of shoulder and arm.
- (B) Permanent swelling of the arm.
- (C) Loss of the skin of the chest requiring skin graft.
- (D) Recurrence of malignancy, if present.
- (E) Decreased sensation or numbness of the inner aspect of the arm and chest wall.
- (2) Simple mastectomy.
- (A) Loss of skin of the chest requiring skin graft.
- (B) Recurrence of malignancy, if present.
- (C) Decreased sensation or numbness of the nipple.
- (3) Lumpectomy.
- (A) Loss of skin of the chest requiring skin graft.
- (B) Recurrence of malignancy, if present.
- (C) Decreased sensation or numbness of the nipple.

- (4) Open biopsy.
  - (A) Loss of skin of the chest requiring skin graft.
  - (B) Recurrence of malignancy, if present.
  - (C) Decreased sensation or numbness of the nipple.
- (j) Male genital system.
  - (1) Orchidopexy (reposition of testis(es)).
    - (A) Removal of testicle.
    - (B) Atrophy (shriveling) of the testicle with loss of function.
  - (2) Orchiectomy (removal of the testis(es)).
    - (A) Decreased sexual desire.
    - (B) Difficulties with penile erection.
    - (C) Permanent sterility (inability to father children) if both testes are removed.
  - (3) Vasectomy.
    - (A) Loss of testicle.
    - (B) Failure to produce permanent sterility (inability to father children).
  - (4) Circumcision.
    - (A) Injury to penis.
    - (B) Need for further surgery.
- (k) Maternity and related cases.
  - (1) Delivery (vaginal).
    - (A) Injury to bladder and/or rectum, including a fistula (hole) between bladder and vagina and/or rectum and vagina.
    - (B) Hemorrhage (severe bleeding) possibly requiring blood administration and/or hysterectomy (removal of uterus) and/or artery ligation (tying off) to control.
    - (C) Sterility (inability to get pregnant).
    - (D) Brain damage, injury or even death occurring to the fetus before or during labor and/or vaginal delivery whether or not the cause is known.
  - (2) Delivery (cesarean section).
    - (A) Injury to bowel and/or bladder.
    - (B) Sterility (inability to get pregnant).
    - (C) Injury to ureter (tube between kidney and bladder).
    - (D) Brain damage, injury or even death occurring to the fetus before or during labor and/or cesarean delivery whether or not the cause is known.
    - (E) Uterine disease or injury requiring hysterectomy (removal of uterus).
  - (3) Cerclage.
    - (A) Premature labor.
    - (B) Injury to bowel and/or bladder.
    - (C) Rupture to membranes and possible infection.
- (l) Musculoskeletal system.
  - (1) Arthroplasty of any joints with mechanical device.

- (A) Impaired function such as stiffness, limp, or change in limb length.
- (B) Blood vessel or nerve injury.
- (C) Pain.
- (D) Blood clot in limb or lung.
- (E) Failure of bone to heal.
- (F) Infection.
- (G) Removal or replacement of any implanted device or material.
- (H) Dislocation or loosening requiring additional surgery.
  - (I) If performed on a child age 12 or under, include the following additional risks: problems with appearance, use, or growth requiring additional surgery.
- (2) Arthroscopy of any joint.
  - (A) Blood vessel or nerve injury.
  - (B) Continued pain.
  - (C) Stiffness of joint.
  - (D) Blood clot in limb or lung.
  - (E) Joint infection.
  - (F) If performed on a child age 12 or under, include the following additional risks: problems with appearance, use, or growth requiring additional surgery.
- (3) Open reduction with internal fixation.
  - (A) Impaired function such as stiffness, limp, or change in limb length.
  - (B) Blood vessel or nerve injury.
  - (C) Pain.
  - (D) Blood clot in limb or lung.
  - (E) Failure of bone to heal.
  - (F) Infection.
  - (G) Removal or replacement of any implanted device or material.
  - (H) If performed on a child age 12 or under, include the following additional risks: problems with appearance, use, or growth requiring additional surgery.
- (4) Osteotomy.
  - (A) Impaired function such as stiffness, limp, or change in limb length.
  - (B) Blood vessel or nerve injury.
  - (C) Pain.
  - (D) Blood clot in limb or lung.
  - (E) Failure of bone to heal.
  - (F) Infection.
  - (G) Removal or replacement of any implanted device or material.

(H) If performed on a child age 12 or under, include the following additional risks: problems with appearance, use, or growth requiring additional surgery.

(5) Ligamentous reconstruction of joints.

(A) Continued instability of the joint.

(B) Arthritis.

(C) Continued pain.

(D) Stiffness of joint.

(E) Blood vessel or nerve injury.

(F) Impaired function and/or scarring.

(G) Blood clot in limb or lung.

(H) If performed on a child age 12 or under, include the following additional risks: problems with appearance, use, or growth requiring additional surgery.

(6) Vertebroplasty/kyphoplasty.

(A) Nerve/spinal cord injury.

(B) Need for emergency surgery.

(C) Embolization of cement (cement passes into blood vessels and possibly all the way to the lungs).

(D) Collapse of adjacent vertebrae (bones in spine).

(E) Leak of cerebrospinal fluid (fluid around the brain and spinal cord).

(F) Pneumothorax (collapsed lung).

(G) Failure to relieve pain.

(H) Rib fracture.

(7) If the following procedures are performed on a child age 12 or under, problems with appearance, use, or growth requiring additional surgery should be disclosed.

(A) Arthrotomy (opening of joint).

(B) Closed reduction with or without pin or external fixation.

(C) Surgical management of open wound.

(D) Partial excision or removal of bone.

(E) Removal of external fixation device.

(F) Traction or casting with or without manipulation for reduction.

(8) Amputation of limb.

(A) Pain and/or phantom sensation in removed limb.

(B) Need for further surgery.

(C) Infection.

(D) Hemorrhage (severe bleeding).

(E) Difficulty with prosthesis fitting.

(m) Nervous system treatments and procedures.

(1) Craniotomy, craniectomy or cranioplasty.

(A) Loss of brain function such as memory and/or ability to speak.

(B) Recurrence, continuation or worsening of the condition that required this operation (no improvement or symptoms made worse).

(C) Stroke (damage to brain resulting in loss of one or more functions).

(D) Loss of senses (blindness, double vision, deafness, smell, numbness, taste).

(E) Weakness, paralysis, loss of coordination.

(F) Cerebrospinal fluid leak with potential for severe headaches.

(G) Meningitis (infection of coverings of brain and spinal cord).

(H) Brain abscess.

(I) Persistent vegetative state (not able to communicate or interact with others).

(J) Hydrocephalus (abnormal fluid buildup causing pressure in the brain).

(K) Seizures (uncontrolled nerve activity).

(L) Need for permanent breathing tube and/or permanent feeding tube.

(2) Cranial nerve operations.

(A) Weakness, numbness, impaired muscle function or paralysis.

(B) Recurrence, continuation or worsening of the condition that required this operation (no improvement or symptoms made worse).

(C) Seizures (uncontrolled nerve activity).

(D) New or different pain.

(E) Stroke (damage to brain resulting in loss of one or more functions).

(F) Persistent vegetative state (not able to communicate or interact with others).

(G) Loss of senses (blindness, double vision, deafness, smell, numbness, taste).

(H) Cerebrospinal fluid leak with potential for severe headaches.

(I) Meningitis (infection of coverings of brain and spinal cord).

(J) Need for prolonged nursing care.

(K) Need for permanent breathing tube and/or permanent feeding tube.

(3) Spine operation, including laminectomy, decompression, fusion, internal fixation or procedures for nerve root or spinal cord compression; diagnosis; pain; deformity; mechanical instability; injury; removal of tumor, abscess or hematoma (excluding coccygeal operations).

(A) Weakness, pain, numbness or clumsiness.

(B) Impaired muscle function or paralysis.

(C) Incontinence, impotence or impaired bowel function (loss of bowel/bladder control and/or sexual function).

- (D) Migration of implants (movement of implanted devices).
  - (E) Failure of implants (breaking of implanted devices).
  - (F) Adjacent level degeneration (breakdown of spine above and/or below the level treated).
  - (G) Cerebrospinal fluid leak with potential for severe headaches.
  - (H) Meningitis (infection of coverings of brain and spinal cord).
  - (I) Recurrence, continuation or worsening of the condition that required this operation (no improvement or symptoms made worse).
  - (J) Unstable spine (abnormal movement between bones and/or soft tissues of the spine).
- (4) Peripheral nerve operation; nerve grafts, decompression, transposition or tumor removal; neuroorrhaphy, neurectomy or neurolysis.
- (A) Numbness.
  - (B) Impaired muscle function.
  - (C) Recurrence, continuation or worsening of the condition that required this operation (no improvement or symptoms made worse).
  - (D) Continued, increased or different pain.
  - (E) Weakness.
- (5) Transphenoidal hypophysectomy or other pituitary gland operation.
- (A) Cerebrospinal fluid leak with potential for severe headaches.
  - (B) Necessity for hormone replacement.
  - (C) Recurrence or continuation of the condition that required this operation.
  - (D) Deformity or perforation of nasal septum (hole in wall between the right and left halves of the nose).
  - (E) Facial nerve injury resulting in disfigurement (loss of nerve function controlling muscles in face).
  - (F) Loss of senses (blindness, double vision, deafness, smell, numbness, taste).
  - (G) Stroke (damage to brain resulting in loss of one or more functions).
  - (H) Persistent vegetative state (not able to communicate or interact with others).
  - (I) Headaches.
- (6) Cerebrospinal fluid shunting procedure or revision.
- (A) Shunt obstruction (blockage of shunt/tubing causing it to stop draining adequately).
  - (B) Malposition or migration of shunt/tubing (improper positioning or later movement of shunt/tubing causing it to stop draining adequately).
  - (C) Seizures (uncontrolled nerve activity).
  - (D) Recurrence or continuation of brain dysfunction.
  - (E) Injury to internal organs of the chest or abdomen.
  - (F) Brain injury.
  - (G) Stroke (damage to brain resulting in loss of one or more functions).
  - (H) Persistent vegetative state (not able to communicate or interact with others).
  - (I) Loss of senses (blindness, double vision, deafness, smell, numbness, taste).
  - (J) Cerebrospinal fluid leak with potential for severe headaches.
  - (K) Meningitis (infection of coverings of brain and spinal cord).
  - (L) Need for prolonged nursing care.
  - (M) Need for permanent breathing tube and/or permanent feeding tube.
- (7) Elevation of depressed skull fracture.
- (A) Loss of brain function such as memory and/or ability to speak.
  - (B) Recurrence, continuation or worsening of the condition that required this operation (no improvement or symptoms made worse).
  - (C) Loss of senses (blindness, double vision, deafness, smell, numbness, taste).
  - (D) Weakness, paralysis, loss of coordination.
  - (E) Cerebrospinal fluid leak with potential for severe headaches.
  - (F) Meningitis (infection of coverings of brain and spinal cord).
  - (G) Brain abscess.
  - (H) Persistent vegetative state (not able to communicate or interact with others).
  - (I) Seizures (uncontrolled nerve activity).
  - (J) Need for permanent breathing tube and/or permanent feeding tube.
- (n) Radiology.
- (1) Splenoportography (needle injection of contrast media into the spleen).
- (A) All associated risks as listed under subsection (b)(2)(B) of this section.
  - (B) Injury to the spleen requiring blood transfusion and/or removal of the spleen.
- (2) Chemoembolization.
- (A) All associated risks as listed under subsection (b)(2)(B) of this section.
  - (B) Tumor lysis syndrome (rapid death of tumor cells, releasing their contents which can be harmful).
  - (C) Injury to or failure of liver (or other organ in which tumor is located).
  - (D) Risks of the chemotherapeutic agent(s) utilized.

(E) Cholecystitis (inflammation of the gallbladder) (for liver or other upper GI embolizations).

(F) Abscess (infected fluid collection) in the liver or other embolized organ requiring further intervention.

(G) Biloma (collection of bile in or near the liver requiring drainage) (for liver embolizations).

(3) Radioembolization.

(A) All associated risks as listed under subsection (b)(2)(B) of this section.

(B) Tumor lysis syndrome (rapid death of tumor cells, releasing their contents which can be harmful).

(C) Injury to or failure of liver (or other organ in which tumor is located).

(D) Radiation complications: pneumonitis (inflammation of lung) which is potentially fatal; inflammation of stomach, intestines, gallbladder, pancreas; stomach or intestinal ulcer; scarring of liver.

(4) Thermal and other ablative techniques for treatment of tumors (for curative intent or palliation) including radiofrequency ablation, microwave ablation, cryoablation, and high intensity focused ultrasound (HIFU).

(A) Injury to tumor-containing organ or adjacent organs/structures.

(B) Injury to nearby nerves potentially resulting in temporary or chronic (continuing) pain and/or loss of use and/or feeling.

(C) Failure to completely treat tumor.

(5) TIPS (Transjugular Intrahepatic Portosystemic Shunt) and its variants such as DIPS (Direct Intrahepatic Portocaval Shunt).

(A) All associated risks as listed under subsection (b)(2)(B) - (D) of this section.

(B) Hepatic encephalopathy (confusion/decreased ability to think).

(C) Liver failure or injury.

(D) Gallbladder injury.

(E) Hemorrhage (severe bleeding).

(F) Recurrent ascites (fluid building up in abdomen) and/or bleeding.

(G) Kidney failure.

(H) Heart failure.

(I) Death.

(6) Myelography.

(A) Chronic (continuing) pain.

(B) Nerve injury with loss of use and/or feeling.

(C) Transient (temporary) headache, nausea, and/or vomiting.

(D) Numbness.

(E) Seizure.

(7) Percutaneous abscess/fluid collection drainage (percutaneous abscess/seroma/lymphocele drainage and/or sclerosis (inclusive of percutaneous, transgluteal, transrectal and transvaginal routes)).

(A) Sepsis (infection in the blood stream), possibly resulting in shock (severe decrease in blood pressure).

(B) Injury to nearby organs.

(C) Hemorrhage (severe bleeding).

(D) Infection of collection which was not previously infected, or additional infection of abscess.

(8) Procedures utilizing prolonged fluoroscopy.

(A) Skin injury (such as epilation (hair loss), burns, or ulcers).

(B) Cataracts (for procedures in the region of the head).

(o) Respiratory system treatments and procedures.

(1) Biopsy and/or excision of lesion of larynx, vocal cords, trachea.

(A) Loss or change of voice.

(B) Swallowing or breathing difficulties.

(C) Perforation (hole) or fistula (connection) in esophagus (tube from throat to stomach).

(2) Rhinoplasty or nasal reconstruction with or without septoplasty.

(A) Deformity of skin, bone or cartilage.

(B) Creation of new problems, such as perforation of the nasal septum (hole in wall between the right and left halves of the nose) or breathing difficulty.

(3) Submucous resection of nasal septum or nasal septoplasty.

(A) Persistence, recurrence or worsening of the obstruction.

(B) Perforation of nasal septum (hole in wall between the right and left halves of the nose) with dryness and crusting.

(C) External deformity of the nose.

(4) Lung biopsy.

(A) Pneumothorax (collapsed lung).

(B) Hemothorax (blood in the chest around the lung).

(5) Segmental resection of lung.

(A) Hemothorax (blood in the chest around the lung).

(B) Abscess (infected fluid collection) in chest.

(C) Insertion of tube into space between lung and chest wall or repeat surgery.

(D) Need for additional surgery.

(6) Thoracotomy.

(A) Hemothorax (blood in the chest around the lung).

(B) Abscess (infected fluid collection) in chest.

(C) Pneumothorax (collapsed lung).

(D) Need for additional surgery.

(7) Thoracotomy with drainage.

(A) Hemothorax (blood in the chest around the lung).

(B) Abscess (infected fluid collection) in chest.

- (C) Pneumothorax (collapsed lung).
  - (D) Need for additional surgery.
- (8) Open tracheostomy.
- (A) Loss of voice.
  - (B) Breathing difficulties.
  - (C) Pneumothorax (collapsed lung).
  - (D) Hemothorax (blood in the chest around the lung).
  - (E) Scarring in trachea (windpipe).
  - (F) Fistula (connection) between trachea into esophagus (tube from throat to stomach) or great vessels.
- (9) Respiratory tract/tracheobronchial balloon dilatation/stenting.
- (A) Stent migration (stent moves from position in which it was placed).
  - (B) Pneumomediastinum (air enters the space around the airways including the space around the heart).
  - (C) Mucosal injury (injury to lining of airways).
- (p) Urinary system.
- (1) Partial nephrectomy (removal of part of the kidney).
- (A) Incomplete removal of stone(s) or tumor, if present.
  - (B) Blockage of urine.
  - (C) Leakage of urine at surgical site.
  - (D) Injury to or loss of the kidney.
  - (E) Damage to organs next to kidney.
- (2) Radical nephrectomy (removal of kidney and adrenal gland for cancer).
- (A) Loss of the adrenal gland (gland on top of kidney that makes certain hormones/chemicals the body needs).
  - (B) Incomplete removal of tumor.
  - (C) Damage to organs next to kidney.
- (3) Nephrectomy (removal of kidney).
- (A) Incomplete removal of tumor if present.
  - (B) Damage to organs next to kidney.
  - (C) Injury to or loss of the kidney.
- (4) Nephrolithotomy and pyelolithotomy (removal of kidney stone(s)).
- (A) Incomplete removal of stone(s).
  - (B) Blockage of urine.
  - (C) Leakage of urine at surgical site.
  - (D) Injury or loss of the kidney.
  - (E) Damage to organs next to kidney.
- (5) Pyeloureteroplasty (pyeloplasty or reconstruction of the kidney drainage system).
- (A) Blockage of urine.
  - (B) Leakage of urine at surgical site.
  - (C) Injury to or loss of the kidney.
  - (D) Damage to organs next to kidney.
- (6) Exploration of kidney or perinephric mass.
- (A) Incomplete removal of stone(s) or tumor, if present.
  - (B) Leakage of urine at surgical site.
  - (C) Injury to or loss of the kidney.
  - (D) Damage to organs next to kidney.
- (7) Ureteroplasty (reconstruction of ureter (tube between kidney and bladder)).
- (A) Leakage of urine at surgical site.
  - (B) Incomplete removal of the stone or tumor (when applicable).
  - (C) Blockage of urine.
  - (D) Damage to organs next to ureter.
  - (E) Damage to or loss of the ureter.
- (8) Ureterolithotomy (surgical removal of stone(s) from ureter (tube between kidney and bladder)).
- (A) Leakage of urine at surgical site.
  - (B) Incomplete removal of stone.
  - (C) Blockage of urine.
  - (D) Damage to organs next to ureter.
  - (E) Damage to or loss of ureter.
- (9) Ureterectomy (partial/complete removal of ureter (tube between kidney and bladder)).
- (A) Leakage of urine at surgical site.
  - (B) Incomplete removal of stone.
  - (C) Blockage of urine.
  - (D) Damage to organs next to ureter.
- (10) Ureterolysis (partial/complete removal of ureter (tube between kidney and bladder from adjacent tissue)).
- (A) Leakage of urine at surgical site.
  - (B) Blockage of urine.
  - (C) Damage to organs next to ureter.
  - (D) Damage to or loss of ureter.
- (11) Ureteral reimplantation (reinserting ureter (tube between kidney and bladder) into the bladder).
- (A) Leakage of urine at surgical site.
  - (B) Blockage of urine.
  - (C) Damage to or loss of ureter.
  - (D) Backward flow of urine from bladder into ureter.
  - (E) Damage to organs next to ureter.
- (12) Prostatectomy (partial or total removal of prostate).
- (A) Leakage of urine at surgical site.
  - (B) Blockage of urine.
  - (C) Incontinence (difficulty with control of urine flow).
  - (D) Semen passing backward into bladder.

(E) Difficulty with penile erection (possible with partial and probable with total prostatectomy).

(13) Total cystectomy (removal of bladder).

(A) Probable loss of penile erection and ejaculation in the male.

(B) Damage to organs next to bladder.

(C) This procedure will require an alternate method of urinary drainage.

(14) Radical cystectomy.

(A) Probable loss of penile erection and ejaculation in the male.

(B) Damage to organs next to bladder.

(C) This procedure will require an alternate method of urinary drainage.

(D) Chronic (continuing) swelling of thighs, legs and feet.

(E) Recurrence or spread of cancer if present.

(15) Partial cystectomy (partial removal of bladder).

(A) Leakage of urine at surgical site.

(B) Incontinence (difficulty with control of urine flow).

(C) Backward flow of urine from bladder into ureter (tube between kidney and bladder).

(D) Blockage of urine.

(E) Damage to organs next to bladder.

(16) Urinary diversion (ileal conduit, colon conduit).

(A) Blood chemistry abnormalities requiring medication.

(B) Development of stones, strictures or infection in the kidneys, ureter or bowel (intestine).

(C) Leakage of urine at surgical site.

(D) This procedure will require an alternate method of urinary drainage.

(17) Ureterosigmoidostomy (placement of kidney drainage tubes into the large bowel (intestine)).

(A) Blood chemistry abnormalities requiring medication.

(B) Development of stones, strictures or infection in the kidneys, ureter or bowel (intestine).

(C) Leakage of urine at surgical site.

(D) Difficulty in holding urine in the rectum.

(18) Urethroplasty (construction/reconstruction of drainage tube from bladder).

(A) Leakage of urine at surgical site.

(B) Stricture formation (narrowing of urethra (tube from bladder to outside)).

(C) Need for additional surgery.

(19) Percutaneous nephrostomy/stenting/stone removal.

(A) Pneumothorax or other pleural complications (collapsed lung or filling of the chest cavity on the same side with fluid).

(B) Septic shock/bacteremia (infection of the blood stream with possible shock/severe lowering of blood pressure) when pyonephrosis (infected urine in the kidney) present.

(C) Bowel (intestinal) injury.

(D) Blood vessel injury with or without significant bleeding.

(20) Dialysis (technique to replace functions of kidney and clean blood of toxins).

(A) Hemodialysis.

(i) Hypotension (low blood pressure).

(ii) Hypertension (high blood pressure).

(iii) Air embolism (air bubble in blood vessel) resulting in possible death or paralysis.

(iv) Cardiac arrhythmias (irregular heart rhythms).

(v) Infections of blood stream, access site, or blood borne (for example: Hepatitis B, C, or HIV).

(vi) Hemorrhage (severe bleeding as a result of clotting problems or due to disconnection of the bloodline).

(vii) Nausea, vomiting, cramps, headaches, and mild confusion during and/or temporarily after dialysis.

(viii) Allergic reactions.

(ix) Chemical imbalances and metabolic disorders (unintended change in blood minerals).

(x) Pyrogenic reactions (fever).

(xi) Hemolysis (rupture of red blood cells).

(xii) Graft/fistula damage including bleeding, aneurysm, formation (ballooning of vessel), clotting (closure) of graft/fistula.

(B) Peritoneal dialysis.

(i) Infections, including peritonitis (inflammation or irritation of the tissue lining the inside wall of abdomen and covering organs), catheter infection and catheter exit site infection.

(ii) Development of hernias of umbilicus (weakening of abdominal wall or muscle).

(iii) Hypertension (high blood pressure).

(iv) Hypotension (low blood pressure).

(v) Hydrothorax (fluid in chest cavity).

(vi) Arrhythmia (irregular heart rhythm).

(vii) Perforation of the bowel.

(viii) Sclerosis or scarring of the peritoneum.

(ix) Weight gain leading to obesity.

(x) Abdominal discomfort/distension.

(xi) Heartburn or reflux.

(xii) Increase in need for anti-diabetic medication.

(xiii) Muscle weakness.

(xiv) Dehydration (extreme loss of body fluid).



(xv) Chemical imbalances and metabolic disorders (unintended change in blood minerals).

(xvi) Allergic reactions.

(xvii) Nausea, vomiting, cramps, headaches, and mild confusion during and/or temporarily after dialysis.

(q) Psychiatric procedures.

(1) Electroconvulsive therapy with modification by intravenous muscle relaxants and sedatives.

(A) Memory changes of events prior to, during, and immediately following the treatment.

(B) Fractures or dislocations of bones.

(C) Significant temporary confusion requiring special care.

(2) Other Procedures. No other procedures are assigned at this time.

(r) Radiation therapy. A child is defined for the purpose of this subsection as an individual who is not physiologically mature as determined by the physician using the appropriate medical parameters.

(1) Head and neck.

(A) Early reactions.

(i) Reduced and sticky saliva, loss of taste and appetite, altered sense of smell, nausea.

(ii) Sore throat, difficulty swallowing, weight loss, fatigue.

(iii) Skin changes: redness, irritation, scaliness, blistering or ulceration, color change, thickening, hair loss.

(iv) Hoarseness, cough, loss of voice, and swelling of airway.

(v) Blockage and crusting of nasal passages.

(vi) Inflammation of ear canal, feeling of "stopped up" ear, hearing loss, dizziness.

(vii) Dry and irritable eye(s).

(viii) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(ix) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Dry mouth and altered sense, or loss, of taste.

(ii) Tooth decay and gum changes.

(iii) Bone damage, especially in jaws.

(iv) Stiffness and limitation of jaw movement.

(v) Changes in skin texture and/or coloration, permanent hair loss, and scarring of skin.

(vi) Swelling of tissues, particularly under the chin.

(vii) Throat damage causing hoarseness, pain or difficulty breathing or swallowing.

(viii) Eye damage causing dry eye(s), cataract, loss of vision, or loss of eye(s).

(ix) Ear damage causing dryness of ear canal, fluid collection in middle ear, hearing loss.

(x) Brain, spinal cord or nerve damage causing alteration of thinking ability or memory, and/or loss of strength, feeling or coordination in any part of the body.

(xi) Pituitary or thyroid gland damage requiring long-term hormone replacement therapy.

(xii) In children, there may be additional late reactions.

(I) Disturbance of bone and tissue growth.

(II) Bone damage to face causing abnormal development.

(III) Brain damage causing a loss of intellectual ability, learning capacity, and reduced intelligence quotient (IQ).

(IV) Second cancers developing in the irradiated area.

(2) Central nervous system.

(A) Early reactions.

(i) Skin and scalp reaction with redness, irritation, scaliness, blistering, ulceration, change in color, thickening, hair loss.

(ii) Nausea, vomiting, headaches.

(iii) Fatigue, drowsiness.

(iv) Altered sense of taste or smell.

(v) Inflammation of ear canal, feeling of "stopped-up" ear, hearing loss, dizziness.

(vi) Depression of blood count leading to increased risk of infection and/or bleeding.

(vii) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(viii) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Permanent hair loss of variable degrees, altered regrowth, texture and color of hair.

(ii) Persistent drowsiness and tiredness.

(iii) Brain damage causing a loss of some degree of thinking ability or memory, or personality changes.

(iv) Scarring of skin.

(v) Spinal cord or nerve damage causing loss of strength, feeling or coordination in any part of the body.

(vi) Damage to eye(s), or optic nerve(s) causing loss of vision.

(vii) Ear damage causing dryness of ear canal, fluid collection in middle ear, hearing loss.

(viii) Pituitary gland damage requiring long-term hormone replacement therapy.

(ix) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to spine, causing stunting of growth, curvature and/or reduction in height.

(III) Bone damage to face, or pelvis causing stunting of bone growth and/or abnormal development.

(IV) Brain damage causing a loss of intellectual ability, learning capacity, and reduced intelligence quotient (IQ).

(V) Second cancers developing in the irradiated area.

(3) Thorax.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, ulceration, change in color, thickening, hair loss.

(ii) Inflammation of esophagus causing pain on swallowing, heartburn, or sense of obstruction.

(iii) Loss of appetite, nausea, vomiting.

(iv) Weight loss, weakness, vomiting.

(v) Inflammation of the lung with pain, fever and cough.

(vi) Inflammation of the heart sac with chest pain and palpitations.

(vii) Bleeding or creation of a fistula resulting from tumor destruction.

(viii) Depression of blood count leading to increased risk of infection and/or bleeding.

(ix) Intermittent electric shock-like feelings in the lower spine or legs on bending the neck.

(x) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(xi) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Changes in skin texture and/or coloration, permanent hair loss and scarring of skin.

(ii) Lung scarring or shrinkage causing shortness of breath.

(iii) Narrowing of esophagus causing swallowing problems.

(iv) Constriction of heart sac which may require surgical correction.

(v) Damage to heart muscle or arteries leading to heart failure.

(vi) Fracture of ribs.

(vii) Nerve damage causing pain, loss of strength or feeling in arms.

(viii) Spinal cord damage causing loss of strength or feeling in arms and legs, and/or loss of control of bladder and rectum.

(ix) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to spine, causing stunting of growth, curvature and/or reduction in height.

(III) Underdevelopment or absence of development of female breast.

(IV) Second cancers developing in the irradiated area.

(4) Breast.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, blistering, ulceration, coloration, thickening, and hair loss.

(ii) Breast changes including swelling, tightness, or tenderness.

(iii) Inflammation of the esophagus causing pain or swallowing, heartburn, or sense of obstruction.

(iv) Lung inflammation with cough.

(v) Inflammation of heart sac with chest pain and palpitations.

(B) Late reactions.

(i) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(ii) Breast changes including thickening, firmness, tenderness, shrinkage.

(iii) Swelling of arm.

(iv) Stiffness and discomfort in shoulder joint.

(v) Rib or lung damage causing pain, fracture, cough, shortness of breath.

(vi) Nerve damage causing pain, loss of strength or feeling in arm.

(vii) Damage to heart muscle or arteries or heart sac leading to heart failure.

(5) Abdomen.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, ulceration, coloration, thickening, hair loss.

(ii) Loss of appetite, nausea, vomiting.

(iii) Weight loss, weakness, fatigue.

(iv) Inflammation of stomach causing indigestion, heartburn, and ulcers.

(v) Inflammation of bowel causing cramping and diarrhea.

(vi) Depression of blood count leading to increased risk of infections and/or bleeding.

(vii) In children, these reactions are likely to be intensified by chemotherapy before, during and after radiation therapy.

(viii) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(ii) Stomach damage causing persistent indigestion, pain, and bleeding.

(iii) Bowel damage causing narrowing or adhesions of bowel with obstruction, ulceration, or bleeding which may require surgical correction, chronic diarrhea, or poor absorption of food elements.

(iv) Kidney damage leading to kidney failure and/or high blood pressure.

(v) Liver damage leading to liver failure.

(vi) Spinal cord or nerve damage causing loss of strength or feeling in legs and/or loss of control of bladder and/or rectum.

(vii) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to spine causing stunting of growth, curvature and/or reduction in height.

(III) Bone damage to pelvis causing stunting of bone growth and/or abnormal development.

(IV) Second cancers developing in the irradiated area.

(6) Female pelvis.

(A) Early reactions.

(i) Inflammation of bowel causing cramping and diarrhea.

(ii) Inflammation of rectum and anus causing pain, spasm, discharge, bleeding.

(iii) Bladder inflammation causing burning, frequency, spasm, pain, bleeding.

(iv) Skin changes: redness, irritation, scaliness, blistering or ulceration, coloration, thickening, hair loss.

(v) Disturbance of menstrual cycle.

(vi) Vaginal discharge, pain, irritation, bleeding.

(vii) Depression of blood count leading to increased risk of infection and/or bleeding.

(viii) In children, these reactions are likely to be intensified by chemotherapy before, during, or after radiation therapy.

(ix) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Bowel damage causing narrowing or adhesions of the bowel with obstruction, ulceration, bleeding, chronic diarrhea, or poor absorption of food elements and may require surgical correction or colostomy.

(ii) Bladder damage with loss of capacity, frequency of urination, blood in urine, recurrent urinary infections, pain, or spasm which may require urinary diversion and/or removal of bladder.

(iii) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(iv) Bone damage leading to fractures.

(v) Ovarian damage causing infertility, sterility, or premature menopause.

(vi) Vaginal damage leading to dryness, shrinkage, pain, bleeding, or sexual dysfunction.

(vii) Swelling of the genitalia or legs.

(viii) Nerve damage causing pain, loss of strength or feeling in legs, and/or loss of control of bladder or rectum.

(ix) Fistula between the bladder and/or bowel and/or vagina.

(x) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to pelvis and hips causing stunting of bone growth and/or abnormal development.

(III) Second cancers developing in the irradiated area.

(7) Male pelvis.

(A) Early reactions.

(i) Inflammation of bowel causing cramping and diarrhea.

(ii) Inflammation of rectum and anus causing pain, spasm, discharge, bleeding.

(iii) Bladder inflammation causing burning, frequency, spasm, pain, and/or bleeding.

(iv) Skin changes: redness, irritation, scaliness, blistering or ulceration, coloration, thickening, hair loss.

(v) Depression of blood count leading to increased risk of infection and/or bleeding.

(vi) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(vii) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Bowel damage causing narrowing or adhesions of the bowel with obstruction, ulceration, bleeding, chronic diarrhea, or poor absorption of food elements and may require surgical correction or colostomy.

(ii) Bladder damage with loss of capacity, frequency of urination, blood in urine, recurrent urinary infections, pain, or spasm which may require urinary diversion and/or removal of bladder.

(iii) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(iv) Bone damage leading to fractures.

(v) Testicular damage causing reduced sperm counts, infertility, sterility, or risk of birth defects.

(vi) Impotence (loss of erection) or sexual dysfunction.

(vii) Swelling of the genitalia or legs.

(viii) Nerve damage causing pain, loss of strength or feeling in legs, and/or loss of control of bladder or rectum.

(ix) Fistula between the bowel and other organs.

(x) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to pelvis and hips causing stunting of bone growth and/or abnormal development.

(III) Second cancers developing in the irradiated area.

(8) Skin.

(A) Early reactions.

(i) Redness, irritation, or soreness.

(ii) Scaliness, ulceration, crusting, oozing, discharge.

(iii) Hair loss.

(iv) These reactions are likely to be intensified by chemotherapy.

(B) Late reactions.

(i) Changes in skin texture causing scaly or shiny smooth skin, thickening with contracture, puckering, scarring of skin.

(ii) Changes in skin color.

(iii) Prominent dilated small blood vessels.

(iv) Permanent hair loss.

(v) Chronic or recurrent ulcerations.

(vi) Damage to adjacent tissues including underlying bone or cartilage.

(vii) In children, second cancers may develop in the irradiated area.

(9) Extremities.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, ulceration, coloration, thickening, hair loss.

(ii) Inflammation of soft tissues causing tenderness, swelling, and interference with movement.

(iii) Inflammation of joints causing pain, swelling and limitation of joint motion.

(iv) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(v) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Changes in skin reaction and/or coloration, permanent hair loss and scarring of the skin.

(ii) Scarring or shrinkage of soft tissues and muscle causing loss of flexibility and movement, swelling of the limb.

(iii) Nerve damage causing loss of strength, feeling or coordination.

(iv) Bone damage causing fracture.

(v) Joint damage causing permanent stiffness, pains and arthritis.

(vi) Swelling of limb below the area treated.

(vii) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to limbs causing stunting of bone growth and/or abnormal development.

(III) Second cancers developing in the irradiated area.

(10) Total body irradiation.

(A) Early reactions.

(i) Loss of appetite, nausea, vomiting.

(ii) Diarrhea.

(iii) Reduced and sticky saliva, swelling of the salivary gland(s), loss of taste.

(iv) Hair loss.

(v) Sore mouth and throat, difficulty swallowing.

(vi) Permanent destruction of bone marrow leading to infection, bleeding, and possible death.

(vii) Inflammation of the lung with fever, dry cough and difficulty breathing with possible fatal lung failure.

(viii) Damage to liver with possible fatal liver failure.

(ix) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(x) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Lung scarring causing shortness of breath, infection, and fatal lung failure.

(ii) Cataract formation in the eyes, possible loss of vision.

(iii) Testicular damage in males causing sterility.

(iv) Ovarian damage in females causing premature menopause and sterility.

(v) Increased risk of second cancer.

(s) Laparoscopic/Thoracoscopic surgery (including robotic surgery).

(1) Laparoscopic/Thoracoscopic risks. The following shall be in addition to risks and hazards of the same surgery when done as an open procedure.

(A) Damage to adjacent structures.

(B) Abscess and infectious complications.

(C) Trocar site complications (e.g., hematoma/bleeding, leakage of fluid, or hernia formation).

(D) Cardiac dysfunction.

(E) Postoperative pneumothorax.

(F) Subcutaneous emphysema.

(G) Conversion of the procedure to an open procedure.

(2) Use of a power morcellator in laparoscopic surgery.

(A) If cancer is present, may increase the risk of the spread of cancer.

(B) Increased risk of damage to adjacent structures.

(t) Pain management procedures.

(1) Neuroaxial procedures (injections into or around spine).

(A) Failure to reduce pain or worsening of pain.

(B) Nerve damage including paralysis (inability to move).

(C) Epidural hematoma (bleeding in or around spinal canal).

(D) Infection.

(E) Seizure.

(F) Persistent leak of spinal fluid which may require surgery.

(G) Breathing and/or heart problems including cardiac arrest (heart stops beating).

(H) Loss of vision.

(I) Stroke.

(2) Peripheral and visceral nerve blocks and/or ablations.

(A) Failure to reduce pain or worsening of pain.

(B) Bleeding.

(C) Nerve damage including paralysis (inability to move).

(D) Infection.

(E) Damage to nearby organ or structure.

(F) Seizure.

(3) Implantation of pain control devices.

(A) Failure to reduce pain or worsening of pain.

(B) Nerve damage including paralysis (inability to move).

(C) Epidural hematoma (bleeding in or around spinal canal).

(D) Infection.

(E) Persistent leak of spinal fluid which may require surgery.

(u) Dental Surgery Procedures.

(1) Oral surgery.

(A) Extraction (removing teeth).

(i) Dry socket (inflammation in the socket of a tooth).

(ii) Permanent or temporary numbness or altered sensation.

(iii) Sinus communication (opening from tooth socket into the sinus cavity).

(iv) Fracture of alveolus and/or mandible (upper and/or lower jaw).

(B) Surgical exposure of tooth in order to facilitate orthodontics.

(i) Injury to tooth or to adjacent teeth and structures.

(ii) Failure to get proper attachment to tooth requiring additional procedure.

(2) Endodontics (deals with diseases of the dental pulp).

(A) Apicoectomy (surgical removal of root tip or end of the tooth, with or without sealing it).

(i) Shrinkage of the gums and crown margin exposure.

(ii) Sinus communication (opening from tooth socket into the sinus cavity).

(iii) Displacement of teeth or foreign bodies into nearby tissues, spaces, and cavities.

(B) Root amputation (surgical removal of portion of one root of a multi-rooted tooth).

(i) Shrinkage of the gums and crown margin exposure.

(ii) Sinus communication (opening from tooth socket into the sinus cavity).

(iii) Displacement of teeth or foreign bodies into nearby tissues, spaces, and cavities.

(C) Root canal therapy (from an occlusal access in order to clean and fill the canal system).

(i) Instrument separation (tiny files which break within the tooth canal system).

(ii) Fenestration (penetration of walls of tooth into adjacent tissue).

(iii) Failure to find and/or adequately fill all canals.

(iv) Expression of irrigants or filling material past the apex of the tooth (chemicals used to clean or materials used to fill a root may go out the end of the root and cause pain or swelling).

(v) Damage to adjacent tissues from irrigants or clamps.

(vi) Fracture or loss of tooth.

(3) Periodontal surgery (surgery of the gums).

(A) Gingivectomy and gingivoplasty (involves the removal of soft tissue).

(i) Tooth sensitivity to hot, cold, sweet, or acid foods.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(B) Anatomical crown exposure (removal of enlarged gingival tissue and supporting bone to provide an anatomically correct gingival relationship).

(i) Tooth sensitivity to hot, cold, sweet, or acid foods.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(C) Gingival flap procedure, including root planing (soft tissue flap is laid back or removed to allow debridement

(cleaning) of the root surface and the removal of granulation tissue (unhealthy soft tissue)).

(i) Permanent or temporary numbness or altered sensation.

(ii) Tooth sensitivity to hot, cold, sweet, or acid foods.

(iii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(D) Apically positioned flap (used to preserve keratinized gingival (attached gum tissue) in conjunction with osseous resection (removal) and second stage implant procedure).

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(E) Clinical crown lengthening (removal of gum tissue and/or bone from around tooth).

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(F) Osseous surgery-including flap entry and closure (modification of the bony support of the teeth).

(i) Permanent or temporary numbness or altered sensation.

(ii) Tooth sensitivity to hot, cold, sweet, or acid foods.

(iii) Loss of tooth.

(iv) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(G) Guided tissue regeneration-resorbable barrier.

(i) Permanent or temporary numbness or altered sensation.

(ii) Accidental aspiration (into the lungs) of foreign matter.

(iii) Rejection of donor materials.

(H) Guided tissue regeneration-nonresorbable barrier (includes membrane removal).

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Accidental aspiration (into the lungs) of foreign matter.

(iv) Rejection of donor materials.

(I) Pedicle soft tissue graft procedure.

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Rejection of donor materials.

(J) Free soft tissue graft protection-including donor site surgery.

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Rejection of graft.

(K) Sub epithelial connective tissue graft procedures.

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Rejection of graft.

(L) Distal or proximal wedge procedure (taking off gum tissue from the very back of the last tooth or between teeth). Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(M) Soft tissue allograft and connective tissue double pedicle graft from below (creates or augments gum tissue).

(i) Permanent or temporary numbness or altered sensation.

(ii) Tooth sensitivity to hot, cold, sweet, or acid foods.

(iii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(4) Implant procedures.

(A) Bone grafting (replacing missing bone).

(i) Permanent or temporary numbness or altered sensation.

(ii) Rejection of bone particles or graft from donor or recipient sites.

(iii) Damage to adjacent teeth or bone.

(B) Surgical placement of implant body.

(i) Blood vessel or nerve injury.

(ii) Damage to adjacent teeth or bone fracture.

(iii) Sinus communication (opening from tooth socket into the sinus cavity).

(iv) Failure of implant requiring corrective surgery.

(v) Cyst formation, bone loss, or gum disease around the implant.

(v) Plastic surgery and surgery of the integumentary system.

(1) Augmentation mammoplasty (breast enlargement with implant).

(A) Bleeding around implant.

(B) Sensory changes or loss of nipple sensitivity.

(C) Failure, deflation, or leaking of implant requiring replacement.

(D) Worsening or unsatisfactory appearance including asymmetry (unequal size or shape).

- (E) Problems with or the inability to breastfeed.
- (F) Capsular contracture (hardening of breast).
- (2) Bilateral breast reduction.
  - (A) Skin flap or fat necrosis (injury or death of skin and fat).
  - (B) Loss of nipple or areola.
  - (C) Sensory changes or loss of nipple sensitivity.
  - (D) Problems with or the inability to breastfeed.
  - (E) Worsening or unsatisfactory appearance including asymmetry (unequal size or shape or not desired size).
- (3) Rhinoplasty or nasal reconstruction with or without septoplasty (repairing the middle wall of the nose).
  - (A) Development of new problems, such as perforation of the nasal septum (hole in wall between the right and left halves of the nose) or breathing difficulty.
  - (B) Spinal fluid leak.
  - (C) Worsening or unsatisfactory appearance.
- (4) Reconstruction and/or plastic surgery operations of the face and neck.
  - (A) Impairment of regional organs, such as eye or lip function.
  - (B) Recurrence of the original condition.
  - (C) Worsening or unsatisfactory appearance.
- (5) Liposuction (removal of fat by suction).
  - (A) Shock.
  - (B) Pulmonary fat embolism (fat escaping with possible damage to vital organs).
  - (C) Damage to skin with possible skin loss.
  - (D) Loose skin.
  - (E) Worsening or unsatisfactory appearance.
- (6) Breast reconstruction with other flaps and/or implants.
  - (A) Bleeding around implant.
  - (B) Sensory changes or loss of nipple sensitivity.
  - (C) Failure, deflation, or leaking of implant requiring replacement.
  - (D) Damage to internal organs.
  - (E) Worsening or unsatisfactory appearance including asymmetry (unequal size or shape).
- (7) Nipple Areolar Reconstruction.
  - (A) Loss of graft.
  - (B) Unsatisfactory appearance.
- (8) Panniclectomy (removal of skin and fat).
  - (A) Persistent swelling in the legs.
  - (B) Nerve damage.
  - (C) Worsening or unsatisfactory appearance.
- (9) Tendonitis, tendon release, and trigger releases.

- (A) Recurrence of symptoms.
- (B) Damage to blood vessels, nerves, tendons, or muscles.
- (C) Worsening function.
- (10) Breast reconstruction with flaps.
  - (A) Damage to blood vessels, nerves, or muscles.
  - (B) Loss of flap possibly requiring additional surgery.
  - (C) Damage to internal organs.
  - (D) Increased risk of abdominal wall complications with pregnancy.
  - (E) Abdominal hernias with abdominal flaps.
  - (F) Chronic abdominal pain with abdominal flaps.
  - (G) Worsening or unsatisfactory appearance including asymmetry (unequal size or shape).
- (11) Flap or graft surgery.
  - (A) Damage to blood vessels, nerves, or muscles.
  - (B) Deep vein thrombosis (blood clot in legs or arms).
  - (C) Loss of flap possibly requiring additional surgery.
  - (D) Worsening or unsatisfactory appearance.
- (12) Tendons, nerves, or blood vessel repair.
  - (A) Damage to nerves.
  - (B) Deep vein thrombosis (blood clot in legs or arms).
  - (C) Rupture of repair.
  - (D) Worsening of function.

(13) Reconstructive and/or plastic surgical procedures of the eye and eye region, such as blepharoplasty, tumor, fracture, lacrimal surgery, foreign body, abscess, or trauma. See subsection (f)(4) of this section (relating to eye treatments and procedures).

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 August 2, 2018.

TRD-201803342

Noah Appel, M.D.

Chairman

Texas Medical Disclosure Panel

Effective date: August 22, 2018

Proposal publication date: March 30, 2018

For further information, please call: (512) 776-6972

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**TITLE 26. HEALTH AND HUMAN SERVICES**

**PART 1. HEALTH AND HUMAN SERVICES COMMISSION**

**CHAPTER 900. HEALTH AND SPECIALTY CARE SYSTEM**

## SUBCHAPTER B. STATE SUPPORTED LIVING CENTER COMMUNITY SERVICES

### 26 TAC §900.101

The Texas Health and Human Services Commission (HHSC) adopts new Chapter 900, Health and Specialty Care System, Subchapter B, State Supported Living Center Community Services, §900.101, concerning Clinical Services to Individuals Residing in the Community. The rule is adopted without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2941), and therefore will not be republished.

#### BACKGROUND AND JUSTIFICATION

The new section is necessary to comply with Texas Human Resources Code §161.080(c)(1), which requires HHSC to establish a list of services state supported living centers (SSLCs) may provide to individuals who are not residents of SSLCs.

Senate Bill (S.B.) 547, 85th Legislature, Regular Session, 2017, amended the Texas Human Resources Code to remove certain conditions on an SSLC's authority to provide non-residential services to support an individual with intellectual or developmental disabilities. This rule, required by S.B. 547, establishes a list of services an SSLC may provide to individuals who are not SSLC residents. The services are: physical therapy, occupational therapy, speech and language therapy, dental services, primary care provider services, psychiatry services, behavioral health services, adaptive aids, and durable medical equipment. SSLCs will not begin providing services until additional funding is received.

HHSC has recently made changes to its internal organizational structure. The title for the "State Operated Facilities" division of the agency was changed to "Health and Specialty Care System." Therefore, the name of new Chapter 900 has been revised for consistency.

#### COMMENTS

The 30-day comment period ended June 11, 2018.

During this period, HHSC received comments regarding the proposed rule from one commenter, specifically The Disability Policy Consortium. A summary of the comments and HHSC's response follows.

**Comment:** The commenter focused on the statutory authority of HHSC to create a community services program on SSLC campuses. Further comment discussed the lack of information on the creation of a community services program.

**Response:** The comments are outside of the scope of the legislative mandate for S.B. 547, which required a rule be adopted for a list of services an SSLC may provide to individuals within the community and procedures for a fee schedule for those services. No changes were made to the rule based on these comments.

#### STATUTORY AUTHORITY

The new section is authorized by Texas Human Resources Code §161.080.

The new section is adopted under Texas Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision

of services by the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid 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 July 31, 2018.

TRD-201803299

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: September 1, 2018

Proposal publication date: May 11, 2018

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## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

#### SUBCHAPTER Q. PRINTING AND ISSUANCE OF WARRANTS

##### 34 TAC §5.400

The Comptroller of Public Accounts adopts new §5.400, concerning printing and issuance of warrants, without changes to the proposed text as published in the June 15, 2018, issue of the *Texas Register* (43 TexReg 3866). The new section will be under new Subchapter Q, Printing and Issuance of Warrants.

New §5.400 governs the comptroller's delegation of the authority to print and issue state warrants under Government Code, §403.060(a). The rule provides the procedures to be used by a state agency wishing to obtain authority from the comptroller to issue and print state warrants. The rule is authorized under Government Code, §403.060(c) and §403.016(g).

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to Government Code, §403.060(c) which allows the comptroller to adopt rules to implement the provisions of Government Code, §403.060(a).

The new section implements Government Code, §403.060(a).

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 August 3, 2018.

TRD-201803350



Victoria North  
Chief Counsel, Fiscal and Agency Affairs Legal Services Division  
Comptroller of Public Accounts  
Effective date: August 23, 2018  
Proposal publication date: June 15, 2018  
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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

#### CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION

##### SUBCHAPTER B. CORRECTIONAL CAPACITY

###### 37 TAC §152.21

###### Adopted Amendments Preamble

The Texas Board of Criminal Justice adopts amendments to §152.21, concerning the Purpose of subchapter B, without changes to the proposed text as published in the March 9, 2018, issue of the *Texas Register* (43 TexReg 1411).

The adopted amendments are necessary to conform the language to *Texas Register* preferences.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.013, 499.102 - 499.110.

Cross Reference to Statutes: None.

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 August 1, 2018.

TRD-201803334  
Sharon Howell  
General Counsel  
Texas Department Of Criminal Justice  
Effective date: August 21, 2018  
Proposal publication date: March 9, 2018  
For further information, please call: (936) 473-6700



###### 37 TAC §152.23

###### Adopted Amendments Preamble

The Texas Board of Criminal Justice adopts amendments to §152.23, concerning the Definitions used in subchapter B, without changes to the proposed text as published in the March 9, 2018, issue of the *Texas Register* (43 TexReg 1411).

The adopted amendments are necessary to make grammatical updates and to conform the language to *Texas Register* preferences.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.013, §§499.102 - 499.110.

Cross Reference to Statutes: None.

###### §152.23. Definitions.

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

(1) De minimis increase in maximum rated unit capacity is the addition of 2% or fewer beds to the capacity of a unit on a one time basis as originally established by the Texas Board of Criminal Justice (TBCJ), and that the addition will not increase the monthly gross payroll of the unit to which it is added by \$500,000 or more.

(2) H.B. 124 is the statutory process for increases other than a de minimis increase to capacity in accordance with Texas Government Code §§499.102-499.110, as enacted by H.B. 124, Acts 1991, 72nd Leg., ch. 655.

(3) Maximum rated unit capacity is the greatest density of offenders in relation to space available for offender housing as established by the TBCJ.

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 August 1, 2018.

TRD-201803335  
Sharon Howell  
General Counsel  
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Effective date: August 21, 2018  
Proposal publication date: March 9, 2018  
For further information, please call: (936) 437-6700



###### 37 TAC §152.25

###### Adopted Amendments Preamble

The Texas Board of Criminal Justice adopts amendments to §152.25, concerning the Maximum Rated Capacity of Individual Units, without changes to the proposed text as published in the March 9, 2018, issue of the *Texas Register* (43 TexReg 1412).

The adopted amendments increase the maximum rated capacities at select units and otherwise make minor adjustments.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.013, 494.001, 499.101 - 499.110.

Cross Reference to Statutes: None.

###### §152.25. Maximum Rated Capacity of Individual Units.

The Texas Board of Criminal Justice establishes the following maximum rated capacities for existing units.  
Figure: 37 TAC §152.25

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 August 1, 2018.

TRD-201803336

Sharon Howell

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Texas Department of Criminal Justice

Effective date: August 21, 2018

Proposal publication date: March 9, 2018

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### 37 TAC §152.27

#### Adopted Amendments Preamble

The Texas Board of Criminal Justice adopts amendments to §152.27, concerning Unit and System Capacity Standards without changes to the proposed text as published in the March 9, 2018, issue of the *Texas Register* (43 TexReg 1412).

The adopted amendments are necessary to conform the language to the definition contained in rule 152.23.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013 and §§499.102 - 499.110.

Cross Reference to Statutes: None.

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 August 1, 2018.

TRD-201803337

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Effective date: August 21, 2018

Proposal publication date: March 9, 2018

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## PART 15. TEXAS FORENSIC SCIENCE COMMISSION

### CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

#### SUBCHAPTER A. ACCREDITATION

##### 37 TAC §651.7

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 Texas Administrative Code §651.7 without changes to the proposed text as published in the June 15, 2018, issue of the *Texas Register* (43 TexReg 3868). This adds the forensic discipline "workplace/employment drug testing" to the list of forensic disciplines exempt from Commission accreditation requirements and to remove "forensic psychology, including profiling, memory analysis and other forms of forensic psychology" from the list of forensic disciplines exempt from Commission accreditation requirements. "Forensic psychology" does not require a rule exemption because the discipline does not entail an expert examination or test performed on physical

evidence. The amendments are necessary to update the rule language in Title 37, Part 1, Chapter 651, Subchapter A, §651.7 to reflect adoptions made by the Commission at its April 20, 2018, quarterly meeting.

Summary of Comments. No comments were received regarding the amendments to this section.

The amendments are made in accordance with the Commission's accreditation authority under Tex. Code. Crim. Proc. art. 38.01§4-d(c).

Cross reference to statute. The adoption affects 37 Texas Administrative Code §651.7.

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 August 6, 2018.

TRD-201803366

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: August 26, 2018

Proposal publication date: June 15, 2018

For further information, please call: (512) 936-0770



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 20. TEXAS WORKFORCE COMMISSION

#### CHAPTER 813. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM EMPLOYMENT AND TRAINING

##### SUBCHAPTER B. ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES AND SUPPORT SERVICES

###### 40 TAC §813.13

The Texas Workforce Commission (TWC) adopts amendments to the following section of Chapter 813, relating to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T), with changes, as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2719):

Subchapter B. Access to Employment and Training Activities and Support Services, §813.13

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 813 rule change is to amend the rule to clarify the respective roles of TWC and the Texas Health and Human Services Commission (HHSC) in the good cause determination process.

The US Department of Agriculture Food and Nutrition Service (FNS) conducted a SNAP E&T Management Evaluation (ME) review in June 2015 to evaluate TWC's operation and compliance with established policies, regulatory requirements, and quality standards. FNS determined that TWC's process with respect to good cause determination did not fully comply with federal law and regulations requiring that only merit staff be permitted to conduct SNAP certifications, and prohibiting SNAP E&T funds from being used for certification activities. FNS emphasized that HHSC must be the agency responsible for determining good cause, with TWC's input limited to forwarding all claims for good cause to HHSC for determination.

Section 813.13 of TWC's current SNAP E&T rules sets out the criteria for good cause determinations, specifying that Local Workforce Development Boards (Boards) make good cause determinations for mandatory work registrants and for exempt recipients who participate voluntarily in SNAP E&T services. However, based on the finding by FNS during the ME review, TWC must amend the rule to reflect that HHSC is the agency responsible for determining good cause, limiting TWC's input to Board staff forwarding all claims for good cause to HHSC for determination and to reflect that good cause does not apply to exempt recipients who participate voluntarily in SNAP E&T services.

## PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

### SUBCHAPTER B. ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES AND SUPPORT SERVICES

TWC adopts the following amendments to Subchapter B:

#### §813.13. Good Cause for Mandatory Work Registrants Who Participate in SNAP E&T Services

Section 813.13 is renamed "Good Cause for Mandatory Work Registrants Who Participate in SNAP E&T Services," because good cause does not apply to exempt recipients who voluntarily participate in SNAP E&T services.

Section 813.13(a):

--adds language to clarify that good cause applies only to work registrants who are required to participate in SNAP E&T services;

--deletes "exempt recipients who voluntarily participate in SNAP E&T service"; and

--clarifies that all claims for good cause are forwarded to HHSC for determination.

Section 813.13(b) is deleted because Boards do not make good cause determinations.

Section 813.13(c):

--deletes "reasons constitutes good cause" and adds "legitimate reasons for failing to participate in SNAP E&T activities" for clarity;

--deletes "exempt recipient who voluntarily";

--changes "Texas Workforce Center" to "Workforce Solutions Office"; and

--is relettered as subsection (b).

Section 813.13(d) is relettered as subsection (c) and amended to clarify that Boards will monitor good cause monthly and share results with HHSC if there is a change in the circumstances surrounding the good cause exception. Paragraph (2) is deleted because Boards cannot extend good cause.

No comments were received. However, TWC amended subsection (a) to remove unintended ambiguity regarding the final authority over approval of good cause claims by more clearly explaining that a Board shall ensure that all good cause claims are forwarded to HHSC for determination.

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

The adopted rule affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

#### §813.13. Good Cause for Mandatory Work Registrants Who Participate in SNAP E&T Services.

(a) Good cause applies only to mandatory work registrants who are required to participate in SNAP E&T services. A Board shall ensure that all good cause claims are forwarded to HHSC for determination before SNAP benefits are denied when mandatory work registrants state that they have a legitimate reason for:

- (1) failing to respond to the outreach notification; and
- (2) failing to participate in SNAP E&T activities.

(b) For purposes of this chapter, the following are legitimate reasons for failing to respond to outreach notifications or failing to participate in SNAP E&T activities:

- (1) temporary illness or incapacitation;
- (2) court appearance;
- (3) caring for a physically or mentally disabled household member who requires the recipient's presence in the home;
- (4) no available transportation and the distance prohibits walking; or no available job within reasonable commuting distance, as defined by the Board;

(5) distance from the home of the mandatory work registrant who participates in SNAP E&T services, to the Workforce Solutions Office, or employment service provider requires commuting time of more than two hours a day (not including taking a child to and from a child care facility), the distance prohibits walking, and there is no available transportation;

(6) farmworkers who are away from their permanent residence or home base, who travel to work in an agriculture or related industry during part of the year, and are under contract or similar agreement with an employer to begin work within 30 days of the date that the individual notified the Board of his or her seasonal farmwork assignment;

(7) an inability to obtain needed child care, as defined by the Board and based on the following reasons:

(A) informal child care by a relative or child care provided under other arrangements is unavailable or unsuitable, and based on, where applicable, Board policy regarding child care. Informal child care may also be determined unsuitable by the parent;

(B) eligible formal child care providers, as defined in Chapter 809 of this title (relating to Child Care Services), are unavailable;

(C) affordable formal child care arrangements within maximum rates established by the Board are unavailable; and

(D) formal or informal child care within a reasonable distance from home or the work site is unavailable;

(8) an absence of other support services necessary for participation;

(9) receipt of a job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law;

(10) an individual or family crisis or a family circumstance that may preclude participation, including substance abuse and mental health and disability-related issues, provided that the mandatory work registrant who participates in SNAP E&T services engages in problem resolution through appropriate referrals for counseling and support services; or

(11) an individual is a victim of family violence.

(c) A Board shall ensure that good cause is monitored at least on a monthly basis and results are shared with HHSC if there is a change in the circumstances surrounding the good cause exception.

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 August 1, 2018.

TRD-201803307

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: August 21, 2018

Proposal publication date: May 4, 2018

For further information, please call: (512) 680-1655



## CHAPTER 852. PURCHASE OF MEDICAL GOODS AND SERVICES BY THE TEXAS WORKFORCE COMMISSION-VOCATIONAL REHABILITATION SERVICES

### SUBCHAPTER A. PURCHASE OF GOODS AND SERVICES

#### 40 TAC §852.1

The Texas Workforce Commission (TWC) adopts the repeal of Chapter 852 in its entirety, relating to the Purchase of Goods and Services by the Texas Workforce Commission - Vocational Rehabilitation Services, without changes, as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2721).

#### PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 852 repeal is to comply with Texas Labor Code §352.101, which required TWC to integrate the two separate Vocational Rehabilitation (VR) programs--VR for individuals with visual impairments (Blind Services) and VR for individuals with other disabilities (Rehabilitation Services)--

into a single VR program. Consistent with §352.101, on October 1, 2017, the VR programs for individuals with visual impairments and for individuals with other disabilities were integrated into a single VR program. The rules to support this integration were effective November 6, 2017.

Currently, TWC's Chapter 852, Purchase of Medical Goods and Services by the Texas Workforce Commission - Vocational Rehabilitation Services, contains a single rule, §852.1, relating to Alternative Purchasing Methods - Rates for Medical Services. To align this purchasing rule with other TWC VR procurement and programmatic operations, this chapter should be repealed. Section 852.1 should be adopted as a rule in Chapter 856 and updated to reflect statutory changes.

No comments were received.

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

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 August 1, 2018.

TRD-201803308

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: August 21, 2018

Proposal publication date: May 4, 2018

For further information, please call: (512) 680-1655



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

The Texas Workforce Commission (TWC) adopts new Chapter 853, relating to Independent Living Services for Older Individuals Who Are Blind (ILS-OIB), without changes, as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2722), comprising the following subchapters:

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

Subchapter B. Services, §853.10 and §853.11

Subchapter C. Customer Financial Participation, §853.20 - §853.22

Subchapter D. Case Documentation, §853.30

Subchapter E. Customer's Rights, §853.40 and §853.41.

The rules will not be republished.

#### PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the new Chapter 853 rules is to develop rules to establish the Independent Living Services for Older Individuals Who Are Blind (ILS-OIB) services as in-house services delivered by TWC. As transferred to TWC in 2016, these rules, found at Subchapter D of current TWC Chapter 854 rules, regarding the Division for Blind Services, supported plans for this program to

be outsourced through an agreement between the Texas Workforce Commission (TWC) and the Texas Health and Human Services Commission (HHSC). However, following input from the federal Rehabilitation Services Administration (RSA), it was decided that TWC would deliver ILS-OIB services in-house. Therefore, new Chapter 853 is proposed to reflect this service delivery model. New Chapter 853 will contain all rules for the ILS-OIB program. In a separate, but concurrent rulemaking, TWC proposes the repeal of Chapter 854, Subchapter D.

Additionally, the adopted amendments are necessary to comply with Texas Labor Code §352.101, which required TWC to integrate the two separate vocational rehabilitation (VR) programs--VR for individuals with visual impairments (Blind Services) and VR for individuals with other disabilities (Rehabilitation Services)--into a single VR program. Consistent with §352.101, on October 1, 2017, the VR programs for individuals with visual impairments and for individuals with other disabilities became integrated into a single VR program. The rules to support this integration were effective November 6, 2017.

With the transfer of VR services from the Texas Department of Assistive and Rehabilitative Services (DARS) to TWC, references within the ILS-OIB rules are no longer consistent with state law. For example, Chapter 854 contains many references to DARS and its organizational structure, and incorporates DARS' terminology, such as referring to individuals receiving services as "consumers." TWC proposes amendments to replace the outdated agency and division names and position titles, as well as references to state statutes and rules in Chapter 854, now being moved to Chapter 853. TWC also proposes to replace the word "consumer" with "customer" to be consistent with TWC terminology.

## PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

TWC adopts new Subchapter A, Independent Living Services for Older Individuals Who Are Blind, as follows:

#### §853.1. Definitions

New §853.1 replaces repealed §854.112 and updates its provisions to include the definitions needed to make administration of the ILS-OIB program consistent with federal regulations at 34 CFR Part 367. The definition for "blind" is taken from state law at Human Resources Code §91.002(2). The definition for "low vision" is taken from §91.002(5), with modifications to describe the condition and include a combination of visual limitations. To ensure consistent application of customer participation and provide transparency, the term "Federal Poverty Guidelines" includes a legal citation in its definition. The rule also adds a reference to the definitions in state law and federal regulations relating to services, updates the division name, and replaces the word "consumer" with "customer."

#### §853.2. Referral

New §853.2 identifies the referral phase, the information needed to initiate a referral, and the potential referral sources for ILS-OIB services. It also explains that minimal services can be provided in the referral phase, but that full delivery of ILS-OIB services is conditional upon receipt of a completed application from an individual meeting all eligibility requirements.

#### §853.3. Accessible Communication

New §853.3, relating to accessible communication, underscores TWC's commitment to providing members of the public who have disabilities and are seeking information or other TWC services access to and use of electronic and information resources comparable to the access and use provided to members of the public without disabilities, unless such access imposes a significant difficulty or expense on TWC under Texas Government Code §2054.460. The rule explains that applicants and customers are entitled to request and to receive communication relating to ILS-OIB services in alternate formats or by alternate methods.

#### §853.4. Application

New §853.4 relates to the process of application for the ILS-OIB program and specifies that a complete application requires a signature, all the information necessary to initiate an assessment of eligibility, and the customer's availability to complete the assessment.

#### §853.5. Eligibility

New §853.5 replaces repealed §854.131 and updates its provisions to establish the eligibility criteria that must be met for a customer to receive ILS-OIB services. This includes the requirement for a completed and signed application before eligibility can be determined. The section also addresses data sources for information such as the Social Security Administration, education records, and data that come directly from the applicant and the applicant's family. TWC requires a substantive evaluation of the documentation and the application to meet eligibility requirements. An eligibility decision is made within 60 days, unless there are unforeseen circumstances.

#### §853.6. Ineligibility Determination

New §853.6 adds that ineligibility can be determined only after a completed application and documentation are obtained and a substantive evaluation is performed. Customers can appeal an ineligibility determination within TWC. Customers must be provided information on the Client Assistance Program (CAP) operated by Disability Rights Texas (DRTx).

### SUBCHAPTER B. SERVICES

TWC adopts new Subchapter B, Services, as follows:

#### §853.10. Independent Living Plan

New §853.10 replaces repealed §854.132 and updates its provisions to add information about the Independent Living Plan (ILP) that is developed between the customer and staff serving Older Individuals Who Are Blind (OIB staff). This plan must be developed and agreed to within 90 days of eligibility determination. The plan guides customer services and goals and specifies progress in meeting the customer's objectives. The plan is reviewed at least once each year. A customer can waive the receipt of a written plan; however, OIB staff must maintain a written ILP in the customer's electronic record.

#### §853.11. Scope of Services

New §853.11 replaces repealed §854.134 and updates its provisions to provide a listing of the services available to ILS-OIB customers, subject to budget constraints of the program. The list includes services provided directly by TWC, as well as those services for which the customer is referred to other entities. Services are based on 29 USC §705(17) and 34 CFR §367.3.

### SUBCHAPTER C. CUSTOMER FINANCIAL PARTICIPATION

TWC adopts new Subchapter C, Customer Financial Participation, as follows:

#### §853.20. Individuals Who Receive Social Security Income or Social Security Disability Insurance

New §853.20 specifies that, based on 34 CFR §367.67, customers who are recipients of Social Security Income (SSI) or Social Security Disability Insurance (SSDI) are not required to participate in the financial costs of the service through the customer financial participation system.

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

New §853.21 replaces repealed §854.140 and updates its provisions to add that OIB staff provides independent living services at no cost to customers, retaining the business practice in place previously at DARS, the predecessor agency. Under 34 CFR §367.67(a), a state is neither required to charge nor prohibited from charging customers for ILS-OIB services. However, 34 CFR §367.67(b) establishes that, where a state chooses to allow other service providers to charge customers for ILS-OIB services, a state's policies must meet certain criteria to assure transparency, equal treatment, and access to services. Additional services may be provided and the customer's fee predetermined and agreed on by the customer. The customer's participation agreement will be based on information about the customer's household size, annual gross income, allowable deductions, comparable services or benefits, and the Federal Poverty Guidelines at <https://aspe.hhs.gov/poverty-guidelines>.

New §853.21 also sets forth requirements and conditions related to:

--customer or customer representative provision of the information or choice not to provide the information, in which case the customer shall pay the entire cost of services;

--reporting changes to any of the information provided as soon as possible and signing a new customer participation agreement thereupon;

--the stipulation that any adjusted fee takes effect at the beginning of the following month and is not retroactive;

--the requirement for OIB staff to develop a process for reconsidering and adjusting the customer's fee in the event of documented extraordinary circumstance;

--a list of such circumstances; and

--stipulations on the use of customer participation fees.

#### §853.22. Availability of Comparable Services and Benefits

New §853.22(a) specifies that if comparable services or benefits are available to the customer under any other program, the customer must use those benefits first. This includes services that are included under the customer's medical and dental insurance, including government insurance.

New §853.22(b) stipulates that TWC must not make this determination in cases in which:

--comparable services or benefits might exist under another program, but are not available to the customer at the time needed; and

--determining the availability of the comparable services and benefits under another program would delay the provision of services to customers who could be at medical risk; or

--the determination would interrupt or delay progress toward achieving the customer's ILP goals.

#### SUBCHAPTER D. CASE DOCUMENTATION

TWC adopts new Subchapter D, Case Documentation, as follows:

#### §853.30. Case Closure

New §853.30 adds that ILS-OIB services are typically completed within 18 months. Case closure can also occur when the customer meets certain circumstances, set forth in paragraphs (1) - (8). Customers are informed of case closure, and there is an avenue for appeal. Post-closure services can be provided for up to six months.

#### SUBCHAPTER E. CUSTOMER'S RIGHTS

TWC adopts new Subchapter E, Customer's Rights, as follows:

#### §853.40. Rights of Customers

New §853.40 replaces repealed §854.150 and updates its provisions to provide safeguards for TWC customers on their rights to appeal any aspect of eligibility determination, service delivery, customer participation, or any other aspect of ILS-OIB services. The right to file a complaint with the CAP is specified in accordance with CFR §367.68 and 29 USC §717.

#### §853.41. Right to Appeal

New §853.41 provides notice that a customer has a right to appeal in accordance with TWC Chapter 850 rules, relating to Vocational Rehabilitation Services Administrative Rules and Procedures.

No comments were received.

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

#### 40 TAC §§853.1 - 853.6

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

The new rules affect Title 4, Texas Labor Code, particularly Chapter 351.

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 August 1, 2018.

TRD-201803310

Jason Vaden

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Texas Workforce Commission

Effective date: August 21, 2018

Proposal publication date: May 4, 2018

For further information, please call: (512) 680-1655



#### SUBCHAPTER B. SERVICES

#### 40 TAC §§853.10, §853.11

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

The new rules affect Title 4, Texas Labor Code, particularly Chapter 351.

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 August 1, 2018.

TRD-201803311

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: August 21, 2018

Proposal publication date: May 4, 2018

For further information, please call: (512) 680-1655



### SUBCHAPTER C. CUSTOMER FINANCIAL PARTICIPATION

#### 40 TAC §§853.20 - 853.22

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

The new rules affect Title 4, Texas Labor Code, particularly Chapter 351.

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 August 1, 2018.

TRD-201803312

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: August 21, 2018

Proposal publication date: May 4, 2018

For further information, please call: (512) 680-1655



### SUBCHAPTER D. CASE DOCUMENTATION

#### 40 TAC §853.30

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

The new rules affect Title 4, Texas Labor Code, particularly Chapter 351.

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 August 1, 2018.

TRD-201803315

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: August 21, 2018

Proposal publication date: May 4, 2018

For further information, please call: (512) 680-1655



### SUBCHAPTER E. CUSTOMER'S RIGHTS

#### 40 TAC §§853.40, §853.41

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

The new rules affect Title 4, Texas Labor Code, particularly Chapter 351.

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 August 1, 2018.

TRD-201803317

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: August 21, 2018

Proposal publication date: May 4, 2018

For further information, please call: (512) 680-1655



### CHAPTER 854. DIVISION FOR BLIND SERVICES

The Texas Workforce Commission (TWC) adopts the repeal of the following sections of Chapter 854, relating to the Division for Blind Services, without changes, as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2729):

Subchapter A. Criss Cole Rehabilitation Center, §§854.1 - 854.7

Subchapter D. Independent Living Services for Older Individuals Who Are Blind, §§854.110 - 854.112, 854.120, 854.130 - 854.134, 854.140 - 854.142, 854.150, 854.151, 854.160, 854.170

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 854 Subchapter A, Criss Cole Rehabilitation Center rule change is to comply with Texas Labor Code §352.101. Section 352.101 required TWC to integrate the two Vocational Rehabilitation (VR) programs--VR for individuals with visual impairments (Blind Services) and VR for individuals with other disabilities (Rehabilitation Services)--into a single VR program. Consistent with §352.101, on October 1, 2017, the VR programs for individuals with visual impairments and for individuals with other disabilities were integrated into a

single VR program. The rules to support this integration were effective November 6, 2017. TWC proposes that a new subchapter in Chapter 856 contain all rules for the Criss Cole Rehabilitation Center (CCRC) program. Therefore, TWC adopts the repeal of Chapter 854, Subchapter A and Subchapter D.

In August 2016, the Texas Health and Human Services Commission promulgated new rules for the Independent Living Services for Older Individuals Who Are Blind (ILS-OIB) program. As transferred to TWC, these rules, found at Subchapter D of current TWC Chapter 854 rules, supported plans for this program to be outsourced. However, as TWC provides ILS-OIB services as in-house services, the rules must be revised to reflect this service-delivery model.

Currently, program rules for ILS-OIB are located in Chapter 854, Subchapter D. In a separate but concurrent rulemaking, TWC adopts new Chapter 853, to contain all rules for the ILS-OIB program.

## PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

### SUBCHAPTER A. CRISS COLE REHABILITATION CENTER

TWC adopts the repeal of Subchapter A, Criss Cole Rehabilitation Center, in its entirety:

#### §854.1. Purpose

Section 854.1 is repealed. This section is no longer needed in this chapter.

#### §854.2. Legal Authority

Section 854.2 is repealed. This section is no longer needed in this chapter.

#### §854.3. Definitions

Section 854.3 is repealed. The information in this section is being incorporated into new Chapter 856, Subchapter G, in a separate but concurrent rulemaking adoption that groups common rules that address TWC's VR program.

#### §854.4. Eligibility

Section 854.4 is repealed. The information in this section is being incorporated into new Chapter 856, Subchapter G, in a separate but concurrent rulemaking adoption that groups common rules that address TWC's VR program.

#### §854.5. Services

Section 854.5 is repealed. The information in this section is being incorporated into new Chapter 856, Subchapter G, in a separate but concurrent rulemaking adoption that groups common rules that address TWC's VR program.

#### §854.6. Consumer Participation and Comparable Services and Benefits

Section 854.6 is repealed. The information in this section is being incorporated into new Chapter 856, Subchapter G, in a separate but concurrent rulemaking adoption that groups common rules that address TWC's VR program.

#### §854.7. Payment of Shift Differentials

Section 854.7 is repealed. The information in this section is being incorporated into new Chapter 856, Subchapter G, in a separate but concurrent rulemaking adoption that groups common rules that address TWC's VR program.

### SUBCHAPTER D. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

TWC adopts the repeal of Subchapter D, Independent Living Services for Older Individuals Who Are Blind, in its entirety:

#### SUBCHAPTER D. DIVISION 1: GENERAL RULES

##### §854.110. Purpose

Section 854.110 is repealed. This section is no longer needed in this chapter.

##### §854.111. Legal Authority

Section 854.111 is repealed. This section is no longer needed in this chapter.

##### §854.112. Definitions

Section 854.112 is repealed. The information in this section is being incorporated into new Chapter 853 in a separate but concurrent rulemaking adoption that consolidates TWC's ILS-OIB program rules into a new chapter.

#### SUBCHAPTER D. DIVISION 2: ALLOCATION OF FUNDS

##### §854.120. Allocation of Funds

Section 854.120 is repealed. The information in this section is being incorporated into new Chapter 853 in a separate but concurrent rulemaking adoption that consolidates TWC's ILS-OIB program rules into a new chapter.

#### SUBCHAPTER D. DIVISION 3: INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

##### §854.130. Purpose

Section 854.130 is repealed. This section is no longer needed in this chapter.

##### §854.131. Eligibility

Section 854.131 is repealed. The information in this section is being incorporated into new Chapter 853 in a separate but concurrent rulemaking adoption that consolidates TWC's ILS-OIB program rules into a new chapter.

##### §854.132. Independent Living Plan

Section 854.132 is repealed. The information in this section has been incorporated into new Chapter 853 in a separate but concurrent rulemaking adoption that consolidates TWC's ILS-OIB program rules into a new chapter.

##### §854.133. Waiting List

Section 854.133 is repealed. This section is no longer needed in this chapter.

##### §854.134. Scope of Services

Section 854.134 is repealed. The information in this section is being incorporated into new Chapter 853 in a separate but concurrent rulemaking adoption that consolidates TWC's ILS-OIB program rules into a new chapter.

#### SUBCHAPTER D. DIVISION 4: CONSUMER PARTICIPATION

##### §854.140. Consumer Participation System

Section 854.140 is repealed. The information in this section is being incorporated into new Chapter 853 in a separate but concurrent rulemaking adoption that consolidates TWC's ILS-OIB program rules into a new chapter.



§854.141. Fee Schedule Amount

Section 854.141 is repealed. This section is no longer needed in this chapter.

§854.142. Insurance Payments

Section 854.142 is repealed. The information in this section is being incorporated into new Chapter 853 in a separate but concurrent rulemaking adoption that consolidates TWC's ILS-OIB program rules into a new chapter.

SUBCHAPTER D. DIVISION 5: CONSUMER RIGHTS

§854.150. Rights of Consumers

Section 854.150 is repealed. The information in this section is being incorporated into new Chapter 853 in a separate but concurrent rulemaking adoption that consolidates TWC's ILS-OIB program rules into a new chapter.

§854.151. Complaint Process

Section 854.151 is repealed. This section is no longer needed in this chapter.

SUBCHAPTER D. DIVISION 6: TECHNICAL ASSISTANCE AND TRAINING

§854.160. Administering Agency's Role in Providing Technical Assistance

Section 854.160 is repealed. This section is no longer needed in this chapter.

SUBCHAPTER D. DIVISION 7: REFERRALS

§854.170. Expectations of Administering Agency's Employees

Section 854.170 is repealed. This section is no longer needed in this chapter.

No comments were received.

SUBCHAPTER A. CRISS COLE REHABILITATION CENTER

40 TAC §§854.1 - 854.7

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

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 81, 301, and 302.

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 August 1, 2018.

TRD-201803318

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Texas Workforce Commission

Effective date: August 21, 2018

Proposal publication date: May 4, 2018

For further information, please call: (512) 680-1655



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

DIVISION 1. GENERAL RULES

40 TAC §§854.110 - 854.112

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

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 81, 301, and 302.

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 August 1, 2018.

TRD-201803319

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: August 21, 2018

Proposal publication date: May 4, 2018

For further information, please call: (512) 680-1655



DIVISION 2. ALLOCATION OF FUNDS

40 TAC §854.120

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

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 81, 301, and 302.

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 August 1, 2018.

TRD-201803320

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: August 21, 2018

Proposal publication date: May 4, 2018

For further information, please call: (512) 680-1655



DIVISION 3. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

40 TAC §§854.130 - 854.134

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt,

amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 81, 301, and 302.

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 August 1, 2018.

TRD-201803322

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: August 21, 2018

Proposal publication date: May 4, 2018

For further information, please call: (512) 680-1655



## DIVISION 4. CONSUMER PARTICIPATION

### 40 TAC §§854.140 - 854.142

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

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 81, 301, and 302.

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 August 1, 2018.

TRD-201803323

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: August 21, 2018

Proposal publication date: May 4, 2018

For further information, please call: (512) 680-1655



## DIVISION 5. CONSUMER RIGHTS

### 40 TAC §§854.150, §854.151

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

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 81, 301, and 302.

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 August 1, 2018.

TRD-201803324

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: August 21, 2018

Proposal publication date: May 4, 2018

For further information, please call: (512) 680-1655



## DIVISION 6. TECHNICAL ASSISTANCE AND TRAINING

### 40 TAC §854.160

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

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 81, 301, and 302.

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 August 1, 2018.

TRD-201803325

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: August 21, 2018

Proposal publication date: May 4, 2018

For further information, please call: (512) 680-1655



## DIVISION 7. REFERRALS

### 40 TAC §854.170

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

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 81, 301, and 302.

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 August 1, 2018.

TRD-201803326

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: August 21, 2018

Proposal publication date: May 4, 2018

For further information, please call: (512) 680-1655



## CHAPTER 856. VOCATIONAL REHABILITATION SERVICES

The Texas Workforce Commission (TWC) adopts the following new sections to Chapter 856, relating to the Division for Rehabilitation Services, without changes, as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2733). The new sections will not be republished.

Subchapter C. Provision of Vocational Rehabilitation Services, §856.57

Subchapter G. Criss Cole Rehabilitation Center, §§856.83 - 856.88

#### PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 856 rule change is to comply with Texas Labor Code §352.101. Section 352.101 required TWC to integrate the two Vocational Rehabilitation (VR) programs--VR for individuals with visual impairments (Blind Services) and VR for individuals with other disabilities (Rehabilitation Services)--into a single VR program. Consistent with §352.101, on October 1, 2017, the VR programs for individuals with visual impairments and for individuals with other disabilities became integrated into a single VR program. The rules to support this integration were effective November 6, 2017.

Currently, TWC's Chapter 852, Purchase of Medical Goods and Services by the Texas Workforce Commission - Vocational Rehabilitation Services, contains a single rule, §851.1, Alternative Purchasing Methods--Rates for Medical Services. To align this purchasing rule with other TWC VR procurement and programmatic operations, this chapter should be repealed. Section 852.1 is proposed to be adopted as a rule in Chapter 856 and updated to reflect statutory changes.

Currently, VR program rules for the Criss Cole Rehabilitation Center (CCRC) are in Chapter 854, Subchapter A. CCRC is a comprehensive rehabilitation facility in Austin and is operated by TWC. CCRC provides evaluation, training, and related services in a residential and community setting to help customers who are blind or Deafblind accomplish their employment and independent living goals. CCRC is a VR service and should be in Chapter 856 with the remainder of the VR program rules. TWC adopts amendments to Chapter 856, Subchapter G, to contain all rules for the CCRC program. In a separate but concurrent rulemaking, TWC proposes the repeal of Chapter 854, Subchapter A.

Additionally, with the transfer of VR services from the Texas Department of Assistive and Rehabilitative Services (DARS) to TWC, Chapter 856 is no longer consistent with state law. For example, Chapter 856 contains many references to DARS and its organizational structure, and it incorporates DARS' terminology, such as referring to individuals receiving services as "consumers." TWC adopts amendments to replace the outdated agency and division names and position titles, as well as references to state statutes and rules in Chapter 856. TWC also adopts amendments to replace the word "consumer" with "customer" to be consistent with TWC terminology.

#### PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

TWC adopts the following amendments to Subchapter C:

§856.57. Alternative Purchasing Methods--Rates for Medical Services

New §856.57, formerly §852.1, is moved from Chapter 852 and updates its provisions to align with TWC procurement and programmatic operations.

#### SUBCHAPTER G. CRISS COLE REHABILITATION CENTER

TWC adopts the following amendments to Subchapter G:

§856.83. Definitions

New §856.83, formerly §854.3, is moved from Chapter 854 and updates its provisions to add the definition of "Deafblind" and provides the requirements to be considered an individual who is Deafblind for purposes of eligibility for CCRC services. The definition of Deafblind replicates the wording of 29 USC Chapter 21, §1905, relating to Definitions. Additionally, the term "consumer" has been changed to "customer," consistent with TWC's terminology, with no change to the underlying definition.

§856.84. Initial Eligibility

New §856.84 replaces repealed §854.4 and updates its provisions to add the initial eligibility criteria to reflect the requirements for acceptance into CCRC for VR services. The eligibility requirements are similar to the requirements previously found in TWC Division of Blind Services rule §854.4. Only current VR customers are eligible for VR services, and they must be referred by a VR counselor for admission. Each customer must have a computerized criminal history check as part of the initial eligibility process. A risk evaluation must be completed if the criminal history check identifies a criminal history. To properly manage this residential program and ensure that all eligibility criteria are met, TWC is amending this section to clarify that all eligibility criteria other than Texas residency still apply to non-Texas residents seeking admission to the CCRC VR Training Program. Furthermore, because TWC has an integrated VR program, there is no need for priority to be given to customers; therefore, §854.4(b) is proposed to be repealed. Additionally, the term "consumers" has been changed to "customers," consistent with TWC's terminology, with no change to the definition.

§856.85. Continuing Eligibility

New §856.85 is added to specify that a customer must maintain eligibility to continue receiving services. Services may be discontinued if the customer is not in compliance with the requirements.

§856.86. Services

New §856.86 replaces repealed §854.5 and updates its provisions to provide a list of current services that TWC provides. Services such as communication systems and tools are added to address the Deafblind customer population. The amendment also updates the division name, replaces the word "consumer" with "customer," and ties the services that a customer receives to the individualized plan for employment.

§856.87. Customer Participation and Comparable Services and Benefits

New §856.87 replaces repealed §854.6 and updates the statutory references and replaces the word "consumer" with "customer."

§856.88. Payment of Shift Differentials

New §856.88 replaces repealed §854.7 and updates its provisions to correlate with TWC's employment business practices.

No comments were received.

#### SUBCHAPTER C. PROVISION OF VOCATIONAL REHABILITATION SERVICES

40 TAC §856.57

STATUTORY AUTHORITY

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

CROSS REFERENCE TO STATUTE

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 81, 301, and 302.

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 August 1, 2018.

TRD-201803328

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: August 21, 2018

Proposal publication date: May 4, 2018

For further information, please call: (512) 680-1655



SUBCHAPTER G. CRISS COLE  
REHABILITATION CENTER

**40 TAC §§856.83 - 856.88**

STATUTORY AUTHORITY

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

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 81, 301, and 302.

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 August 1, 2018.

TRD-201803329

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: August 21, 2018

Proposal publication date: May 4, 2018

For further information, please call: (512) 680-1655



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Department of Banking

### Title 7, Part 2

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 11 (Miscellaneous), comprised of Subchapter A (§11.37).

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the section under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or emailed to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

Any proposed changes to this section as a result of the rule review will be published as a proposed rule in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201803403  
Catherine Reyer  
General Counsel  
Texas Department of Banking  
Filed: August 7, 2018



On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 26 (Perpetual Care Cemeteries), comprised of §§26.1 - 26.6, 26.11, and 26.12.

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Coun-

sel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or emailed to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201803404  
Catherine Reyer  
General Counsel  
Texas Department of Banking  
Filed: August 7, 2018



On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 27 (Applications), comprised of §27.1.

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the section under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

Any proposed changes to this section as a result of the rule review will be published as a proposed rule in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201803405  
Catherine Reyer  
General Counsel  
Texas Department of Banking  
Filed: August 7, 2018



On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 31 (Private Child Support Enforcement Agencies), comprised of Subchapter A (§31.1); Subchapter B (§§31.11 - 31.20); Subchapter C (§§31.31 - 31.34 and §§31.36 - 31.39); Subchapter D (§§31.51 - 31.56); Subchapter E (§§31.72 - 31.76); Subchapter F (§§31.91 - 31.96); and Subchapter G (§§31.111 - 31.115).

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or emailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201803406  
Catherine Reyer  
General Counsel  
Texas Department of Banking  
Filed: August 7, 2018

Office of Consumer Credit Commissioner

#### **Title 7, Part 5**

The Finance Commission of Texas (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal, Texas Administrative Code, Title 7, Part 5, Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops. Chapter 85, Subchapter A contains Division 1, concerning General Provisions; Division 2, concerning Pawnshop License; Division 3, concerning Pawnshop Employee License; Division 4, concerning Operation of Pawnshops; Division 5, concerning Inspections and Examination; Division 6, concerning License Revocation, Suspension, and Surrender; and Division 7, concerning Enforcement; Penalties.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this subchapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to rule.comments@occc.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201803427  
Laurie B. Hobbs  
Assistant General Counsel  
Office of Consumer Credit Commissioner  
Filed: August 8, 2018

◆ ◆ ◆  
Employees Retirement System of Texas

#### **Title 34, Part 4**

The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 71, Creditable Service. This review is being conducted pursuant to Texas Government Code §2001.039.

The Board will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at paula.jones@ers.texas.gov. The deadline for receiving comments is Monday, September 17, 2018, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-201803338  
Paula A. Jones  
Deputy Executive Director and General Counsel  
Employees Retirement System of Texas  
Filed: August 2, 2018

◆ ◆ ◆  
The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 74, Qualified Domestic Relations Orders. This review is being conducted pursuant to Texas Government Code § 2001.039.

The Board will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at paula.jones@ers.texas.gov. The deadline for receiving comments is Monday, September 17, 2018, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-201803339  
Paula A. Jones  
Deputy Executive Director and General Counsel  
Employees Retirement System of Texas  
Filed: August 2, 2018

◆ ◆ ◆  
The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 82, Health Services in State Office Complexes. This review is being conducted pursuant to Texas Government Code §2001.039.

The Board will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at paula.jones@ers.texas.gov. The deadline for receiving comments is Monday, September 17, 2018, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-201803340

Paula A. Jones

Deputy Executive Director and General Counsel  
Employees Retirement System of Texas

Filed: August 2, 2018

◆ ◆ ◆  
**Adopted Rule Reviews**

Texas State Soil and Water Conservation Board

**Title 31, Part 17**

The Texas State Soil and Water Conservation Board (Board) has completed the review of Texas Administrative Code, Title 31, Part 17, Chapter 519, Technical Assistance, Subchapter A, Technical Assistance Program as required by the Texas Government Code § 2001.039, Agency Review of Existing Rules. These rules were published for comment in the April 20, 2018, issue of the *Texas Register* (43 TexReg 2455). The text of these rules may be found in the Texas Administrative Code or through the Board's website at [www.tsswcb.texas.gov/about/agency-rules](http://www.tsswcb.texas.gov/about/agency-rules).

Texas Government Code §2001.039 requires that each state agency review and re-adopt, re-adopt with amendments, or repeal the rules adopted by that agency under Texas Government Code, chapter 2001, Subchapter B, Rulemaking. As required by §2001.039(e), this review is to assess whether the reasons for adopting or re-adopting the Board's Conservation Assistance rule continue to exist. These rules provide the conditions for providing Technical Assistance to soil and water conservation districts. The Board requested specific comments from interested persons on whether the reasons for adopting Chapter 519, Subchapter A continue to exist. In addition, the Board welcomed comments on any modifications that would improve the rule.

The Board received no comments.

The Board finds that the reasons for adopting 31 TAC §519.1 - §519.12 continue to exist and re-adopts the rule without changes.

TRD-201803364

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Filed: August 3, 2018

◆ ◆ ◆  
The Texas State Soil and Water Conservation Board (Board) has completed the review of Texas Administrative Code, Title 31, Part 17, Chapter 521, Agricultural Water Conservation, Subchapter A, Technical Assistance Program for Soil and Water Conservation Land Improvement Measures, as required by the Texas Government Code §2001.039, Agency Review of Existing Rules. These rules were published for comment in the April 20, 2018, issue of the *Texas Register* (43 TexReg 2455 - 2456). The text of these rules may be found in the Texas Administrative Code, Title 31, Part 17, Chapter 521, Agricultural Water Conservation, Subchapter A, Technical Assistance Program for Soil and Water Conservation Land Improvement Measures, or through the Board's website at [www.tsswcb.texas.gov/about/agency-rules](http://www.tsswcb.texas.gov/about/agency-rules).

Texas Government Code §2001.039 requires that each state agency review and re-adopt, re-adopt with amendments, or repeal the rules adopted by that agency under Texas Government Code, chapter 2001, subchapter B, Rulemaking. As required by §2001.039(e), this review is to assess whether the reasons for adopting or re-adopting the Board's Agricultural Water Conservation rule continues to exist. The Board requested specific comments from interested persons on whether the reasons for adopting Chapter 521, Subchapter A continue to exist. In addition, the Board welcomed comments on any modifications that would improve the rule. The Board's Chapter 521, Subchapter A rule provides the conditions for providing conservation assistance to soil and water conservation districts.

The Board received no comments in response to its request for comment published in the *Texas Register* (43 TexReg 2455 - 2456). After internal review, the Board determined that the rule effectively allows the Board to accomplish its functions as directed by the Legislature.

The Board finds that the reasons for adopting Texas Administrative Code, Title 31, Part 17, Chapter 521, Subchapter A, continue to exist and re-adopts the rule without amendments. These rules provide the conditions for providing Agricultural Water Conservation to soil and water conservation districts. Therefore, the Board re-adopts Chapter 521, Subchapter A, in its entirety, under authority granted in Texas Agricultural Code §201.020(a) and 203.012, which authorize the Board to adopt and enforce rules necessary for the performance of its functions as well as Texas Government Code §2001.039, which requires each state agency to review and re-adopt its rules every four years.

The Board hereby certifies that the rules in Chapter 521, Agricultural Water Conservation, Subchapter A, Technical Assistance Program for Soil and Water Conservation Land Improvement Measures are re-adopted without change; and have been reviewed by legal counsel and found to be a valid exercise of the Board's legal authority. It is therefore ordered by the Texas State Soil and Water Conservation Board that Chapter 521, Subchapter A, is hereby re-adopted under Texas Government Code §2001.039 with no changes and the review of Chapter 521, Subchapter A, is concluded.

TRD-201803365

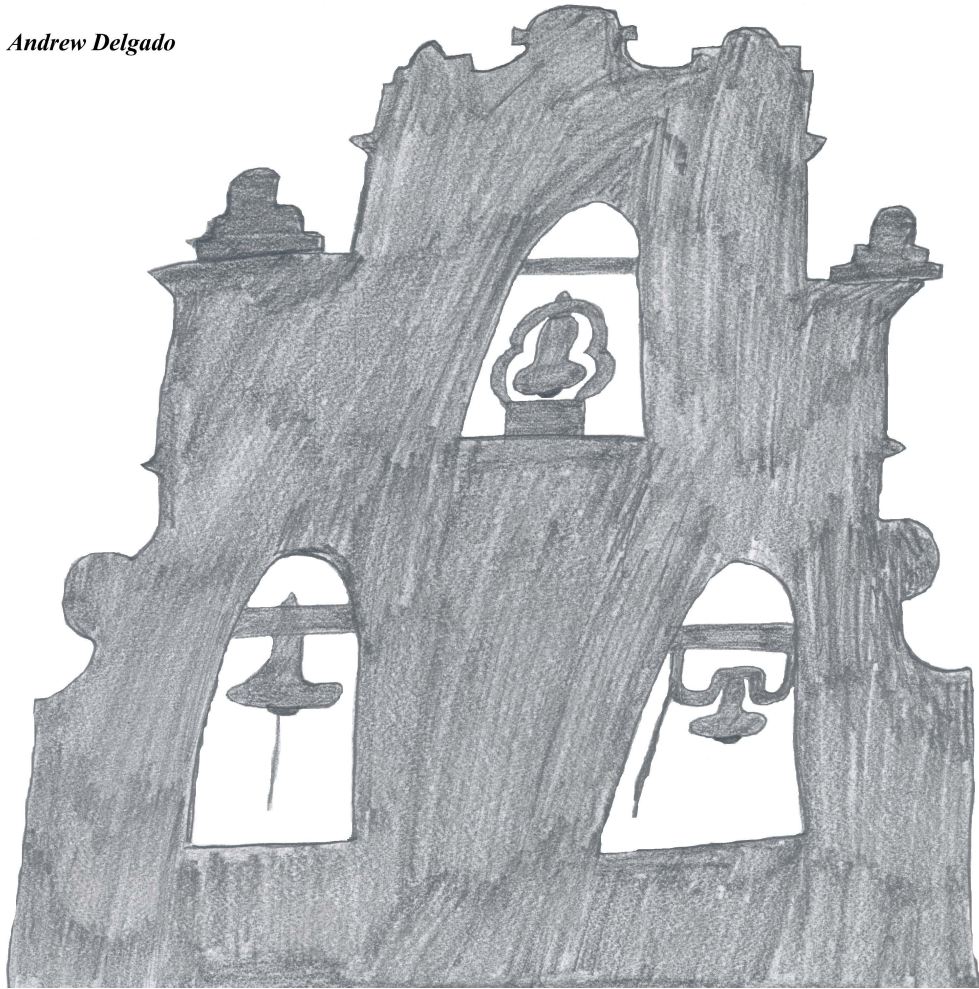
Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Filed: August 3, 2018

*Andrew Delgado*





# TABLES &

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# GRAPHICS

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.

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Figure: 22 TAC §190.14(9)

Violation Description	Statutory/Rule Citation	Low Sanction	High Sanction
Abusive or Disruptive Behavior	§164.052(a)(5) (unprofessional conduct likely to injure public); Rule §190.8(2)(K), (P)	Remedial Plan: Anger management and communications CME, JP exam, medical ethics	Agreed Order with IME or Public Referral to PHP; CME in medical ethics, anger management, communications with colleagues, JP exam. For multiple orders or egregious actions--interfering with patient care: public reprimand, suspension with terms and conditions
Aiding in unlicensed practice	§164.052(a)(17) (directly or indirectly aids or abets unlicensed practice)	Remedial Plan: Directed CME in supervision or delegation if applicable; 8 hours CME in medical ethics, 8 hours CME in risk management; must pass JP within 1 year	Agreed Order: Public reprimand, all sanctions in low category, plus \$2,000 admin penalty
Bad faith mediation by a licensee in relation to an out-of-network health benefit claim	§1467.101 and 1467.102 of the Texas Insurance Code (bad faith in out-of-network claim dispute resolution)--"except for good cause shown, the regulatory agency shall impose an administrative penalty"	Good cause shown: Remedial Plan: 8 hours of medical ethics; otherwise, admin penalty is statutorily required	Agreed Order: Public reprimand; \$5,000 admin penalty, "except for good cause shown" per §1467.102; plus all sanctions in low category
Boundary Violation: Engaging in sexual contact with a patient or engaging in sexually inappropriate behavior or comments directed towards a patient	§164.052(a)(5) (unprofessional conduct likely to injure public); Rule §190.8(2)(E)-(F)	<b>RP is statutorily prohibited</b> Verbal remarks, or inappropriate behavior, but not involving touching: Agreed Order: Public reprimand; Vanderbilt or PACE boundaries course; JP exam; CME in ethics; chaperone	Cases involving physical contact: Agreed Order: Low sanctions plus IME, Replace chaperone with may not treat patient of the affected gender; or suspension or revocation

Boundary Violation: Becoming financially or personally involved with a patient in an inappropriate manner	§164.052(a)(5)(unprofessional conduct likely to injure public); Rule §190.8(2)(G)	<b>RP is statutorily prohibited</b> Single incident: Agreed Order: CME in ethics, JP exam; if financial involvement, restitution if appropriate; and/or admin penalty	More than one incident (more than one patient, or occasion): Agreed Order: Low Sanctions plus: Public reprimand; Vanderbilt or PACE boundaries course; JP exam; CME in ethics; administrative penalty; or suspension or revocation
Breach of Confidentiality	§164.052(a)(5) (unprofessional conduct likely to injure public); Rule §190.8(2)(N)	Remedial Plan: 8 hours risk management CME to include HIPAA, \$500 administration fee	Agreed Order: Public reprimand, CME in risk management and in HIPAA requirements; \$3,000 per occurrence; JP exam
Cease and desist order--issuance of: See "Unlicensed practice of medicine"	§164.002 (Board's general authority to dispose of "any complaint or matter" unless precluded by another statute) §165.052 (power to issue cease and desist orders against unlicensed persons)		
Cease and desist order (existing), violation of	§165.052(b) (violation of (c) and (d) is grounds for imposing admin penalty)	Administrative penalty \$2,000 - \$5,000 per offense	Referral to Attorney General for civil penalty and costs or criminal prosecution. §165.101 (civil) and §165.152 (criminal)
Change in practice or mailing address, failure to notify the board of	§164.051(a)(3) Rule §166.1(d) (notify Board within 30 days of change of mailing or practice address or professional name on file)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management; \$2,000 admin penalty; JP exam
CME - Failure to obtain or document CME	§164.051(a)(3) (forbids breaking or attempting to break a Board rule); Rule §166.2 (48 credits each 24 months + other	Remedial Plan: All missing hours of CME and 4 hours of ethics/risk management and	Agreed Order: 8 hours of CME in ethics/risk management plus complete all

	requirements and accreditation of CME req'ts)	\$500 administration fee	missing hours; \$1,000 admin penalty; JP exam
Crime: Abortion - performing a criminal abortion. Health and Safety Code §170.002 and Chapter 171 (§170.002 prohibits third-trimester abortions, with exceptions; Chapter 171 requires physicians to make available certain materials to abortion patients and restricts how informed consent is obtained; the criminal offense (§171.018) is an unspecified class of misdemeanor punishable only by a \$10,000 fine)	§164.052(a)(16) (prohibits performing, procuring, aiding, or abetting in procuring a criminal abortion); §164.055 (requires "appropriate disciplinary action" against a physician who violates Health and Safety Code §170.002 or Chapter 171)	Agreed Order: Public Reprimand; must pass JP within 1 year; \$5,000 admin penalty	Agreed Order: Suspension, probated with terms, or revocation
Crime: Arrest for offense under Penal Code §§21.02; 21.11; 22.011(a)(2); 22.021(a)(1)(B); (assaultive offenses against children)	§164.0595 (Temporary suspension or restriction of license for certain arrests)	Agreed Order: Restriction of license, chaperone; may not treat pediatric patients	Agreed Order: Suspension of license, no probation
Crime: Deferred adjudication community supervision for offense under Penal Code §§21.11; 22.011(a)(2); 22.021(a)(1)(B); (assaultive offenses against children)	§164.057(c) (mandates revocation upon proof of deferred adjudication community supervision)		Revocation is statutorily required

Crime: Felony conviction	§204.303(a)(2) of the Physician Assistant Act; §205.351(a)(7) of the Acupuncture Act; §164.057(a)(1)(A) of the Medical Practice Act (requires suspension on initial conviction for a felony)	Initial conviction: Statutorily required §190.8(6)(A)(iv) and §164.057(a)(1)(A); suspension to occur by operation of law pursuant to §187.72	Revocation is statutorily required on final conviction - §164.057(b)
Crime: Felony deferred adjudication; Misdemeanor involving moral turpitude deferred adjudication	§204.303(a)(2) & (3) of the Physician Assistant Act; Board Rule 185.17(7)& (11); §205.351(a)(7) of the Acupuncture Act; §164.051(a)(2)(A) of the Medical Practice Act (authorizes sanctions for initial convictions and deferred adjudications for felonies and misdemeanors involving moral turpitude)	Agreed Order: Appropriate sanction such as referral to PHP, anger management, IME, restrictions on practice, CME in appropriate area	Suspension or Revocation; §164.001(a); Revocation is statutorily required on final conviction of a felony- §164.057(b)
Crime: Misdemeanor conviction of crime involving moral turpitude	§204.303(a)(2) of the Physician Assistant Act; §205.351(a)(7) of the Acupuncture Act; §164.051(a)(2)(B) of the Medical Practice Act (authorizes suspension on initial conviction for misdemeanor of moral turpitude, and revocation upon final conviction)	If the offense is not related to the duties and responsibilities of the licensed occupation, the standard sanction shall require: (-a-) Suspension of license, which may be probated; (-b-) compliance with all restrictions, conditions and terms imposed by any order of probation or deferred adjudication; (-c-) public reprimand; and (-d-) administrative penalty of \$2,000 per violation.	If the offense is related to the duties and responsibilities of the licensed occupation, the standard sanction shall be revocation of the license.
Crime: Misdemeanor conviction <b>not</b> involving moral turpitude that is connected with the	Texas Occupations Code §53.021; Rule §190.8(6)(B)(iv) stating Chapter 53 of applies to misdemeanor convictions not involving moral turpitude but connected with the physicians	Suspension	Revocation

physician's practice of medicine	practice of medicine and setting out factors showing connection to practice of medicine		
Crime: Misdemeanor initial conviction under Penal Code Chapter 22 (assaultive offenses - <b>see also: arrest or deferred adjudication for assaultive offenses against children</b> ) of crime punishable by more than a fine; <b>OR</b> Penal Code §25.07 (violation of court order re: family violence); <b>OR</b> §25.071 (violation of court order re: crime of bias or prejudice); <b>OR</b> one requiring registration as a sex offender under Code of Criminal Procedures Chapter 62	§164.057(a)(1)(B), (C), (D), and (E) (when misdemeanor conviction requires suspension)	Suspension is statutorily required per §164.057(a)(1)(B)	Revocation is statutorily required on final conviction - §164.057(b)
Death certificate, failure to sign electronically	§164.053(a)(1) (authorizes sanctions via §164.052(a)(5) for breaking any law that "is connected with the physician's practice of medicine"); Health and Safety Code Chapter 193 (requires electronic filing of death certificates)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: CME – 8 hours of risk management, 4 – 8 hours medical ethics; \$2,000 admin penalty; JP exam
Delegation of professional medical responsibility or acts to person if	§164.053(a)(9) (describes the violation as unprofessional conduct, allows sanctions)	Remedial Plan: 12 hours CME in supervision and delegation, 8 hours in risk management,	Agreed Order: Low sanctions plus no delegation or supervision authority;

the physician knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts		8 hours in medical ethics; JP exam	administrative penalty of \$2,000 per violation
Discipline by peers, may be either an administrative violation or SOC	§164.051(a)(7) (describes offense: includes being subjected to disciplinary action taken by peers in a local, regional, state, or national professional medical ass'n or being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other action IF the board finds the action was based on unprofessional conduct or professional incompetence that was likely to harm the public and "was appropriate and reasonably supported by evidence submitted to the board." Expert panel report provides such evidence)	Agreed Order: See the applicable sanction for the violation of the Texas Medical Practice Act that most closely relates to the basis of the disciplinary action by peers. In addition, the licensee shall comply with all restrictions, conditions and terms imposed by the disciplinary action by peers to the extent possible.	Agreed Order: Public reprimand; comply with all restrictions, conditions and terms imposed by the disciplinary action by peers to the extent possible; and administrative penalty of \$3,000 per violation, plus directed CME and, if SOC case, a chart monitor. If not SOC: IME; anger management; CME in communications
Disciplined by another state or military may be either an administrative violation or a patient care violation	§164.051(a)(9) (describes the violation, requires that acts for which discipline imposed be the same or similar to acts in §164.052 or acts that are the same or similar to acts described in 164.051(a), for example rule violations, SOC violations, and all forms of impairment) Issue is only whether there was an order—no relitigation of prior facts, e.g., no new expert panel required	If no standard of care concerns, Remedial Plan with appropriate CME and \$500 administration fee; OR reciprocal Agreed Order as appropriate.	If out-of-state order is revocation, revocation is statutorily required.
Drug logs - Failure to maintain (see also, violation of	§164.053(a)(2) (describes offense and refers to Chapter	Remedial Plan: 8 hours of ethics/risk management	Agreed Order: Public reprimand; 8 hours of ethics/risk

state or federal law connected with practice)	481 Health and Safety Code and 21 USC §801 et seq.)	and \$500 administration fee	management; \$2,000 admin penalty; JP exam
Employing a revoked/cancelled/ or suspended physician (see also aiding and abetting the unlicensed practice)	§164.052(a)(14) (describes offense: "directly or indirectly employs . . ."); §164.052(a)(15) (forbids associating in the practice of medicine with such a person)	Agreed Order: Public reprimand; \$3,000 admin penalty; take and pass JP exam	Agreed Order: Public reprimand; \$5,000 admin penalty; JP exam; no delegation authority
Failing to adequately supervise subordinates and improper delegation	§164.053(a)(8); §164.053(a)(9) – These sections describe the respective violations and define them as unprofessional conduct	Remedial Plan: 12 hours CME in supervision and delegation; consider ordering Rsp to furnish ED copies of delegation orders of develop and furnish delegation orders to ED; \$500 admin fee	Agreed Order: Low category sanctions plus: monitoring of practice; no delegation or supervision authority; administrative penalty of \$2,000 per violation; JP exam
Fails to keep proper medical records	§164.051(a)(3) (authorizes sanctioning rule violations); §164.051(a)(6) (authorizes sanctioning failure to practice acceptably consistent with public welfare); Rule §165.1 describes contents of an adequate medical record	Remedial Plan: CME in appropriate area; \$500 administration fee	Agreed Order: 8 or more hours of medical record-keeping, require in-person attendance if practical; chart monitor 8 – 12 cycles; \$2,000 admin penalty; JP exam; PACE course in medical record-keeping if prior order for inadequate record-keeping
Failure to Communicate with patient or other providers	§164.052(a)(5) (prohibits conduct that is "likely to deceive or defraud the public" and unprofessional conduct as defined by §164.053)	Single incident: Remedial Plan--8 hours risk management CME to include patient communications, \$500 administration fee	Multiple instances: Agreed Order: Public reprimand, risk management and communications CME, fine, counseling, IME
Failure to display a "Notice Concerning Complaints" sign	Rule §178.3(a)(1) (requires display of sign)	Remedial Plan: 4 hours of ethics/risk management	Agreed Order: 8 hours of ethics/risk management,



		and \$500 administration fee	\$1,000 admin penalty; JP exam
Failure to report dangerous behavior to governmental body	§164.052(a)(5) (prohibits conduct that is "likely to deceive or defraud the public" and unprofessional conduct as defined by §164.053)	Single incident: Agreed Order: Admin penalty; CME in medical ethics; JP exam	Multiple or egregious: Agreed Order: Low category sanctions plus public reprimand and \$5,000 admin penalty
Failure to Pay/CS	Gov't Code; Family Code Chapter 232 (authorizes suspending licenses of any kind granted by the state to persons who do not pay support payments)	Suspension until such time as the licensee is no longer in default is required – statutorily required	Suspension until such time as the licensee is no longer in default – statutorily required
Failure to Pay Student Loan	§56.003 of the Texas Occupations Code	Agreed Order: public reprimand; within a certain time frame, provide proof of entering into an agreement with the loan servicing agent and/or default has been cured. Auto-suspend if violate order	Suspension until such time as the licensee is no longer in default
Failure to report suspected abuse of a patient by a third party, when the report of that abuse is required by law	§164.052(a)(5)(prohibits conduct that is "likely to deceive or defraud the public" and unprofessional conduct as defined by §164.053); Rule §190.8(2)(O)	Remedial Plan; CME- 8 hrs risk management; JP Exam	Agreed Order: Low sanctions plus public reprimand; administrative penalty \$3,000 per violation
Fees, failure to provide explanation of	§101.203 (prohibits overbilling via ref to Health and Safety Code §311.025); §101.351 (establishes requirement and excludes application of §101.351 to physicians who post a billing practice sign in their waiting room)	Remedial Plan: 8 hours of ethics/risk management/billing practices and \$500 administration fee	Agreed Order: 8 – 16 hours of CME in ethics, risk management, billing practices, and CPT coding, \$2,000 admin penalty
Fraud on a diploma/in an exam	§164.052(a)(2); §164.052(a)(3) (describes offense as presenting an illegally or fraudulently obtained credential and cheating on exams)	Misrepresentations that do not make licensee/applicant ineligible: Remedial Plan - 8 hours of ethics/risk management	If misrepresentation makes the licensee ineligible, then revocation.

		And \$500 administration fee	
Fraudulent, improper billing practices - requires that Respondent knows the service was not provided or knows was improper, unreasonable, or medically or clinically unnecessary. Should not sanction for an unknowing and isolated episode.	§101.203 (prohibits overbilling via ref to Health and Safety Code §311.0025); §164.053(a)(7) (prohibits violation of Health and Safety Code §311.0025)	Agreed order: Including, but not limited to: monitoring of billing practices; directed CME; restitution; and administrative penalty of \$1,000, but not to exceed the amount of improper billing	Agreed Order: Public reprimand, monitoring of practice, including billing practices; directed CME; restitution; and administrative penalty of \$3,000 per violation
Health care liability claim, failure to report	§160.052(b) (requires reporting health care liability claims to Board) Rule §176.2 and §176.9 (prescribes form for such reporting)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management; \$2,000 admin penalty; JP exam
Impairment (no history and no aggravating factors such as SOC, boundary violation, or felony)	§164.051(a)(4) (authorizes sanctions for practicing by those unable because of illness, drunkenness, excessive use of substances, or a mental or physical condition); §164.052(a)(4) (forbids use of alcohol or drugs in an intemperate manner that could endanger a patient's life)	Refer to PHP— Public referral via agreed order required if case involves discharge from PHP, otherwise private referral is OK if appropriate	Voluntary surrender or temporary suspension
Impairment (with history or SOC violation or boundary violation or felony)	§164.051(a)(4) (authorizes sanctions for practicing by those unable because of illness, drunkenness, excessive use of substances, or a mental or physical condition); §164.052(a)(4) (forbids use of alcohol or drugs in an intemperate manner that could endanger a patient's life)	Agreed Order: IME with report to ED or to panel at re-convened ISC, restrict practice or voluntary suspension pending report; if impairment is found at ISC, suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice	Agreed Order: Suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine OR Suspension probated for 10 years with terms and conditions including but not necessarily limited to: drug testing;

		medicine, with conditions to be determined by a subsequent panel	restrictions on practice; AA or NA attendance evidenced by logs; IME for psychiatric/psychological evaluation and treatment; proficiency testing OR revocation.
Intimidation of Complainant	§164.052(a)(5) (prohibits unprofessional conduct as defined by §164.053 or that is "likely to deceive or defraud the public")	Single Incident: Public reprimand and fine	Multiple/Egregious: Suspension and/or revocation; significant admin penalty; CME in ethics; JP exam
Medical Records: failure to release/ Overcharging for	§159.006 of the Act (information furnished by licensee); §164.051(a)(3) (prohibits rule violations); Rule §165.2 (requires release to proper person as described therein unless release would harm the patient and prescribes allowable charges	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management, \$2,000 admin penalty; JP exam. Also, §159.006 (Board may appoint temp or permanent custodian of patient records held by a physician)
Misleading advertising	§164.051(a)(3); §164.052(6) (prohibits false advertising); Rule §164.3, §164.	Remedial Plan: 8 hours of ethics/risk management, correct the advertisement and \$500 administration fee	Agreed Order: 16 hours of ethics/risk management in person, correct the advertisement, \$5,000 admin penalty, JP exam
Operating an unlicensed pharmacy	§158.001(b) (requires physicians to comply with Occupations Code Chapter 558 to operate a retail pharmacy)	Agreed Order: Must pass JP within 1 year, \$2,000 penalty, CME – medical ethics	Agreed Order: JP exam; cease operating pharmacy; CME – ethics and risk management
Overbilling: See fraudulent, improper billing			
Peer review action: See Discipline by peers			

Physician-patient relationship, Improper termination of	Rule §190.8(1)(J) (requires reasonable notice to patient of termination)	Single incident: Remedial Plan: 8 hours CME - 4 risk management and 4 ethics, \$500 administration fee	Multiple instances: Public reprimand, risk management, fine, CME - in physician-patient communications
Pill mills, unregistered pain clinics, overprescribing – See Delegation, Supervision, Prescribing			Revocation
Prescribing controlled substances to oneself, family members, or others in which there is a close personal relationship absent immediate need, without taking an adequate history, performing a proper physical examination, or creating and maintaining adequate records	§164.051(a)(6); Rule §190.8(1)(L), (M)	Agreed Order CME 8 hours medical recordkeeping, or risk management; 8 hours appropriate prescribing of controlled substances; JP Exam  If only one prescription and no evidence of pattern, the ISC Panel may consider a remedial plan.	Agreed Order Low sanctions plus public reprimand; restrictions on prescribing to self, family, and others in which there is a close personal relationship, restrictions on practice including restrictions on prescribing and administering controlled substances and dangerous drugs, administrative penalty of \$3,000 per violation
Prescribing dangerous drugs to oneself, family members, or others in which there is a close personal relationship without taking an adequate history, performing a proper physical examination, or creating and maintaining adequate records	§164.051(a)(6); Rule §190.8(1)(L), (M)	Remedial Plan: CME - 8 hours medical recordkeeping or risk management; JP Exam	Agreed Order: Low sanctions plus restrictions on prescribing to self, family, and others in which there is a close personal relationship and administrative penalty of \$2,000 per violation

<p>Prescribing, writes false or fictitious prescriptions OR prescribes or dispenses drugs to a person who is known to be an abuser of narcotic drugs, controlled substances, or dangerous drugs OR writes prescriptions for or dispenses to a person who the physician should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs</p>	<p>§164.053(a)(3),(a)(4) (defines the violations under unprofessional conduct)</p>	<p>Agreed Order: CME - 8 hours drug-seeking behavior, 8 hours risk management; chart monitor at least 8 cycles; if Respondent does not use one, order to develop a pain management contract with specific provisions for termination of physician-patient relationship on a maximum of 3 violations by the patient including a positive test for a controlled substance not prescribed by Respondent, drug screens required by contract; JP Exam; admin penalty of \$3,000 per violation</p>	<p>Agreed Order Low sanctions plus: restrictions on practice including restrictions on prescribing and administering controlled substances and dangerous drugs; proficiency testing; directed CME; and increase administrative penalty to \$5,000 per violation.  If evidence of false or fictitious prescriptions, surrender DEA registration certificate for all controlled substance schedules.</p>
<p>Prescribing, nontherapeutic--or dispensing, or administering of drugs nontherapeutically, one patient, no prior board disciplinary history related to standard of care or care-related violations OR prescribing, administering, or dispensing in a manner inconsistent with public health and welfare, one</p>	<p>§164.053(a)(5),(a)(6) (prohibits prescribing or administering any drug or treatment that is nontherapeutic per se or because of the way it is administered or prescribed)</p>	<p>Remedial Plan CME in appropriate area; \$500 administration fee per year.</p>	<p>Agreed Order: Proficiency testing, CME in appropriate area; chart monitor for 8 cycles; administrative penalty of \$3,000 per violation</p>

patient, no prior board disciplinary history related to standard of care or care-related violations			
Prescribing, nontherapeutic--or dispensing, or administering of drugs nontherapeutically More than one patient or prior history of disciplinary action for standard of care or care-related violations  OR prescribing, administering, or dispensing in a manner inconsistent with public health and welfare, more than one patient or prior history of disciplinary action for standard of care or care-related violations	§164.053(a)(5),(a)(6) (prohibits prescribing or administering any drug or treatment that is nontherapeutic per se or because of the way it is administered or prescribed)	Agreed Order: Proficiency testing; CME in appropriate area; chart monitor 12 cycles; administrative penalty \$3,000 per violation	Agreed Order: Low sanctions plus restrictions on practice, including prescribing and administering controlled substances and dangerous drugs; and administrative penalty of \$5,000 per violation. If there are aggravating factors, revocation should be considered.
Referring a patient to a facility, laboratory, or pharmacy without disclosing the existence of the licensee's ownership interest in the entity to the patient	§164.052(a)(5) (prohibits conduct that is "likely to deceive or defraud the public" and unprofessional conduct as defined by §164.053); Rule §190.8(2)(H)	Remedial Plan: CME 8 hrs ethics, 8 hrs risk management; within 30 days of order's entry, provide proof of implement of form used to disclose ownership to interest	Agreed Order: Low sanctions plus public reprimand; JP Exam; administrative penalty \$3,000 per violation
Refusal to respond to board subpoena or request for information or action	§160.009 of the Act and Rule §179.4 (relating to Request for Information and Records from Physicians); §164.052(a)(5), as further	If records eventually received, Remedial Plan of 8 hours of ethics/risk management and	If records never received and intentionally withheld, Agreed Order:

	defined by Board Rule 190.8(2)(B) (prohibits Unprofessional conduct as defined by §164.053 or that is "likely to deceive or defraud the public")	\$500 administration fee	public reprimand; JP exam; admin penalty; CME in medical ethics
Reporting false or misleading information on an initial application for licensure or for licensure renewal	§164.052(a)(1) (forbids submission of false or misleading statements of documents in an application for a license)	Misrepresentations that do not make licensee/applicant ineligible: Remedial Plan - 8 hours of ethics/risk management and \$500 administration fee	If misrepresentation makes the licensee ineligible, then revocation.
Reporting false or misleading Board (non-licensing matter)	§164.052(a)(5), as further defined by Rule §190.8(2)(C)	Remedial Plan - 8 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management JP Exam administrative penalty of \$3,000
Self-Prescribing: See "Prescribing to self."			
Solicitation of patients/Drumming	§165.155 (provides a Class A misdemeanor penalty)	Agreed Order (if no conviction): 8 hours of ethics/risk management and \$500 administration fee	Egregious: Agreed Order: Public reprimand, chart sign off, \$5,000 fine, JP exam, CME in medical ethics OR referral to county attorney for prosecution as Class A misdemeanor under §165.155(e)
Standard of Care - one patient, no prior SOC or care-related violations	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare)	Remedial Plan*: CME in appropriate area; \$500 administration fee per year. *No RP if case concerns a patient death	Agreed Order: Proficiency testing; directed CME; chart monitor for 8 cycles; administrative penalty of \$3,000 per violation
Standard of care - one patient, one	§164.051(a)(6) (fails to practice medicine in an acceptable,	Agreed Order: Chart monitor for 8 cycles; directed CME,	Agreed Order: Limiting the practice

prior SOC or care-related violation	professional manner consistent with public health and welfare)	administrative penalty of \$3,000 per violation	of the person or excluding one or more specified activities of medicine; proficiency testing; directed CME; monitoring of the practice (either chart monitor for 12 cycles or supervising physician for a number of cases or specified period of time); public reprimand; and administrative penalty of \$5,000 per violation.
Standard of care - one patient, more than one prior SOC or care-related violation	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare); §164.051(a)(8) (recurring meritorious healthcare liability claims that evidence professional incompetence likely to injure the public); Rule §190.8(5) (defines "recurring" as 3 or more claims awarded or settled for \$50,000 in a 5-year period)	Agreed Order: Limiting the practice of the person or excluding one or more specified activities of medicine; proficiency testing; directed CME; monitoring of the practice (either chart monitor for 12 cycles or supervising physician for a number of cases or specified period of time); administrative penalty of \$ 3,000 per violation	Agreed Order: K-STAR or PACE or equivalent proficiency testing; directed CME; chart monitoring (either chart monitor for 16 cycles or supervising physician for a number of cases or specified period of time), restricting the practice; withdrawal of prescribing privileges or delegating privileges; public reprimand; administrative penalty of \$5,000 per violation
Standard of care - more than one patient, no prior SOC or care-related violation	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare); §164.051(a)(8) (recurring meritorious healthcare liability claims that evidence	Agreed Order: Chart Monitor for 8 cycles; CME in appropriate area; administrative penalty of \$3,000 per violation	Agreed Order: Proficiency testing; directed CME; chart monitor 12 cycles; public reprimand; and administrative



	professional incompetence); Rule §190.8(5) (defines "recurring" as 3 or more claims awarded or settled for \$50,000 in a 5-year period)		penalty of \$5,000 per violation
Standard of care - more than one patient, prior SOC or care-related violations	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare); §164.051(a)(8) (recurring meritorious healthcare liability claims that evidence professional incompetence); Rule §190.8(5) (defines "recurring" as 3 or more claims awarded or settled for \$50,000 in a 5-year period)	Agreed Order: Proficiency testing; directed CME; monitoring for 12 cycles; requiring oversight or restricting of the practice; public reprimand; and administrative penalty of \$5,000 per violation.	Suspension or revocation
Supervision of midlevels, failure to perform: See "Failing to adequately supervise subordinates and improper delegation."			
Unlicensed practice of medicine	§165.052(a)(see definition of "practice of medicine" at §151.002(a)(13))	Cease and Desist Order and referral of Order to District Attorney or Attorney General	Cease and Desist Order; referral to Attorney General's office for injunction or civil penalties
Unsound Mind - adjudicated (See also "Impairment")	§164.051(a)(5) (enables Board to take action if a licensee or applicant "is found by a court to be of unsound mind")	Suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine; IME and return to ISC panel with results	Temporary suspension prior to seeking revocation; show cause hearing under §164.056
Violation of Board Order	§164.052(a)(5) (enables sanctioning of unprofessional or dishonorable conduct as defined by §164.053 or conduct that injures the public)	Administrative in nature- Agreed Order: Administrative Penalty of \$1,000; Substantive in nature-extension of	Agreed Order: Low sanctions plus: public reprimand; admin penalty of \$3,000 - \$5,000

		order and increase the terms of the original order	
Violation of state or federal law connected with physician's practice	§164.053(a)(1) (authorizes sanctions via §164.052(a)(5) for breaking any law that "is connected with the physician's practice of medicine")	If criminal law, see above under "Crime." If civil law, Agreed Order: must pass JP exam and 8 hours of risk management/ethics	Agreed Order: public reprimand; restriction of license; surrender of controlled substance privileges; plus low sanctions

# 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

Request for Applications for the Sexual Assault Prevention and Crisis Services - Federal Program

The Office of the Attorney General (OAG) is soliciting applications from sexual assault programs and state sexual assault coalitions that wish to utilize funds for projects that support the primary prevention of sexual violence.

**Applicable Funding Source:** The source of federal funds includes the Federal Department of Health and Human Services, Preventive Health and Health Services Block Grant, Catalog of Federal Domestic Assistance (CFDA) Number 93.758 and Injury Prevention and Control Research and State and Community Based Programs, CFDA Number 93.136. The federal funds are used for grant contracts supporting the primary prevention of sexual violence. SAPCS-State funding may also be utilized for these purposes. All funding is contingent upon the appropriation of funds by the United States Congress and the Texas Legislature. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

**Eligibility Requirements:** To be eligible for this grant opportunity, the Applicant must be a FY 2018 SAPCS-Federal grantee on January 31, 2019.

**Eligible Applicants:** Sexual assault programs and state sexual assault coalitions are eligible to apply for a SAPCS-Federal grant. Funding eligibility may be further limited as stated in the Application Kit.

**Sexual Assault Programs** - any local public or private nonprofit corporation, independent of a law enforcement agency or prosecutor's office, that is operated as an independent program or as part of a municipal, county, or state agency and that provides the minimum services to adult survivors of stranger and non-stranger sexual assault. The following minimum services must be offered for at least nine months prior to receiving a SAPCS-Federal grant contract:

- a 24-hour crisis hotline;
- crisis intervention;
- public education;
- advocacy; and
- accompaniment to hospitals, law enforcement offices, prosecutors' offices, and courts.

**State Sexual Assault Coalitions** - a statewide nonprofit organization that has been identified as a state sexual assault coalition by a state or federal agency authorized to make that designation.

**Eligibility:** The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

**How to Obtain Application Kit:** The OAG will post the Application Kit on the OAG's official agency website at <https://www.texasattorneygeneral.gov/cvs/grants-and-contracts>. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to this site regularly.

### Deadlines and Filing Instructions for the Grant Application:

**Registration Deadline:** On-line registration is required to apply for a SAPCS-Federal grant. The deadline to complete registration is listed in the Application Kit and on the website. If registration is not completed by the deadline, then an Application will not be accepted and is not eligible for funding.

To register go to: <https://www.texasattorneygeneral.gov/cvs/grants-and-contracts>.

**Application Deadline:** The applicant must submit its application, including all required attachments, to the OAG and the OAG must receive the submitted application and all required attachments by 5:00 p.m. Central Daylight Time, September 21, 2018, to be considered timely filed.

**Filing Instructions:** Strict compliance with the filing instructions, as provided in the Application Kit, is required.

The OAG will **not** consider an application if it is not filed by the due date as stated in the Application Kit.

**Minimum and Maximum Amounts of Funding Available:** The minimum amount of funding each program may apply for is \$85,000 per fiscal year. The maximum amounts of funding are as follows: current Sexual Assault Programs \$85,000 per fiscal year; and current State Sexual Assault Coalition grantees \$480,000 per fiscal year.

The amount of an award is determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

**Start Date and Length of Grant Contract Period:** The grant period is for one year from February 1, 2019, through January 31, 2020, subject to and contingent on funding and/or approval by the OAG. Contracts will be awarded for a one-year period (term).

**No Match Requirements:** There are no match requirements for SAPCS-Federal projects.

**Volunteer Requirements:** All SAPCS-Federal projects must have a volunteer component. Specific requirements for the volunteer component will be stated in the Application Kit.

**Award Criteria:** The OAG will make funding decisions that support the efficient and effective use of public funds. Review components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget.

**SAPCS-Federal Purpose Area:** The purpose of the SAPCS-Federal program is to fund strategies and activities that support the primary prevention of sexual violence and any other purposes consistent with Texas Government Code, Chapter 420.

**Staffing:** All SAPCS-Federal projects must:

(a) Include a minimum of 75% of an applicant's budget in the personnel and fringe budget categories.

(b) Designate and request funding for a Primary Prevention Coordinator that is responsible for the coordination and implementation of primary prevention efforts. This position must be for a full-time Primary Prevention Coordinator.

In addition, only those staff positions that are directly related to achieving the goals of this project will be funded.

*Preference:* The OAG reserves the right to consider all other appropriations or funding an applicant currently receives when making funding decisions. The OAG may give priority to applicants that do not receive other sources of funding, including funding that originates from the Texas Compensation to Victims of Crime Fund.

**Prohibitions on Use of Grant Funds:** OAG grant funds may not be used to support or pay the costs of overtime, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit. Additional prohibitions include, but are not limited to, using grant funds for: construction and/or renovation; development of major software applications; direct counseling, treatment, or advocacy services to victims or perpetrators of sexual violence; victim response training on how service providers should respond to victims of sexual violence (i.e., hospital advocacy, law enforcement training, SANE training and judicial response); and research.

None of these funds may be used to pay for any medical services to any medical service provider.

**OAG Contact Person:** If additional information is needed, contact Lyndsay Ysla at [grants@oag.texas.gov](mailto:grants@oag.texas.gov) or (512) 936-1278.

TRD-201803426  
Amanda Crawford  
General Counsel  
Office of the Attorney General  
Filed: August 8, 2018

## Capital Area Rural Transportation System

Public Notice - RFP-2018-123-Audit Services

Capital Area Rural Transportation System (CARTS) is soliciting proposals for the selection of a Certified Public Accounting Firm to provide professional services for the Annual A-133 Audit.

The RFP will be available in digital format beginning at 5:00 p.m., Friday, August 10, 2018, on our website at <http://www.ride-carts.com/about/procurement> or a copy can be picked up at the CARTS Headquarters at 5300 Tucker Hill Lane, Cedar Creek, Texas 787612.

The schedule is:

Release of RFP: August 12, 2018

Deadline for Written Questions: September 7, 2018

Responses to Questions Posted: September 14, 2018

Response Due Date: September 21, 2018

Proposals will be evaluated on qualifications, experience, and the quality and content of the submittal.

TRD-201803374  
Tammy Atkins  
Controller  
Capital Area Rural Transportation System  
Filed: August 6, 2018

## 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, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/13/18 - 08/19/18 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/13/18 - 08/19/18 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009<sup>3</sup> for the period of 08/01/18 - 08/31/18 is 18% or Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 08/01/18 - 08/31/18 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

<sup>3</sup> For variable rate commercial transactions only.

TRD-201803379  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: August 7, 2018

## 33rd and 424th District Court

Public Notice

NOTICE OF PUBLIC HEARING

Pursuant to Sections 84.003 - 84.004 and 152.905, Texas Local Government Code, a public hearing will be held on August 31, 2018, at 8:00 a.m. in the District Courtroom #1, Burnet County Courthouse Annex North, 1701 E. Polk Street (Hwy 29 East), Burnet, Texas before the undersigned, Judge of the 33rd and 424th Judicial District Courts of Burnet, Blanco, Llano and San Saba Counties for the following purposes:

1. Setting the annual amount of compensation, travel expenses and other allowances of the county auditors and assistant auditors of Burnet, Blanco and Llano Counties; and
2. Appointment of Burnet County Purchasing Agent and setting annual compensation; and
3. Appointment of Burnet County Auditor; and
4. Setting the annual compensation of the official court reporters of the 33rd and 424th Judicial District Courts, and hiring and setting hourly

compensation for additional deputy reporters as necessary to meet the Courts' schedule.

Parties in interest and citizens may appear and be heard in connection with the matters mentioned above.

TRD-201803368

Honorable J. Allan Garrett  
33rd Judicial District Court  
33rd and 424th District Court  
Filed: August 6, 2018

## 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 September 18, 2018. 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 September 18, 2018. 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 Utilities, Incorporated; DOCKET NUMBER: 2018-0479-PWS-E; IDENTIFIER: RN102685641; LOCATION: Lakeside, Tarrant County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 15 picoCuries per liter (pCi/L) for gross alpha particle activity, based on the running annual average; and 30 TAC §290.108(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 5 pCi/L for combined radium-226 and radium-228, based on the running annual average; PENALTY: \$1,002; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Austin Curling Center, LLC; DOCKET NUMBER: 2018-0056-EAQ-E; IDENTIFIER: RN110060118; LOCATION: Sun-

set Valley, Travis County; TYPE OF FACILITY: commercial development project; 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: \$11,250; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(3) COMPANY: City of Bruceville-Eddy; DOCKET NUMBER: 2018-0650-PWS-E; IDENTIFIER: RN101216356; LOCATION: Bruceville-Eddy, McLennan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's wells; and 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous water service to new construction or any existing service when the water purveyor has reason to believe cross-connections or other potential contamination hazards exists; PENALTY: \$1,722; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: City of Chillicothe; DOCKET NUMBER: 2018-0316-MWD-E; IDENTIFIER: RN102985355; LOCATION: Chillicothe, Hardeman County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010639001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and §319.5(b) and TPDES Permit Number WQ0010639001, Monitoring and Reporting Requirements Numbers 1 and 3.a, by failing to analyze effluent samples at the intervals specified in the permit; PENALTY: \$9,375; Supplemental Environmental Project offset amount of \$7,500; ENFORCEMENT COORDINATOR: Claudia Corrales, (432) 620-6138; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: City of Eastland; DOCKET NUMBER: 2018-0543-PWS-E; IDENTIFIER: RN101386944; LOCATION: Eastland, Eastland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §§290.272, 290.273, and 290.274(a) and (c), by failing to meet the adequacy requirements of the Consumer Confidence Report distributed to the customers of the facility for calendar year 2016; and 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligram per liter for total trihalomethanes based on the locational running annual average; PENALTY: \$902; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: City of Gonzales; DOCKET NUMBER: 2018-0920-WQ-E; IDENTIFIER: RN101917169; LOCATION: Gonzales, Gonzales County; TYPE OF FACILITY: waste water treatment plant; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0079; REGIONAL OFFICE: 6300 Ocean Drive, Unit 5839, Corpus Christi 78412-5839, (361) 825-3100.

(7) COMPANY: City of Sansom Park; DOCKET NUMBER: 2018-0599-WQ-E; IDENTIFIER: RN105613699; LOCATION: Sansom Park, Tarrant County; TYPE OF FACILITY: municipal separate storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4) and §305.125(1), and Texas Pollutant Discharge Elimination System General Permit Number TXR040376, Part IV, Section B, Number

2, by failing to submit a concise annual report to the executive director within 90 days of the end of a reporting year; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: City of Springtown; DOCKET NUMBER: 2017-0207-MWD-E; IDENTIFIER: RN101920445; LOCATION: Springtown, Parker County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010649001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; PENALTY: \$8,000; ENFORCEMENT COORDINATOR: Caleb Olson, (512) 239-2541; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Devon Gas Services, L.P.; DOCKET NUMBER: 2018-0523-AIR-E; IDENTIFIER: RN100222736; LOCATION: Chico, Wise County; TYPE OF FACILITY: compressor station; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O3272/General Operating Permit Number 514, Site-wide requirements (b)(3), by failing to certify compliance for at least each 12-month period following initial permit issuance and submit the permit compliance certification within 30 days after the end of the certification period; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Felipe de Jesus Garza dba Juniors Drive Inn and Meat Market; DOCKET NUMBER: 2018-0631-PST-E; IDENTIFIER: RN102714227; LOCATION: Zapata, Zapata County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(11) COMPANY: Flint Hills Resources Port Arthur, LLC; DOCKET NUMBER: 2018-0323-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Air Permit Numbers 16989 and PSDTX-794, Special Conditions Number 1, Federal Operating Permit Number O1317, General Terms and Conditions and Special Terms and Conditions Number 24, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$7,125; Supplemental Environmental Project offset amount of \$2,850; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: FOREST WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-0033-PWS-E; IDENTIFIER: RN101183465; LOCATION: Forest, Cherokee County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director along with certification that the consumer notification has been distributed for the January 1, 2016 - December 31, 2016, monitoring period; and 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c) and TCEQ Agreed

Order Docket Number 2013-1723-PWS-E, Ordering Provision Number 2.c., by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids, based on the locational running annual average; PENALTY: \$2,275; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: GB Biosciences LLC; DOCKET NUMBER: 2018-0439-AIR-E; IDENTIFIER: RN100238492; LOCATION: Houston, Harris County; TYPE OF FACILITY: fungicide and herbicide manufacturing plant; RULES VIOLATED: 30 TAC §101.201(b) and §122.143(4), Federal Operating Permit Number O2264, Special Terms and Conditions Number 2.F, and Texas Health and Safety Code, §382.085(b), by failing to create a final record for a non-reportable emissions event no later than two weeks after the end of the emissions event; PENALTY: \$5,040; Supplemental Environmental Project offset amount of \$2,520; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Glenn A. Smith Corporation; DOCKET NUMBER: 2018-0908-WQ-E; IDENTIFIER: RN109708313; LOCATION: Tyler, Smith County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Herbert Darling, (512) 239-2520; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: INVISTA S.a.r.l.; DOCKET NUMBER: 2018-0096-AIR-E; IDENTIFIER: RN102663671; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Federal Operating Permit Number O1415, Special Terms and Conditions Numbers 14 and 16, New Source Review Permit Numbers 810, PSDTX1448, and GHGPSDTX129, Special Conditions Number 14, and Texas Health and Safety Code, §382.085(b), by failing to perform daily visible emissions observations when the associated baghouse and particulate scrubbers are in operation; PENALTY: \$30,135; Supplemental Environmental Project offset amount of \$12,054; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(16) COMPANY: Kaufman County Fresh Water Supply District Number 1A; DOCKET NUMBER: 2018-0349-MWD-E; IDENTIFIER: RN102334638; LOCATION: Forney, Kaufman County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013910001, Phase I, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations; PENALTY: \$29,000; Supplemental Environmental Project offset amount of \$29,000; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Los Botines Water Supply Corporation; DOCKET NUMBER: 2017-0846-PWS-E; IDENTIFIER: RN106716442; LOCATION: Botines, Webb County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code (THSC), §341.033(a), by failing to operate the water system under the direct supervision of a water works operator who holds a Class D or higher license; 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 §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring

plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.43(e), by failing to ensure that potable water storage tank and pressure maintenance facilities are installed in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates; 30 TAC §290.46(m)(4), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment, and failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution lines, and related appurtenances in a watertight condition; 30 TAC §290.45(b)(1)(B)(iv) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings for each treatment plant, pump station, and storage tank at the public water system until the facility is decommissioned; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.109(d)(2)(F) (formerly §290.109(c)(2)(A)(i)), and THSC, §341.033(d), by failing to collect a routine distribution water sample for coliform analysis for the months of July 2015 - March 2016; 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the executive director (ED) for the July 1, 2015 - December 31, 2015, January 1, 2016 - June 30, 2016, and July 1, 2016 - December 31, 2016, monitoring periods; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the ED by the tenth day of the month following the end of each quarter for the third quarter of 2015 through the fourth quarter of 2016; 30 TAC §§290.46(f)(4), 290.106(e), and 290.107(e), by failing to report the results of nitrate and volatile organic chemical contaminants sampling to the ED for the January 1, 2015 - December 31, 2015, monitoring period; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for calendar year 2015; and 30 TAC §290.46(f)(4) and §290.115(e), by failing to report the results of Stage 2 Disinfection Byproducts sampling for the January 1, 2015 - December 31, 2015, and January 1, 2016 - December 31, 2016, monitoring periods; PENALTY: \$6,742; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(18) COMPANY: Mark Veach dba Wholesale Landscape Supply; DOCKET NUMBER: 2018-0362-MSW-E; IDENTIFIER: RN110088846; LOCATION: Porter, Montgomery County; TYPE OF FACILITY: recycling business; RULE VIOLATED: 30 TAC §328.5(b), by failing to submit a Notice of Intent prior to the commencement of recycling activities; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: NORTH VICTORIA UTILITIES, INCORPORATED; DOCKET NUMBER: 2018-0423-PWS-E; IDENTIFIER: RN102673324; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(e)(2), (h), and (i)(3), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required

distribution sample sites, have the samples analyzed, and report the results to the executive director (ED) for the July 1, 2017 - December 31, 2017, monitoring period; 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2017 - June 30, 2017, monitoring period during which the copper action level was exceeded; and 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2017 - June 30, 2017, monitoring period during which the copper action level was exceeded; PENALTY: \$375; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(20) COMPANY: Pecan Doctor Spraying Service; DOCKET NUMBER: 2018-0695-WR-E; IDENTIFIER: RN109726620; LOCATION: Blanco, Blanco County; TYPE OF FACILITY: site; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: \$350; ENFORCEMENT COORDINATOR: Herbert Darling, (512) 239-2520; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (512) 339-2929.

(21) COMPANY: PENCCO, INCORPORATED; DOCKET NUMBER: 2018-0372-AIR-E; IDENTIFIER: RN104790670; LOCATION: Ennis, Ellis County; TYPE OF FACILITY: flocculant/clarifying agent production plant; RULES VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code (THSC), §382.085(b), and New Source Review (NSR) Permit Number 85567, Special Conditions (SC) Number 5.B, by failing to analyze and record the pH of the scrubbing solution every five minutes; 30 TAC §116.115(c), THSC, §382.085(b), and NSR Permit Number 85567, SC Number 6, by failing to confirm the de-mister's integrity once every six months; 30 TAC §116.115(b)(2)(E), THSC, §382.085(b), and NSR Permit Number 85567, SC Numbers 1, 8, and 10, by failing to maintain records containing the information and data sufficient to demonstrate compliance with the permit; and 30 TAC §116.115(c), THSC, §382.085(b), and NSR Permit Number 85567, SC Number 7, by failing to maintain the loading rates for the chemicals in a confidential file at the site and made available to TCEQ personnel; PENALTY: \$9,815; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: PHILLIPS 66 COMPANY; DOCKET NUMBER: 2018-0299-AIR-E; IDENTIFIER: RN102495884; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1440, Special Terms and Conditions Number 17, and Flexible Permit Numbers 9868A and PSDTX102M7, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$26,252; Supplemental Environmental Project offset amount of \$10,501; ENFORCEMENT COORDINATOR: Jo Hunsberger, (512) 239-1274; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(23) COMPANY: Ramadan Mohamad dba Speedy Bee 1; DOCKET NUMBER: 2017-1742-PST-E; IDENTIFIER: RN102050028; LOCATION: Cedar Hill, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.45(c)(3)(A), by failing to ensure that the emergency shutoff valves are securely anchored at the base of the dispensers; PENALTY:

\$7,313; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: RURAL BARDWELL WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-0328-PWS-E; IDENTIFIER: RN101196590; LOCATION: Ennis, Ellis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed, and report the results to the executive director (ED) for the July 1, 2017 - December 31, 2017, monitoring period; and 30 TAC §290.117(n), by failing to comply with the additional sampling requirements as required by the ED to ensure that minimal levels of corrosion are maintained in the distribution system; PENALTY: \$630; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Samuel Branch; DOCKET NUMBER: 2018-0395-OSI-E; IDENTIFIER: RN104009105; LOCATION: Tahoka, Lynn County; TYPE OF FACILITY: on-site sewage facility; RULES VIOLATED: 30 TAC §285.61(4) and Texas Health and Safety Code, §366.051(c), by failing to ensure that an authorization to construct had been obtained prior to beginning construction of an on-site sewage facility; PENALTY: \$375; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(26) COMPANY: SHAMZIL ENTERPRISE INCORPORATED dba PDK Food Store; DOCKET NUMBER: 2018-0731-PST-E; IDENTIFIER: RN102490778; LOCATION: Haltom City, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of fuel; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: St. Joseph Regional Health Center; DOCKET NUMBER: 2018-0555-PST-E; IDENTIFIER: RN101377281; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: hospital using emergency generators; RULES VIOLATED: 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 underground storage tanks (USTs); and 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; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(28) COMPANY: Steve Dale McCoy dba McCoy Dairy Farm; DOCKET NUMBER: 2018-0437-AGR-E; IDENTIFIER: RN102334471; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: dairy farm; RULES VIOLATED: 30 TAC §321.47(e)(5), by failing to maintain a rain gauge capable of measuring the design rainfall event; 30 TAC §321.47(i)(3), by failing to document the address of an off-site manure recipient; and 30 TAC §321.33(d)

and TWC, §26.027(c), by failing to obtain the proper authorization before expanding any existing animal feeding operation such that it becomes a concentrated animal feeding operation; PENALTY: \$3,651; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: THI of Texas at Lubbock I, LLC dba Southwest Regional Medical Complex; DOCKET NUMBER: 2018-0340-PST-E; IDENTIFIER: RN102048923; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: medical facility; 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 the underground storage tank; and 30 TAC §334.602(a), by failing to designate, train and certify at least one named individual for each class of operator - Class A and Class B for the facility; PENALTY: \$4,773; ENFORCEMENT COORDINATOR: Rahim Momin, (512) 239-2544; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(30) COMPANY: W.R. GRACE AND CO. - CONN.; DOCKET NUMBER: 2018-0422-PWS-E; IDENTIFIER: RN100223379; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(e)(2), (h), and (i)(3), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites, have the samples analyzed, and report the results to the executive director (ED) for the July 1, 2017 - December 31, 2017, monitoring period; 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2017 - June 30, 2017, monitoring period during which the copper action level was exceeded; and 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2017 - June 30, 2017, monitoring period during which the copper action level was exceeded; PENALTY: \$312; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (817) 588-5800.

(31) COMPANY: Wheel Technologies, Incorporated; DOCKET NUMBER: 2018-0593-AIR-E; IDENTIFIER: RN109975656; LOCATION: Farmers Branch, Dallas County; TYPE OF FACILITY: rim and wheel refurbishing facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(32) COMPANY: Wright City Water Supply Corporation; DOCKET NUMBER: 2018-0552-PWS-E; IDENTIFIER: RN101238459; LOCATION: Troup, Smith County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum containment level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$213; ENFORCEMENT COORDINATOR: Caleb Olson, (512) 239-2541; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201803377





Amended Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 152632

**APPLICATION.** Lauren Concrete Inc, 2001 Picadilly Drive, Round Rock, Texas 78664-9511 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 152632 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 4901 West Highway 290, Dripping Springs, Hays County, Texas 78620. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.193888&lng=-98.176666&zoom=13&type=r>. This application was submitted to the TCEQ on July 3, 2018. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on July 12, 2018.

**PUBLIC COMMENT / PUBLIC HEARING.** Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, TX 78711-3087, or electronically at [www.tceq.texas.gov/agency/comments.html](http://www.tceq.texas.gov/agency/comments.html). Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

**The Public Hearing is to be held:**

**Monday, September 10, 2018, at 6:30 p.m.**

**Dripping Springs Ranch Park**

**1042 Event Center Drive**

**Drippings Springs, Texas 78620**

**RESPONSE TO COMMENTS.** A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

**CENTRAL/REGIONAL OFFICE.** The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Austin Regional Office, located at 12100 Park 35 Circle Bldg A Rm 179, Austin, Texas 78753-1808, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

**INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.**

Further information may also be obtained from Lauren Concrete, Inc., 2001 Picadilly Drive Round Rock, Texas 78664-9511, or by calling Mr. Paul W. Henry P.E., Principal Engineer, Henry Environmental Services at (512) 281-6555.

TRD-201803417

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 8, 2018



Enforcement Orders

An agreed order was adopted regarding City of Kenedy, Docket No. 2014-1899-MWD-E on August 8, 2018, assessing \$59,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DSJS Management, LLC, Docket No. 2016-1035-MWD-E on August 8, 2018, assessing \$7,838 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jake Marx, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MINSA CORPORATION, Docket No. 2016-1251-MLM-E on August 8, 2018, assessing \$53,629 in administrative penalties with \$10,725 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Southwest Convenience Stores, LLC dba 7 Eleven 57812 and 7 Eleven 57816, Docket No. 2016-1411-PST-E on August 8, 2018, assessing \$36,200 in administrative penalties with \$7,240 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Gerhardt, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WINRE LLC, Docket No. 2016-1640-WQ-E on August 8, 2018, assessing \$8,462 in administrative penalties with \$1,692 deferred. Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Alto, Docket No. 2016-1825-MWD-E on August 8, 2018, assessing \$22,800 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Brady, Docket No. 2016-1929-MSW-E on August 8, 2018, assessing \$17,718 in administrative penalties with \$3,543 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Bridge City, Docket No. 2016-1965-PWS-E on August 8, 2018, assessing \$351 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Tyler Gerhardt, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Houston Refining LP, Docket No. 2016-2070-AIR-E on August 8, 2018, assessing \$84,188 in administrative penalties with \$16,837 deferred. Information concerning any aspect of this order may be obtained by contacting Joanna Hunsberger, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ADICO ENTERPRISES INC. dba Scarsdale Shell, Docket No. 2016-2079-PST-E on August 8, 2018, assessing \$12,000 in administrative penalties with \$2,400 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Texas, Inc., Docket No. 2017-0247-MWD-E on August 8, 2018, assessing \$28,300 in administrative penalties with \$5,660 deferred. Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Livingston Care Associates, Inc. and Polk Health Holdings LLC, Docket No. 2017-0296-MWD-E on August 8, 2018, assessing \$27,084 in administrative penalties with \$5,416 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Lingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CAMPBELL OIL CO. dba Conoco Kwik Stop, Docket No. 2017-0305-PST-E on August 8, 2018, assessing \$8,751 in administrative penalties with \$1,750 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SAM RAYBURN WATER, INC., Docket No. 2017-0307-PWS-E on August 8, 2018, assessing \$619 in administrative penalties. Information concerning any aspect

of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Arlington, Docket No. 2017-0344-WQ-E on August 8, 2018, assessing \$13,125 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jennifer Ann Greene, Docket No. 2017-0463-MLM-E on August 8, 2018, assessing \$10,336 in administrative penalties with \$9,136 deferred. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LCY ELASTOMERS LP, Docket No. 2017-0615-IWD-E on August 8, 2018, assessing \$78,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Audrey Liter, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shell Oil Company, Docket No. 2017-0658-AIR-E on August 8, 2018, assessing \$13,125 in administrative penalties with \$2,625 deferred. Information concerning any aspect of this order may be obtained by contacting Shelby Orme, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding M.A.A.A. ENTERPRISES, INC. dba Clinton Food Market, Docket No. 2017-0804-PST-E on August 8, 2018, assessing \$24,800 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Isaac Ta, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding North East Texas Regional Mobility Authority and Webber, LLC, Docket No. 2017-0835-WQ-E on August 8, 2018, assessing \$67,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TEXAS BARGE & BOAT, INC., Docket No. 2017-0957-IWD-E on August 8, 2018, assessing \$20,700 in administrative penalties with \$4,140 deferred. Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SAHIL VENTURES, INC. dba Paradise Food Mart, Docket No. 2017-0998-PWS-E on August 8, 2018, assessing \$7,725 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AARYA & ARJUN INC dba 24/7 Convenience Store, Docket No. 2017-1037-PST-E on August 8, 2018, assessing \$8,453 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Joseph

Washburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RODELL WATER SYSTEM, INC., Docket No. 2017-1140-PWS-E on August 8, 2018, assessing \$6,708 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cinco Electronics Recycling, Inc, Docket No. 2017-1175-MLM-E on August 8, 2018, assessing \$12,189 in administrative penalties with \$2,437 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RED RIVER DOZER & FARM SERVICE, INC., Docket No. 2017-1225-MLM-E on August 8, 2018, assessing \$40,954 in administrative penalties with \$8,190 deferred. Information concerning any aspect of this order may be obtained by contacting Huan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sunoco Partners Marketing & Terminals L.P., Docket No. 2017-1251-AIR-E on August 8, 2018, assessing \$47,195 in administrative penalties with \$9,439 deferred. Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Edmonson, Docket No. 2017-1297-PWS-E on August 8, 2018, assessing \$845 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TURLINGTON WATER SUPPLY CORPORATION, Docket No. 2017-1299-PWS-E on August 8, 2018, assessing \$732 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Solutia Inc., Docket No. 2017-1313-AIR-E on August 8, 2018, assessing \$9,682 in administrative penalties with \$1,936 deferred. Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AL'S QUICK STOP, INC. dba 7-Eleven Convenience Store 39309, Docket No. 2017-1346-PST-E on August 8, 2018, assessing \$18,000 in administrative penalties with \$3,600 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Afshan & Iftikhar Enterprises, Inc. dba KWIK STOP #1, Docket No. 2017-1352-PST-E on August 8, 2018, assessing \$8,187 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Joseph Washburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cecil Alfred Redford dba Lakehills Homestead and RV Park and Linda Carol Redford dba Lakehills Homestead and RV Park, Docket No. 2017-1370-PWS-E on August 8, 2018, assessing \$817 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Brownsville, Docket No. 2017-1410-PST-E on August 8, 2018, assessing \$8,284 in administrative penalties with \$1,656 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Twin Eagle Sand Logistics, LLC, Docket No. 2017-1519-MLM-E on August 8, 2018, assessing \$9,875 in administrative penalties with \$1,975 deferred. Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Thalia Water Supply Corporation, Docket No. 2017-1585-PWS-E on August 8, 2018, assessing \$810 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Farhad Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding EOLA WATER SUPPLY CORPORATION, Docket No. 2017-1732-PWS-E on August 8, 2018, assessing \$1,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Audrey Litter, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201803429

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 8, 2018



#### Enforcement Orders

An agreed order was adopted regarding Allstate BK Real Estate Holdings, Ltd., Docket No. 2017-0538-PWS-E on August 7, 2018, assessing \$1,244 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Charles J. Wilson dba Memory Lane MHP, Docket No. 2017-0962-PWS-E on August 7, 2018, assessing \$880 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Adam Taylor, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding First Solid Energy Group, LP, Docket No. 2017-1116-AIR-E on August 7, 2018, assessing \$5,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201803430



Notice of Hearing GCGV Asset Holding LLC

SOAH Docket No. 582-18-4846

TCEQ Docket No. 2018-0899-AIR

Proposed Permit Nos. 146425 and PSDTX1518

**APPLICATION.**

GCGV Asset Holding LLC, 1735 Hughes Landing Blvd., The Woodlands, Texas 77380-1688, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit 146425, and Prevention of Significant Deterioration (PSD) Air Quality Permits PSDTX1518, which would authorize construction of

a petrochemicals and plastics manufacturing complex south of Highway 181 and west of FM RD 2986, Gregory, San Patricio County, Texas 78390. This application was processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This application was submitted to the TCEQ on April 19, 2017. The proposed facility will emit the following air contaminants in a significant amount: carbon monoxide, greenhouse gases, nitrogen oxides, organic compounds, and particulate matter, including particulate matter with diameters of 10 microns or less (PM10) and 2.5 microns or less (PM2.5). In addition, the facility will emit the following air contaminants: exempt solvents, hazardous air pollutants, ammonia, ethylene oxide, hydrogen sulfide, sulfur dioxide, and sulfuric acid mist.

The degree of PSD increment predicted to be consumed by the proposed facility and other increment-consuming sources in the area is as follows:

PM<sub>10</sub>

Maximum Averaging Time	Maximum Increment Consumed (µg/m <sup>3</sup> )	Allowable Increment (µg/m <sup>3</sup> )
24-hour	9.8	30
Annual	1.5	17

Nitrogen Dioxide

Maximum Averaging Time	Maximum Increment Consumed (µg/m <sup>3</sup> )	Allowable Increment (µg/m <sup>3</sup> )
Annual	4.1	25

PM<sub>2.5</sub>

Maximum Averaging Time	Maximum Increment Consumed (µg/m <sup>3</sup> )	Allowable Increment (µg/m <sup>3</sup> )
24-hour	8.95	9
Annual	1.35	4

The Executive Director has determined that the emissions of air contaminants from the proposed facility, which are subject to PSD review, will not violate any state or federal air quality regulations and will not have any significant adverse impact on soils, vegetation, or visibility. All air contaminants have been evaluated, and "best available control technology" will be used for the control of these contaminants.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The permit application, executive director's preliminary decision, draft permit, and the executive director's preliminary determination summary and executive director's air quality analysis are available for viewing and copying at the TCEQ central office, the TCEQ Corpus Christi regional office, and at the Bell Whittington Public Library, 2400 Memorial Parkway, Portland, San Patricio County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Corpus Christi Regional Office, NRC Bldg Ste 1200, 6300 Ocean Dr., Unit 5839, Corpus Christi, Texas. As a public courtesy, we

have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <<http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=27.92979&lng=-97.32191&zoom=13&type=r>>. For the exact location, refer to the application.

**DIRECT REFERRAL.**

The Combined Notice of Public Meeting and Notice of Application and Preliminary Decision was published in English on April 26, 2018, and in Spanish on May 1, 2018. On June 28, 2018, the Applicant filed a request for direct referral to the State Office of Administrative Hearings (SOAH). Therefore, the chief clerk has referred this application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

**CONTESTED CASE HEARING.**

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - September 6, 2018

Nueces County Courthouse

Central Jury Room - 1st Floor

901 Leopard Street

Corpus Christi, Texas 78401

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will be conducted in accordance with the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code (TAC) Chapter 116, Subchapters A and B; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155.

To request to be a party, you must attend the hearing and show you would be affected by the application in a way not common to the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

#### MAILING LIST.

You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

#### AGENCY CONTACTS AND INFORMATION.

Public comments and requests must be submitted either electronically at [www.tceq.texas.gov/goto/comments](http://www.tceq.texas.gov/goto/comments), 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. If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. General information regarding the TCEQ may be obtained electronically at <http://www.tceq.texas.gov>.

**In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

#### INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800)

687-4040. General information regarding the TCEQ can be found at <http://www.tceq.texas.gov/>.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Further information may also be obtained from GCGV Asset Holding LLC at the address stated above or by calling Mrs. Tammy Headrick, Environmental Advisor GCGV Asset Holding at (832) 625-4775.

Issued: July 31, 2018

TRD-201803419

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 8, 2018



Notice of Hearing GCGV Asset Holding LLC

SOAH Docket No. 582-18-4847

TCEQ Docket No. 2018-0900-AIR

Proposed Permit Nos. 146959 and PSDTX1520

#### APPLICATION.

GCGV Asset Holding LLC, 1735 Hughes Landing Blvd., The Woodlands, TX 77380-1688, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit 146959 and Prevention of Significant Deterioration (PSD) Air Quality Permit PSDTX1520, which would authorize construction of a plastics rail logistics center south of Highway 181 and west of FM RD 2986, Gregory, San Patricio County, Texas 78390. This application was processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code (TAC), Chapter 101, Subchapter J. This application was submitted to the TCEQ on May 25, 2017. The proposed facility will emit the following air contaminants in a significant amount: organic compounds and particulate matter, including particulate matter with diameters of 10 microns or less (PM10) and 2.5 microns or less (PM2.5).

The degree of PSD increment predicted to be consumed by the proposed facility and other increment-consuming sources in the area is as follows:

PM<sub>10</sub>

Maximum Averaging Time	Maximum Increment Consumed (µg/m <sup>3</sup> )	Allowable Increment (µg/m <sup>3</sup> )
24-hour	9.8	30
Annual	1.5	17

PM<sub>2.5</sub>

Maximum Averaging Time	Maximum Increment Consumed (µg/m <sup>3</sup> )	Allowable Increment (µg/m <sup>3</sup> )
24-hour	8.95	9
Annual	1.35	4

The Executive Director has determined that the emissions of air contaminants from the proposed facility, which are subject to PSD review, will not violate any state or federal air quality regulations and will not have any significant adverse impact on soils, vegetation, or visibility. All air contaminants have been evaluated, and "best available control technology" will be used for the control of these contaminants.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The permit application, executive director's preliminary decision, draft permit, and the executive director's preliminary determination summary and executive director's air quality analysis are available for viewing and copying at the TCEQ central office, the TCEQ Corpus Christi regional office, and at the Bell Whittington Public Library, 2400 Memorial Parkway, Portland, San Patricio County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Corpus Christi Regional Office, NRC Bldg Ste 1200, 6300 Ocean Dr., Unit 5839, Corpus Christi, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=27.92979&lng=-97.32191&zoom=13&type=r>. For the exact location, refer to the application.

**DIRECT REFERRAL.**

The Combined Notice of Public Meeting and Notice of Application and Preliminary Decision was published in English on April 26 and 27, 2018, and in Spanish on May 1, 2018. On June 28, 2018, the Applicant filed a request for direct referral to the State Office of Administrative Hearings (SOAH). Therefore, the chief clerk has referred this application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

**CONTESTED CASE HEARING.**

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

**10:00 a.m. - September 6, 2018**

**Nueces County Courthouse**

**Central Jury Room - 1st Floor**

**901 Leopard Street**

**Corpus Christi, Texas 78401**

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will be conducted in accordance with the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 TAC Chapter 116, Subchapters A and B; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155.

To request to be a party, you must attend the hearing and show you would be affected by the application in a way not common to the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

**MAILING LIST.**

You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

**AGENCY CONTACTS AND INFORMATION.**

Public comments and requests must be submitted either electronically at [www.tceq.texas.gov/goto/comments](http://www.tceq.texas.gov/goto/comments), 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. If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. General information regarding the TCEQ may be obtained electronically at <http://www.tceq.texas.gov>

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."

**INFORMATION.**

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information regarding the TCEQ can be found at <http://www.tceq.texas.gov/>.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Further information may also be obtained from GCGV Asset Holding LLC at the address stated above or by calling Mrs. Tammy Headrick, Environmental Advisor GCGV Asset Holding at (832) 625-4775.

Issued: July 31, 2018

TRD-201803420

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 8, 2018

## Texas Ethics Commission

### List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Julia Shinn at (512) 463-5800.

#### **Deadline: Special Session Report due September 14, 2017 for Candidates and Officeholders**

Sandra Crenshaw, P.O. Box 223964, Dallas, Texas 75222-3964

#### **Deadline: Semiannual Report due January 16, 2018 for Candidates and Officeholders**

Laura R. Thompson, 10251 Grand Meadow, San Antonio, Texas 78239

#### **Deadline: 8-Day Pre-Election Report due February 26, 2018 for Candidates and Officeholders**

Jeff O'Dea, 6655 Bayou Glen Rd., Houston, Texas 77057

#### **Deadline: Semiannual Report due January 16, 2018 for Committees**

Chad W. Anderson, Rio Grande Valley Apartment Assn. PAC, 813 N. Main, Ste. 201, McAllen, Texas 78501

Jack Drake, Move Houston State PAC, 10709 Marsha Ln., Houston, Texas 77024

Ryan Rowley, Southeast Republicans, 11827 Glen Bay Ct., Houston, Texas 77089

Charles T. Simpson, Keep Austin Proud, 7103 N. Lamar #105, Austin, Texas 78752

#### **Deadline: Lobby Activities Report due June 11, 2018**

Jesse R. Ayala, 5000 Research Forest Dr., The Woodlands, Texas 77381

Coover Law, P.C., Attn: David Marshall Coover II, 1122 Colorado, Ste. 102, Austin, Texas 78701

Amanda J. Marzullo, P.O. Box 6006, Austin, Texas 78762

Kelly McBeth, P.O. Box 5100, Austin, Texas 78763

Lilyanne H. McClean, 1701 Brun St., Ste. 100, Houston, Texas 77019

Elizabeth McGiffert, 1535 Mission St., San Francisco, California 94103

Lucinda Dean Saxon, 2204 Hayfield Sq., Pflugerville, Texas 78660

TRD-201803345

Seana Willing

Executive Director

Texas Ethics Commission

Filed: August 2, 2018

## Texas Facilities Commission

### Request for Proposals #303-0-20638

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-0-20638. TFC seeks a five (5) or ten (10) year lease of approximately 10,668 square feet of office space in Killeen, Texas.

The deadline for questions is July 30, 2018, and the deadline for proposals is August 13, 2018, at 3:00 p.m. The award date is September 20, 2018. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at <http://www.txsmartbuy.com/sp/303-0-20638>.

TRD-201803370

Naomi Gonzalez

Acting General Counsel

Texas Facilities Commission

Filed: August 6, 2018

### Request for Proposals #303-0-20639

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-0-20639. TFC seeks a five (5) or ten (10) year lease of approximately 9,871 square feet of office space in Rockwall, Hunt or Collin County, Texas.

The deadline for questions is August 27, 2018, and the deadline for proposals is September 10, 2018, at 3:00 p.m. The award date is October 18, 2018. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at <http://www.txsmartbuy.com/sp/303-0-20639>.

TRD-201803369

Naomi Gonzalez

Acting General Counsel

Texas Facilities Commission

Filed: August 6, 2018

## General Land Office

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

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of July 27 through August 3, 2018. 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 §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office website. The notice was published on the website on Friday, August 10, 2018. The public comment period for this project will close at 5:00 p.m. on Monday, September 10, 2018.

### FEDERAL AGENCY ACTIONS:

**Applicant:** Port of Corpus Christi Authority (POCCA)

**Location:** Inner Harbor of the Corpus Christi Ship Channel to the south of the intersection of Burleson Street and Market Street in the Port of Corpus Christi, Nueces County

**Latitude & Longitude (NAD 83):** 27.815951, -97.416834 (project site); 27.889252, -97.591216 (mitigation site); 27.885743, -97.594452 (upland disposal site)

**Project Description:** The applicant is requesting to amend the currently authorized POCCA Dock 17 (previously NuStar Dock 17). The applicant was authorized to construct a new oil dock with breasting dolphins and dredge an associated basin. The oil dock was 125 feet long by 50 feet wide and was going to be constructed at the end of a 25-foot-long by 40-foot-wide approach way. Two breasting dolphins were going to be constructed on each side of the dock extending 150 feet to the east of the dock and 160 feet to the west of the dock. The dolphins were to be 30 feet long by 18 feet wide. The authorized basin will not change in acreage and will still be approximately 11.43 acres in size. The applicant is proposing to amend the depth to be dredged to a total depth of -54 feet mean lower low water (MLLW), plus 4 feet advanced maintenance dredging, and plus 2 feet for allowable over depth for a total of -60 feet MLLW. The proposed basin will be constructed with a 3:1 slope, 0.82 acre of combined open water and estuarine wetland will be permanently filled for equipment support area, and the placement of articulated block mat on top of a geotextile fabric will be placed along the shoreline to stabilize the dredged slope. An existing outfall structure will be relocated along the western shoreline to accommodate basin dredging. Impacts to the onsite aquatic resources will change; specifically, no impacts to oysters will occur based on the results of an aquatic habitat survey conducted in January 2018, 0.037 acre of impact to submerged aquatic vegetation (SAV), 0.1 acre of tidal flat (an increase of 0.01 acre from the previous authorization), 0.15 acre of estuarine wetlands (a decrease of 0.1 acre from the previous authorization), 0.05 acre of mangroves (a decrease of 0.01 acre from the previous authorization), 3.68 acres of shallow open water that ranges from 0 feet MLLW to -6 feet MLLW (a decrease of 0.43 acre from the previous authorization), and 6.13 acres of deep open water (greater than -6 feet deep MLLW). Approximately 590,000 cubic yards of material will be hydraulically dredged and/or mechanically excavated and placed within one or more of the following dredged material placement areas (DMPAs): IH-PA2 (Herbie Mauer), IH-PA2 (Rincon DMPA), IH-PA1 (Inner Harbor PA), IH-PA3A (South Shore Cell A), IH-PA3B (South Shore Cell B), and/or IH-PA6 (Tule Lake). This

amendment request includes the modification of the previously authorized dock within the same dredge and fill footprint. The proposed dock will include a 30-foot-wide by 154-foot-long approach way on the east side of the dock, a 30-foot-wide by 145-foot-long approach way on the west side of the dock, both of which lead to a 90-foot-wide by 617.5-foot-long platform that has a traffic area, equipment area, a turn-around area, and other amenities to perform its purpose and need. It is estimated that approximately 300 steel and/or concrete piles in excess of 24-inch-diameter will be installed within the project footprint. The applicant is also proposing to amend their current approved mitigation plan by removing the oyster mitigation (Attachment A) and replacing it with seagrass mitigation (Attachment B). The applicant proposes to mitigate for the unavoidable impacts to 0.037 acre of submerged aquatic vegetation (SAV) by creating 0.111 acre of tidal wetlands that are adjacent to the previously approved wetland mitigation site within the Nueces Delta Preserve.

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application #SWG-2015-00417. 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.

**CMP Project No:** 18-1299-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Mr. Jesse Solis, P.O. Box 12873, Austin, Texas 78711-2873, or via email at federal.consistency@glo.texas.gov. Comments should be sent to Mr. Solis at the above address or by email.

TRD-201803428

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: August 8, 2018

## Texas Department of Insurance

### Company Licensing

Application for incorporation in the State of Texas by WALDEN DENTAL PLANS INC., a domestic Health Maintenance Organization. The home office is in Katy, Texas.

Application for incorporation in the State of Texas by PROCARE ADVANTAGE, LLC, a domestic Health Maintenance Organization. The home office is in Carrollton, Texas.

Application by EL PASO FIRST HEALTH PLANS, INC., a domestic Health Maintenance Organization, to add DBA (doing business as) PREFERRED ADMINISTRATORS. The home office is in El Paso, Texas.

Application for incorporation in the State of Texas by IRONBOUND INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in The Woodlands, Texas.

Application for admission to the State of Texas by GOAUTO INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Baton Rouge, Louisiana.

Application to do business in the State of Texas by OSMA HEALTH & WELFARE BENEFIT CORPORATION, a foreign Multiple Employer Welfare Arrangement (MEWA). The home office is in Oklahoma City, Oklahoma.

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 Jeff Hunt, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-201803425  
Norma Garcia  
General Counsel  
Texas Department of Insurance  
Filed: August 8, 2018

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Announcement of Application to Amend a State-Issued Certificate of Franchise Authority**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on August 3, 2018, to amend a state-issued certificate of franchise authority.

Project Title and Number: Application of Friendship Cable of Texas, Inc. d/b/a Suddenlink Communications to Amend a State-Issued Certificate of Franchise Authority, Project Number 48567.

The applicant seeks to amend its state-issued certificate of franchise authority number 90023 to expand its service area footprint to include the city limits of Annona, Texas.

Information on the application may be obtained by contacting 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. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 48567.

TRD-201803402  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 7, 2018

◆ ◆ ◆  
**Notice of Application for a Service Provider Certificate of Operating Authority**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on August 2, 2018, in accordance with Public Utility Regulatory Act §§54.151 - 54.156.

Docket Title and Number: Application of NGA 911, L.L.C. for a Service Provider Certificate of Operating Authority, Docket Number 48566.

Applicant seeks to provide facilities-based, data, and resale telecommunications services throughout the state of Texas.

Persons wishing to 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 no later than August 24, 2018. 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 48566.

TRD-201803401  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 7, 2018

**Notice of Application for a Water Certificate of Convenience and Necessity**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 30, 2018, for an application for a water certificate of convenience and necessity (CCN) in Starr County.

Docket Style and Number: Application of El Sauz Water Supply Corporation for a Water Certificate of Convenience and Necessity and to Decertify San Isidro Water Supply Corporation's Water Service Area in Starr County, Docket Number 48557.

The Application: El Sauz Water Supply Corporation (El Sauz WSC) filed an application for a water CCN to provide first-time water service to the San Isidro area in Starr County. El Sauz WSC is requesting to decertify San Isidro Water Supply Corporation's water service area under CCN 12796. El Sauz WSC plans to become the sponsor for available funding from USDA Rural Development for construction of needed water system improvements in the San Isidro area. The total area requested includes approximately 136,000 acres and 632 customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 48557.

TRD-201803421  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 8, 2018

◆ ◆ ◆  
**Notice of Application for Approval of a Service Area Contract**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) for approval of a service area contract designating areas to be served.

Docket Style and Number: Application of West Travis County Public Utility Agency and the City of Austin for Approval of a Service Area Contract Under Texas Water Code §13.248 and to Amend Certificates of Convenience and Necessity in Travis County, Docket Number 48561.

The Application: West Travis County Public Utility Agency (West County Utility) and the City of Austin filed an application under Texas Water Code §13.248 for approval of a service area contract and to amend their water certificates of convenience and necessity (CCN) in Travis County. West County Utility holds water CCN No. 13207 and the City of Austin holds water CCN No. 11322. Applicants have agreed to alter the boundaries of their respective CCNs and transfer one affected area comprising 10.734 acres and one current customer. There are no transfer of assets and facilities between the applicants.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection

at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 48561.

TRD-201803399  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 7, 2018



#### Notice of Application for Approval of a Service Area Contract and to Amend Certificates of Convenience and Necessity

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) for approval of a service area contract and to amend certificates of convenience and necessity (CCN).

Docket Style and Number: Application of City of Royse City and BHP Water Supply Corporation for Approval of Service Area Contract under Texas Water Code §13.248 and to Amend Certificates of Convenience and Necessity in Hunt County. Docket Number 48564.

The Application: BHP WSC holds water CCN No. 10064 and Royse City holds water CCN No. 12827. The applicants, by settlement agreement, seek approval to decertify land within BHP's water CCN boundary and Royse City seeks to be dually certificated with BHP for land within BHP's water CCN boundary.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 48564.

TRD-201803422  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 8, 2018



#### Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on August 2, 2018, in accordance with the Texas Water Code.

Docket Style and Number: Application of Aqua Texas Inc. and Town of Buffalo Gap for Sale, Transfer, or Merger of Facilities and Certificate Rights in Taylor County (Gap Water System), Docket Number 48565.

The Application: Aqua Texas Inc. is seeking to sell a portion of its water certificate of convenience and necessity (CCN) number 13201 and to transfer its Gap Water System facilities to Buffalo Gap. Buffalo Gap will obtain a new water CCN. The transfer includes approximately 1,782 acres and 269 current customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to

intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 48565.

TRD-201803423  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 8, 2018



#### Notice of Application to Amend a Certificate of Convenience and Necessity

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 16, 2018 for a name change amendment to a certificate of convenience and necessity.

Docket Style and Number: Application of Taylor Telephone Cooperative, Inc. to Amend a Certificate of Convenience and Necessity. Docket Number 48529.

The Application: Taylor Telephone Cooperative, Inc. seeks to change the name on certificate of convenience and necessity 40083 to Taylor Telephone Cooperative, Inc. d/b/a Taylor Telecom.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas 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. The deadline for intervention in this proceeding is August 31, 2018. 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 48529.

TRD-201803398  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 7, 2018



#### Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 25, 2018, to amend a certificate of convenience and necessity (CCN) for a proposed transmission line in Cameron County.

Docket Style and Number: Application of South Texas Electric Cooperative, Inc. to Amend its Certificate of Convenience and Necessity for the Proposed Palmas to East Rio Hondo 138-kV Transmission Line in Cameron County, Docket Number 48490.

The Application: South Texas Electric Cooperative, Inc. filed an application to amend its CCN to construct a double circuit capable 138-kV transmission line in Cameron County. The proposed project will be 6.2 to 6.6 miles in length, and is estimated to cost approximately \$6,151,000 to \$7,119,000, depending upon the final route chosen by the Commission. The Commission may approve any of the routes or route segments presented in the application.

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. The deadline for intervention in this proceeding is September 10, 2018. 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 48490.

TRD-201803424  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 8, 2018



#### Notice of Application to Amend a Sewer Certificate of Convenience and Necessity

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on August 3, 2018, to amend a sewer certificate of convenience and necessity (CCN).

Docket Style and Number: Application of the City of San Marcos to Amend Certificate of Convenience and Necessity in Hays, Guadalupe, Comal, and Caldwell Counties. Docket Number 48571.

The Application: The City of San Marcos request to amend its sewer CCN No. 20116 to accommodate the immediate economic area's accelerated growth trend. An approved amendment to its CCN will allow the city to include additional requested areas of service for funding and extension of its sewer infrastructure. The affected service area requested includes approximately 2,880 acres and 1,007 customers.

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 48571.

TRD-201803416  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 7, 2018



#### Notice of Proceeding for 2018 Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund

Notice is given to the public of the 2018 compliance proceeding initiated by the Public Utility Commission of Texas for eligible telecommunications providers (ETP) and resale eligible telecommunications providers (RETP) to attest to the proper use of Texas universal service funds (TUSF).

Project Title and Number: Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund Pursuant to PURA §56.030. Project Number 32567.

The Public Utility Commission of Texas initiated this proceeding under Public Utility Regulatory Act (PURA) §56.030 and 16 Texas Administrative Code (TAC) §26.417 and §26.419. PURA §56.030 requires that on or before September 1 of each year, a telecommunications provider that receives disbursements from the TUSF file with the commission an affidavit certifying that the telecommunications provider complies with

the requirements for receiving money from the TUSF and requirements regarding the use of money from the universal service fund program for which the telecommunications provider receives disbursements.

This certification requirement applies to every ETP and RETP receiving support from the TUSF. In accordance with PURA §56.030 and 16 TAC §26.417 and §26.419, each ETP and RETP receiving TUSF support must file with the commission a sworn affidavit (using the commission prescribed form) certifying that the provider complies with the requirements for receiving money from the TUSF and the requirements regarding the use of money from each TUSF program for which the provider receives funds. All carriers in Texas requesting certification by the commission shall submit an affidavit by September 1, 2018.

Carriers designated as ETPs and RETPs may contact the Public Utility Commission of Texas 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. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. Persons contacting the commission regarding this proceeding should refer to Project Number 32567.

TRD-201803348  
Adriana Gonzales  
Rules Coordinator  
Public Commission of Texas  
Filed: August 2, 2018



#### Notice of Proceeding for 2018 Annual State Certification for Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds

Notice is given to the public of the 2018 certification proceeding initiated by the Public Utility Commission of Texas for state certification of common carriers as eligible telecommunications carriers (ETC) to receive federal universal service funds.

Project Title and Number: Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds. Project Number 24481.

Under 47 Code of Federal Regulations (C.F.R.) § 54.314, the Public Utility Commission of Texas annually certifies that all federal high-cost support provided to carriers in Texas was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The commission must file the certification with the Federal Communications Commission and the Universal Service Administrative Company by October 1 each year in order for ETCs to receive federal high-cost support. Without certification, carriers will not receive federal high-cost support.

The certification requirement applies to all incumbent local exchange carriers and competitive eligible telecommunications carriers seeking federal high-cost support. Under 16 Texas Administrative Code §26.418(k), each carrier shall provide the commission with a sworn affidavit certifying that the carrier complies with federal requirements for receiving federal high-cost support. All carriers in Texas requesting certification by the commission must submit an affidavit by September 1, 2018.

Carriers seeking to be certified may contact the Public Utility Commission of Texas 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. Hearing and speech-impaired individuals with text telephone (TTY) may

contact the commission through Relay Texas by dialing 7-1-1. Persons contacting the commission regarding this proceeding should refer to Project Number 24481.

TRD-201803349  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 2, 2018

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**Regional Water Planning Group - Area B**

Public Notice: Regional Water Planning Group - Area B Meeting and Solicitation of Public Comments on Technical Memorandum

The Regional Water Planning Group - Area B (RWPG-B) was established by state law, including Texas Water Code Chapter 16, TWDB rules, and 31 TAC Chapters 355, 357, and 358 on February 19, 1998. Region B includes the following counties: Archer, Baylor, Clay, Cottle, Foard, Hardeman, King, Montague, Wichita, Willbarger, and the part of Young County that encompasses the City of Olney. The purpose of the RWPG-B is to provide comprehensive regional water planning and to carry out the related responsibilities placed on regional water planning groups by Texas Legislature. Foremost among those responsibilities is the development of a regional water plan for Region B that identifies both short and long-term water supply needs and recommends water management strategies for addressing them.

Notice is hereby given that the Regional Water Planning Group - Area B will hold an open meeting on Wednesday, August 22, 2018, 10:00 a.m. at the Red River Authority of Texas Administrative Offices located at 3000 Hammon Road, Wichita Falls, Texas, to consider action to approve and submit a Technical Memorandum to the Texas Water Development Board in accordance with 31 TAC §357.12(c).

The Technical Memorandum provides documentation of the RWPG-B's preliminary analysis of Water Demand Projections, Water Availability, Existing Water Supplies, and Water Needs, Methodologies for identifying, and a list of, potentially feasible Water Management Strategies and declaration of the RWPG-B's intent of whether or not to pursue simplified planning for the development of the *2021 Region B Regional Water Plan*. A draft copy of the Technical Memorandum will be made available for review on the RWPG-B's website, [www.regionbwater.org](http://www.regionbwater.org), one week prior to the meeting.

The RWPG-B will accept written and oral comments (3 minutes per speaker) from the public regarding the Technical Memorandum during the open meeting. The deadline for submittal of written comments to the RWPG-B is 5:00 p.m. on September 6, 2018. Comments may be emailed to [randy.whiteman@rra.texas.gov](mailto:randy.whiteman@rra.texas.gov) or mailed to Mr. Randy Whiteman, General Manager, Red River Authority of Texas, Administrative Agency for Region B, P.O. Box 240, Wichita Falls, Texas 76307-0240.

For additional information, please contact: Ms. Stacey Green at (940) 723-2236 or email at [stacey.green@rra.texas.gov](mailto:stacey.green@rra.texas.gov).

TRD-201803346  
Randy Whiteman  
General Manager  
Regional Water Planning Group - Area B  
Filed: August 2, 2018

◆ ◆ ◆  
**Office of the Secretary of State**

**Notice of Public Hearing**

Notice is hereby given that the Public Hearing for the Voting System Examination for Election Systems & Software (ES&S) will be held on Friday, August 17, 2018, from 1:00 p.m. - 3:00 p.m. at the State Office of Administrative Hearings, Room 103, 300 W. 15th Street, Austin, Texas 78701-1649.

TRD-201803432  
Keith Ingram  
Director of Elections  
Office of the Secretary of State  
Filed: August 9, 2018

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**Texas State Soil and Water Conservation Board**

Request for Proposals for the Fiscal Year 2019 Clean Water Act §319(h) Nonpoint Source Grant Program

**PROPOSALS DUE: September 28, 2018**

**INTRODUCTION**

This request for proposals (RFP) provides instructions and guidance for applicants seeking funding from the Texas State Soil and Water Conservation Board (TSSWCB) under the Clean Water Act (CWA) §319(h) Nonpoint Source (NPS) Grant Program. Pursuant to Section 201.026(b) of the Agriculture Code, the TSSWCB is the lead agency for activity relating to abating agricultural and silvicultural nonpoint source pollution. The U.S. Environmental Protection Agency (EPA) distributes funds appropriated by Congress annually to the TSSWCB under the authorization of CWA §319(h). TSSWCB then administers/awards these federal funds as grants to cooperating entities for activities that address the goals, objectives, and priorities stated in the *Texas NPS Management Program*. The *Texas NPS Management Program* is the State's comprehensive strategy to protect and restore water quality in waterbodies impacted by NPS water pollution. This document can be accessed online at <https://www.tsswcb.texas.gov/index.php/programs/texas-nonpoint-source-management-program>.

The types of agricultural and silvicultural NPS pollution prevention and abatement activities that can be funded with §319(h) grants include the following: implementation of nine-element watershed protection plans (WPPs) and the agricultural and silvicultural NPS portion of Total Maximum Daily Load (TMDL) Implementation Plans (I-Plans), surface water quality monitoring, data analysis and modeling, demonstration of innovative best management practices (BMPs), technical assistance to landowners for conservation planning, public outreach/education, development of nine-element WPPs including the formation and facilitation of stakeholder groups, and monitoring activities to determine the effectiveness of specific pollution prevention methods. Strictly research activities are not eligible for §319(h) grant funding.

The TSSWCB is requesting proposals for watershed assessment, planning, implementation, demonstration, and education projects within the boundaries of impaired or threatened watersheds. The *2014 Texas Integrated Report* describes the water quality conditions for waterbodies in the state. All proposals must focus on the restoration and protection of water quality consistent with the goals, objectives, and priority watersheds and aquifers identified in Appendix C and D of the *Texas NPS Management Program*. Up to \$1 million of the TSSWCB's FY2019 CWA §319(h) grant will be eligible for this RFP. No more than 10% of these funds may be utilized for groundwater projects. A competitive proposal process will be used so that the most appropriate and effective projects are selected for funding.

Project proposals should, where applicable, stress interagency coordination, demonstrate new or innovative technologies, use comprehensive strategies that have statewide applicability, and stress public participation. Examples of project proposals previously funded by TSSWCB are available at <https://www.tsswcb.texas.gov/programs/texas-nonpoint-source-management-program/active-nonpoint-source-grant-projects>. Additionally, applicants are encouraged to review EPA's Grant Guidelines for the NPS Program available at <http://water.epa.gov/polwaste/nps/cwact.cfm>.

This RFP does not set a maximum or minimum amount for individual projects; however, project funding generally ranges between \$100,000 and \$400,000 for a two to three year project. The TSSWCB CWA §319(h) NPS Grant Program has a 60/40% match requirement, however proposals that do not meet the minimum matching requirement will still be considered. The cooperating entity will be reimbursed up to 60% from federal funds and must contribute a minimum of 40% of the total costs to conduct the project. The match must be from non-federal sources (may be cash or in-kind services) and must be described in the budget justification. Reimbursable indirect costs are limited to no more than 15% of total federal direct costs.

Quarterly progress and final reports are the minimum project reporting requirements. All projects that include an environmental data collection, generation, or compilation component (e.g., water quality monitoring, modeling, bacterial source tracking) must have a Quality Assurance Project Plan (QAPP), to be reviewed and approved by TSSWCB and the EPA. Project budgets and timelines should account for the development and review of QAPPs. More information on QAPPs and the *TSSWCB Environmental Data Quality Management Plan* is available at <http://www.tsswcb.texas.gov/quality>.

#### TSSWCB PRIORITIES

For this FY2019 RFP, the following priorities have been identified. Proposals that do not focus on these priorities are still welcomed but may rank lower than those that focus on the priorities.

##### Priority Project Activities

Implement WPPs and TMDL I-Plans (*See* priority areas listed below).

WPP development initiatives (*See* Appendix C in *Texas NPS Management Program*), which include activities such as the formation of watershed groups or water quality data collection and analysis.

Implement components of the *Texas Coastal NPS Pollution Control Program* in the Coastal Management Zone (<http://www.tsswcb.texas.gov/coastalnps>).

Support use of federal Farm Bill Programs and Initiatives (National Water Quality Initiative (NWQI) and Gulf of Mexico Initiative (GoMI)) through Cooperative Conservation in impaired watersheds.

Demonstration projects and/or development/delivery of education programs.

##### Priority Areas for WPP and TMDL Implementation Projects

###### WPPs

Leon River

Lavon Lake

Plum Creek (Segment 1810)

Lampasas River

Double Bayou

Navasota River

Attoyac Bayou

Mid and Lower Cibolo

Tres Palacios

#### ELIGIBLE ORGANIZATIONS

Grants will be available to public and private entities such as local municipal and county governments and other political subdivisions of the State (e.g., soil and water conservation districts), educational institutions, non-profit organizations, and state and federal agencies. Private organizations, for profit, may participate in projects as partners or contractors but may not apply directly for funding.

#### SELECTION PROCESS

Submitted proposals will be reviewed, scored, and ranked based on the evaluation and ranking criteria included in this RFP. A minimum scoring requirement (70%) is necessary for proposals to be eligible for consideration.

All applicants, unsuccessful and successful, will be notified. Those applicants whose proposals are recommended for funding will be contacted, and then TSSWCB will work with the applicant to revise and finalize the proposal prior to submittal to EPA. EPA must review and approve all proposals prior to TSSWCB awarding grant funds.

#### SUBMISSION PROCESS

To obtain a complete copy of TSSWCB's RFP and proposal submission packet, please visit <https://www.tsswcb.texas.gov/index.php/programs/texas-nonpoint-source-management-program> or contact Jana Lloyd at (254) 773-2250 ext. 224. All proposals must be submitted electronically (MS® Word) using the workplan template provided in this RFP; otherwise, proposals will be considered administratively incomplete and not considered for funding. All letters of support for the proposal, including letters from Project Partners confirming their role, must be received by the proposal due date to be considered. Submit proposals to [jlloyd@tsswcb.texas.gov](mailto:jlloyd@tsswcb.texas.gov). Proposals must be received electronically by 5:00 p.m. CDT, September 28, 2018, to be considered.

#### FY2019 GRANT TIMELINE

Issuance of RFP August 17, 2018

Deadline for Submission of Proposals September 28, 2018

Proposal Evaluation by TSSWCB October-November 2018

Notification of Selected Proposals/Unsuccessful Applicants December 2018

Work with Applicants to Finalize Selected Proposals November-December 2018

Review of Selected Proposals by EPA January 2019

Submit Grant Application to EPA May 2019

Contract Award August 2019

Anticipated Project Start Date September 1, 2019

TRD-201803400

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Filed: August 7, 2018

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**Texas Water Development Board**

Applications Received July 2018

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73730 a request from the Laguna Madre Water District, 105 Port Road, Port Isabel, Texas 78578-2404, received July 3, 2018, for \$5,425,000, financing from the Clean Water State Revolving Fund for planning, design, and construction of Wastewater Treatment Plant, Phase I Improvements.

Project ID #62806 a request from the City of Bevil Oaks, 7525 Sweetgum Road, Beaumont, Texas 77713-8412, received on July 5, 2018, for \$500,000 in financing from the Drinking Water State Revolving Fund for planning, design, and construction to replace infrastructure at the City's Water Treatment Plant that was destroyed during the Hurricane Harvey flooding.

Project ID #10445 a request from North Alamo Water Supply Corporation, 420 South Doolittle Road, Edinburg, Texas 78542, received on July 10, 2018, for \$15,854,000 in financing from the Economically Distressed Areas Program for the construction portion of a wastewater collection and treatment system.

Project ID #62807 a request from the City of Goliad, P.O. Box 939, Goliad, Texas 77963-0939, received on July 10, 2018, for \$1,100,000 in financing from the Drinking Water State Revolving Fund for the planning, design, and construction of a new groundwater well, storage tank, and appurtenances at its Ward Street elevated storage tank location.

Project ID #10447 a request from the City of Brady, P.O. Box 351, Brady, Texas 76825-0351, received on July 11, 2018, for \$28,665,000 in financing from the Economically Distressed Areas Program for the design and construction to treat its groundwater supplies to remove the Radionuclide contamination, improve the surface water treatment plan, and distribute the treated water.

Project ID #10438 a request from El Paso Water Utilities Public Service Board, P.O. Box 511, El Paso, Texas 79961-0511, received on July 16, 2018, for \$42,649,054 in financing from the Economically Distressed Areas Program for the planning, design, and construction to provide first-time wastewater sanitary sewer services to defined projects areas which includes the installation of a centralized gravity flow wastewater transmission line, various diameter collection lines and manholes.

Project ID #10439 a request from the City of Mission, 1201 East 8th Street, Mission, Texas 78572, received on July 16, 2018, for \$5,104,000 in financing from the Economically Distressed Areas Program for the construction of a centralized wastewater collection system to bring first-time sewer service to 14 colonia subdivisions in North Mission.

Project ID #10418 a request from Beaver Creek Water Control and Improvement District Number 1, 3380 Beaver Creek Drive, Caldwell, Texas 77836, received on July 17, 2018, for \$6,486,462 in financing from the Economically Distressed Areas Program for the existing privately owned water wells within the Beaver Creek WCID#1 service area that have been deemed a health nuisance by the Department of State Health Services.

Project ID #10455 a request from the City of Rio Hondo, P.O. Box 389, Rio Hondo, Texas 78583-0389, received on July 17, 2018, for

\$2,800,025 in financing from the Economically Distressed Areas Program for the planning, design, acquisition, and construction of the rehabilitation of the wastewater treatment plant.

Project ID #10366 a request from Kerr County, 700 Main, Kerrville, Texas 78028, received on July 18, 2018, for \$6,920,000 in financing from the Economically Distressed Areas Program for J J Lane, new centralized sewer service area currently served by failing septic systems.

Project ID #10366 a request from Kerr County, 700 Main, Kerrville, Texas 78028, received on July 18, 2018, for \$6,480,000 in financing from the Economically Distressed Areas Program for Hill Country River Estates, new centralized sewer service to area currently on failing septic systems.

Project ID #10422 a request from the City of Iola, 23574 Brazos Avenue, Iola, Texas 77861, received on July 19, 2018, for \$10,995,000 in financing from the Economically Distressed Areas Program for the planning, design, acquisition, and construction of a first-time sanitary sewer system.

Project ID #10456 a request from the City of Alpine, 100 North 13th Street, Alpine, Texas 79830-4401, received on July 19, 2018, for \$1,162,404 in financing from the Economically Distressed Areas Program for improvements to the wastewater treatment plant.

Project ID #10421 a request from the City of Menard, P.O. Box 177, Menard, Texas 76859-0177, received on July 19, 2018, for \$2,000,000 in financing from the Economically Distressed Areas Program for the planning, design, acquisition, and construction of the surface water treatment plant to address groundwater under the influence.

Project ID #73763 a request from the City of Blanco, 300 Pecan Street, Blanco, Texas 78606-750, received on July 23, 2018, for \$2,550,000 in financing from the Clean Water State Revolving Fund for the additional funding needed for the construction of the new wastewater treatment plant.

Project ID #73807 a request from the City of Terrell, 201 East Nash Street, Terrell, Texas 75160-0310, received on July 30, 2018, for \$24,550,000 in financing from the Clean Water State Revolving Fund for the Kings Creek wastewater treatment plant improvements project.

Project ID #62808 a request from the City of Terrell, 201 East Nash Street, Terrell, Texas 75160-0310, received on July 30, 2018, for \$7,385,000 in financing from the Drinking Water State Revolving Fund in order to complete improvements to water service lines which include piping upgrades, utility relocations, and storage improvements.

TRD-201803362  
Todd Chenoweth  
General Counsel  
Texas Water Development Board  
Filed: August 3, 2018



## 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 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

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 "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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