TEXAS REGISTER

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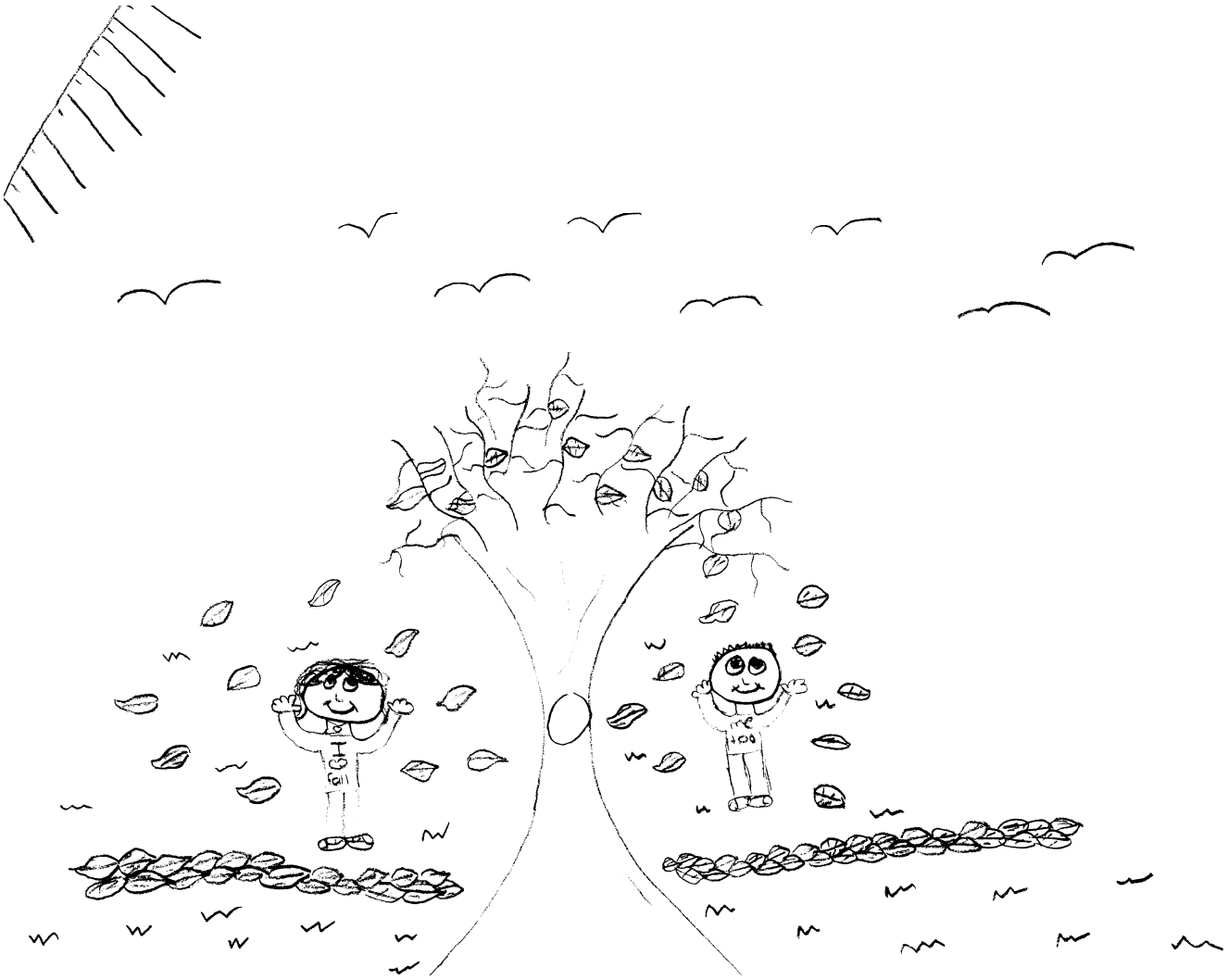

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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In This Issue

THE GOVERNOR

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

Appointments

Appointments for October 25, 2018

Appointed as the Commander of the Texas State Guard, for a term to expire at the pleasure of the Governor, Robert J. Bodisch, Sr. of Round Rock, Texas (replacing Gerald R. "Jake" Betty of College Station).

Appointments for October 30, 2018

Appointed to the Texas Board of Chiropractic Examiners, for a term to expire February 1, 2019, Scott D. Wofford, D.C. of Abilene, Texas (replacing John H. Riggs, III, D.C. of Midland who resigned).

Appointed to the Texas Board of Chiropractic Examiners, for a term to expire February 1, 2023, Mindy R. Neal, D.C. of Bovina, Texas (replacing Amy Vavra Gonzalez, D.C. of Mansfield whose term expired).

Appointed to the Texas Board of Chiropractic Examiners, for a term to expire February 1, 2023, Debra L. White, D.C. of Nacogdoches, Texas (replacing Karen Campion Brown, D.C. of Bryan whose term expired).

Appointments for October 31, 2018

Appointed to the Juvenile Justice Advisory Board, for a term to expire at the pleasure of the Governor, Angel L. Carroll of Lubbock, Texas (replacing David A. Torres of Austin).

Appointed to the Juvenile Justice Advisory Board, for a term to expire at the pleasure of the Governor, Gabrielle R. Gallardo of San Antonio, Texas (pursuant to Executive Order RP-9)

Appointed as Presiding Officer of the Automobile Burglary and Theft Prevention Authority, for a term to expire at the pleasure of the Governor, Thomas J. "Tommy" Hansen, Jr. (replacing Carlos Luis Garcia of Brownsville as Presiding Officer).

Appointed to the Automobile Burglary and Theft Prevention Authority, for a term to expire February 1, 2023, Phillip S. "Shay" Gause of Helotes, Texas (replacing Kenneth R. Ross of Houston whose term expired).

Appointed to the Automobile Burglary and Theft Prevention Authority, for a term to expire February 1, 2023, Miguel A. "Mike" Rodriguez, Jr. of Laredo, Texas (replacing Carlos Luis Garcia of Brownsville whose term expired).

Appointed as the Texas Poet Laureate, State Musician and State Artists Committee, for a term to expire October 1, 2019, Carol A. Hollen of Mineola, Texas (replacing Mary Ann Heller of Austin whose term expired).

Greg Abbott, Governor

TRD-201804766

♦ ♦ ♦

Proclamation 41-3606

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on August 23, 2017, certifying that Hurricane Harvey posed a threat of imminent disaster for Aransas, Austin, Bee, Brazoria, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton and Wilson counties; and

WHEREAS, the disaster proclamation of August 23, 2017, was subsequently amended on August 26, August 27, August 28 and September 14 to add the following counties to the disaster proclamation: Angelina, Atascosa, Bastrop, Bexar, Brazos, Burleson, Caldwell, Cameron, Comal, Grimes, Guadalupe, Hardin, Jasper, Kerr, Lee, Leon, Madison, Milam, Montgomery, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Washington and Willacy; and

WHEREAS, on September 20, 2017, and in each subsequent month effective through today, I issued proclamations renewing the disaster declaration for all counties listed above; and

WHEREAS, due to the catastrophic damage caused by Hurricane Harvey, a state of disaster continues to exist in those same counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for the 60 counties listed above.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 4th day of November, 2018.

Greg Abbott, Governor

TRD-201804786

♦ ♦ ♦


840
Vanessa Aguilar
11th Grade

THE ATTORNEY GENERAL

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.)

Requests for Opinions

RQ-0254-KP

Requestor:

The Honorable Jaime Esparza

District Attorney

34th Judicial District

El Paso County Courthouse, 2nd Floor

500 East San Antonio Street

El Paso, Texas 79901-2420

Re: Whether repeal of 40 U.S.C. 318 affects the authority the Legislature granted to Federal Protective Service officers under article 2.122(b) of the Texas Code of Criminal Procedure (RQ-0254-KP)

Briefs requested by December 4, 2018

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

TRD-201804788
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: November 6, 2018

♦ ♦ ♦

Makinzy Almand
10th Grade

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER U. CITRUS CANKER QUARANTINE

4 TAC §§19.400 - 19.405, 19.407 - 19.409

The Texas Department of Agriculture (the Department or TDA) adopts on an emergency basis new Title 4, Chapter 19, Subchapter U, Citrus Canker Quarantine, §§19.400 - 19.405 and §§19.407 - 19.409, concerning citrus quarantine. The new sections are adopted on an emergency basis to establish requirements and restrictions necessary to address dangers posed by quarantined infestation of destructive strains of citrus canker in Cameron, Harris, and Fort Bend counties, and recently infested Brazoria County of Texas.

Citrus canker is a non-systemic plant disease caused by strains or pathotypes of the bacterium *Xanthomonas citri* subsp.*citri*. The disease produces leaf-spotting, fruit rind-blemishing, defoliation, shoot dieback, fruit drop, and can predispose fruit to secondary infection by decay organisms. Marketability of symptomatic fresh fruit is reduced. While leaf lesions 2-10 mm diameter may appear within 14 days following host inoculation, symptoms may take several weeks to a few months to appear. Lower temperatures may increase the latency of the disease. Citrus canker bacterium can stay viable on the tree or soil for several months in old lesions on leaves, branches and other plant surfaces. *X. citri* subsp.*citri* is spread by wind-borne rain, splashing water, movement of infected plant material or mechanical contamination.

The detection of plants infected with citrus canker necessitates an emergency response by the Department in order to timely and properly destroy infected plants to combat and slow the spread of this highly destructive plant pathogen in Texas and prevent its spread to other states. TDA promptly destroys all plants anywhere in the state that test positive for any strain of citrus canker, in accordance with statute, to prevent the further spread of canker. The adoption of emergency rules is necessary to prevent the spread of citrus canker, especially in the citrus zone, which will help to prevent potential devastation to the state's citrus industry.

The movement, distribution or sale of citrus plants within or out of the quarantined areas will be regulated as a result of the emergency rules. Equipment or material coming in direct contact with infected plant material must be decontaminated prior to moving out of the quarantined area using any approved decontaminant. The citrus fruits sold, distributed or moved to packing houses for processing must be moved under the conditions of a compliance agreement.

The Department strongly urges residents in, and visitors to the quarantined areas, to be aware of the disease and may help combat it by contacting the Department, Texas A&M University (TAMU) AgriLife Extension, TAMU Kingsville-Citrus Center, USDA, or Texas Citrus Pest and Disease Management Corporation for more information.

The rules are adopted on an emergency basis under the Texas Agriculture Code, §71.004, which authorizes the Department to establish emergency quarantines; §73.004, which authorizes the Department to establish quarantines against citrus diseases and pests it determines are injurious; §71.007, which authorizes the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; and §12.020, which authorizes the Department to assess administrative penalties for violations of Chapter 71 of the Texas Agriculture Code.

The code affected by the adoption is the Texas Agriculture Code, Chapters 12, 71 and 73.

§19.400. Quarantined Pest.

Quarantined pest is citrus canker, and its causal agent, the bacterial pathogen *Xanthomonas citri* subsp. *citri*. The quarantined pest is a serious plant disease that is not widely distributed in this state.

§19.401. Quarantined Areas.

(a) Quarantined areas are described in this section, and as defined on the Department's website at *www.TexasAgriculture.gov.* A map of the quarantined area is also available on the Department's website.

(b) Quarantined areas include:

(1) In Fort Bend and Harris Counties: The quarantine boundary is described as: starting at a point described as N29.7166139524 degrees and W95.6013268808 degrees, then South along Shady Breeze Drive to a point described as N29.7142932806 degrees and W95.6011334915 degrees, then East along Westpark Tollway to a point described as N29.7146800592 degrees and W95.5962987587 degrees, then South along Cook Road to a point described as N29.6763889689 degrees and W95.5959119801 degrees, then East along Bissonnet Street to a point described as N29.6655591655 degrees and W95.5885631843 degrees, then South East along Kirkwood Road to a point described as N29.6415788853 degrees and W95.5723184784 degrees, then East along West Airport Boulevard to a point described as N29.6440929481 degrees and W95.5388621218 degrees, then South East along South Loop 8 to a point described as N29.6172118282 degrees and W95.5595547819 degrees, then West along U.S. Highway 90 to a point described as N29.629588746 degrees and W95.5922375822 degrees, then

South West along Interstate Highway 69 to a point described as N29.6168250495 degrees and W95.6061616155 degrees, then South East to a point described as N29.611410147 degrees and W95.6030673847 degrees, then South West along Country Club Boulevard to a point described as N29.6048349094 degrees and W95.6104161804 degrees, then North West along William Trace Boulevard to a point described as N29.5974861137 degrees and 95.6222129303 degrees, then South West along Interstate Highway 69 to a point described as N29.6007737338 degrees and 95.6314956191 degrees, then North West along State Highway 6 to a point described as N29.6090894752 degrees and W95.6438725379 degrees, then South West along University Boulevard to a point described as N29.5936183274 degrees and W95.6492874387 degrees, then West along New Territory Boulevard to a point described as N29.5898513129 degrees and W95.6774894667 degrees, then North West along State Highway 99 to a point described as N29.6573433334 degrees and W95.7154981303 degrees, then North along Harlem Road to a point described as N29.6619612082 degrees and W95.7151429089 degrees, then East along Madden Road to a point described as N29.6620781561 degrees and W95.7057571299 degrees, then North to a point described as N29.6688467839 degrees and W95.7059505183 degrees, then East to a point described as N29.6688467839 degrees and W95.7028562893 degrees, then North to a point described as N29.6702005099 degrees and W95.7024695107 degrees, then East to a point described as N29.6698137304 degrees and W95.694540547 degrees, then North to a point described as N29.6707806779 degrees and W95.694540547 degrees, then East to a point described as N29.6713608449 degrees and W95.6800363467 degrees, then North to a point described as N29.683931153 degrees and W95.6810032933 degrees, then West to a point described as N29.6845113218 degrees and W95.7013091739 degrees, then North along Addicks Clodine Road to a point described as N29.7009494162 degrees and W95.7011157855 degrees, then East along Bellaire Boulevard to a point described as N29.700756026 degrees and W95.6846776911 degrees, then South along Chickory Woods Lane to a point described as N29.6984353533 degrees and W95.6846776911 degrees, then East along Espinosa Drive to a point described as N29.6982419649 degrees and W95.6792627885 degrees, then South along Caracas Drive to a point described as N29.6955345136 degrees and W95.6790693983 degrees, then East along Sinaloa Drive to a point described as N29.6959212931 degrees and W95.6765553373 degrees, then North along San Pablo Drive to a point described as N29.6966948504 degrees and W95.6755883907 degrees, then East along Alametos Drive to a point described as N29.697081629 degrees and W95.6653387553 degrees, then North East along Addicks Clodine Road to a point described as N29.7100387148 degrees and W95.6603106322 degrees, then East along Westpark Tollway to a point described as N29.7104254934 degrees and W95.653348616 degrees, then North along Cedar Gardens Drive to a point described as N29.7140998913 degrees and W95.6529618365 degrees, then East along West Bend Drive to a point described as N29.7144866699 degrees and W95.6444527058 degrees, then South East along Westpark Tollway to a point described as N29.7135197234 degrees and W95.6158310829 degrees, then North on Synott Road to a point described as N29.717000731 degrees and 95.6154443043 degrees, then East along Brant Rock Drive to the starting point.

(2) In Harris County: The quarantine boundary is described as: starting at the intersection of Stella Link Road and North Braeswood Boulevard, then westerly along North Braeswood Boulevard to its intersection with Academy Street, then northerly along Academy Street to its intersection with Merrick Street, then easterly along Merrick Street to its intersection with Stella Link Road, then northerly along Stella Link Road to its intersection with Blue Bonnet Boulevard, then easterly along Blue Bonnet Boulevard to its intersection with Sewanee Street, then northerly along Sewanee Street to its intersection with Glen Haven Boulevard, then easterly along Glen Haven Boulevard to its intersection with Buffalo Speedway, then southerly along Buffalo Speedway to its intersection with South Braeswood Boulevard, then easterly along South Braeswood Boulevard to its intersection with Greenbush Drive, then southerly along Greenbush Drive to its intersection with Buffalo Speedway, then southerly along Buffalo Speedway to its intersection with Durhill Street, then westerly along Durhill Street to its intersection with Latma Drive, then northwesterly along Latma Drive to its intersection with Stella Link Road, then northerly along Stella Link Road to its intersection with Linkwood Drive, then northwesterly along Linkwood Drive to its intersection with South Braeswood Boulevard, then easterly along South Braeswood Boulevard to its intersection with Stella Link Road, then northerly along Stella Link Road to the starting point.

(3) In Cameron County: The quarantine boundary is described as: starting at a point described as N26.037815 degrees and W97.662652 degrees, then North West along U.S. Highway 281 to a point described as N26.043182 degrees and W97.662384 degrees, then North East along Farm to Market Road 732 to a point described as N26.045021 degrees and W97.666146 degrees, then North West along Joines Road to a point described as N26.07366 degrees and W97.640404 degrees, then North to a point described as N26.077092 degrees and W97.64515 degrees, then North East along Farm to Market Road 732 to a point described as N26.077092 degrees and W97.64515 degrees, then South East along Pennsylvania Avenue to a point described as N26.101461 degrees and W97.627285 degrees, then East along State Highway 100 to a point described as N26.073305515 degrees and W97.499314413 degrees, then South along Old Alice Road to a point described as N26.045394196 degrees and W97.504870042 degrees, then South West to a point described as N26.040001059 degrees and W97.510593706 degrees, then South to a point described as N26.003180323 degrees and W97.515121111 degrees, then East to a point described as N26.00304269 degrees and W97.512721575 degrees, then South to a point described as N26.0015193 degrees and W97.512867198 degrees, then East to a point described as N26.001250533 degrees and W97.508846831 degrees, then South to a point described as N25.995337159 degrees and W97.50931978 degrees, then East along Abilene Trail to a point described as N25.993839022 degrees and W97.495641435 degrees, then South along Stagecoach Trail to a point described as N25.978458918 degrees and W97.496850497 degrees, then West along Farm to Market Road 3248 to a point described as N25.945208997 degrees and W97.54445823 degrees, then North West along U.S. Highway 281 to a point described as N25.961952175 degrees and W97.578028281 degrees, then South to a point described as N25.944069784 degrees and W97.580010328 degrees, then North West along the Rio Grande River to the starting point.

(4) In Brazoria County and the adjacent area of Harris County: The quarantine boundary is described as: starting at a point described as N29.62598819 degrees and W95.266591998 degrees, then East along Almeda Genoa Road to a point described as N29.627130034 degrees and W95.249026799 degrees, then North East along Clearwood Drive to a point described as N29.632563989 degrees and W95.246256988 degrees, then North along Interstate Highway 45 to a point described as N29.651657784 degrees and W95.251359728 degrees, then East along Marleen Street to a point described as N29.652713805 degrees and W95.226735226 degrees, then South East along State Highway 3 to a point described as N29.637616657 degrees and W95.211540768 degrees, then South West along South Shaver Street to a point described as N29.626500058 degrees and W95.226619915 degrees, then South East along Interstate Highway 45 to a point described as N29.583976741 degrees

and W95.181246397 degrees, then South West along Blue Spruce Vale Way to a point described as N29.571100719 degrees and W95.195038307 degrees, then North West along Beamer Road to a point described as N29.572851511 degrees and W95.199176592 degrees, then South West along Dixie Farm Road to a point described as N29.5488365 degrees and W95.245129139 degrees, then North West along Farm to Market Road 518 to a point described as N29.564863322 degrees and W95.285403451 degrees, then North along State Highway 35 to a point described as N29.581828296 degrees and W95.286188027 degrees, then East along McHard Road to a point described as N29.582386972 degrees and W95.269586196 degrees, then North East along Pearland Parkway to the starting point.

§19.402. Regulated Articles Subject to the Quarantine.

(a) For purposes of this subchapter, a regulated article is a quarantined article defined under Texas Agriculture Code, §71.0092.

(b) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph (a) of this section, when it is determined by an inspector that it presents a risk of spread of citrus canker and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the provisions of this subchapter.

(c) Any article that described as a regulated article by Title 7, Code of Federal Regulations (CFR) §301.75-3.

§19.403. Restrictions on Movement, Sale, Distribution and Propagation of Articles Subject to the Quarantine.

(a) Movement of regulated articles.

(1) Regulated articles that are plants. Movement, sale or distribution through, within, into or from a quarantined area is prohibited, unless:

(A) authorized by the Department or USDA-APHIS-PPQ under a compliance agreement, limited permit or special permit; or

(B) within a given property, except, within 10 feet of where a plant which is symptomatic or diagnosed with citrus canker has been found, and the area has been treated according a compliance agreement or permit issued by the Department or USDA.

(2) Regulated articles that are fruit. Regulated articles that are fruit that are moved from the property where they were produced, or are distributed or sold:

(A) must be free of leaves, stems and debris; or

(B) must be under a compliance agreement or permit issued by the Department or USDA.

(3) Fruit shall not be moved out of a quarantined area, except under a compliance agreement or special permit with the Department or the USDA.

(4) Landscapers and mowers. Landscapers and mowers servicing a quarantined area must come under compliance agreement with the Department or USDA, and decontaminate tools, appliances and equipment by steam cleaning or by washing with an approved disinfectant prior to moving regulated articles out of the quarantined area.

(b) Transitory movement of regulated articles through a quarantined area shall be done only in a completely covered and enclosed insect-proof and water-proof container that shall not remain in the quarantined area beyond the time required for simple transit.

(c) Propagation, sale or distribution of regulated articles.

(1) Propagation and growing of any regulated articles that are plants, rootstock or budwood for movement or use inside, into or from a quarantined area shall be in certified citrus nursery facilities under the requirements and restrictions in chapter 21, subchapter D, of this title, relating to "Certified Nursery Stock Certification Program."

(2) Certified citrus nursery facilities shall comply with structural and sanitation requirements and restrictions applicable to interstate movement from citrus canker quarantined areas, as specified in the "Interstate Movement of Citrus Nursery Stock From Areas Quarantine for Citrus Canker, Citrus Greening, and/or Asian Citrus Psyllid" as published by USDA-APHIS-PPQ.

(d) Disposal of regulated articles. Infected plants, plant parts or regulated articles that are completely covered can move out of the quarantined area for burning or burial in a landfill under a compliance agreement or permit issued by the Department or USDA.

§19.404. Ongoing Pest Management.

At all times, all citrus plants for sale or distribution must be inspected regularly for symptoms of citrus canker. If any regulated article exhibits symptoms of citrus canker:

(1) the regulated article must be held at the location from sale or distribution, pending inspection, sampling and testing by the Department, and the location must immediately notify the nearest regional Department office; and

(2) plants or plant parts that test positive for citrus canker shall be destroyed and disposed of under Department supervision.

§19.405. Citrus Fruit Harvest.

(a) Compliance agreement required. Regulated fruit from a quarantined area intended for noncommercial or commercial movement, sale or distribution, shall not be moved from the production site, except under a compliance agreement with the Department or USDA.

(b) Disinfecting of regulated fruit.

(1) Disinfecting of regulated fruit shall include chemical treatment of regulated fruit, as prescribed in the USDA Treatment Manual D301.75-11(a).

(2) Following treatment of regulated fruit in accordance with this subsection, personnel must clean their hands as prescribed in the USDA Treatment Manual D301.75-11.

(3) Vehicles, equipment and other inanimate objects must be cleaned and treated as prescribed in the USDA Treatment Manual D301.75-11(d).

§19.407. Consequences for Failure to Comply with Quarantine Requirements or Restrictions.

(a) A person who fails to comply with quarantine restrictions or requirements or a Department order relating to the quarantine is subject to administrative or civil penalties up to $10,000 per day for any violation of the order and to the assessment of costs for any treatment or destruction that must be performed by the Department in the absence of such compliance.

(b) The Department is authorized to seize and treat or destroy or order to be treated or destroyed, any regulated article:

(1) that is found to be infested with the quarantined pest; or,

(2) regardless of whether infected or not, that is transported within, out of, or through the quarantined area in violation of this subchapter.

(c) Regulated articles seized pursuant to any Department order shall be destroyed at the owner's expense under the supervision of a Department inspector.

§19.408. Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions.

An order under the quarantine may be appealed according to procedures set forth in the Texas Agriculture Code, §71.010.

§19.409. Conflicts between Graphical Representations and Textual Descriptions; Other Inconsistencies.

(a) In the event that discrepancies exist between geographical descriptions and representations and textual descriptions of the geographic area in this subchapter, the representation or description creating the larger geographical area or more stringent requirements regarding the handling or movement of regulated articles shall control.

(b) The textual description of the plant disease shall control over any graphical representation of the same.

(c) Where otherwise clear as to intent, the mistyping of a scientific or common name in this subchapter shall not be grounds for exemption of compliance with the requirements of this subchapter.

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

Filed with the Office of the Secretary of State on October 30, 2018.

TRD-201804716
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: October 30, 2018
Expiration date: February 26, 2019
For further information, please call: (512) 463-4075

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8058

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8058, concerning Inpatient Direct Graduate Medical Education (GME) Reimbursement.

BACKGROUND AND PURPOSE

Currently, HHSC makes Medicaid GME supplemental payments to five state-owned teaching hospitals: University of Texas (UT) Medical Branch at Galveston, UT Health Science Center at Tyler, UT MD Anderson, UT Southwestern - Zale Lipshy, and UT Southwestern - Clements. The non-federal share for these GME payments comes from appropriations or patient revenues belonging to the state-owned teaching hospitals that are transferred to HHSC. HHSC draws down the federal match and makes quarterly interim Medicaid GME payments directly to the hospitals based on resident full-time equivalents (FTEs) and inpatient days reported by the hospital. The interim payments are reconciled and cost settled based on audited final cost report data.

The proposed amendment will allow eligible teaching hospitals owned and operated by non-state governmental entities to receive GME Medicaid supplemental payments, provided that the non-federal share is provided by the governmental entity that owns and operates the hospital. The payment will be based on the number of full-time equivalent medical residents and the Medicare per resident amount (PRA) reported on CMS Form 2552-10 and the Medicaid inpatient utilization percentage.

An annual Medicaid GME supplemental payment amount will be calculated for each eligible hospital using data from the hospital cost report most recently submitted to HHSC on October 1 of each year. HHSC proposes to split the annual amount into two payments. HHSC will not propose cost settlement of Medicaid GME supplemental payments for the new class of hospitals covered by this expansion.

HHSC is exploring the addition of hospitals operated by non-governmental entities. HHSC has not proposed adding such hospitals at this time given ongoing discussions with the Centers for Medicare and Medicaid Services (CMS) regarding the sources of the non-federal share of supplemental Medicaid payments. However, HHSC is interested in receiving comment on the concept.

SECTION-BY-SECTION SUMMARY

Proposed amendment to §355.8058 clarifies that subsection (a) is limited to Medicaid GME supplemental payments made to state-owned teaching hospitals and makes conforming changes throughout the subsection. Additionally, the proposed amendment clarifies previously existing language.

Proposed new §355.8058(b) specifies that the language in that subsection is limited to Medicaid GME supplemental payments made to non-state government-owned and operated teaching hospitals.

Proposed new paragraph §355.8058(b)(1) establishes the effective date of October 1, 2018, for Medicaid GME supplemental payments made to non-state government-owned and operated teaching hospitals.

Proposed new paragraph §355.8058(b)(2) provides definitions for the Medicaid GME supplemental payments made to non-state government-owned and operated teaching hospitals.

Proposed new paragraph §355.8058(b)(3) provides the methodology for calculating the total annual GME payment for each eligible hospital.

Proposed new paragraph §355.8058(b)(4) specifies which hospital cost report will be used for the calculation of the annual GME payment to each eligible hospital.

Proposed new paragraph §355.8058(b)(5) specifies that non-state government-owned and teaching hospitals must provide the non-federal share of GME payments.

Proposed new paragraph §355.8058(b)(6) states that payments under this subsection will be made semiannually.

The proposed amendment include other technical corrections, numbering revisions, and non-substantive changes to make the rule more understandable.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the section will be in effect, there will be a fiscal impact on state government as a result of the amendment. The non-federal share of the Medicaid GME payments is provided by local governmental entities through intergovernmental transfers (IGTs) to HHSC. HHSC will then draw down federal matching funds to issue the GME payments.

There is a possibility of fiscal implications to local governments, but participation in the Inpatient Direct GME supplemental payment program is voluntary. The non-federal share of GME supplemental payments to participating providers is provided by local governments through IGTs. A fiscal impact to local governments may occur only if the local governments choose to provide the IGT to participate in the Inpatient Direct GME program. However, such participation could yield a positive total fiscal impact to the local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

(3) implementation of the proposed amendment will not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed amendment will not require an increase or decrease in fees paid to the agency;

(5) the proposed amendment will not create a new rule;

(6) the proposed amendment will expand an existing rule; and

(7) the proposed amendment will not change the number of individuals subject to the rule.

(8) HHSC has insufficient information to determine the proposed amendment's effects on the state's economy.

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

Greta Rymal, Deputy Executive Commissioner for Financial Services, has also determined that there is no adverse economic impact on small businesses, micro-businesses, and rural communities required to comply with the section as proposed. Participation in the Inpatient Direct GME program is voluntary and places no burden on small businesses, micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated costs to persons who are required to comply with the section as proposed.

There is no anticipated negative impact on local employment.

COST TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to receive a source of federal funds.

PUBLIC BENEFIT

Victoria Grady, Acting Director of Rate Analysis, has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated is that the additional revenue to participating hospitals will help them maintain and expand existing residency programs.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kevin Niemeyer in HHSC Rate Analysis at (512) 730-7445.

Written comments on the proposal may be submitted to the HHSC Rate Analysis Department, 4900 North Lamar Blvd., Austin, TX 78714-9030 (Mail Code H-400); by fax to (512) 730-7475; or by e-mail to RateAnalysisDept@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 19R010" in the subject line.

STATUTORY AUTHORITY

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

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.8058. Inpatient Direct Graduate Medical Education (GME) Reimbursement.

(a) The Texas Health and Human Services Commission (HHSC) uses the methodology in this subsection to calculate Inpatient Direct Graduate Medical Education (GME) cost reimbursement for state-owned or state-operated teaching hospitals.

(1) Effective September 1, 2008, HHSC [~~the Texas Health and Human Services Commission (HHSC)~~] or its designee may reimburse a state-owned or state-operated teaching hospital with an approved medical residency program the hospital's inpatient direct GME cost for hospital cost reports beginning with state fiscal year 2009.

(2) Reimbursement of inpatient direct GME cost for state-owned or state- operated teaching hospitals:

(A) Inpatient direct GME cost, as specified under methods and procedures set out in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248 are calculated under similar methods for each hospital having inpatient direct GME costs on its tentative or final audited cost report.

(B) Definitions [~~GME definitions~~].

(i) Base year average per resident amount--the hospital's Medicaid allowable inpatient direct GME cost as reported

on CMS Form 2552-96 [2552], Hospital Cost Report ending in state fiscal year 2007; Worksheet B; Part I; Column 26; Line 95, divided by the un-weighted FTE residents from Worksheet S-3; Part I; Line 25.

(ii) Current FTE residents--the hospital's number of full time equivalent (FTE) [FTE] interns, residents, or fellows who participate in a program that is determined by HHSC to be a properly approved medical residency program including a program in osteopathy, dentistry, or podiatry, as required in order to become certified by the appropriate specialty board, as reported on CMS Form 2552-96 [2552], Hospital Cost Report; Worksheet S-3; Part I; Line 25.

(iii) GME Medicaid inpatient utilization percentage--the hospital's proportion of paid Medicaid inpatient days, including managed care days, as reported on CMS Form 2552-96 [2552], Hospital Cost Report adjusted to Medicaid Claim Summary Report; Worksheet S-3; Part 1; Line 12; Column 5, divided by the hospital's total inpatient days, as reported on Worksheet S-3; Part 1; Column 6, Lines 12, 14 (subprovider days), and 26 (observation days). Medicaid inpatient days and total inpatient days will include inpatient nursery days.

(C) HHSC calculates the total GME payments for each hospital as follows:

(i) multiplies the base year average per resident amount by the applicable Centers for Medicare and Medicaid Services (CMS) Prospective Payment System Hospital Market Basket index;

(ii) multiplies the results in clause (i) of this subparagraph by the number of current full-time equivalent (FTE) residents; and

(iii) multiplies the results in clause (ii) of this subparagraph by the GME Medicaid inpatient utilization percentage, which results in the total GME payments.

(D) Inpatient direct GME costs are removed from the reimbursement methodology and not used in the calculation of the provider's inpatient cost settlement.

(E) The GME interim payments will be reimbursed on a quarterly basis only after hospital services have been rendered. The interim payments are payable within 90 days of the receipt of the hospital's quarterly resident FTE data. Each hospital's quarterly resident FTE data will be divided by 4 to determine the average resident FTEs for each quarter. The interim payments will be reconciled and settled based on audited final cost report data.

(F) To receive GME payments from HHSC, a state-owned or state-operated teaching hospital must be enrolled as a Medicaid provider with HHSC and provide intergovernmental transfers to HHSC to fund the non-federal [state] portion of reimbursement for GME costs.

(b) HHSC uses the methodology in this subsection to calculate reimbursement for GME cost reimbursement for non-state government-owned and operated teaching hospitals.

(1) Effective October 1, 2018, HHSC or its designee may reimburse a non-state government-owned and operated teaching hospital with an approved medical residency program the hospital's estimated inpatient direct GME cost.

(2) Definitions.

(A) Non-state government-owned and operated teaching hospital--a hospital with a properly approved medical residency program that is owned and operated by a local government entity, including but not limited to, a city, county, or hospital district.

(B) FTE residents--the hospital's number of full time equivalent (FTE) interns, residents, or fellows who participate in a program that is determined by HHSC to be a properly approved medical residency program including a program in osteopathy, dentistry, or podiatry, as required in order to become certified by the appropriate specialty board, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; Column 9; Line 27.

(C) Medicare per resident amount (PRA)--average direct cost per medical resident, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet E-4; Line 18.

(D) GME Medicaid inpatient utilization percentage--the hospital's proportion of paid Medicaid inpatient days, including managed care days, divided by the hospital's total inpatient days, as reported on Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; columns 7 and 8.

(3) HHSC calculates the total annual GME payment for each hospital as follows:

(A) multiplies the FTE residents by the Medicare per resident amount;

(B) multiplies the results in subparagraph (A) of this paragraph by the GME Medicaid inpatient utilization percentage.

(4) On October 1 of each year, the cost report most recently submitted to HHSC or its designee, will be used for the annual GME payment calculation.

(5) To receive GME payments from HHSC, a non-state government-owned and operated teaching hospital must be enrolled as a Medicaid provider with HHSC and provide intergovernmental transfers to HHSC to fund the non-federal portion of reimbursement for GME costs.

(6) Payments under this subchapter will be made on a semi-annual basis.

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

Filed with the Office of the Secretary of State on November 5, 2018.

TRD-201804774
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 16, 2018
For further information, please call: (512) 730-7445

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 66. REGISTRATION OF PROPERTY TAX CONSULTANTS

16 TAC §§66.10, 66.20, 66.21, 66.25, 66.70, 66.80

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code, Chapter 66, §§66.10, 66.20, 66.21, 66.25,

66.70, and 66.80, regarding the Property Tax Consultants Program.

JUSTIFICATION AND EXPLANATION OF RULES

The proposed amendments are being implemented to be consistent with statutory language contained in Texas Occupations Code, Chapter 1152. The Department published a Notice of Intent to Review its Property Tax Consultants Program rules as part of the four-year rule review required under Government Code §2001.039 in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10483). These changes update references; clarify licensing and regulatory provisions; and address concerns during the initial comment period. The proposed amendments are necessary to complete Phase II of the Department's rule review.

The Property Tax Consultants Advisory Council met on October 10, 2018, and recommended publishing the proposed rules in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §66.10 update language.

The proposed amendments to §66.20 make editorial corrections.

The proposed amendments to §66.21 update the review date for each educational program and course.

The proposed amendments to §66.25 update continuing education hours, instruction hours, certificate of course completion retention, and removes continuing education providers.

The proposed amendments to §66.70 update language.

The proposed amendments to §66.80 update fees.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Brian E. Francis, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed amendments.

Brian E. Francis, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be a loss of revenue to the State as a result of enforcing or administering the proposed amendments.

The proposed amendments increase the license renewal fee from $75 to $135, however, the renewal fee will be paid once every two years instead of annually. For fiscal years one, two, and four the Department estimates an increase in revenue of $33,030, $28,699 and $24,859 respectively. However, in fiscal year three the Department estimates a loss in revenue of $50,348, and in fiscal year five a loss in revenue of $51, 248. The estimated loss and increase in revenue is a result of the timing of license renewals. A renewing licensee will, therefore, pay 10 percent less in fees every two years, and revenue to the State will also be reduced by approximately 10 percent over the long term.

The reduction in fees for private providers will not result in a loss of revenue, as no fees have previously been collected from them.

There is no estimated increase or loss in revenue to local governments as a result of the proposed amendments as local governments are not responsible for administering the state regulation of property tax consultants under Texas Occupations Code, Chapter 1152.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Francis has determined that the proposed amendments will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Francis also has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be changing from a one-year license to a two-year license. This would result in a reduction in the paperwork required of Property Tax Consultant licensees, as they would now renew their license every other year. Renewing licensees would pay 10 percent less in fees every two years, ultimately reducing the cost of business operations and passing savings onto to the consumer.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Francis has determined that for each year of the first five-year period the proposed amendments are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed amendments.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments. Since the agency has determined that the proposed amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. There are exceptions for certain types of rules under §2001.0045(c).

The proposed amendments do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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 rules will be in effect, the agency has determined the following:

(1) The proposed amendments do not create or eliminate a government program.

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed amendments do require an initial increase in fees paid to the agency due to extending the licensing term. However, fees paid to the agency will decrease by 10 percent each subsequent year.

(5) The proposed amendments do not create a new regulation.

(6) The proposed amendments do not expand, limit, or repeal an existing regulation.

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed amendments do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposal may be submitted to Ana Villarreal, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, Chapters 51 and 1152, 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 proposal are those set forth in Texas Occupations Code, Chapters 51 and 1152. No other statutes, articles, or codes are affected by the proposal.

§66.10. Definitions.

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

(1) (No change.)

(2) Private Provider--An educational institution that is established, conducted, and primarily supported by a nongovernmental person, [~~as defined by Texas Occupations Code, Chapter 1152,~~] which meets program and accreditation standards comparable to public institutions of higher education as determined by the Texas Higher Education Coordinating Board, and which offers an educational program or course for pre-registration credit or for upgrade credit towards a senior property tax consultant registration. The term does not include a continuing education provider as defined in Chapter 59 of this title.

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

§66.20. Registration Requirements.

(a) (No change.)

(b) An applicant for a senior property tax consultant registration must pass a department-approved examination for senior property tax consultants. The standard for passing the senior property tax consultant examination shall be a score of at least 70 percent [~~%~~].

(c) An applicant for a property tax consultant registration must pass a department-approved examination for property tax consultants. The standard for passing the property tax consultant examination shall be a score of at least 70 percent [~~%~~].

(d) (No change.)

§66.21. Pre-registration and Upgrade Education.

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

(e) Each educational program or course shall be reviewed in even-numbered years [~~annually~~].

(f) (No change.)

§66.25. Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) A registrant holding a certificate of registration pursuant to Texas Occupations Code 1152.201 must complete 12 hours of continuing education described in subsection (c)(1) - (4) within the term of the current registration.

(c) [~~(b)~~] To renew a registration expiring prior to May 1, 2019, a registrant must complete 12 hours of continuing education in courses approved or recognized by the department. Except as provided in Texas Occupations Code, §1152.204(b), the continuing education hours must include the following:

(1) three hours of instruction in Texas state law and rules that regulate the conduct of registrants;

(2) one hour of instruction in ethics;

(3) four hours of instruction in appraisal; and

(4) four hours of instruction in property tax consulting.

(d) To renew a registration expiring on or after May 1, 2019, a registrant must complete 24 hours of continuing education in courses approved or recognized by the department. Except as provided in Texas Occupations Code, §1152.204(b), the continuing education hours must include the following:

(1) six hours of instruction in Texas state law and rules that regulate the conduct of registrants;

(2) two hours of instruction in ethics;

(3) eight hours of instruction in appraisal; and

(4) eight hours of instruction in property tax consulting.

(e) [~~(c)~~] The continuing education hours must have been completed within the term of the current registration, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the two [~~one~~] year period immediately prior to the date of renewal.

(f) [~~(d)~~] A registrant may not receive continuing education credit for attending the same course more than once during the two-year [~~one-year~~] period for which the course is approved.

(g) [~~(e)~~] A registrant shall retain a copy of the certificate of completion for a course for two years [~~one year~~] after the date of completion. In conducting any inspection or investigation of the registrant,

the department may examine the registrant's records to determine compliance with this subsection.

(h) [~~(f)~~] To be approved under Chapter 59 of this title, a continuing education provider's course must be dedicated to instruction in one or more of the topics listed in subsection (b) of this section, and the continuing education provider must be registered under Chapter 59 of this title.

(i) [~~(g)~~] A continuing education course recognized by the department under Texas Occupations Code, §1152.204(b) is not required to be approved under Chapter 59 of this title, and the provider of such a course is not required to be registered under Chapter 59 of this title.

[~~(h) Except as provided in subsection (i) of this section, this section shall apply to continuing education providers and courses for registrants upon the effective date of this section.~~]

[~~(i) A continuing education provider that was approved by the department before the effective date of this section may continue to offer for credit continuing education courses that were approved by the department before the effective date of this section, until December 31, 2006.~~]

§66.70. Responsibilities of Registrant--General.

(a) - (c) (No change.)

(d) Individuals who are registered under Texas Occupations Code, §1152.158 may not perform property tax consulting services for compensation in connection with personal [~~a property that is not real~~] property.

(e) - (g) (No change.)

§66.80. Fees.

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

(e) The fee for the timely renewal of a property tax consultant's, senior property tax consultant's and real estate property tax consultant's registration is $135 [~~$75~~].

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

(h) The [~~non-refundable application~~] fee for recognition as a private provider is $0 [~~$125~~].

(i) A [~~In addition to the application fee,~~ a] private provider shall pay no [~~an~~] annual fee [~~of $75, which shall be refunded if the department does not recognize the private provider's educational program or course~~].

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

Filed with the Office of the Secretary of State on November 5, 2018.

TRD-201804767
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 16, 2018
For further information, please call: (512) 463-3671

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CHAPTER 95. TRANSPORTATION NETWORK COMPANIES

16 TAC §§95.40, 95.50, 95.71, 95.100

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 95, §§95.40, 95.50, 95.71 and 95.100, regarding the Transportation Network Companies program.

JUSTIFICATION AND EXPLANATION OF THE RULES

The proposed rules implement Texas Occupations Code, Chapter 2402. The proposed rules are necessary to make editorial corrections and neutralize language used regarding persons using fix-framed wheelchairs.

The proposed rules were sent to industry stakeholders for feedback on October 1, 2018.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §95.40 make an editorial correction.

The proposed amendments to §95.50 make editorial corrections and update language with current terminology.

The proposed amendments to §95.71 make editorial corrections.

The proposed amendment to §95.100 updates language with current terminology.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rules are in effect there will be no direct costs to the state or local governments as a result of enforcing or administering the proposed rules.

Mr. Francis has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

Mr. Francis has determined that for each year of the first five years the proposed rules are in effect, there are no foreseeable implications relating to costs or revenues to local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Francis has determined that the proposed rules will not affect any local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Francis has also determined that for each year of the first five-year period the proposed rules are in effect, the public will benefit from the introduction of neutral language and terms to describe persons using fix-framed wheelchairs as "passengers", thereby removing the stigma associated with the need for accessibility.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Francis has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules.

Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses or rural communities, preparation of an Economic Impact Statement and Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c).

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045(c).

GOVERNMENT GROWTH IMPACT STATEMENT

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 rules will be in effect, the agency 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.

(6) The proposed rule does not 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.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032, or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, Chapters 51 and 2402, 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 proposal are those set forth in Texas Occupations Code, Chapters 51 and 2402. No other statutes, articles, or codes are affected by the proposal.

§95.40. Responsibilities of the Department.

(a) Unless otherwise provided by statute or this chapter, the department may send notice of department proposed actions and decisions through email sent to the last email address designated by the permit holder in the department's licensing records.

(b) At licensure, the department will provide the permit holder with the requirements for the Accessibility Pilot Program [~~accessibility pilot program~~] report required by Texas Occupation Code, Chapter 2402.

§95.50. Reporting Requirements.

(a) For purposes of this section, "Market" means the legal boundaries of a municipality as defined in §1.005 of the Local Government Code or the metropolitan statistical area as defined by the Office of Management and Budget.

(b) (No change.)

(c) For purposes of the required Disability Compliance Report, the transportation network company is required to submit the information in subsection (c)(1) and (c)(2) within the 100th day after the transportation network company begins a pilot program.

(1) Disability Compliance Report. A report under this paragraph must include:

(A) Criteria for determining the four largest markets that the transportation company operates in this state;

(i) Identify the market(s) in which the transportation network company implemented the Accessibility Pilot Program; and

(ii) (No change.)

(B) The services offered to passengers with disabilities [~~disabled persons~~], including such passengers [~~disabled persons~~] using a fixed-frame wheelchair.

(C) - (D) (No change.)

(2) Disability Compliance Report Data Requirements. A report under this paragraph also must include:

(A) The number of vehicles equipped to accommodate a passenger with a fixed-frame wheelchair that were available through the company's digital network in the Accessible Pilot Program [~~pilot program~~] market.

(B) (No change.)

(C) The number of rides provided to passengers using fixed-frame wheelchairs [~~wheelchair-bound passengers~~].

(D) The number of instances in which the company referred a passenger using a fixed-frame wheelchair [~~wheelchair-bound passenger~~] to an alternate provider because the passenger could not be accommodated by the company.

(E) Average wait times for Accessibility Pilot Program market area. The permit holder must track and report the average time elapsed between the time a passenger initially requested a ride and the time the ride began for each:

(i) passenger using a fixed-frame wheelchair [~~wheelchair-bound passenger~~] serviced by the permit holder;

(ii) passenger using a fixed-frame wheelchair [~~wheelchair-bound passenger~~] referred to an alternate provider; and

(iii) non-wheelchair accessible requested ride.

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

(d) Accessibility Pilot Program Report. The report required by this subsection must be aggregated in ninety (90) day increments. The report must include final values for the entire period of the Accessibility Pilot Program and at a minimum include:

(1) The number of vehicles equipped to accommodate a passenger using [~~with~~] a fixed-frame wheelchair that were available through the company's digital network in the Accessibility Pilot Program [~~pilot program~~] market.

(2) (No change.)

(3) The number of rides provided to passengers using a fixed-frame wheelchair [~~wheelchair-bound passengers~~].

(4) The number of instances in which the company referred a passenger using a fixed-frame wheelchair [~~wheelchair-bound passenger~~] to an alternate provider because the passenger could not be accommodated by the company.

(5) Average wait times for Accessibility Pilot Program market area. The permit holder must track and report the average time elapsed between the time a passenger initially requested a ride and the time the ride began for each:

(A) passenger using a fixed-frame wheelchair [~~wheelchair-bound passenger~~] serviced by the permit holder;

(B) passenger using a fixed-frame wheelchair [~~wheelchair-bound passenger~~] referred to an alternate provider; and

(C) non-wheelchair accessible requested ride.

§95.71. Data Integrity, Name Changes, Address Changes, and Address Additions.

(a) A permit holder is obligated to ensure and maintain the accuracy of all information provided [~~it provides~~] to the department pursuant to this chapter.

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

§95.100. Statutory Compliance.

(a) (No change.)

(b) For purposes of compliance with 2402.111(a)(2)(A), a transportation network company shall consider a vehicle capable of transporting passengers using a fixed-frame wheelchair [~~passengers~~] in the cabin as eligible.

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

Filed with the Office of the Secretary of State on November 5, 2018.

TRD-201804769
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 16, 2018
For further information, please call: (512) 463-8179

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER B. PUBLIC PROCUREMENT AUTHORITY AND ORGANIZATION

DIVISION 4. IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

34 TAC §20.156

The Comptroller of Public Accounts proposes the repeal of §20.156, concerning certain employment for former state officers or employees restricted.

The comptroller proposes to repeal this section because the underlying statute, Government Code, §572.069, has been amended, and the rule no longer serves to further clarify the statute. Although the rule is proposed for repeal, the restrictions on certain employment of former state officers or employees remain in the statute. Amended §572.069 provides that "A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn."

Tom Currah, Chief Revenue Estimator, has determined that repeal of the rule will not result in any fiscal implications to the state government, units of local government, or individuals. The proposed repeal would benefit the public by removing a rule that does not serve to clarify the current statute. There would be no significant anticipated economic cost to the public.

Mr. Currah also has determined during the first five years that the proposed rule repeal is in effect, the repeal: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal repeals an existing rule.

The proposed rule repeal would have no significant fiscal impact on small businesses or rural communities.

Comments on the repeal may be submitted to Amy Comeaux, Statewide Procurement Policy and Outreach Manager, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The repeal is proposed under Government Code, §403.011, which outlines the general powers of the comptroller, Government Code, §572.051, which requires each state agency to adopt a written ethics policy, and Government Code, §656.051, which authorizes the comptroller to adopt rules related to training of state agency purchasing personnel, including ethics training.

The repeal affects Government Code, §572.069.

§20.156. Certain Employment for Former State Officer or Employee Restricted.

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

Filed with the Office of the Secretary of State on November 5, 2018.

TRD-201804768
Don Neal
Chief Counsel, Operations and Support Legal Services Division
Comptroller of Public Accounts
Earliest possible date of adoption: December 16, 2018
For further information, please call: (512) 475-0387

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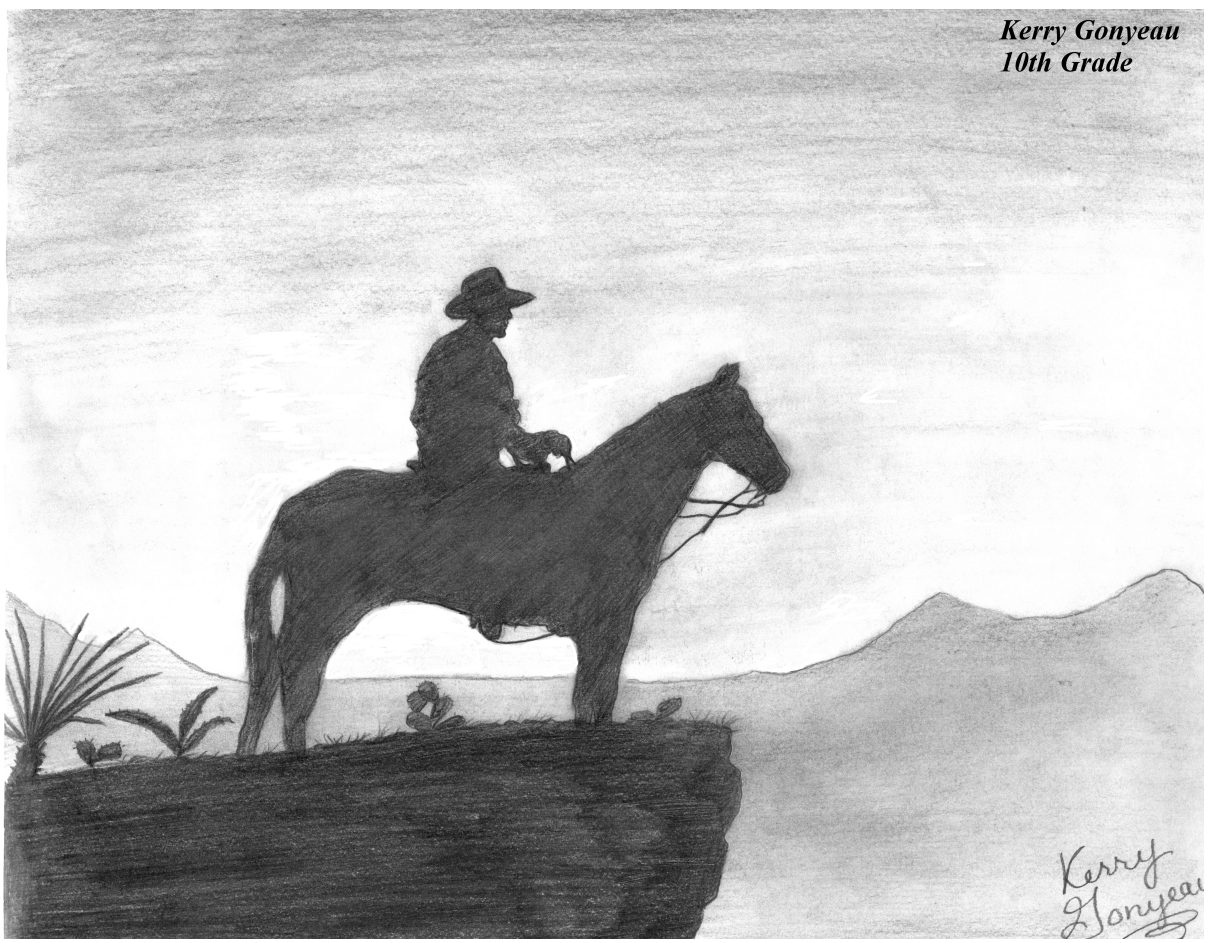
Kerry Gonyeau
10th Grade
Kerry Gonyeau

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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 15. HEARING AID SERVICES

1 TAC §354.1231, §354.1233

The Texas Health and Human Services Commission (HHSC) adopts amendments to §354.1231, concerning Benefits and Limitations; and §354.1233, concerning Requirements for Hearing Aid Services. The amendments to §354.1231 and §354.1233 are adopted with changes to the proposed text as published in the June 22, 2018, issue of the *Texas Register* (43 TexReg 3958). The rules will be republished.

BACKGROUND AND JUSTIFICATION

The adopted rule amendments allow nurse practitioners, clinical nurse specialists, and physician assistants under physician delegation to perform client examinations to determine medical necessity for a hearing aid.

The adopted rule amendments specify that nurse practitioners, clinical nurse specialists, and physician assistants under physician delegation who perform client examinations may recommend a client for a hearing aid evaluation performed by a physician or an audiologist. A hearing examination is a preliminary step to investigating hearing loss and to determine the medical necessity for a hearing aid, in which a client's hearing is checked to see if further evaluation is required by a physician or audiologist. Currently, a hearing examination may only be conducted by a Medicaid-enrolled provider licensed to perform these services. The hearing aid evaluation is a subsequent, in-depth procedure by a physician or audiologist to determine the type, scope, and severity of hearing loss.

The adopted rule amendments reinforce a physician's ability to delegate tasks to nurse practitioners, clinical nurse specialists, and physician assistants, as specified by Texas Medical Board and Texas Board of Nursing administrative rules.

COMMENTS

The 30-day comment period ended July 22, 2018. During this period, HHSC received comments regarding the proposed rules from five commenters, including the Advanced Practice Registered Nurse (APRN) Alliance, the Texas Medical Association and the Texas Association of Otolaryngology, Texas Speech-Language-Hearing Association, and the Coalition for Nurses in Advanced Practice. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Two commenters suggested amending the rules to state that nurse practitioners and physician assistants may be reimbursed separately for hearing examinations performed under delegation of a physician.

Response: HHSC appreciates the comment. HHSC respectfully declines to make the amendments that the commenter suggests, as they are outside the scope of HHSC's proposed amendments to the rule.

Comment: Two commenters noted their positive support for the rule amendments adding nurse practitioners (NPs) as persons who may assess a patient's medical necessity for a hearing aid evaluation. However, they suggested that other types of advanced practice registered nurses (APRNs) are also qualified to perform this service. The commenters recommend striking "nurse practitioner" and substituting "advanced practice registered nurse" throughout rules §354.1231 and §354.1233.

Response: The Texas Board of Nursing (BON) licenses qualified registered nurses to enter practice as advanced practice registered nurses (APRNs), which includes nurse anesthetists, nurse practitioners, clinical nurse specialists, and certified nurse midwives. BON advised HHSC that performing the hearing examination may not be within scope of practice for all APRNs. However, HHSC confirmed with BON that it is within scope of practice for clinical nurse specialists to perform hearing examinations, so HHSC will amend the rule proposal accordingly.

Comment: One commenter recommended removing the requirement that physicians delegate the evaluation to a nurse practitioner.

Response: HHSC respectfully declines to make the amendments that the commenter suggests. The amendments as proposed reinforce a physician's ability to delegate tasks to nurse practitioners and physician assistants.

Comment: One commenter recommended adding the requirement that nurse practitioners and physician assistants perform the hearing examination "under the delegation *and supervision"* of a physician.

Response: HHSC respectfully declines to make the amendments that the commenter suggests. The amendments as proposed reinforce a physician's ability to delegate tasks to nurse practitioners, clinical nurse specialists, and physician assistants.

Comment: One commenter suggested amending the title of the Physician Examination Report form to the "Hearing Examination Report" as cited in §354.1233.

Response: HHSC respectfully declines to make the amendment as they are outside the scope of HHSC's proposed amendments to the rule.

Comment: One commenter noted that audiologists are the appropriate professionals to perform the audiological evaluation and hearing aid evaluation to determine the need for amplification.

Response: HHSC agrees that audiologists and physicians are the appropriate professionals to perform comprehensive hearing evaluations.

ADDITIONAL INFORMATION

For further information, please call: (512) 730-7429.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.1231. Benefits and Limitations.

(a) Benefits. Reimbursement for hearing aid services available through the Texas Medical Assistance (Medicaid) Program shall be provided in accordance with federal regulations found at 42 CFR Chapter IV, Subchapter C, Medical Assistance Programs, and the provisions and procedures found elsewhere in this chapter. The following hearing aid services shall be reimbursed through the Texas Medicaid Program:

(1) physician, or, under physician delegation, a nurse practitioner, clinical nurse specialist, or physician assistant, examination to determine the medical necessity for a hearing aid;

(2) hearing aid evaluations;

(3) hearing aids (monaural or binaural) and hearing aid repairs;

(4) replacement batteries and related hearing aid supplies;

(5) initial fitting, dispensing, and post-fitting check of the hearing aid(s); and

(6) first and second revisits to assess the recipient's adaptation to the hearing aid(s) and the functioning of the instrument(s).

(b) Limitations and exclusions. All authorized hearing aid providers, as described in §354.1233 of this division (relating to Requirements for Hearing Aid Services), must comply with the following conditions and limitations established by the Texas Health and Human Services Commission (HHSC).

(1) Hearing aid services are available to persons who are eligible for Medicaid services.

(2) An individual using a hearing aid before becoming eligible for Medicaid benefits may have a hearing aid evaluation conducted by an approved hearing aid services provider after becoming eligible for Medicaid. Medicaid reimbursement for a new hearing aid shall be denied if the provider concludes, based upon the evaluation findings, that the recipient's present hearing aid adequately compensates for the degree of hearing loss.

(3) Providers may not submit a hearing aid evaluation claim to HHSC unless the Medicaid recipient meets the eligibility criteria in §354.1233(c).

(4) Repairs are limited to one per year per hearing aid. Additional repairs require prior authorization.

(5) Replacement of a hearing aid may be considered when loss or irreparable damage has occurred. Replacement of a hearing aid requires prior authorization. Replacement will not be authorized in situations where the equipment has been abused or neglected.

(6) Hearing aids may be replaced once every five years.

(7) Hearing aid services do not include auditory training, speechreading, or other types of rehabilitative services.

(8) Hearing aids are limited to eligible recipients who meet medical necessity criteria as defined by HHSC or its designee, which includes an air conduction puretone average (500 Hz, 1000 Hz, 2000 Hz) in the better ear of 35 dB hearing loss (HL) or greater.

(9) Recipients under the age of 21 meet the criteria for binaural aids if they meet the conditions for a monaural hearing aid and have at least a 35 dB hearing loss in both ears.

(10) Recipients under the age of 21 that do not meet the criteria listed in this section may submit a request for authorization through the Texas Health Steps Comprehensive Care Program (THSteps-CCP).

(11) Coverage for recipients age 21 and older who meet the medical criteria as defined by HHSC or its designee and have hearing loss in both ears is limited to one hearing aid.

(12) Coverage is not available for recipients age 21 and older who have hearing loss in only one ear.

§354.1233. Requirements for Hearing Aid Services.

(a) Hearing aid services. Providers of hearing aid services must comply with:

(1) all applicable federal and state laws and regulations;

(2) recognized professional standards;

(3) the provisions in Division 1 of this subchapter (relating to Medicaid Procedures for Providers);

(4) the provisions in Division 11 of this subchapter (relating to General Administration);

(5) the conditions, specifications, and limitations established by the Texas Health and Human Services Commission (HHSC); and

(6) applicable requirements of their licensing authority.

(b) Reimbursement.

(1) Physicians. Physicians shall be reimbursed for all services covered by the Texas Medicaid Program, including examinations and hearing evaluations. Physicians may delegate examinations to nurse practitioners, clinical nurse specialists, or physician assistants.

(2) Audiologists. Audiologists shall be reimbursed for hearing aid evaluations and for the fitting and dispensing of hearing aids.

(3) Fitters and dispensers. Hearing aid fitters and dispensers shall be reimbursed for the fitting and dispensing of hearing aids.

(c) Hearing aid evaluations. Hearing aid evaluations must be recommended by a physician, or, under physician delegation, a nurse practitioner, clinical nurse specialist, or physician assistant, based upon examination of the recipient. Reimbursement for hearing aid evaluations will be made only to physicians or licensed audiologists. The

recipient must have a medical necessity for a hearing aid as stated in §354.1231 of this division (relating to Benefits and Limitations). The recipient must not have any medical contraindications to the ability to use or wear a hearing aid.

(1) A physician, nurse practitioner, clinical nurse specialist, or physician assistant who recommends a hearing aid evaluation must be licensed in the state where and when the examination is conducted.

(2) The physician, nurse practitioner, clinical nurse specialist, or physician assistant must indicate on the Physician Examination Report form if the recipient needs a hearing aid evaluation based on the examination of the recipient. Medicaid reimbursement for a hearing aid evaluation shall be based on the physician's, nurse practitioner's, clinical nurse specialist's, or physician assistant's recommendation that the hearing aid evaluation is necessary.

(3) Providers must administer hearing aid evaluations using appropriate procedures as specified within their scope of practice and recognized professional standards.

(4) Reimbursement for home visit hearing aid evaluations shall be made if the recipient's physician has documented that the recipient's medical condition prohibits traveling to the provider's place of business.

(5) Providers of hearing aid evaluations must have a report in the recipient's record. Providers must include in the report hearing aid evaluation test data.

(6) Hearing aid evaluations performed by fitters and dispensers are not reimbursable. If a fitter or dispenser performs a hearing evaluation on a recipient, the recipient shall not be billed for the hearing evaluation.

(d) Hearing aids. Providers must offer each recipient eligible for a hearing aid a new instrument that meets the recipient's hearing need.

(1) Warranty. Providers must ensure that each hearing aid purchased through the Texas Medicaid Program is a new and current model that meets the performance specifications of the manufacturer and the hearing needs of the recipient. Providers must also ensure that each hearing aid is covered by at least a standard 12-month manufacturer's warranty, effective from the dispensing date.

(2) Required package. Providers must dispense each hearing aid purchased through the Texas Medicaid Program with all necessary tubing, cords, connectors, and a one-month supply of batteries. The instructions for care and use of the hearing aid must be included with the hearing aid package.

(3) Thirty-day trial period. Providers must allow each eligible recipient thirty days to determine if the recipient is satisfied with a hearing aid purchased through the Texas Medicaid Program. The trial period consists of thirty consecutive days from the dispensing date. Providers must inform recipients of the trial period and present the beginning and ending date of the trial period to the recipient in writing.

(A) During the trial period, providers may dispense additional hearing aids, as medically necessary, until the recipient is satisfied with the result of the hearing aid or the provider determines that the recipient cannot benefit from the dispensing of an additional hearing aid. A new trial period begins with the dispensing date of each hearing aid.

(B) Providers may charge a rental fee for hearing aids returned during the trial period.

(i) If a rental fee is charged, providers must assess the rental fee according to the rules and regulations established by the Texas Department of Licensing and Regulation.

(ii) The maximum rental fee for eligible Medicaid recipients shall be $2 per day. This fee shall not be a covered benefit of the Texas Medicaid Program. Recipients shall be responsible for paying any rental fee assessed them for instruments returned during the 30-day period. Providers must keep in the recipient's file the signed certification acknowledging responsibility to pay hearing aid rental fees.

(iii) Providers must comply with all procedures and directions of the Texas Medicaid Program regarding forms and certifications required during the 30-day trial period. Providers must allow thirty days to elapse from the hearing aid dispensing date before completing a "30-day trial period certification statement." The certification statement must be maintained by the provider in the recipient's file.

(4) Post-fitting checks. The fitter and dispenser must perform a post-fitting check of the hearing aid within five weeks of the initial fitting. The post-fitting check is part of the dispensing procedure and is not reimbursed separately.

(5) First revisit. The first revisit shall include a hearing aid check. Providers must make counseling available as needed within six months of the post-fitting check.

(6) Second revisit. The purpose of the second revisit is to make any necessary adjustments to the hearing aid. Provider must conduct a second revisit as needed.

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

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

TRD-201804719
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 20, 2018
Proposal publication date: June 22, 2018
For further information, please call: (512) 730-7429

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CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8201

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.8201, concerning Waiver Payments to Hospitals for Uncompensated Care. The amendment is adopted with changes to the proposed text as published in the September 21, 2018, issue of the *Texas Register* (43 TexReg 6043). The text of the rule will be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendment is to alter the final payment methodology for the Uncompensated Care (UC) program in demonstration years 7 and 8. Since 2012, HHSC has operated the UC pool under the authority of a federally approved 1115 demonstration waiver. This pool of limited funds is a vital resource for hundreds of Texas hospitals that provide uncompensated care.

Historically, HHSC provided preferential treatment to rural hospitals in the UC program by making a rural hospital's UC payment equal to a particular amount of that hospital's eligible uncompensated costs. The original intent behind this decision was to provide "a certain level of protection in UC in recognition of the financial vulnerability of [rural] hospitals and the critical role they play in preserving the rural safety net." (39 TexReg 4844, June 27, 2014). Since that time, a growing number of large urban hospitals obtained Medicare designations as Rural Referral Centers (RRCs). In addition, the recent federal court ruling in *Children's Hosp. Association of Texas v. Azar* ("CHAT ruling") caused a statewide change in the way HHSC must calculate eligible costs that are reimbursable through the UC program.

As a result of these unanticipated developments, HHSC is eliminating preferential treatment in UC for RRCs with more than 100 beds in a metropolitan statistical area (MSA) beginning in demonstration year 8. These hospitals are known as "urban RRCs." HHSC is also limiting the preferential treatment for urban RRCs in demonstration year 7. The unanticipated effects of the aforementioned CHAT ruling in combination with the growth of urban RRCs receiving preferential treatment would result in an extremely inequitable shift from the majority of hospitals participating in the UC program to the very few urban RRCs. In fact, the 12 urban RRCs would receive 18.46 percent of the entire UC pool while only accounting for 7.04 percent of all eligible uncompensated costs throughout Texas.

As a result, for demonstration year 7 only, HHSC is allowing urban RRCs to receive preferential treatment up to the level of eligible uncompensated costs, in the aggregate, that would have been calculated for those hospitals prior to the CHAT ruling. This allows urban RRCs to receive 54 percent of their eligible uncompensated costs.

HHSC considered a variety of different options before proposing this amendment. HHSC met with and received feedback from a large number of stakeholders prior to publication of the proposal. After publication, HHSC evaluated feedback in the form of written comments and oral testimony received during a public hearing.

HHSC is making the following changes upon adoption:

First, HHSC is reformatting the definition of "Rural hospital."

Second, HHSC is correcting and updating an internal reference in §355.8201(g)(4)(C) that was incorrect.

Third, HHSC is clarifying that the 100 beds referenced in the definitions refers to "licensed beds," not "staffed beds."

Fourth, HHSC is clarifying the date by which new affiliation agreements must be submitted.

COMMENTS

The 30-day comment period ended October 22, 2018.

During this period, HHSC received comments regarding the proposed amendments from a member of the Texas Legislature and 11 entities, including:

Baptist Hospitals of Southeast Texas

Catholic Health Initiatives St. Luke's Health

Children's Hospital Association of Texas

CHRISTUS Health

Community Health Systems

Parkland Health and Hospital System

Steward Health Care System

Teaching Hospitals of Texas

Tenet Healthcare Corporation

Texas Hospital Association

Universal Health Systems

A summary of comments relating to the rule and HHSC's responses follows.

Comments Related to Demonstration Year 7

Comment: Some commenters are opposed to the proposed change to the level of preferential treatment for urban RRCs in demonstration year 7. The commenters provided multiple reasons for opposing the proposed change. First, some commenters believe that the legislature intends for urban RRCs to be treated similarly to rural hospitals. Second, some commenters argue that the proposed change is inappropriate because they have set their budgets. Third, some commenters argue that the proposed change is a retroactive action by the state in violation of the Texas Constitution. Fourth, one commenter believes that adopting a change "so close to the end of a demonstration year" sets a dangerous precedent. Fifth, some hospitals argue that the proposed change exacerbates inequities and will result in some classes of hospital receiving reimbursement above allowable costs.

Response: HHSC understands that hospitals eligible to participate as urban RRCs would receive lower UC payments compared to rural hospitals. However, after extensive analysis and discussion, HHSC believes it is contrary to good public policy for urban RRCs to receive an unanticipated windfall at the expense of other Texas safety net hospitals.

Regarding legislative intent, the 85th Legislature included a definition of rural hospital in the General Appropriations Act that excludes large urban RRCs. The legislative intent of the 2017 act was that urban RRCs should not receive preferential treatment intended for rural hospitals. The decision was made to allow for a transition period described in this rule for large urban RRCs in UC. Contrary to the comment, there is nothing to indicate that the 84th or 85th Legislatures intended to benefit large urban RRCs as rural hospitals. The legislative intent of Rider 38 in the 2013 General Appropriations Act, where a description of preferential treatment for rural hospitals was first placed, was to preserve the safety net "regardless of where located." There were no large hospitals with a Rural Referral Center designation that were located in metropolitan statistical areas in 2013. HHSC does not believe the legislature could have intended to give preferential treatment to a category of hospital that did not, at the time, exist.

Regarding a facility having a set budget, HHSC appreciates the need for a facility to plan its financing. However, HHSC cannot take into account the varying budget cycles for every facility in the state when making policy decisions, as every facility has different budget years. HHSC strives to balance the good of the

public at large and the needs of individual facilities when making policy decisions.

Regarding the claim that HHSC is taking a retroactive action in violation of the Texas Constitution, HHSC notes that the proposed amendment to alter the final payment methodology in demonstration year 7 is not a retroactive application of the law. The final payments for year 7 of the demonstration project have not been made yet, and payment recipients were notified by letter on August 9, 2018, that adjustments to the payment methodology for the final payment for year 7 were imminent. Under both the federal and state constitutions, a law cannot be deemed "retroactive" in violation of the constitution unless it can be shown that the application of the law would take away or impair a vested right acquired under existing law; an "expectancy" based upon anticipated continuance of present laws does not create a vested right for purposes of either the federal or state constitutions.

Regarding the claim that HHSC is creating dangerous precedent by making a change so close to the end of a demonstration year, HHSC respectfully disagrees. Again, HHSC strives to balance the good of the public at large and the needs of individual facilities when making policy decisions. HHSC believes that the shift of public funds between types of hospitals that would occur if no change is made sets a dangerous precedent itself, if not outright creates danger to the health care safety net. Regardless of the precedent, HHSC created a reasoned compromise that would allow for urban RRCs to receive the benefit they rationally would have expected at the beginning of demonstration year 7.

Regarding the claim that adopting this rule exacerbates inequalities and allows for some hospital classes to receive reimbursement above their uninsured and Medicaid allowable costs, HHSC respectfully disagrees. First, given that the UC program is capped, HHSC must rationally apportion a finite amount of funding among hundreds of hospitals. The change in payment methodology for demonstration year 7 actually decreases the inequalities between classes relative to the methodology that would exist without this change since the result is more in line with expectations at the beginning of the demonstration year. Additionally, whether or not a hospital is above its allowable costs depends on how one calculates those costs. Given the change in the calculation of the Hospital-Specific Limit (HSL) as a result of the CHAT ruling, HHSC does not believe any class is paid above its allowable costs.

No changes were made in response to this comment.

Comment: Several commenters are supportive of the proposed change to the level of preferential treatment for urban RRCs in demonstration year 7. However, while some commenters support the change outright, others are willing to accept the proposed change only if it is necessary. Such commenters believe that the option HHSC proposed is the most appropriate compromise.

Response: HHSC appreciates the comment. The shift in funds to certain provider classes was unexpected and created inequalities among the classes. HHSC continues to believe that such a shift is inappropriate. As such, HHSC will adopt the compromise policy of allowing urban RRCs to receive preferential treatment in accord with what they would have expected at the beginning of the demonstration year. No changes were made in response to this comment.

Comment: While several commenters were supportive of a change to the demonstration year 7 payment methodology, some commenters requested that HHSC allow for the full preferential treatment that rural hospitals receive but based on the HSL in use prior to the CHAT ruling.

Response: HHSC appreciates the comment but cannot adopt the recommendation. The HSL calculation is used across multiple programs that, to a great extent, are linked together (i.e., UC, Disproportionate Share Hospital program, and the Uniform Hospital Rate Increase Program). Using a different HSL methodology in one program as opposed to others is difficult and could have unanticipated results. Using two different HSL methodologies in the same program would be arbitrary. Additionally, it would be administratively burdensome to complete multiple calculations of the HSL with varying methodologies depending on the program or type of facility. No changes were made in response to this comment.

Comments Relating to Demonstration Year 8

Comment: One commenter urged HHSC to maintain the Rider 38 preferential treatment for urban RRCs in the UC program for demonstration year 8.

Response: HHSC disagrees with the comment. The Texas Legislature did not intend to allow urban RRCs to receive preferential treatment in the UC program, and the change for demonstration year 8 will allow HHSC to treat urban RRCs just as they are in the context of Medicaid rates. Additionally, this further alleviates an unanticipated inequality among the hospital classes within the UC program. HHSC notes that urban RRCs still receive preferential treatment in demonstration year 7. No changes were made in response to this comment.

Comment: Some commenters urged HHSC to carry over the proposed change in methodology for demonstration year 7 to demonstration year 8.

Response: HHSC disagrees with the comment. The Texas Legislature did not intend to allow urban RRCs to receive preferential treatment in the UC program, and the change for demonstration year 8 will allow HHSC to treat urban RRCs just as they are in the context of Medicaid rates. Additionally, this further alleviates an unanticipated inequality among the hospital classes within the UC program. No changes were made in response to this comment.

Comment: Some commenters support the proposed elimination of preferential treatment for urban RRCs in the UC program for demonstration year 8.

Response: HHSC appreciates and agrees with the comment. No changes were made in response to this comment.

Comments Relating to the Appropriate Definition of "Rural Hospital"

Comment: One commenter claims that HHSC acted arbitrarily by excluding facilities in a county of more than 60,000 people from the definition of "rural hospital." The commenter recommends that HHSC move the population cutoff to more than 280,000.

Response: HHSC disagrees with the commenter as the definition of "rural hospital" is not arbitrary. The proposed definition mirrors the prior definition of "Rider 38 hospital" in regards to the population cutoff of hospitals within a county of 60,000 or fewer people. This part of the definition existed since 2013. In addition, this definition is taken from the General Appropriations Act of the 85th Legislature, with the exception of Sole Community Hospitals. The Texas Legislature directed HHSC to give hospitals that meet this definition of "rural hospital" preferential treat-

ment in the context of hospital rates. Streamlining the definition across all hospital payment programs, to the extent feasible, is rational as it allows like hospitals to be treated consistently in each payment program. No changes were made in response to this comment.

Comment: One commenter recommends that HHSC use other factors to determine if a facility is a "rural hospital."

Response: HHSC disagrees with the comment. This definition is taken from the General Appropriations Act of the 85th Legislature, with the exception of Sole Community Hospitals. The Texas Legislature directed HHSC to give hospitals that meet this definition of "rural hospital" preferential treatment in the context of hospital rates. Streamlining the definition across all hospital payment programs is rational as it allows like hospitals to be treated consistently in each payment program. No changes were made in response to this comment.

Comment: One commenter believes that a hospital's location within a MSA should not be the deciding factor for urban or rural status in demonstration year 8. Specifically, the commenter states that the MSA is not designed to determine an urban or rural classification nor is it designed to be used in program funding formulas. Instead, the commenter recommends that HHSC take additional factors into account when determining a rural hospital. The two specific factors recommended by the commenter are 1) whether a hospital serves remote and rural areas as demonstrated by a population density of less than 100 per square mile and 2) whether a hospital is located within 10 miles of the Mexico border and in a county with a population density less than 150 per square mile.

Response: HHSC disagrees with the comment. This definition is taken from the General Appropriations Act of the 85th Legislature, with the exception of Sole Community Hospitals. The Texas Legislature directed HHSC to give hospitals that meet this definition of "rural hospital" preferential treatment in the context of hospital rates. Streamlining the definition across all hospital payment programs is rational as it allows like hospitals to be treated consistently in each payment program. No changes were made in response to this comment.

Other Comments Received

Comment: One commenter requested that in counting the number of beds to determine rural hospital and urban RRC status, HHSC should utilize staffed beds as opposed to licensed beds.

Response: HHSC utilizes licensed beds across all of its payment programs when determining eligibility. Licensed beds are a standard metric that is not susceptible to large variation between, or within, a program year. Therefore, HHSC clarified the rule to reflect that the determination of rural hospitals and urban RRCs is based on licensed beds.

Comment: One commenter claims that HHSC violated the Texas Administrative Procedure Act. First, the commenter claims that HHSC violated Texas Government Code §2001.024(4) by failing to provide an analysis of the fiscal impact to the city of Beaumont and Jefferson County. Second, the commenter claims that HHSC violated Government Code §2001.024(5) by failing to provide an analysis of the economic costs to persons and impact on local employment to the city of Beaumont and Jefferson County.

Response: HHSC assumes that the analyses to which the commenter refers are the Government Growth Impact Statement described by Government Code §2001.0221, the Local Employment Impact Statement described by Government Code §2001.022, and the requirement of Government Code §2001.024(a)(5) that the notice include information regarding the costs to persons required to comply with the rule. These statements must be included in the notice of a proposed rule or rule amendment per Government Code §2001.024(a)(4), (a)(5), and (a)(6). The statements were included in the notice of the proposed rule amendment.

With regard to Government Code §2001.024(a)(4), HHSC believes that the commenter could be referring to the general requirement for fiscal notes described in that section or the Government Growth Impact Statement required by Government Code §2001.0221. The general requirement for fiscal notes was fulfilled, as nothing in Government Code §2001.024(a)(4) requires a state agency to calculate the fiscal effect of a change in policy to governmental entities solely because a private entity within those governmental jurisdictions may lose funds.

As to the Government Growth Impact Statement, HHSC restates from the preamble of the proposal that it has determined that during the first five years that the rule will be in effect:

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

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

(3) implementation of the proposed rule will not require an increase or decrease in future legislative appropriations;

(4) the proposed rule will not affect fees paid to the agency;

(5) the proposed rule will not create a new rule;

(6) the proposed rule will limit an existing rule;

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

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

HHSC also notes that Government Code §2001.0221(c) expressly provides that failure to comply with the section does not impair the legal effect of a rule adopted under Chapter 2001.

With regard to the requirement of Government Code §2001.024(a)(5) that the analysis describe the economic costs to persons regulated by the rule, HHSC restates from the preamble of the proposal that HHSC has determined there are no anticipated economic costs to persons who are required to comply with the section as proposed.

With regard to the Local Employment Impact Statement required by Government Code §2001.022 and §2001.024(a)(6), HHSC restates from the preamble of the proposal that there is a possibility of a negative impact on local employment in some communities and a positive impact in others. The change in reimbursement methodology for urban RRCs will impact distribution of UC funds to participating providers. Certain providers will receive greater reimbursement while urban RRCs will receive less than they would have under the previous rule. HHSC lacks sufficient data to both predict communities in which there may be an employment impact and to determine the potential impacts on local employment in those communities. HHSC also notes that Government Code §2001.022(c) provides that failure to comply with this section does not impair the legal effect of a rule adopted under Chapter 2001.

No changes were made in response to this comment.

Comment: One commenter claims that HHSC violated Government Code §2007.043 by failing to provide an assessment of the takings impact of the proposed changes.

Response: HHSC restates from the preamble of the proposal that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043. A providing hospital's not yet calculated or received payment under the UC program is not "property" for purposes of the taking clauses of either the federal or state constitutions. Nor does an "expectancy" based upon anticipated continuance of present laws create a vested right for purposes of either the federal or state constitutions. No changes were made in response to this comment.

Comment: One commenter supports the use of the HSL methodology resulting from the disposition of the CHAT ruling described above.

Response: HHSC appreciates this comment and will continue to use a single HSL methodology for its payment programs. No changes were made in response to this comment.

Comment: One commenter requests that HHSC utilize the HSL methodology in operation prior to the CHAT ruling. The commenter claims that this method is more equitable for the hospitals that provide more uncompensated care than any other class.

Response: HHSC cannot utilize the HSL methodology in operation prior to the CHAT ruling. HHSC believes that given its current state plan, rules, and past practice, it would be inconsistent with court direction to use the prior HSL methodology. No changes were made in response to this comment.

Comment: Some commenters request that HHSC implement a different HSL calculation such that other insurance and Medicare payments are included up to the Medicaid allowable cost. Commenters point to Texas Human Resources Code §32.0284 as authority for HHSC to take such action. The commenter claims that this method is more equitable for the hospitals that provide more uncompensated care than any other class. Additionally, the commenter says that no state plan amendment would be necessary.

Response: HHSC appreciates the comment but declines to adopt it for demonstration year 7. HHSC is evaluating the proposal for demonstration year 8, but is not making such a change in this amendment. The impact of such a change is so large that it would necessitate its own notice and comment period. Also, as stated previously, HHSC believes that using a single HSL methodology across all of the related programs is prudent. Thus, HHSC would not adopt such a methodology for the UC program alone.

In addition, even if HHSC were to make such a change in rule for the UC program only, the 1115 waiver would have to be amended in order to allow for a different methodology in the UC program. No changes were made in response to this comment.

Comment: One commenter requested that HHSC eliminate the secondary reconciliation described in §355.8201(i)(3). They argue that the procedure is not mandated in the 1115 waiver and that the harms to hospitals outweigh the policy benefits.

Response: HHSC is evaluating potential solutions to this issue but is not prepared to adopt a solution at this point. HHSC anticipates continued dialogue and may propose amendments on this issue at a later date. No changes were made in response to this comment.

STATUTORY AUTHORITY

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

§355.8201. Waiver Payments to Hospitals for Uncompensated Care.

(a) Introduction. Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver payments are available under this section for services provided between October 1, 2017 and September 30, 2019, by eligible hospitals described in subsection (c) of this section. Waiver payments to hospitals for uncompensated charity care provided beginning October 1, 2019, are described in §355.8212 of this division (relating to Waiver Payments to Hospitals for Uncompensated Charity Care). Waiver payments to hospitals must be in compliance with the Centers for Medicare & Medicaid Services approved waiver Program Funding and Mechanics Protocol, HHSC waiver instructions and this section.

(b) Definitions.

(1) Affiliation agreement--An agreement, entered into between one or more privately-operated hospitals and a governmental entity that does not conflict with federal or state law. HHSC does not prescribe the form of the agreement.

(2) Aggregate limit--The amount of funds approved by the Centers for Medicare & Medicaid Services for uncompensated-care payments for the demonstration year that is allocated to each uncompensated-care provider pool, as described in subsection (f)(2) of this section.

(3) Anchor--The governmental entity identified by HHSC as having primary administrative responsibilities on behalf of a Regional Healthcare Partnership (RHP).

(4) Centers for Medicare & Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(5) Clinic--An outpatient health care facility, other than an Ambulatory Surgical Center or Hospital Ambulatory Surgical Center, that is owned and operated by a hospital but has a nine-digit Texas Provider Identifier (TPI) that is different from the hospital's nine-digit TPI.

(6) Data year--A 12-month period that is described in §355.8066 of this title (relating to Hospital-Specific Limit Methodology) and from which HHSC will compile cost and payment data to determine uncompensated-care payment amounts. This period corresponds to the Disproportionate Share Hospital data year.

(7) Delivery System Reform Incentive Payments (DSRIP)--Payments related to the development or implementation of a program of activity that supports a hospital's efforts to enhance access to health care, the quality of care, and the health of patients and families it serves. These payments are not considered patient-care revenue and are not

offset against the hospital's costs when calculating the hospital-specific limit as described in §355.8066 of this title.

(8) Demonstration year--The 12-month period beginning October 1 for which the payments calculated under this section are made. This period corresponds to the Disproportionate Share Hospital program year.

(9) Disproportionate Share Hospital (DSH)--A hospital participating in the Texas Medicaid program that serves a disproportionate share of low-income patients and is eligible for additional reimbursement from the DSH fund.

(10) Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

(11) HHSC--The Texas Health and Human Services Commission or its designee.

(12) Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness.

(13) Intergovernmental transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

(14) Large public hospital--An urban public hospital - Class one as defined in §355.8065 of this title (relating to Disproportionate Share Hospital Reimbursement Methodology).

(15) Mid-Level Professional--Medical practitioners which include only these professions: Certified Registered Nurse Anesthetists, Nurse Practitioners, Physician Assistants, Dentists, Certified Nurse Midwives, Clinical Social Workers, Clinical Psychologists, and Optometrists.

(16) Private hospital--A hospital that is not a large public hospital as defined in paragraph (14) of this subsection, a small public hospital as defined in paragraph (21) of this subsection or a state-owned hospital.

(17) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(18) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform. Regional Healthcare Partnerships will support coordinated, efficient delivery of quality care and a plan for investments in system transformation that is driven by the needs of local hospitals, communities, and populations.

(19) RHP plan--A multi-year plan within which participants propose their portion of waiver funding and DSRIP projects.

(20) Rural hospital--A hospital enrolled as a Medicaid provider that is:

(A) located in a county with 60,000 or fewer persons according to the 2010 U.S. Census; or

(B) designated by Medicare as a Critical Access Hospital (CAH) or a Sole Community Hospital (SCH); or

(C) designated by Medicare as a Rural Referral Center (RRC) and is not located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Office of Management and Budget, or is located in an MSA but has 100 or fewer beds.

(21) Small public hospital--An urban public hospital - Class two or a non-urban public hospital as defined in §355.8065 of this title.

(22) Transition payment--Payments available only during the first demonstration year to hospitals that previously participated in a supplemental payment program under the Texas Medicaid State Plan. For a hospital participating in the 2012 DSH program, the maximum amount a hospital may receive in transition payments is the lesser of:

(A) the hospital's 2012 DSH room; or

(B) the amount the hospital received in supplemental payments for claims adjudicated between October 1, 2010, and September 30, 2011.

(23) Uncompensated-care application--A form prescribed by HHSC to identify uncompensated costs for Medicaid-enrolled providers.

(24) Uncompensated-care payments--Payments intended to defray the uncompensated costs of services that meet the definition of "medical assistance" contained in §1905(a) of the Social Security Act that are provided by the hospital to Medicaid eligible or uninsured individuals.

(25) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for services, as defined by CMS.

(26) Urban rural referral center--A hospital designated by Medicare as a Rural Referral Center (RRC) that is located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Office of Management and Budget, and that has more than 100 beds.

(27) Waiver--The Texas Healthcare Transformation and Quality Improvement Program Medicaid demonstration waiver under §1115 of the Social Security Act.

(c) Eligibility. A hospital that meets the requirements described in this subsection may receive payments under this section.

(1) Generally. To be eligible for any payment under this section:

(A) a hospital must have a source of public funding for the non-federal share of waiver payments; and

(B) if it is a hospital not operated by a governmental entity, it must have filed with HHSC an affiliation agreement and the documents described in clauses (i) and (ii) of this subparagraph.

(i) The hospital must certify on a form prescribed by HHSC:

(I) that it is a privately-operated hospital;

(II) that no part of any payment to the hospital under this section will be returned or reimbursed to a governmental entity with which the hospital affiliates; and

(III) that no part of any payment under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the hospital's receipt of the supplemental funds.

(ii) The governmental entity that is party to the affiliation agreement must certify on a form prescribed by HHSC:

(I) that the governmental entity has not received and has no agreement to receive any portion of the payments made to any hospital that is party to the agreement;

(II) that the governmental entity has not entered into a contingent fee arrangement related to the governmental entity's participation in the waiver program;

(III) that the governmental entity adopted the conditions described in the certification form prescribed by or otherwise approved by HHSC pursuant to a vote of the governmental entity's governing body in a public meeting preceded by public notice published in accordance with the governmental entity's usual and customary practices or the Texas Open Meetings Act, as applicable; and

(IV) that all affiliation agreements, consulting agreements, or legal services agreements executed by the governmental entity related to its participation in this waiver payment program are available for public inspection upon request.

(iii) Submission requirements.

(I) Initial submissions. The parties must initially submit the affiliation agreements and certifications described in this subsection to the HHSC Rate Analysis Department on the earlier of the following occurrences after the documents are executed:

(-a-) The date the hospital submits the uncompensated-care application that is further described in paragraph (2) of this subsection; or

(-b-) Thirty days before the projected deadline for completing the IGT for the first payment under the affiliation agreement. The projected deadline for completing the IGT is posted on HHSC Rate Analysis' website for each payment under this section.

(II) Subsequent submissions. The parties must submit revised documentation as follows:

(-a-) When the nature of the affiliation changes or parties to the agreement are added or removed, the parties must submit the revised affiliation agreement and related hospital and governmental entity certifications.

(-b-) When there are changes in ownership, operation, or provider identifiers, the hospital must submit a revised hospital certification.

(-c-) The parties must submit the revised documentation thirty days before the projected deadline for completing the IGT for the first payment under the revised affiliation agreement. The projected deadline for completing the IGT is posted on HHSC Rate Analysis' website for each payment under this section.

(III) A hospital that submits new or revised documentation under subclause (I) or (II) of this clause must notify the Anchor of the RHP in which the hospital participates.

(IV) The certification forms must not be modified except for those changes approved by HHSC prior to submission.

(-a-) Within 10 business days of HHSC Rate Analysis receiving a request for approval of proposed modifications, HHSC will approve, reject, or suggest changes to the proposed certification forms.

(-b-) A request for HHSC approval of proposed modifications to the certification forms will not delay the submission deadlines established in this clause.

(V) A hospital that fails to submit the required documentation in compliance with this subparagraph will not receive a payment under this section.

(2) Uncompensated-care payments. For a hospital to be eligible to receive uncompensated-care payments, in addition to the requirements in paragraph (1) of this subsection, the hospital must:

(A) submit to HHSC an uncompensated-care application for the demonstration year, as is more fully described in subsection (g)(1) of this section, by the deadline specified by HHSC;

(B) submit to HHSC documentation of:

(i) its participation in an RHP; or

(ii) approval from CMS of its eligibility for uncompensated-care payments without participation in an RHP;

(C) be actively enrolled as a Medicaid provider in the State of Texas at the beginning of the demonstration year; and

(D) have submitted, and be eligible to receive payment for, a Medicaid fee-for-service or managed-care inpatient or outpatient claim for payment during the demonstration year.

(3) Changes that may affect eligibility for uncompensated-care payments.

(A) If a hospital closes, loses its license, loses its Medicare or Medicaid eligibility, withdraws from participation in an RHP, or files bankruptcy before receiving all or a portion of the uncompensated-care payments for a demonstration year, HHSC will determine the hospital's eligibility to receive payments going forward on a case-by-case basis. In making the determination, HHSC will consider multiple factors including whether the hospital was in compliance with all requirements during the demonstration year and whether it can satisfy the requirement to cooperate in the reconciliation process as described in subsection (i) of this section.

(B) A hospital must notify HHSC Rate Analysis Department in writing within 30 days of the filing of bankruptcy or of changes in ownership, operation, licensure, Medicare or Medicaid enrollment, or affiliation that may affect the hospital's continued eligibility for payments under this section.

(d) Source of funding. The non-federal share of funding for payments under this section is limited to timely receipt by HHSC of public funds from a governmental entity.

(e) Payment frequency. HHSC will distribute waiver payments on a schedule to be determined by HHSC and posted on HHSC's website.

(f) Funding limitations.

(1) Payments made under this section are limited by the maximum aggregate amount of funds allocated to the provider's uncompensated-care pool for the demonstration year. If payments for uncompensated care for an uncompensated-care pool attributable to a demonstration year are expected to exceed the aggregate amount of funds allocated to that pool by HHSC for that demonstration year, HHSC will reduce payments to providers in the pool as described in subsection (g)(5) of this section.

(2) HHSC will establish the following seven uncompensated-care pools: a state-owned hospital pool; a large public hospital pool; a small public hospital pool; a private hospital pool; a physician group practice pool; a governmental ambulance provider pool; and a publicly owned dental provider pool as follows:

(A) The state-owned hospital pool.

(i) The state-owned hospital pool funds uncompensated-care payments to state-owned teaching hospitals, state-owned IMDs and state chest hospitals.

(ii) HHSC will determine the allocation for this pool at an amount less than or equal to the total annual maximum uncom-

pensated-care payment amount for these hospitals as calculated in subsection (g)(2) of this section.

(B) Set-aside amounts. HHSC will determine set-aside amounts as follows:

(i) For small public hospitals:

(I) that are also rural hospitals:

(-a-) Divide the amount of funds approved by CMS for uncompensated-care payments for the demonstration year by the amount of funds approved by CMS for uncompensated-care payments for the 2013 demonstration year and round the result to four decimal places.

(-b-) Determine the small rural public hospital set-aside amount by multiplying the value from item (-a-) of this subclause by the sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all small rural public hospitals that are eligible to receive uncompensated-care payments under this section and that meet the definition of a small public hospital from subsection (b)(21) of this section. Truncate the resulting value to zero decimal places.

(II) that are also urban RRCs, for DY 7 only, determine the small public urban RRC set-aside amount by multiplying by 54% the sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all small public urban RRCs that are eligible to receive uncompensated-care payments under this section and that meet the definition of an urban RRC from subsection (b)(26) of this section. Truncate the resulting value to zero decimal places.

(ii) For private hospitals:

(I) that are also rural hospitals:

(-a-) Divide the amount of funds approved by CMS for uncompensated-care payments for the demonstration year by the amount of funds approved by CMS for uncompensated-care payments for the 2013 demonstration year and round the result to four decimal places.

(-b-) Determine the private rural hospital set-aside amount by multiplying the value from item (-a-) of this subclause by the sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all private rural hospitals that are eligible to receive uncompensated-care payments under this section and that meet the definition of a small public hospital from subsection (b)(21) of this section. Truncate the resulting value to zero decimal places.

(II) that are also urban RRCs, for DY 7 only, determine the private urban RRC set-aside amount by multiplying by 54% the sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all private urban RRCs that are eligible to receive uncompensated-care payments under this section and that meet the definition of an urban RRC from subsection (b)(26) of this section. Truncate the resulting value to zero decimal places.

(iii) Determine the total set-aside amount by summing the results of subclauses (i)(I), (i)(II), (ii)(I), and (ii)(II) of this subparagraph.

(C) Non-state-owned provider pools. HHSC will allocate the remaining available uncompensated-care funds, if any, and the set-aside amount among the non-state-owned provider pools as described in this subparagraph. The remaining available uncompensated-care funds equal the amount of funds approved by CMS for uncompensated-care payments for the demonstration year less the sum of funds allocated to the state-owned hospital pool under subparagraph (A) of this paragraph and the set-aside amount from subparagraph (B) of this paragraph.

(i) HHSC will allocate the funds among non-state-owned provider pools based on the following amounts:

(I) Large public hospitals:

(-a-) The sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all large public hospitals, as defined in subsection (b)(14) of this section, eligible to receive uncompensated-care payments under this section; plus

(-b-) An amount equal to the IGTs transferred to HHSC by large public hospitals to support DSH payments to themselves and private hospitals for the same demonstration year.

(II) Small public hospitals:

(-a-) The sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all non-rural and non-urban RRC small public hospitals, as defined in subsection (b)(21) of this section, eligible to receive uncompensated-care payments under this section; plus

(-b-) An amount equal to the IGTs transferred to HHSC by small public hospitals to support DSH payments to themselves for Pass One and Pass Two payments for the same demonstration year.

(III) Private hospitals: The sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all non-rural and non-urban RRC private hospitals, as defined in subsection (b)(16) of this section, eligible to receive uncompensated-care payments under this section.

(IV) Physician group practices: The sum of the unreimbursed uninsured costs and Medicaid shortfall for physician group practices, as described in §355.8202(g)(2)(A) of this title (relating to Waiver Payments to Physician Group Practices for Uncompensated Care).

(V) Governmental ambulance providers: The sum of the uncompensated care costs multiplied by the federal medical assistance percentage (FMAP) in effect during the cost reporting period for governmental ambulance providers, as described in §355.8600 of this title (relating to Reimbursement Methodology for Ambulance Services). Estimated amounts may be used if actual data is not available at the time calculations are performed.

(VI) Publicly-owned dental providers: The sum of the total allowable cost minus any payments for publicly owned dental providers, as described in §355.8441 of this title (relating to Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services). Estimated amounts may be used if actual data is not available at the time calculations are performed.

(ii) HHSC will sum the amounts calculated in clause (i) of this subparagraph.

(iii) HHSC will calculate the aggregate limit for each non-state-owned provider pool as follows:

(I) To determine the large public hospital pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds, from this subparagraph, by the amount calculated in clause (i)(I) of this subparagraph;

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places.

(II) To determine the small public hospital pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(II) of this subparagraph;

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places; and

(-c-) add the result from item (-b-) of this subclause to the amount calculated in subparagraph (B)(ii) of this paragraph.

(III) To determine the private hospital pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(III) of this subparagraph;

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places; and

(-c-) add the result from item (-b-) of this subclause to the amount calculated in subparagraph (B)(iii) of this paragraph.

(IV) To determine the physician group practice pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(IV) of this subparagraph; and

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places.

(V) To determine the maximum aggregate amount of the estimated uncompensated care costs for all governmental ambulance providers:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(V) of this subparagraph; and

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places.

(VI) To determine the publicly owned dental providers pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(VI) of this subparagraph; and

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places.

(3) Payments made under this section are limited by the availability of funds identified in subsection (d) of this section. If sufficient funds are not available for all payments for which a hospital is eligible, HHSC will reduce payments as described in subsection (h)(2) of this section.

(g) Uncompensated-care payment amount.

(1) Application.

(A) Cost and payment data reported by the hospital in the uncompensated-care application is used to calculate the annual maximum uncompensated-care payment amount for the applicable demonstration year, as described in paragraph (2) of this subsection.

(B) Unless otherwise instructed in the application, the hospital must base the cost and payment data reported in the application on its applicable as-filed CMS 2552 Cost Report(s) For Electronic Filing Of Hospitals corresponding to the data year and must comply with the application instructions or other guidance issued by HHSC.

(i) When the application requests data or information outside of the as-filed cost report(s), the hospital must provide all requested documentation to support the reported data or information.

(ii) For a new hospital, the cost and payment data period may differ from the data year, resulting in the eligible uncompensated costs based only on services provided after the hospital's Medicaid enrollment date. HHSC will determine the data period in such situations.

(2) Calculation. A hospital's annual maximum uncompensated-care payment amount is the sum of the components below. In no case can the sum of payments made to a hospital for a demonstration year for DSH and uncompensated-care payments, less the payments described in paragraph (3) of this subsection, exceed a hospital's specific limit as determined in §355.8066 of this title after modifications to reflect the adjustments described in paragraph (4) of this subsection.

(A) The interim hospital specific limit, calculated as described in §355.8066 of this title, except that an IMD may not report cost and payment data in the uncompensated-care application for services provided during the data year to Medicaid-eligible and uninsured patients ages 21 through 64, less any payments to be made under the DSH program for the same demonstration year, calculated as described in §355.8065 of this title;

(B) Other eligible costs for the data year, as described in paragraph (3) of this subsection;

(C) Cost and payment adjustments, if any, as described in paragraph (4) of this subsection; and

(D) For each hospital eligible for payments under subsection (f)(2)(C)(i)(I) of this section, the amount transferred to HHSC by that hospital's affiliated governmental entity to support DSH payments for the same demonstration year.

(3) Other eligible costs.

(A) In addition to cost and payment data that is used to calculate the hospital-specific limit, as described in §355.8066 of this title, a hospital may also claim reimbursement under this section for uncompensated care, as specified in the uncompensated-care application, that is related to the following services provided to Medicaid-eligible and uninsured patients:

(i) direct patient-care services of physicians and mid-level professionals;

(ii) pharmacy services; and

(iii) clinics.

(B) The payment under this section for the costs described in subparagraph (A) of this paragraph are not considered inpatient or outpatient Medicaid payments for the purpose of the DSH audit described in §355.8065 of this title.

(4) Adjustments. When submitting the uncompensated-care application, hospitals may request that cost and payment data from the data year be adjusted to reflect increases or decreases in costs resulting from changes in operations or circumstances.

(A) A hospital:

(i) may request that costs not reflected on the as-filed cost report, but which would be incurred for the demonstration year, be included when calculating payment amounts;

(ii) may request that costs reflected on the as-filed cost report, but which would not be incurred for the demonstration year, be excluded when calculating payment amounts.

(B) Documentation supporting the request must accompany the application. HHSC will deny a request if it cannot verify that costs not reflected on the as-filed cost report will be incurred for the demonstration year.

(C) In addition to being subject to the reconciliation described in subsection (i)(1) of this section which applies to all uncompensated-care payments for all hospitals, uncompensated-care payments for hospitals that submitted a request as described in subparagraph (A)(i) of this paragraph that impacted the interim hospital-specific limit described in paragraph (2)(A) of this subsection will be subject to the reconciliation described in subsection (i)(2) of this section.

(D) Notwithstanding the availability of adjustments impacting the interim hospital-specific limit described in this paragraph, no adjustments to the interim hospital-specific limit will be considered for purposes of Medicaid DSH payment calculations described in §355.8065 of this title.

(5) Reduction to stay within uncompensated-care pool aggregate limits. Prior to processing uncompensated-care payments for any payment period within a waiver demonstration year for any uncompensated-care pool described in subsection (f)(2) of this section, HHSC will determine if such a payment would cause total uncompensated-care payments for the demonstration year for the pool to exceed the aggregate limit for the pool and will reduce the maximum uncompensated-care payment amounts providers in the pool are eligible to receive for that period as required to remain within the pool aggregate limit.

(A) Calculations in this paragraph will be applied to each of the uncompensated-care pools separately.

(B) HHSC will calculate the following data points:

(i) For each provider, prior period payments to equal prior period uncompensated-care payments for the demonstration year.

(ii) For each provider, a maximum uncompensated-care payment for the payment period to equal the sum of:

(I) the portion of the annual maximum uncompensated-care payment amount calculated for that provider (as described in this section and the sections referenced in subsection (f)(2)(C) of this section) that is attributable to the payment period; and

(II) the difference, if any, between the portions of the annual maximum uncompensated-care payment amounts attributable to prior periods and the prior period payments calculated in clause (i) of this subparagraph.

(iii) The cumulative maximum payment amount to equal the sum of prior period payments from clause (i) of this subparagraph and the maximum uncompensated-care payment for the payment period from clause (ii) of this subparagraph for all members of the pool combined.

(iv) A pool-wide total maximum uncompensated-care payment for the demonstration year to equal the sum of all pool members' annual maximum uncompensated-care payment amounts for the demonstration year from paragraph (2) of this subsection.

(v) A pool-wide ratio calculated as the pool aggregate limit from subsection (f)(2) of this section divided by the pool-wide total maximum uncompensated-care payment amount for the demonstration year from clause (iv) of this subparagraph.

(C) If the cumulative maximum payment amount for the pool from subparagraph (B)(iii) of this paragraph is less than the aggregate limit for the pool, each provider in the pool is eligible to receive their maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph without any reduction to remain within the pool aggregate limit.

(D) If the cumulative maximum payment amount for the pool from subparagraph (B)(iii) of this paragraph is more than the aggregate limit for the pool, HHSC will calculate a revised maximum uncompensated-care payment for the payment period for each provider in the pool as follows:

(i) HHSC will calculate a capped payment amount equal to the product of the provider's annual maximum uncompensated-care payment amount for the demonstration year from paragraph (2) of this subsection and the pool-wide ratio calculated in subparagraph (B)(v) of this paragraph.

(ii) If the payment period is not the final payment period for the demonstration year, the revised maximum uncompensated-care payment for the payment period equals the lesser of:

(I) the maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph; or

(II) the difference between the capped payment amount from clause (i) of this subparagraph and the prior period payments from subparagraph (B)(i) of this paragraph.

(iii) If the payment period is the final payment period for the demonstration year:

(I) HHSC will calculate an IGT-supported maximum uncompensated-care payment for the payment period equal to the amount of the maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph that is supported by an IGT commitment.

(-a-) For hospitals and physician group practices, HHSC will obtain from each RHP anchor a current breakdown of IGT commitments from all governmental entities, including governmental entities outside of the RHP, that will be providing IGTs for uncompensated-care payments for each hospital and physician group practice within the RHP that is eligible for such payments for the payment period.

(-b-) Ambulance and dental providers will be assumed to have commitments for 100 percent of the non-federal share of their payments. The non-federal share for ambulance providers is provided through certified public expenditures (CPEs); for ambulance providers, references to IGTs in this subsection should be read as references to CPEs.

(II) HHSC will calculate an IGT-supported maximum uncompensated-care payment for the demonstration year to equal the IGT-supported maximum uncompensated-care payment for the payment period from subclause (I) of this clause plus the provider's prior period payments from subparagraph (B)(i) of this paragraph.

(III) For providers with an IGT-supported maximum uncompensated-care payment amount for the demonstration year from subclause (II) of this clause that is less than or equal to their capped payment amount from clause (i) of this subparagraph, the provider's revised maximum uncompensated-care payment for the payment period equals the IGT-supported maximum uncompensated-care payment amount for the payment period from subclause (I) of this clause. For these providers, the difference between their

capped payment amount from clause (i) of this subparagraph and their IGT-supported maximum uncompensated-care payment amount for the demonstration year from subclause (II) of this clause is their unfunded cap room.

(IV) HHSC will sum all unfunded cap room from subclause (III) of this clause to determine the total unfunded cap room for the pool.

(V) For providers with an IGT-supported maximum uncompensated-care payment amount for the demonstration year from subclause (II) of this clause that is greater than their capped payment amount from clause (i) of this subparagraph, the provider's revised maximum uncompensated-care payment amount for the payment period is calculated as follows:

(-a-) For each provider, HHSC will calculate an overage amount to equal the difference between the IGT-supported maximum uncompensated-care payment amount for the demonstration year from subclause (II) of this clause and their capped payment amount for the demonstration year from clause (i) of this subparagraph. Unfunded cap room from subclause (IV) of this clause will be distributed to these providers based on each provider's overage as a percentage of the pool-wide overage.

(-b-) For each provider, the provider's revised maximum uncompensated-care payment amount for the payment period is equal to the sum of its capped payment amount from clause (i) of this subparagraph and its portion of its pool's unfunded cap room from item (-a-) of this subclause less its prior period payments from subparagraph (B)(i) of this paragraph.

(E) Once reductions to ensure that uncompensated-care expenditures do not exceed the aggregate limit for the demonstration year for the pool are calculated, HHSC will not re-calculate the resulting payments for any provider for the demonstration year, including if the IGT commitments upon which the reduction calculations were based are different than actual IGT amounts.

(F) Notwithstanding the calculations described in subparagraphs (A) - (E) of this paragraph, if the payment period is the final payment period for the demonstration year, to the extent the payment is supported by IGT, each rural hospital is guaranteed a payment at least equal to its interim hospital specific limit from paragraph (2)(A) of this subsection multiplied by the value from subsection (f)(2)(B)(i)(I) of this section for the demonstration year less any prior period payments. If this guarantee will cause payments for a pool to exceed the aggregate pool limit, the reduction required to stay within the pool limit will be distributed proportionally across all non-rural and non-urban RRC providers in the pool based on each provider's resulting payment from subparagraphs (A) - (E) of this paragraph as compared to the payments to all non-rural and non-urban RRC hospitals in the pool resulting from subparagraphs (A) - (E) of this paragraph.

(G) Notwithstanding the calculations described in subparagraphs (A) - (E) of this paragraph, if the payment period is the final payment period for the demonstration year, to the extent the payment is supported by IGT, each urban RRC is guaranteed a payment at least equal to its interim hospital specific limit from paragraph (2)(A) of this subsection multiplied by 54% for the demonstration year less any prior period payments. If this guarantee will cause payments for a pool to exceed the aggregate pool limit, the reduction required to stay within the pool limit will be distributed proportionally across all non-rural and non-urban RRC providers in the pool based on each provider's resulting payment from subparagraphs (A) - (E) of this paragraph as compared to the payments to all non-rural and non-urban RRC hospitals in the pool resulting from subparagraphs (A) - (E) of this paragraph.

(6) Prohibition on duplication of costs. Eligible uncompensated-care costs cannot be reported on multiple uncompensated-care applications, including uncompensated-care applications for other programs. Reporting on multiple uncompensated-care applications is duplication of costs.

(7) Advance payments.

(A) In a demonstration year in which uncompensated-care payments will be delayed pending data submission or for other reasons, HHSC may make advance payments to hospitals that meet the eligibility requirements described in subsection (c)(2) of this section and submitted an acceptable uncompensated-care application for the preceding demonstration year from which HHSC calculated an annual maximum uncompensated-care payment amount for that year.

(B) The amount of the advance payments will be a percentage, to be determined by HHSC, of the annual maximum uncompensated-care payment amount calculated by HHSC for the preceding demonstration year.

(C) Advance payments are considered to be prior period payments as described in paragraph (5)(B)(i) of this subsection.

(D) A hospital that did not submit an acceptable uncompensated-care application for the preceding demonstration year is not eligible for an advance payment.

(E) If a partial year uncompensated-care application was used to determine the preceding demonstration year's payments, data from that application may be annualized for use in computation of an advance payment amount.

(h) Payment methodology.

(1) Notice. Prior to making any payment described in subsection (g) of this section, HHSC will give notice of the following information:

(A) the payment amount for the payment period (based on whether the payment is made quarterly, semi-annually, or annually);

(B) the maximum IGT amount necessary for a hospital to receive the amount described in subparagraph (A) of this paragraph; and

(C) the deadline for completing the IGT.

(2) Payment amount. The amount of the payment to a hospital will be determined based on the amount of funds transferred by the affiliated governmental entity or entities as follows:

(A) If the governmental entity transfers the maximum amount referenced in paragraph (1) of this subsection, the hospital will receive the full payment amount calculated for that payment period.

(B) If a governmental entity does not transfer the maximum amount referenced in paragraph (1) of this subsection, HHSC will determine the payment amount to each hospital owned by or affiliated with that governmental entity as follows:

(i) At the time the transfer is made, the governmental entity notifies HHSC, on a form prescribed by HHSC, of the share of the IGT to be allocated to each hospital owned by or affiliated with that entity and provides the non-federal share of uncompensated-care payments for each entity with which it affiliates in a separate IGT transaction; or

(ii) In the absence of the notification described in clause (i) of this subparagraph, each hospital owned by or affiliated with the governmental entity will receive a portion of its payment amount for that period, based on the hospital's percentage of the total payment

amounts for all hospitals owned by or affiliated with that governmental entity.

(C) For a hospital that is affiliated with multiple governmental entities, in the event those governmental entities transfer more than the maximum IGT amount that can be provided for that hospital, HHSC will calculate the amount of IGT funds necessary to fund the hospital to its payment limit and refund the remaining amount to the governmental entities identified by HHSC.

(3) Final payment opportunity. Within payments described in this section, a governmental entity that does not transfer the maximum IGT amount described in paragraph (1) of this subsection during a demonstration year will be allowed to fund the remaining payments at the time of the final payment for that demonstration year. The IGT will be applied in the following order:

(A) To the final payment up to the maximum amount;

(B) To remaining balances for prior payment periods in the demonstration year.

(i) Reconciliation. HHSC will reconcile actual costs incurred by the hospital for the demonstration year with uncompensated-care payments, if any, made to the hospital for the same period:

(1) If a hospital received payments in excess of its actual costs, the overpaid amount will be recouped from the hospital, as described in subsection (j) of this section.

(2) If a hospital received payments less than its actual costs, and if HHSC has available waiver funding for the demonstration year in which the costs were accrued, the hospital may receive reimbursement for some or all of those actual documented unreimbursed costs.

(3) If a hospital submitted a request as described in subsection (g)(4)(A)(i) of this section that impacted its interim hospital-specific limit, that hospital will be subject to an additional reconciliation as follows:

(A) HHSC will compare the hospital's adjusted interim hospital-specific limit from subsection (g)(4)(A)(i) of this section for the demonstration year to its final hospital-specific limit as described in §355.8066(c)(2) of this title for the demonstration year.

(B) If the final hospital-specific limit is less than the adjusted interim hospital-specific limit, HHSC will recalculate the hospital's uncompensated-care payment for the demonstration year substituting the final hospital-specific limit for the adjusted interim hospital-specific limit with no other changes to the data used in the original calculation of the hospital's uncompensated-care payment other than any necessary reductions to the original IGT amount and will recoup any payment received by the hospital that is greater than the recalculated uncompensated-care payment. Recouped funds may be redistributed to other hospitals that received payments less than their actual costs.

(4) Each hospital that received an uncompensated-care payment during a demonstration year must cooperate in the reconciliation process by reporting its actual costs and payments for that period on the form provided by HHSC for that purpose, even if the hospital closed or withdrew from participation in the uncompensated-care program. If a hospital fails to cooperate in the reconciliation process, HHSC may recoup the full amount of uncompensated-care payments to the hospital for the period at issue.

(j) Recoupment.

(1) In the event of an overpayment identified by HHSC or a disallowance by CMS of federal financial participation related to a hospital's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the overpayment or disallowance. The non-federal share of any funds recouped from the hospital will be returned to the entity that owns or is affiliated with the hospital.

(2) Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1711 of this title (relating to Recoupment of Overpayments and Debts), 42 CFR Part 455, and Chapter 403, Texas Government Code. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the hospital against which any overpayment was made or disallowance was directed.

(B) If, within 30 days of the hospital's receipt of HHSC's written notice of recoupment, the hospital has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all future Medicaid payments from the hospital until HHSC has recovered an amount equal to the amount overpaid or disallowed.

(k) Penalty for failure to complete Category 4 reporting requirements for Regional Healthcare Partnerships. Hospitals must comply with all Category 4 reporting requirements set out in Chapter 354 of this title, Subchapter D (relating to Texas Healthcare Transformation and Quality Improvement Program). If a hospital fails to complete required Category 4 reporting measures by the last quarter of a demonstration year:

(1) the hospital will forfeit its uncompensated-care payments for that quarter; or

(2) the hospital may request from HHSC a six-month extension from the end of the demonstration year to report any outstanding Category 4 measures.

(A) The fourth-quarter payment will be made upon completion of the outstanding required Category 4 measure reports within the six-month period.

(B) A hospital may receive only one six-month extension to complete required Category 4 reporting for each demonstration year.

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

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Karen Ray
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Texas Health and Human Services Commission
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Proposal publication date: September 21, 2018
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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.13

Introduction

The Texas Board of Nursing (Board) adopts amendments to §217.13, relating to *Peer Assistance Program.* The amendments are adopted with changes to the proposed text published in the September 14, 2018, issue of the *Texas Register* (43 TexReg 5905).

Reasoned Justification

The amendments are adopted under the authority of the Occupations Code §301.151 and are necessary for compliance with the requirements of House Bill (HB) 2950, effective September 1, 2017.

Background

House Bill (HB) 2950 amended the Occupations Code §301.257 to provide an opportunity for individuals to have their required participation in the Board's contracted peer assistance program re-evaluated at the time of their initial licensure. Among other things, the bill requires the Board to develop a process to determine, at the time of initial licensure, whether an individual should be required to participate in the Board's contracted peer assistance program. In making its determination, the Board is required to review the individual's criminal history record information, and, if applicable, determine whether participation in the program is warranted based upon the time that has elapsed since the individual's conviction or end of community supervision. Further, the Board must re-evaluate or require the contractor administering the Board's peer assistance program to re-evaluate the treatment plan or the time the individual is required to participate in the peer assistance program based on the person's individualized needs. Finally, the bill requires the Board, if appropriate, and if satisfied that the individual has achieved a satisfactory period of treatment or documented sobriety, as defined by Board rules, to authorize a waiver of peer assistance program completion if the individual's continued participation in the peer assistance program is not necessary. The amendments are necessary to implement these statutory requirements.

The amendments will apply to individuals who have received an eligibility order from the Board that requires participation and completion of the Board's contracted peer assistance program. At this time, the Board's contracted peer assistance program is the Texas Peer Assistance Program for Nurses (TPAPN). If an individual has sought an eligibility decision from the Board and has received an eligibility order from the Board requiring the individual to enroll and successfully complete TPAPN, the amendments will provide that individual the opportunity to have the eligibility order re-evaluated at the time of his/her initial licensure. Often, an individual will receive an eligibility order from the Board requiring the successful completion of TPAPN; however, the individual may be years away from applying for nursing licensure when he/she receives the eligibility order. During the intervening time period, the individual may obtain sufficient evidence of treatment and/or ongoing sobriety that would make participation and completion of TPAPN unnecessary or inappropriate. When the individual applies for initial licensure, he/she may then submit such evidence to the Board. If the Board determines that the evidence is sufficient to demonstrate that the individual is safe to practice nursing without participating in TPAPN, the Board may waive the requirement for the individual to participate in TPAPN and/or substitute less stringent stipulations for the individual to complete.

Changes to the Adopted Text.

The Board received one written comment on the proposal. The comment was considered by the Board at its October 2018 meeting. In response to the written comment on the published proposal, the Board has made changes to §217.13(i)(3)(B) and (5)(B) of the section as adopted. None of these changes, however, materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. Further, the Board believes these changes address the commenter's concerns.

How the Sections Will Function.

Adopted subsection (i) sets forth the Board's process for re-evaluating an individual's eligibility order under §301.257(l) and (m).

Under adopted §217.13(i)(1), each individual receiving an eligibility order requiring participation in a peer assistance program will be notified by the Board that he/she may request re-evaluation of his/her participation in the peer assistance program. The individual will be provided this notice at the time the individual's initial nursing license is issued. If the individual wishes to have his/her participation in a peer assistance program re-evaluated by the Board, the individual must affirmatively request re-evaluation by the Board and provide the Board with relevant evidence supporting the individual's request, as set forth in §217.13(i)(2).

Adopted §217.13(i)(3) specifies the factors that will be considered when re-evaluating an individuals' required participation in a peer assistance program. First, the Board will evaluate the individual's criminal history record information and whether participation in the program is warranted based upon the time that has elapsed since the individual's conviction or end of community supervision. Second, the Board will evaluate the individual's participation requirements, as established by the peer assistance program, and the amount of time the individual is required to participate in the peer assistance program based upon the individual's individualized needs. Third, the Board will evaluate verifiable and reliable evidence of the individual's sobriety and abstinence from drugs and alcohol, which may include evidence of the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, letters of support from sponsors, a substance use disorder evaluation, and evidence of support group attendance.

As specified by §217.23(i)(4), the individual must comply with the terms of his/her eligibility order until the Board completes its review and issues a decision. Finally, §217.23(i)(5) authorizes the Executive Director to review an individual's request for re-evaluation of his/her participation in a peer assistance program; require a peer assistance program to amend its participation requirements for an individual based upon the individual's individualized needs and/or the amount of time an individual must participate in the peer assistance program; require the individual to comply with terms and conditions issued and monitored by the Board instead of participating in a peer assistance program; and execute a waiver of an individual's participation in a peer assistance program if the individual has achieved a satisfactory period of treatment or documented sobriety that complies with Board rules and policies, and it is determined that the individual's continued participation is not necessary for the protection of the public.

Summary of Comments Received

Summary of Comment: A commenter representing the Texas Nurses Association states that, while the applicable statute references a "treatment plan," the commenter recommends that the Board take the opportunity to provide a much-needed clarification in this regard. The commenter states that neither the Board nor the Texas Peer Assistance Program for Nurses (TPAPN) provides nurses with a "treatment plan". Instead, the commenter states that the Board sets requirements for participation. The commenter is concerned that calling the requirements a "treatment plan" implies that TPAPN provides treatment, which it does not. The commenter suggests replacing "treatment plan" with "participation requirements" in the rule language as a possible remedy. The commenter states that this change would make it clear to applicants that the Board can re-evaluate the participation requirements rather than the plan for treatment, and that TPAPN is not a treatment provider.

Agency Response: The Board agrees that TPAPN, the Board's current peer assistance program provider, does not provide treatment to its participants, and that the rule should not imply that it does, nor should the rule imply that any future contracted peer assistance program provider will provide treatment to its participants. The purpose of the Board's contracted peer assistance program provider is to provide monitoring and advocacy for its participants, not treatment. To that end, the Board has changed the language in the rule as adopted to replace "treatment plan" with "participation requirements".

Names of Those Commenting For and Against the Proposal.

For: None.

Against: None.

For, with changes: Texas Nurses Association.

Neither for nor against, with changes: None.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.151 and §301.257(l) and (m).

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.257 (l) provides that the Board may require in a declaratory order under this section that a person begin participation in a peer assistance program at the time of receipt of an initial license under this chapter. The Board shall notify the person that, on issuance of the person's initial license, the person may request reevaluation of the person's required participation in the peer assistance program.

Section 3301.257(m) states that the Board, by rule, shall develop a process to determine whether a person should continue to be required to participate in a peer assistance program. In making the determination, the Board shall: (1) review the person's criminal history record information and, if applicable, determine whether participation in the program is warranted based on the time that has elapsed since the conviction or end of community supervision; (2) reevaluate or require a contractor administering a peer assistance program to reevaluate the treatment plan or the time the person is required to participate in the peer assistance program based on the person's individualized needs; and (3) authorize, as appropriate, a waiver of peer assistance program completion if the Board is satisfied the person has achieved a satisfactory period of treatment or documented sobriety, as defined by Board rules, and continued participation is not necessary.

§217.13. Peer Assistance Program.

(a) A peer assistance program for nurses approved by the Board under chapter 467, Health and Safety Code, will identify, monitor, and assist with locating appropriate treatment for those nurses whose practice is impaired or suspected of being impaired by chemical dependency, mental illness or diminished mental capacity so that they may return to practice safe nursing.

(b) Role of the Board of Nursing and Peer Assistance Program.

(1) The Board of Nursing will retain the sole and exclusive authority to discipline a nurse who has committed a practice violation under §301.452(b) of the Nursing Practice Act regardless of whether such violation was influenced by chemical dependency, mental illness, or diminished mental capacity. The Board will balance the need to protect the public and the need to ensure the nurse seeks treatment in determining whether the nurse is appropriate for participation in an approved peer assistance program.

(2) The program shall report to the board, in accordance with policies adopted by the board, a nurse reported to the program who is impaired or suspected of being impaired for chemical dependency, mental illness, or diminished mental capacity if the nurse was reported to the program by third party. A third party report is a report concerning a nurse suspected of chemical dependency, mental illness, or diminished mental capacity that comes to the attention of the program through any source other than a self report.

(c) General Criteria for Approved Peer Assistance Program.

(1) The program will provide statewide peer advocacy services to all nurses licensed to practice in Texas whose practice may be impaired by chemical dependency, certain mental illnesses, or diminished mental capacity.

(2) The program shall have a statewide monitoring system that will be able to track the nurse while preserving confidentiality.

(3) The program shall have a network of trained peer volunteer advocates located throughout the state.

(4) The program shall have a written plan for the education and training of volunteer advocates and other program personnel.

(5) The program shall have a written plan for the education of nurses, other practitioners, and employers.

(6) The program shall demonstrate financial stability and funding sufficient to operate the program.

(7) The program shall have a mechanism for documenting program compliance and for timely reporting of noncompliance to the board.

(8) The program shall be subject to periodic evaluation by the board or its designee in order for the board to evaluate the success of the program.

(d) Evaluation of Peer Assistance Program.

(1) The program shall collect and make available to the board and other appropriate persons data relating to program operations and participant outcomes. At a minimum, the program shall submit the

following statistical information quarterly to the Board for the purpose of evaluating the success of the program:

(A) Number and source of referral;

(B) Number of individuals who sign participation agreements;

(C) Type of participation agreement signed, i.e., Extended Evaluation Program; substance abuse or dependency, dual diagnosis, mental illness;

(D) Number of cases referred to program by Board of Nursing (this number should include all third party referrals that are reported to the board, but remain in participation pending board review);

(E) Number of participants referred to program by Board order;

(F) Number of self referred cases closed and reason(s) for closure;

(G) Number of active cases;

(H) Number of participants employed in nursing;

(I) Number of participants completing program;

(J) Number of participants who are reported back for failing to comply with the participation agreement;

(K) Monitoring activities, including number of drug screens requested, conducted and results of these tests;

(L) All applicable performance measures required by the Legislative Budget Board.

(2) The program shall have a written plan for a systematic total program evaluation. Such plan shall include at a minimum monthly reports of the programs activities showing compliance with this rule, quarterly reports of applicable LBB performance measure data and an annual report of program activities.

(3) The program shall be subject to periodic evaluation by the board or its designee in order for the board to evaluate the success of the program.

(e) Participants entering the approved peer assistance program for chemical dependency or chemical abuse must agree to the following minimum conditions:

(1) The nurse shall undergo, as appropriate, a physical and/or psychosocial evaluation before entering the approved monitoring program. This evaluation will be performed by health care professional(s) with expertise in chemical dependency.

(2) The nurse shall enter into a contract with the approved peer assistance program to comply with the requirements of the program which shall include, but not be limited to:

(A) The nurse will undergo recommended substance abuse treatment by an appropriate treatment facility or provider.

(B) The nurse will agree to remain free of all mind-altering substances including alcohol except for medications prescribed by an authorized prescriber for legitimate medical purposes and approved by the program.

(C) The nurse must complete the prescribed aftercare, if any, which may include individual and/or group psychotherapy.

(D) The nurse will submit to random and "for cause" drug screening as specified by the approved monitoring program.

(E) The nurse will attend support groups as specified by the contract.

(F) The nurse will comply with specified employment conditions and restrictions as defined by the contract.

(G) The nurse shall sign a waiver allowing the approved peer assistance program to release, to the extent permitted by federal or state law, information to the Board if the nurse does not comply with the requirements of this contract.

(3) The nurse may be subject to disciplinary action by the Board if the nurse does not participate in the approved peer assistance program, does not comply with specified employment restrictions, or does not successfully complete the program.

(f) Referral to Board of Noncompliance with Peer Assistance Program.

(1) A participant may be terminated from the program for the following causes:

(A) Noncompliance with any aspect of the program agreement;

(B) Receipt of information by the board which, after investigation, results in disciplinary action by the board; or

(C) Being unable to practice according to acceptable and prevailing standards of safe nursing care.

(2) The program shall contact the board in accordance with board policies if a nurse under contract fails to comply with the terms of the program agreement or evidences conduct that indicates an inability or unwillingness to comply with the program.

(g) Eligibility for Program Participation.

(1) The program shall contact the board if it receives a third-party referral for a nurse who may have been impaired or suspected of being impaired and who may have failed to comply with the minimum standards of nursing (22 TAC §217.11) and/or committed an act constituting unprofessional conduct (22 TAC §217.12). The program shall send that report to the Board. The Board will balance the need to protect the public and the need to ensure the impaired nurse seeks treatment in determining whether the nurse is appropriate for participation in an approved peer assistance program.

(2) An individual may not participate in the program if the information reviewed in conjunction with the report indicates to the board that the individual's compliance with the program may not be effectively monitored while participating in the program. This information includes, but is not limited to, the following:

(A) The individual is not currently licensed as a registered nurse or licensed vocational nurse;

(B) The individual is currently using or being prescribed a drug normally associated with chemical dependency or abuse;

(C) The individual has a medical and/or psychiatric condition, diagnosis, or disorder, other than chemical dependency, in which the manifest symptoms are not adequately controlled;

(D) The individual has attempted or completed two or more chemical dependency monitoring programs as of the date of the application, notwithstanding the individual's current chemical dependency treatment plan and related treatment currently submitted for purposes of program eligibility;

(E) The board has taken action against the individual's license to practice nursing as either a registered nurse or a licensed practical nurse in Texas within the last 5 years;

(F) The individual has been convicted of a felony, placed on probation or received deferred adjudication relating to a felony, or felony charges are currently pending, or is currently being investigated for a felony; or

(G) The individual has been convicted or registered as a sex offender.

(h) Successful Completion of the Program. A participant successfully completes the program when the participant fully complies with all of the terms of the program agreement for the period as specified in the agreement. When a participant successfully completes the program, the program shall notify the participant of the successful completion in writing. Once the participant receives this written notification of successful completion of the program, the participant shall no longer be required to comply with the program agreement. The program shall notify the board when a nurse who the board has ordered to attend or referred to the program successfully completes the peer assistance contract.

(i) Re-evaluation of Participation in Peer Assistance Program.

(1) Each individual receiving an eligibility order requiring participation in a peer assistance program upon initial licensure shall be notified by the Board, upon the issuance of a nursing license, that he/she may request re-evaluation of his/her participation in the peer assistance program.

(2) If an individual wishes to have his/her participation in a peer assistance program re-evaluated by the Board, the individual must affirmatively request re-evaluation by the Board and provide the Board with relevant evidence supporting the individual's request.

(3) The following factors shall be considered when re-evaluating an individuals' required participation in a peer assistance program:

(A) the individual's criminal history record information and whether participation in the program is warranted based upon the time that has elapsed since the individual's conviction or end of community supervision;

(B) the individual's participation requirements and the amount of time the individual is required to participate in the peer assistance program based upon the individual's individualized needs; and

(C) verifiable and reliable evidence of the individual's sobriety and abstinence from drugs and alcohol, which may include evidence of the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, letters of support from sponsors, a substance use disorder evaluation, and evidence of support group attendance.

(4) An individual must comply with the terms of his/her eligibility order until the Board completes its review under this subsection and issues a decision.

(5) The Executive Director is authorized to:

(A) review an individual's request for re-evaluation of his/her participation in a peer assistance program under this subsection;

(B) amend the participation requirements for an individual based upon the individual's individualized needs and/or the amount of time an individual must participate in the peer assistance program;

(C) require the individual to comply with terms and conditions issued and monitored by the Board instead of participating in a peer assistance program; and

(D) execute a waiver of an individual's participation in a peer assistance program if the individual has achieved a satisfactory period of treatment or documented sobriety that complies with Board rules and policies, and it is determined that the individual's continued participation is not necessary for the protection of the public.

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

Filed with the Office of the Secretary of State on October 29, 2018.

TRD-201804702
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Effective date: November 18, 2018
Proposal publication date: September 14, 2018
For further information, please call: (512) 305-6822

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22 TAC §217.24

Introduction

The Texas Board of Nursing (Board) adopts new §217.24, relating to *Telemedicine Medical Service Prescriptions.* The new section is adopted without changes to the proposed text published in the September 14, 2018, issue of the *Texas Register* (43 TexReg 5907) and will not be republished.

Reasoned Justification. The new section is adopted under the authority of the Occupations Code §301.151 and §111.006 and is necessary for compliance with the statutory mandates of the Occupations Code Chapter 111.

Background

During the 85th Legislative Session, the Texas Legislature enacted Senate Bill (SB) 1107, which became effective on May 27, 2017. SB 1107 added new §§111.005 - 111.008 to Chapter 111. These new sections address prescriptions issued during the course of telemedicine medical services.

Pursuant to the Occupations Code §562.056, a pharmacist has a statutory responsibility to determine that a prescription is a valid prescription before dispensing the prescription. If the pharmacist knows, or should have known, that the prescription was issued without a valid practitioner-patient relationship, the pharmacist may not dispense the prescription drug. Section 111.005 defines a valid practitioner-patient relationship in the context of telemedicine medical services.

Pursuant to §111.005, a valid practitioner-patient relationship exists between a practitioner providing telemedicine medical services and a patient receiving telemedicine medical services if the practitioner meets the same standard of care that would apply to an in-person setting and has a pre-existing practitioner-patient relationship with the patient, communicates with the patient pursuant to an appropriate call coverage agreement, and provides the telemedicine medical services through an appropriate method specified by the statute.

Although §111.005 statutorily defines a valid practitioner-patient relationship in the context of telemedicine medical services, §111.006 requires the Board to jointly adopt rules with the Texas Medical Board, the Texas Physician Assistant Board, and the Texas State Board of Pharmacy that address the determination of a valid prescription, including the validity of a prescription issued as a result of a telemedicine medical service. The adopted new section implements this statutory requirement and is consistent with rules previously adopted by the Texas Medical Board (22 TAC §174.5).

How the New Section Will Function.

Although other types of practitioners may issue prescriptions during the course of telemedicine medical services, the adopted new section only applies to those practitioners within the Board's jurisdiction. Advanced practice registered nurses (APRNs) with prescriptive authority are authorized to issue prescriptions during the course of telemedicine medical services. As such, the adopted rule will affect APRNs with prescriptive authority who issue prescriptions in this role. The adopted new section also provides guidance to the public and other practitioners, including pharmacists, who may be required to determine if a telemedicine medical service prescription written by an APRN is, in fact, valid.

Specifically, new §217.24(a) addresses the standard of care for the issuance of a prescription during the provision of telemedicine medical services. New §217.24(a) provides that the validity of a prescription issued as a result of a telemedicine medical service will be determined by the same standards that would apply to the issuance of the prescription in an in-person setting. Under §111.007, a practitioner is held to the same standard of care that applies to an in-person setting. Consistent with this statutory mandate, the new subsection extends this same standard to a practitioner's prescribing practices. As a result, a patient should expect to receive the same standard of care during telemedicine medical services that he/she would enjoy in an in-person setting, and the Board expects a practitioner's prescribing practices to also meet the same standard.

New §217.24(b) re-iterates that a licensed practitioner is expected to meet the standard of care and demonstrate professional practice standards and judgment, consistent with all applicable statutes and rules when issuing, dispensing, delivering, or administering a prescription medication as a result of a telemedicine medical service. Nothing in the rule, however, is intended to limit the professional judgment, discretion or decision-making authority of the practitioner.

New §217.24(c) provides that a valid prescription must be issued for a legitimate medical purpose by a practitioner as part of patient-practitioner relationship as set out in §111.005, Texas Occupations Code, and meet all other applicable laws before prescribing, dispensing, delivering or administering a dangerous drug or controlled substance. Section 111.005 specifies that a valid practitioner-patient relationship exists between a practitioner providing telemedicine medical services and a patient receiving telemedicine medical services if the practitioner meets the same standard of care that would apply to an in-person setting and has a pre-existing practitioner-patient relationship with the patient, communicates with the patient pursuant to an appropriate call coverage agreement, and provides the telemedicine medical services through an appropriate method, as those requirements are more specifically set forth in the statutory section. The adopted new subsection makes clear that all of the statutory requirements of §111.005, as well as any other applicable requirements, must be met in order for the prescription to be considered valid.

New §217.24(d) makes clear that, like all other prescriptions, any prescription drug orders issued as the result of a telemedicine medical service, are subject to all regulations, limitations, and prohibitions set out in the federal and Texas Controlled Substances Act, Texas Dangerous Drug Act and any other applicable federal and state law.

New §217.24(e) focuses on prescriptions for the treatment of chronic pain. Although the Board agrees that chronic pain is a legitimate medical condition that needs to be treated, the Board finds that clear legislative intent exists to balance this need with patient safety, particularly in light of the current public health crisis involving overdose deaths. As such, the rule seeks to prohibit practitioners from treating chronic pain with scheduled drugs through the use of telemedicine medical services, unless otherwise allowed under federal and state law. The adopted subsection defines "chronic pain" as a state in which pain persists beyond the usual course of an acute disease or healing of an injury, which may be associated with a chronic pathological process that causes continuous or intermittent pain over months or years. The subsection also makes clear that the treatment of acute pain with scheduled drugs through use of telemedicine medical services will be allowed, unless otherwise prohibited under federal and state law. The adopted subsection defines acute pain as the normal, predicted, physiological response to a stimulus, such as trauma, disease, and operative procedures, which is time limited.

Summary of Comments Received

Summary of Comment: A commenter representing the Texas Medical Association states that the rule should re-iterate that, in order to issue prescriptions in conjunction with telemedicine medical services, an advanced practice registered nurse (APRN) must have prescriptive authority. The commenter states that, unlike the Texas Medical Board's rules on telemedicine, the Board's proposed rules contain no restriction relating to who may issue a prescription. The commenter states that the Texas Medical Board's rules clarify that prescriptions issued contemporaneously with a telemedicine medical service are those that are issued by a physician or by another health professional who is acting pursuant to a prescriptive authority agreement. The commenter states that, while the Board clarifies in the preamble of the proposed rule that this applies to APRNs with prescriptive authority, this clarification is not published in the administrative code, and therefore, would not be easily accessed by nurses or other members of the public. The commenter encourages the Board to amend the proposed rules to put in the text of the rule a clarification that an APRN must have a prescriptive authority agreement under Chapter 157 before the nurse may issue prescriptions contemporaneously with a telemedicine medical service.

The commenter also points out that the rule does not include a definition of "telemedicine medical service". The commenter states that both Senate Bill (SB) 1107 and the Texas Medical Board's rules contain a definition of "telemedicine medical service". The commenter states that this definition is important because it distinguishes a telemedicine medical service from a telehealth service. Further, the commenter states that physicians and physician delegatees provide telemedicine medical services, while a telehealth service is everything else. Thus, without physician delegation and supervision, nurses, including APRNs, may not provide telemedicine medical services. The

commenter recommends that the Board include a definition of "telemedicine medical service" in the rules that will clarify that telemedicine medical services may be provided only under physician delegation and supervision.

Finally, the commenter states that the Board has no other rules that provide direction or standards for its licensees when providing telehealth or telemedicine medical services. The commenter acknowledges that SB 1107 does not direct the Board to adopt rules on anything but the validity of a prescription issued contemporaneously with a telemedicine medical service. However, the commenter recommends that the Board utilize its general rulemaking authority under the Occupations Code §301.151 to adopt general rules that apply to nurses when providing telehealth or telemedicine medical services. The commenter states that the Texas Medical Board has provided regulatory privacy, fraud and abuse, notice, and record keeping standards, for physicians providing telemedicine medical services. The commenter notes that these standards are not perfect and may lack clarity in some areas, but still urges the Board to adopt the same standards for APRNs providing telemedicine medical services. The commenter states that this would help physicians when they delegate tasks to APRNs and other nurses, because the physicians would know that the nurses have a clear set of standards to follow in performing telemedicine medical or telehealth services. The commenter further states that this would ensure that telemedicine medical services have the privacy, fraud and abuse, and other protections, regardless of whether they are provided by a physician or APRN.

Agency response: The Board does not find the commenter's recommended changes necessary and, therefore, declines to make them. The proposed rule applies to APRNs with prescriptive authority, as those are clearly the only licensees within the Board's jurisdiction who are authorized to issue prescriptions. An APRN must be properly licensed and authorized under a valid prescriptive authority agreement in order to issue a prescription, whether in the context of telemedicine or otherwise. This is true whether this rule specifically re-states these requirements or not. However, this rule is intended to implement the specific provisions of the Occupations Code Chapter 111, as they relate to telemedicine medical service prescriptions. It is not intended to summarize all requirements or limitations that may apply to a nurse's practice. Nurses, including APRNs, are required to know and abide by the limitations of their licensure and to ensure their nursing practice meets all required standards at all times. The text of the rule does not alter this expectation in any way.

The Board also declines to add a definition of "telemedicine medical service" to the rule. The scope of the rule is very narrow and refers only to telemedicine medical service prescriptions and telemedicine medical services. The Board does not find the rule confusing or misleading in this regard. Further, APRNs who provide telemedicine medical services must adhere to the requirements associated with that setting, including appropriate physician delegation and supervision. The Board does not find it necessary to add additional language to the rule to re-iterate what is already required of APRNs in these settings.

Finally, the Board declines to adopt a comprehensive set of standards for APRNs providing telehealth or telemedicine medical services in this rule. The Board has already adopted minimum standards of nursing practice that apply to APRNs in any practice setting (22 Tex. Admin. Code §217.11), standards that apply to all APRNs (22 Tex. Admin. Code Chapter 221), and standards that apply to APRNs with prescriptive authority (22 Tex. Admin. Code Chapter 222). Additionally, APRNs must know and conform their practice to other state and federal laws and regulations that may affect their practice, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Occupations Code Chapter 111 and 157, the Health and Safety Code Chapter 181, and any applicable rules adopted by the Texas Medical Board, the Texas Board of Pharmacy, and the Texas Department of Insurance, to name a few. Privacy standards, fraud and abuse, notice, and record keeping standards are already covered by these federal and state statutes and regulations. As such, the Board declines to include duplicative standards in this rule.

Names of Those Commenting For and Against the Proposal.

For: None.

Against: None.

For, with changes: Texas Medical Association.

Neither for nor against, with changes: None.

Statutory Authority. The new section is adopted under the authority of the Occupations Code §§301.151 and 111.005-111.008.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 111.005(a) provides that a valid practitioner-patient relationship is present between a practitioner providing a telemedicine medical service and a patient receiving the telemedicine medical service as long as the practitioner complies with the standard of care described in §111.007 and the practitioner: (i) has a preexisting practitioner-patient relationship with the patient established in accordance with rules adopted under §111.006; (ii) communicates, regardless of the method of communication, with the patient pursuant to a call coverage agreement established in accordance with Texas Medical Board rules with a physician requesting coverage of medical care for the patient; or (iii) provides the telemedicine medical services through the use of one of the following methods, as long as the practitioner complies with the follow-up requirements in Subsection (b), and the method allows the practitioner to have access to, and the practitioner uses, the relevant clinical information that would be required in accordance with the standard of care described in §111.007: (A) synchronous audiovisual interaction between the practitioner and the patient in another location; (B) asynchronous store and forward technology, including asynchronous store and forward technology in conjunction with synchronous audio interaction between the practitioner and the patient in another location, as long as the practitioner uses clinical information from: (i) clinically relevant photographic or video images, including diagnostic images; or (ii) the patient 's relevant medical records, such as the relevant medical history, laboratory and pathology results, and prescriptive histories; or (C) another form of audiovisual telecommunication technology that allows the practitioner to comply with the standard of care described in §111.007.

Section 111.005(b) states that a practitioner who provides telemedicine medical services to a patient as described in Subsection (a)(3) shall: (1) provide the patient with guidance on appropriate follow-up care; and (2) if the patient consents and the patient has a primary care physician, provide to the patient 's primary care physician within 72 hours after the practitioner provides the services to the patient a medical record or other report containing an explanation of the treatment provided by the practitioner to the patient and the practitioner 's evaluation, analysis, or diagnosis, as appropriate, of the patient 's condition.

Section 111.005(c) states that notwithstanding any other provision of this section, a practitioner-patient relationship is not present if a practitioner prescribes an abortifacient or any other drug or device that terminates a pregnancy.

Section 111.006(a) provides that the Texas Medical Board, the Texas Board of Nursing, the Texas Physician Assistant Board, and the Texas State Board of Pharmacy shall jointly adopt rules that establish the determination of a valid prescription in accordance with §111.005. Rules adopted under this section must allow for the establishment of a practitioner-patient relationship by a telemedicine medical service provided by a practitioner to a patient in a manner that complies with §111.005(a)(3).

Section 111.006(b) states that the Texas Medical Board, the Texas Board of Nursing, the Texas Physician Assistant Board, and the Texas State Board of Pharmacy shall jointly develop and publish on each respective board 's Internet website responses to frequently asked questions relating to the determination of a valid prescription issued in the course of the provision of telemedicine medical services.

Section 111.007(a) provides that a health professional providing a health care service or procedure as a telemedicine medical service or a telehealth service is subject to the standard of care that would apply to the provision of the same health care service or procedure in an in-person setting.

Section 111.007(b) provides that an agency with regulatory authority over a health professional may not adopt rules pertaining to telemedicine medical services or telehealth services that would impose a higher standard of care than the standard described in Subsection (a).

Section 111.008 states that the chapter does not apply to mental health services.

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

Filed with the Office of the Secretary of State on November 5, 2018.

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Jena Abel
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Proposal publication date: September 14, 2018
For further information, please call: (512) 305-6822

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CHAPTER 228. PAIN MANAGEMENT

22 TAC §228.2

Introduction

The Texas Board of Nursing (Board) adopts new §228.2, relating to *Prescription Monitoring Program.* The new section is adopted with changes to the proposed text published in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5641).

Reasoned Justification

The new section is adopted under the authority of the Occupations Code §301.151 and is necessary for compliance with the statutory mandates of the Health and Safety Code §481.0764 and §481.0765.

During the 85th Legislative Session, the Texas Legislature enacted House Bill (HB) 2561, which amended the Health and Safety Code Chapter 481, and became effective on September 1, 2107. Among other things, HB 2561 requires health care practitioners, including advanced practice registered nurses (APRNs), to access the Texas Prescription Monitoring Program (PMP) prior to prescribing or dispensing opioids, benzodiazepines, barbiturates, or carisoprodol. The bill further authorizes, but does not require, practitioners to access the PMP prior to prescribing or dispensing any controlled substance.

The Texas PMP collects and monitors prescription data for all controlled substances dispensed by pharmacies in Texas or from a pharmacy that is located in another state that dispenses to Texas residents. The PMP also allows providers to query their own prescribing history. Because opioids, benzodiazepines, barbiturates, carisoprodol (Soma), and other controlled substances have significant addictive risks and potential impact on public health, it is important for APRNs to recognize their responsibility to review the PMP as part of responsible prescribing practices.

The adopted rule implements the statutory requirements of HB 2561 and provides guidance to Board regulated practitioners who prescribe controlled substances. First, as required by the bill, the adopted rule requires APRNs to access and review the PMP prior to prescribing opioids, benzodiazepines, barbiturates, or carisoprodol. There are two exceptions to this requirement. First, a prescriber is not required to review the PMP if the patient for whom the medication is being prescribed has been diagnosed with cancer or is receiving hospice care, and the APRN clearly notes these circumstances on the patient's prescription or in the patient's electronic prescription record. Second, an APRN will not be in violation of the statute's requirements if the APRN attempts to review the PMP but is unable to do so due to circumstances outside the APRN's control and clearly documents the reason(s) for the APRN's inability to access the PMP on the patient's prescription or in the patient's electronic prescription record. The rule also encourages, although does not require, APRNs who prescribe controlled substances to review the PMP prior to prescribing these medications.

The adopted rule also requires APRNs to document their review of the PMP and their rational for prescribing the medication in the patient's medical record. This requirement is intended to ensure that APRNs who prescribe opioids, benzodiazepines, barbiturates, carisoprodol (Soma), or other controlled substances have appropriately considered the risks associated with the prescribed medication, particularly in light of the patient's past medical history, and have adequate medical necessity and judgment to justify the prescription. Consistent with the provisions of HB 2561, this rule will become effective September 1, 2019.

Changes to the Adopted Text. The Board received one written comment on the proposal. The comment was considered by the Board at its October 2018 meeting. In response to the written comment on the published proposal, the Board has made changes to §228.2(b)(2), (c)(2), and (d) of the section as adopted. The Board has also added new subsection (e) to this section. None of these changes, however, materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. Further, the Board believes these changes address a portion of the commenter's concerns.

How the Section Will Function.

Because Chapter 228 contains the Board's requirements specific to pain management, adopted new §228.2(a) states that APRNs should access and review the PMP prior to prescribing any controlled substance for patients being treated for pain.

Adopted new §228.2(b) requires APRNs to access and review the PMP before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, unless the patient has been diagnosed with cancer or the patient is receiving hospice care, and the APRN clearly notes on the patient's prescription or in the patient's electronic prescription record that the patient was diagnosed with cancer or is receiving hospice care.

Adopted new §228.2(c) provides that an APRN will not be subject to disciplinary action if the APRN makes a good faith attempt to access and review the PMP prior to prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, but is unable to access the information because of circumstances outside the control of the APRN and clearly notes this on the patient's prescription or in the patient's electronic prescription record.

Adopted new §228.2(d) requires an APRN to document the review of the PMP and rationale for prescribing a controlled substance in the patient's medical record.

Adopted new §228.2(e) includes the effective date of the rule.

Summary of Comments Received.

Summary of Comment: A commenter representing the APRN Alliance states that the proposal creates two disciplinable offenses: failing to check the prescription monitoring program (PMP) and failing to properly document the check. However, the commenter points out that the Health and Safety Code §481.0764 provides that a failure to check the PMP is grounds for disciplinary action, but there is no mention of documenting the check in the patient's records. The commenter states that the APRN Alliance feels strongly that documentation should be encouraged and appreciates the Board's efforts to do so. However, the commenter recommends that the Board consider alternative ways to encourage documentation, without making failure to do so disciplinable. The commenter suggests that the Board could modify the language in the rule by creating a safe harbor for documentation instead of requiring it. This would ensure that the Board is not forced to discipline a nurse who can prove, despite failing to document, that they complied with the applicable law by checking the PMP. If the Board feels that failure to document should be independently disciplinable, the commenter asks that the Board reconsider the standards it has set for the documentation. For example, proposed §228.2(c)(2) requires nurses to record "the circumstances that prevented the APRN from being able to" access the PMP. The commenter states that these standards inject subjectivity into the rules.

Further, the commenter states that the Board's repeated use of the term "prescription record" implies that documentation will be made within the PMP itself, rather than in the patient's medical record. If this is the case, the commenter questions whether the Board has done its due diligence to ensure that the PMP has the ability to include the Board's various requirements. However, if the Board intended "prescription record" to mean the medical record, the commenter asks that the Board change the rule language to reflect its intent.

Finally, the commenter asks the Board to include an effective date for the rule in the rule language. The commenter states that although the Board acknowledges, in the preamble for the rule, that it will become effective in September 2019, few, if any, nurses will see the rule preamble. The commenter states that this will create confusion for nurses, especially if the legislature modifies the statutory requirements during the legislative session. Further, the commenter states that the Administrative Procedure Act requires that the rule become effective 20 days after filing with the Secretary of State. The Government Code §2001.036(a)(1) provides that the only way to move the effective date past the 20-day standard is "if a later date is required by statute or specified in the rule." The commenter states that the effective date of House Bill 2561 is not required by statute, but is instead required by the effective date provisions of the bill, which do not become statute upon passage. Therefore, as currently drafted, the commenter states that a later date is not required by statute or specified in rule, and the rule will become effective 20 days after filing with the Secretary of State's Office. The commenter urges the Board to remedy this oversight by specifying an effective date in the rule.

Agency Response: The minimum standards of nursing practice require nurses to accurately and completely document the care they render. For APRNs who prescribe medications, this includes appropriate documentation of treatment plans and goals, evaluation of treatment options, and rationale for ongoing medical treatment. The review of the PMP is a necessary and important part of formulating an appropriate treatment plan for a patient, particularly in circumstances where the PMP indicates the patient's history of multiple prescriptions from several different providers. Likewise, it is also important for a prescriber to document the rationale for prescribed medication(s) in order to ensure that the prescriber has appropriately considered the PMP, if applicable, and/or other pertinent factors that may affect the effectiveness and safety of the prescribed medications. These requirements are consistent with the prevailing standard of care and are intended to provide safeguards for patients and to prevent the inappropriate prescribing of dangerous and additive substances. To that end, the Board will review a prescriber's documentation when investigating complaints involving inappropriate or non-therapeutic prescribing. Further, a prescriber's failure to document the review of the PMP and/or the prescriber's rational for prescribing a controlled substance may result in disciplinary action, if warranted by the circumstances of the particular case. If the Board is unable to enforce the standards it prescribes, they are rendered meaningless. As such, the Board declines to make changes suggested by the commenter, as they relate to required documentation.

Further, the Board notes that §481.0765(c) exempts a prescriber from reviewing the PMP if the prescriber makes a good faith attempt to check the PMP, but is unable to access the information because of circumstances outside the control of the prescriber. The proposal gives the prescriber the benefit of this exception so long as the prescriber is able to document the circumstances

that prevented him/her from reviewing the PMP. While the commenter states that this requirement is too subjective in nature, it seems inevitable that every situation will necessarily involve unique circumstances that prevent a prescriber from accessing the PMP at the specific date and time he/she attempts to review the program. As such, this information, by its very nature, will be subjective and individualized. So long as the information is appropriately documented, the prescriber will not be subject to discipline for failing to review the PMP under these circumstances. The Board, therefore, declines to make changes to this portion of the rule, as requested by the commenter.

Although the proposal includes the same terminology as that of §481.0765, the Board has determined that clarification of the term "prescription record" is necessary within the context of this rule. House Bill 2561 amended the Health & Safety Code §481.0765 to require a prescriber to review the PMP prior to prescribing opioids, benzodiazepines, barbiturates, or carisoprodol. However, §481.0765(a) exempts a prescriber from this requirement if the prescription is for a patient who has been diagnosed with cancer or the patient is receiving hospice care and the prescriber clearly notes in the prescription record that the patient was diagnosed with cancer or is receiving hospice care. Section 481.0765(c) contains an additional exemption if a prescriber is unable to access the PMP due to circumstances outside of his/her control. HB 2561 utilizes the phrase "prescription record" in conjunction with requirements and conditions related to electronic prescription records. The bill does not utilize this term to refer to the PMP or to a patient's medical record. As such, the Board has determined that, in order to give proper effect to the exemptions in §481.0765, the rule should include reference to both electronic and non-electronic prescription records. To that end, the Board has changed the text of the rule as adopted to clarify that the exception(s) specified in §481.0765 must be documented on either the patient's hard copy prescription or in the patient's electronic prescription record.

Finally, although the Board disagrees with the commenter that the effective date of a statute may not be utilized to satisfy the criteria set forth in the Government Code §2001.036(a)(1) without the necessity of the effective date appearing in the text of the statute itself, the Board has added the effective date of this rule into the text of the rule, as suggested by the commenter.

Names of Those Commenting For and Against the Proposal.

For: None.

Against: None.

For, with changes: The APRN Alliance.

Neither for nor against, with changes: None.

Statutory Authority. The section is adopted under the authority of the Health and Safety Code §481.0764(a), (b), and (d) and §481.0765(a) and (c) and the Occupations Code §301.151.

Section 481.0764(a) provides that a person, authorized to receive information under §481.076(a)(5), other than a veterinarian, shall access that information with respect to the patient before prescribing or dispensing opioids, benzodiazepines, barbiturates, or carisoprodol.

Section 481.0764(b) states that a person authorized to receive information under §481.076(a)(5) may access that information with respect to the patient before prescribing or dispensing any controlled substance.

Section 481.0764(d) states that a violation of §481.0764(a) is grounds for disciplinary action by the regulatory agency that issued a license, certification, or registration to the person who committed the violation.

Section 481.0765(a) states that a prescriber is not subject to the requirements of §481.0764(a) if the patient has been diagnosed with cancer or the patient is receiving hospice care and the prescriber clearly notes in the prescription record that the patient was diagnosed with cancer or is receiving hospice care, as applicable.

Section 481.0765(c) provides that a prescriber or dispenser is not subject to the requirements of §481.0764(a) and a dispenser is not subject to a rule adopted under §481.0761(j) if the prescriber or dispenser makes a good faith attempt to comply but is unable to access the information under §481.076(a)(5) because of circumstances outside the control of the prescriber or dispenser.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

§228.2. Prescription Monitoring Program (PMP).

(a) APRNs should access and review the prescription monitoring program (PMP) authorized by Chapter 481, Health and Safety Code, prior to prescribing any controlled substance for patients being treated for pain.

(b) APRNs must access and review the PMP before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol unless:

(1) the patient has been diagnosed with cancer or the patient is receiving hospice care; and

(2) the APRN clearly notes on the prescription or in the electronic prescription record that the patient was diagnosed with cancer or is receiving hospice care, as applicable.

(c) An APRN will not be subject to disciplinary action if the APRN:

(1) makes a good faith attempt to access and review the PMP prior to prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, but is unable to access the information because of circumstances outside the control of the APRN; and

(2) clearly notes on the patient's prescription or in the patient's electronic prescription record the APRN's attempt to access and review the PMP and the circumstances that prevented the APRN from being able to do so.

(d) Documentation that the review of the PMP occurred and rationale for prescribing a controlled substance must be included in the patient's medical record.

(e) This section takes effect September 1, 2019.

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

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Texas Board of Nursing
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§116.114, 116.160, 116.164, 116.196, 116.198, 116.310, 116.611, and 116.615. The amendment to §116.114 is adopted *with change* to the proposed text as published in the May 25, 2018, issue of the *Texas Register* (43 TexReg 3297) and, therefore, will be republished. Sections 116.160, 116.164, 116.196, 116.198, 116.310, 116.611, and 116.615 are adopted *without change* to the proposed text, and, therefore, will not be republished.

The adopted revisions to §§116.114, 116.160, 116.164(a), 116.196, 116.198, 116.310, 116.611, and 116.615 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

House Bill (HB) 4181, 85th Texas Legislature, 2017, amended Texas Health and Safety Code (THSC), §382.055, to provide TCEQ with the option to use an electronic method or system to notify new source review (NSR) air permit holders that an air permit is scheduled for review. Prior to HB 4181, these notices were required to be sent by registered or certified mail. HB 4181 requires that any electronic notice system developed by TCEQ include the capability to verify that the notice has been received by the permit holder. HB 4181 became effective on September 1, 2017. Revisions to Chapter 116 are necessary to reflect the option for TCEQ to use an electronic method of providing renewal notifications.

By providing TCEQ with the authority to use an electronic method for providing NSR permit renewal notices, HB 4181 provides for reduced printing and postage costs and other logistical concerns associated with the use of traditional registered or certified mail for the substantial number of renewal notices which must be provided each year. This is expected to result in a more efficient air permit renewal process for TCEQ and for air permit holders.

While the primary purpose of this rulemaking is to implement the electronic permit renewal notification process provided for by HB 4181, TCEQ is also taking this opportunity to adopt several unrelated changes to Chapter 116. These other adopted revisions include: the use of electronic methods to register an air quality standard permit; adopted changes to clarify when a new standard permit registration is required and when standard permit representations must be updated; adopted changes to clarify the applicability of Prevention of Significant Deterioration (PSD) permitting to certain sources emitting greenhouse gases (GHG); and the correction of outdated or erroneous cross references and terms.

The adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes include: appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally not specifically discussed in this preamble.

In a concurrent rulemaking published in this issue of the *Texas Register,* the commission has adopted revisions to 30 TAC Chapter 122, Federal Operating Permits Program, to implement another section of HB 4181 relating to the option to use an electronic method to notify federal operating permit holders and interested persons of a proposed final permit action.

Section by Section Discussion

§116.114. Application Review Schedule.

The commission adopts an amendment to §116.114(c)(2) to rephrase a reference to THSC, §382.031(a). The commission withdraws the proposed amendment to §116.114(c)(3)(A), which would have deleted a reference to Plant-wide Applicability Limit (PAL) permits and added a reference to rules relating to Constructed or Reconstructed Major Sources under the Federal Clean Air Act (FCAA), §112(g). If the proposed change to this rule had been adopted, PAL permits would have fallen under the 180-day timeframe of §116.114(c)(3)(B). Upon further evaluation, the commission has decided to maintain the reference to PAL permits in §116.114(c)(3)(A) because the commission believes it is appropriate for the review of PAL permits to remain under the one-year timeframe specified for federal major source permits by this rule. In addition, the commission is not adopting the proposed language concerning FCAA, §112(g) actions in this rule because EPA generally does not approve rules involving §112(g) requirements as a SIP revision.

§116.160. Prevention of Significant Deterioration Requirements.

The commission adopts an amendment to §116.160(b)(2). The adopted revision deletes a reference to §116.164(a)(4)(B), which has been deleted as part of the adopted revisions to §116.164.

§116.164. Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources.

The commission adopts amended §116.164(a) and (b). The commission adopts the revision to §116.164(a) to reflect changes in GHG permitting policy and guidance resulting from the 2014 Supreme Court decision (*Utility Air Regulatory Group v EPA*, 132 U.S. 2427 (2014)). The Supreme Court ruling determined that a project should not be subject to PSD review for an increase in GHG emissions alone; but that an increase in GHG emissions may be subject to PSD review if a different, non-GHG pollutant has an increase which triggers PSD review. In other words, GHG emissions associated with a project may be subject to review only if the PSD review was already going to be required by increased emissions of another regulated pollutant. Accordingly, the commission has adopted a clarifying statement to §116.164(a) and adopted a deletion of §116.164(a)(3) - (5),

which addressed cases where there was an increase in GHG emissions alone. The Supreme Court decision and current EPA guidance have established that these cases no longer trigger PSD review for GHG emissions. The commission also adopted a minor rephrasing of §116.164(b) to clarify that projects which do not trigger the applicability criteria of §116.164(a) are not required to obtain a permit for those GHG emissions; however, a permit or authorization of some type is still required for any other pollutants which may result from such a project.

§116.196. Renewal of a Plant-wide Applicability Limit Permit.

The commission adopts an amendment to §116.196. The amendment adds language under §116.196(a) to document and clarify the procedures used to notify holders of PAL permits that a permit is approaching expiration and needs to be renewed. The adopted amendment requires that the TCEQ provide notification to the permit holder no less than 12 months prior to the expiration of the permit. While the commission already provides a renewal notification to holders of PAL permits as a matter of practice, the adopted language clarifies the timing of the notice and allows for the use of an electronic method to deliver the notice to the permit holder, as an alternative to postal mail. The amendment makes the renewal notification requirements for PAL permits more consistent with the notification process used for traditional NSR permits under §116.310, for which similar revisions are being adopted. The commission also adopts a re-lettering of the existing subsections of §116.196 as necessary to accommodate the adopted changes to §116.196(a).

§116.198. Expiration or Voidance.

The commission adopts amended §116.198(a) and (b). The adopted revisions remove current references to §116.196(a) in this section and replace them with references to §116.196(b). This adopted change is necessary because the concurrently adopted relettering of the provisions of §116.196 relocates the requirements of §116.196(a) concerning submittal of a PAL permit renewal application to §116.196(b).

§116.310. Notification of Permit Holder.

The commission adopts amendments to §116.310. The amendments add language allowing the use of an electronic method to notify permit holders that a permit is approaching expiration and is need of renewal. This electronic notice would be an alternative to the use of traditional certified or registered mail. This adopted change is necessary to maintain consistency with the corresponding changes to THSC, §382.055 enacted by HB 4181.

The commission is also adopting a revision to the text of §116.310 to more closely match the timing of the notice requirement stated in THSC, §382.055, which requires that the commission provide the notice to the permit holder no less than 180 days before the date the permit renewal application is due. Under §116.315(a), the permit renewal application is, by default, to be submitted at least six months before the expiration of the permit. Therefore, in order to satisfy the combination of §116.315(a) and THSC, §382.055, the commission must send the notice no later than 180 days before the six-month period prior to the expiration of the permit. In conclusion, the commission must send the renewal notice to the permit holder approximately 12 months prior to the date the permit is scheduled to expire. The commission adopts the revision of the language in §116.310 accordingly.

§116.611. Registration to Use a Standard Permit.

The commission adopts an amendment to §116.611 to provide for the use of an electronic method to apply for a standard permit registration, instead of requiring that registrations be submitted on paper forms using certified mail or hand delivery methods. The adopted rule language requires that standard permit registrations be provided to TCEQ using an electronic method designated by the executive director for the applicable standard permit(s). The commission intends to use the existing ePermits system to facilitate these electronic registrations. If a designated electronic method is not available, the registration shall be sent by certified mail, return receipt requested, or hand delivered, as is currently required under the existing rules. Relevant forms, instructions, and supporting documents to support the electronic submittal of standard permit registrations will be available on the commission's website. The shift to the use of an electronic format for the receipt of standard permit registrations is intended to reduce processing time, improve efficiency, and conserve agency resources.

Fees for standard permit registrations submitted electronically will also be paid electronically, through the commission's ePay system or some other designated method.

§116.615. General Conditions.

The commission adopts amendments to §116.615. The amendments clarify the requirements applicable to the holder of a registered standard permit when the permit holder intends to make changes or additions which were not previously represented in the original registration or any subsequent updates to the registration. The adopted revisions are necessary to ensure that: commission records on registered standard permit facilities are kept up-to-date; new facilities comply with appropriate public notice requirements; and facilities which undergo changes after a standard permit has been issued continue to meet the conditions of the standard permit and are complying with appropriate requirements based on the current configuration and operation of the facility. These requirements will only apply to facilities authorized under a standard permit which requires registration under §116.611.

The commission adopts the deletion of a portion of existing §116.615(2) relating to the requirement to notify the executive director of changes to representations for a standard permit facility. The commission adopts more detailed rule language to address changes at a registered standard permit facility under adopted §116.615(2)(A) - (D).

Adopted §116.615(2)(A) addresses the addition of new facilities at an existing operation which is authorized under a registered standard permit. The adopted rule requires that the holder of the standard permit submit a new registration and fee before beginning construction on the new facility or facilities. The new registration would be required to encompass all new and existing facilities to be authorized under the standard permit. The adopted rule also specifies that public notice is required for the new registration incorporating new and existing facilities under certain standard permits. If the applicable standard permit requires public notice, the construction of new facilities shall not commence until the public notice process is complete and the new registration has been issued by the executive director. Currently, the following facilities, that have standard permits requiring public notices are: concrete batch plants, concrete batch plants with enhanced controls, animal carcass incinerators, and permanent rock and concrete crushers. The adopted requirements are necessary to ensure that additions of new facilities at existing standard permit sites are reviewed to verify compli-

ance with the terms of the standard permit and to ensure that any applicable public notice requirements are fulfilled for the entire operation being authorized under the standard permit.

If the construction of new facilities under §116.615(2)(A) is associated with a standard permit which does not require public notice, then the normal timeframes of §116.611(b) apply. Construction may begin any time after receipt of written notification from the executive director that there are no objections or 45 days after receipt by the executive director of the new registration, whichever occurs first; except when a different time period is specified for a particular standard permit.

Adopted §116.615(2)(B) addresses changes to representations which involve changes in the method of control of emissions, changes in the character of the emissions, or increases in the discharge of the various emissions. These types of changes are currently covered by rule language in existing §116.615(2). The adopted rule does not change the requirement to notify the executive director of such changes within 30 days of the change, but clarifies that a fee will be assessed for processing these types of changes in representations. The written notification should identify the current representations which are affected and include a detailed description of the changes which are being made. A $900 fee will be assessed for this review, which is consistent with the existing fee structure for processing a new or revised registration.

Adopted §116.615(2)(C) addresses changes to representations which do not result in changes in the method of control of emissions, changes in the character of the emissions, or increases in the discharge of the various emissions. For these types of changes, the holder of the standard permit would be required to notify the executive director of such changes within 30 days of the change. No fee is being adopted for processing these types of changes.

Adopted §116.615(2)(D) addresses situations where the applicable standard permit already contains specific conditions or procedures for handling changes to representations which are different from the adopted requirements in §116.615(2). In such cases, the holder of the standard permit shall comply with the applicable requirements of the standard permit instead of the requirements in adopted §116.615(2).

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirements to prepare a regulatory impact analysis (RIA).

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to Chapter 116 to implement HB 4181 are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather the amendments would give the commission the option of providing notice of an air permit application renewal under Chapter 116 by an electronic method or system that has a reliable method of verifying that the notice has been received by the permit holder.

While the primary purpose of the rulemaking is to revise Chapter 116 to include the option to use an electronic method or system of notification for permit renewals, this rulemaking also includes several unrelated adopted amendments to Chapter 116. These include the use of electronic methods to register an air quality standard permit; changes to clarify when a standard permit registration is required to be updated; changes to clarify the applicability of PSD permitting to certain sources emitting GHG; and the correction of outdated or erroneous cross references and terms.

Because these adopted rules would modify administrative procedures for registrations of standard permits in future authorizations, clarify the applicability of GHG permitting, and make minor corrections, the amendments do not add significant permitting requirements. Therefore, these adopted amendments will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, a RIA is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "Major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and does not exceed a requirement of a delegation agreement or contract to implement a state or federal program. Finally, this rulemaking is not adopted solely under the general powers of the agency but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB or bill) 633 during the 75th Texas Legislature, 1997. The intent of SB 633 was to require agencies to conduct a RIA of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded, "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full RIA unless the rule was a major environmental rule that exceeds a federal law. Because of the ongoing need to meet federal requirements, the commission routinely proposes and

adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule adopted by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. The commission contends that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the adopted rule may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and, in fact, creates no additional impacts since the proposed rule does not exceed the requirement to attain and maintain the National Ambient Air Quality Standards. For these reasons, the adopted rulemaking falls under the exception in Texas Government Code, §2001.0225(a), because it is required by, and does not exceed, federal law.

The commission consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ); Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied);* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978)).

The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission substantially complied with the requirements of Texas Government Code, §2001.0225.

The primary purpose of the adopted amendments is to give the commission the option of providing notice of an air permit application renewal under Chapter 116 by an electronic method or system that has a reliable process of verifying that the notice has been received by the permit holder. An additional purpose is to address other parts of Chapter 116 that require clarification, as discussed elsewhere in this preamble. The adopted amendments were not developed solely under the general powers of the agency, but are authorized by specific sections of THSC, Chapter 382, and the Texas Water Code, which are cited in the Statutory Authority sections of this preamble. Therefore, this adopted rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Regulatory Impact Analysis Determination.

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% 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 adopted rulemaking action under Texas Government Code, §2007.043. The primary purpose of this adopted rulemaking action, as discussed elsewhere in this preamble, is to give the commission the option of providing notice of an air permit application renewal under Chapter 116 by an electronic method or system that has a reliable process of verifying that the notice has been received by the permit holder. An additional purpose is to address other parts of Chapter 116 that require clarification, as discussed elsewhere in this preamble. The adopted rulemaking action will not create any additional burden on private real property. The adopted 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 adoption 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 adopted rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22, and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). The adopted rules provide for the use of an electronic method to notify permit holders that a permit is due for renewal, update procedural rules that govern the submittal of air quality PSD GHG permit applications, and clarify registration and public notice requirements for changes at certain standard permit facilities. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR) to protect and enhance air quality in the coastal areas (31 TAC §501.32). This rulemaking complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation

Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

The adopted amendments are not expected to have a significant impact on sites subject to the Federal Operating Permits Program. Facilities which operate under a registered standard permit and also have a Site Operating Permit (SOP) should evaluate the revised applicable requirements of §116.615 to determine if an update to their SOP is necessary. The adopted amendments to the remaining sections will not require any revisions to federal operating permits.

Public Comment

The commission offered a public hearing on June 22, 2018. The comment period closed on June 26, 2018. The commission received comments from the Texas Chemical Council (TCC) and EPA Region 6. One commenter was generally supportive of the proposed amendments but suggested certain additional changes to the rules or agency procedures. One commenter did not express support or opposition to the proposed amendments but requested clarification of the effects of one of the proposed changes.

Response to Comments

Comment

TCC stated that they support TCEQ's efforts to increase the efficiency of the permit renewal and final action notice processes, but expressed concern that electronic notices may be lost or misplaced due to company email changes or personnel changes. TCC stated that TCEQ should use a robust verification process to provide confirmation that the electronic notices are received by the permitted entities.

Response

The provisions of HB 4181 which allow for TCEQ to provide NSR permit renewal notices electronically also require TCEQ to employ a verification method. TCEQ's Air Permits Division (APD) is planning to employ a system that will provide APD with a receipt when the electronic renewal notice is opened by the recipient. If APD does not receive a receipt confirming that the electronic renewal notice was received and opened within a reasonable time frame, APD will assume that the electronic delivery was not successful. In such a case, APD will contact the permit holder's designated recipient by other means (such as by telephone or postal mail) and verify the recipient's contact information to ensure that the notice is delivered in a manner that provides APD with verification that the notice was delivered successfully. No change to the rule was made in response to this comment.

Comment

TCC suggested that the electronic renewal notices also be sent to the permit holder's technical contact, rather than just the company's responsible official. TCC stated that roles may change frequently and that the responsible official may not be located at the site for which the permit is issued.

Response

TCEQ concurs that it would be beneficial to include both the permit technical contact and the responsible official, in the distribution of electronic notices. In cases where TCEQ has the email address of a designated technical contact on file, APD intends to send an electronic copy of the notice to the technical contact, as well as, the responsible official. If APD receives a receipt verifying delivery from either the responsible official or the technical contact, APD will consider the electronic notice to have been received by the permit holder. No change to the rule was made in response to this comment.

Comment

EPA Region 6 requested clarification of the effect of the proposed change to §116.114(c)(3)(A), which would delete a reference to PAL permits and replace it with a reference to FCAA, §112(g) permits under 40 CFR Part 63. Specifically, EPA Region 6 requested clarification of the review timeline that would apply to PAL permit applications if the proposed change was adopted.

Response

If adopted, the proposed change to remove the reference to PAL permits in §116.114(c)(3)(A) would mean that the more generalized provisions in §116.114(c)(3)(B) would apply to PAL applications. Permit applications covered by §116.114(c)(3)(B) are subject to a 180-day timeline. Upon further consideration, the commission has determined that it would be more appropriate for PAL permits to remain under the one-year timeframe allotted for federal major source permits under §116.114(c)(3)(A). Accordingly, the commission is withdrawing the proposed amendment to §116.114(c)(3)(A).

SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 1. PERMIT APPLICATION

30 TAC §116.114

Statutory Authority

The rule is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rule is also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and

Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0518, concerning Preconstruction Permits, which authorizes the commission to grant a permit before work is begun on the construction of a new facility or a modification of an existing facility; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which authorizes the commission to provide notice of permit applications.

In addition, the rule is adopted under Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The adopted rule will implement THSC, §§382.051, 382.0513, 382.0515, 382.0518, and 382.056.

§116.114. Application Review Schedule.

(a) Review schedule. The executive director shall review permit applications in accordance with the following.

(1) Notice of completion or deficiency. The executive director shall mail written notification informing the applicant that the application is complete or that it is deficient within 90 days of receipt of the application for a new permit, or amendment to a permit or special permit.

(A) If the application is deficient, the notification must state:

(i) the additional information required; and

(ii) the intent of the executive director to void the application if information for a complete application is not submitted.

(B) Additional information may be requested within 60 days of receipt of the information provided in response to the deficiency notification.

(2) Preliminary decision to approve or disapprove the application. The executive director shall conduct a technical review and send written notice to the applicant of the preliminary decision to approve or not approve the application within 180 days from receipt of a completed permit application or 150 days from receipt of a completed permit amendment. If the applicant has provided Notice of Receipt of Application and Intent to Obtain Permit public notification as required by the executive director under Chapter 39 of this title (relating to Public Notice), one of the following shall apply:

(A) if comments are received on the proposed facility and replied to by the executive director in accordance with §39.420 of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision) and §55.156 of this title (relating to Public Comment Processing); and

(B) if no requests for public hearing or public meeting on the proposed facility have been received or the application is otherwise exempt under §39.419(e) of this title (relating to Notice of Application and Preliminary Decision), the executive director shall send a copy of the Preliminary Decision to the applicant; or

(C) if Notice of Application and Preliminary Decision is required under §39.419(e) of this title, the executive director shall authorize this notice and send copies to the applicant and all other persons are required under §39.602 of this title (relating to Mailed Notice).

(3) Review schedule for Advanced Clean Energy Projects. In addition to the applicable requirements and deadlines specified in subsections (a) - (c) of this section, the following deadlines apply to permit applications for advanced clean energy projects as defined in Texas Health and Safety Code, §382.003, Definitions:

(A) As authorized by federal law, not later than nine months after the executive director declares an application for a permit under this chapter for an advanced clean energy project to be administratively complete, the executive director shall complete its technical review of the application.

(B) The commission shall issue a final order issuing or denying the permit not later than nine months after the executive director declares the application technically complete. The commission may extend this deadline up to three months if it determines that the number of complex pending applications for permits under this chapter will prevent the commission from meeting this deadline without creating an extraordinary burden on the resources of the commission.

(4) Refund of permit fee.

(A) If the time limits provided in this section to process an application are exceeded, the applicant may appeal in writing to the executive director for a refund of the permit fee.

(B) The permit fee shall be reimbursed if it is determined by the executive director that the specified period was exceeded without good cause, as provided in Texas Civil Statutes, Article 6252-13b.1, §3.

(b) Voiding of deficient application.

(1) An applicant shall make a good faith effort to submit, in a timely manner, adequate information which demonstrates that the requirements for obtaining a permit or permit amendment are met in response to any deficiency notification issued by the executive director under the provisions of this section, or Chapter 39 of this title.

(2) If an applicant fails to make such good faith effort after two written notices of deficiency, the executive director shall void the application and notify the applicant of the voidance and the remaining deficiencies in the voided application. If a new application is submitted within six months of the voidance, it shall meet the requirements of §116.111 of this title (relating to General Application) but will be exempt from the requirements of §116.140 of this title (relating to Applicability).

(c) Notification of executive director's decision.

(1) Notification to applicant. The executive director or the chief clerk shall send to the applicant the decision to approve or not approve the application if:

(A) no timely requests for reconsideration, contested case hearing, or public meeting on the proposed facility have been received; or

(B) if hearing requests have been received and withdrawn before the executive director's Preliminary Decision; or

(C) the application is for any amendment, modification, or renewal application that would not result in an increase in allowable

emissions and would not result in the emission of an air contaminant not previously emitted; and

(D) the applicant has satisfied all public notification requirements of Chapter 39 of this title.

(2) Notification to commenters. Persons submitting written comments under Chapter 39 of this title shall be sent the executive director's final action and given an explanation of the opportunity to file a motion under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) at the same time that the applicant is notified. If the number of interested persons who have requested notification makes it impracticable for the commission to notify those persons by mail, the commission shall notify those persons by publication using the method prescribed by Texas Health and Safety Code, §382.031(a).

(3) Time limits. The executive director shall send notification of final action within:

(A) one year after receipt of a complete prevention of significant deterioration or nonattainment permit application, or a complete permit application for an action under Subchapter C of this chapter (relating to Plant-Wide Applicability Limits);

(B) 180 days of receipt of a completed permit or permit renewal application; or

(C) 150 days of receipt of a permit amendment or special permit amendment application.

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

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DIVISION 6. PREVENTION OF SIGNIFICANT DETERIORATION REVIEW

30 TAC §116.160, §116.164

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rule is also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.05102, concerning Permitting Authority of Commission; Greenhouse Gas Emissions, which authorizes the commission to adopt rules to implement the emissions of greenhouse gases in a manner consistent with THSC, §382.051; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0518, concerning Preconstruction Permits, which authorizes the commission to grant a permit before work is begun on the construction of a new facility or a modification of an existing facility; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which authorizes the commission to provide notice of permit applications.

In addition, the rules are also adopted under Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The adopted rules will implement THSC, §§382.05102, 382.051, 382.0513, 382.0515, 382.0518, and 382.056.

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

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SUBCHAPTER C. PLANT-WIDE APPLICABILITY LIMITS

DIVISION 1. PLANT-WIDE APPLICABILITY LIMITS

30 TAC §116.196, §116.198

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which estab-

lishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.128, concerning Electronic Reporting to Commission; Electronic Transmission of Information by Commission; Reduction of Duplicate Reporting, which authorizes the commission to utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission. The rules are also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0518, concerning Preconstruction Permits, which authorizes the commission to grant a permit before work is begun on the construction of a new facility or a modification of an existing facility; THSC, §382.055, concerning Review and Renewal of Preconstruction Permit, which authorizes the commission to review and determine whether the authority to operate a preconstruction permit should be renewed; THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which authorizes the commission to provide notice of permit applications; and THSC, §382.062, concerning Application, Permit, and Inspection Fees, which authorizes the commission to adopt, charge, and collect fees.

In addition, the rules are adopted under Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The adopted rules will implement TWC, §5.128, THSC, §§382.051, 382.0513, 382.0515, 382.0518, 382.055, 382.056, 382.062, and Texas Occupations Code, §55.002.

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

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SUBCHAPTER D. PERMIT RENEWALS

30 TAC §116.310

Statutory Authority

The rule is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.128, concerning Electronic Reporting to Commission; Electronic Transmission of Information by Commission; Reduction of Duplicate Reporting, which authorizes the commission to utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission. The rule is also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0518, concerning Preconstruction Permits, which authorizes the commission to grant a permit before work is begun on the construction of a new facility or a modification of an existing facility; THSC, §382.055, concerning Review and Renewal of Preconstruction Permit, which authorizes the commission to review and determine whether the authority to operate a preconstruction permit should be renewed; THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which authorizes the commission to provide notice of permit applications; and THSC, §382.062, concerning Application, Permit, and Inspection Fees, which authorizes the commission to adopt, charge, and collect fees.

In addition, the rules are adopted under Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states

to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The adopted rule will implement House Bill 4181 (85th Texas Legislature, 2017), TWC §5.128, and THSC, §§382.051, 382.0513, 382.0151, 382.0518, 382.055, 382.056, 382.062, and Texas Occupations Code, §55.002.

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

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SUBCHAPTER F. STANDARD PERMITS

30 TAC §116.611, §116.615

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.128, concerning Electronic Reporting to Commission; Electronic Transmission of Information by Commission; Reduction of Duplicate Reporting, which authorizes the commission to utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission. The rule is also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.05195, concerning Standard Permit, which authorizes the commission to issue a standard permit for new or existing similar facilities; THSC, §382.051963, concerning Amendment of Certain Permits, authorizes the commission to amend a standard permit; and THSC, §382.062, concerning Application, Permit, and Inspection Fees, which authorizes the commission to adopt, charge, and collect fees.

In addition, the rules are adopted under Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The adopted rules will implement TWC §5.128, and THSC, §§382.051, 382.0513, 382.0515, 382.05195, 382.051963, and 382.062.

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CHAPTER 122. FEDERAL OPERATING PERMITS PROGRAM

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§122.143, 122.146, 122.165, 122.204, 122.210, 122.241, 122.320, 122.345, and §§122.503 - 122.505 without change as published in the May 25, 2018, issue of the *Texas Register* (43 TexReg 3310) and, therefore, will not be republished.

The adopted revisions to §§122.143, 122.146, 122.165, 122.204, 122.210, 122.241, 122.320, 122.345, and §§122.503 - 122.505 will be submitted to the United States Environmental Protection Agency (EPA) for approval as a revision to the TCEQ's Federal Operating Permits (FOP) Program.

Background and Summary of the Factual Basis for the Adopted Rules

House Bill (HB) 4181, 85th Texas Legislature, 2017, amended Texas Health and Safety Code (THSC), §382.0562(a), to provide for the use of an electronic method or system to notify permit applicants and permit commenters of a proposed final action on an FOP. Prior to HB 4181, these final action notices were required to be sent by first class mail. HB 4181 became effective on September 1, 2017. Revisions to Chapter 122 are necessary to reflect the new electronic method of providing proposed final action notifications.

By providing TCEQ with the authority to use an electronic method for providing these proposed final action notices, HB 4181 will reduce printing and postage costs and other logistical concerns associated with the use of traditional first-class mail for delivery of these notices. This is expected to result in a more efficient and more streamlined permitting process for TCEQ and for FOP applicants.

While the primary purpose of this rulemaking is to implement the electronic notification process provided for by HB 4181, TCEQ is also taking this opportunity to address several other issues with Chapter 122. These additional adopted revisions include: expanding the use of electronic communication to notify FOP holders that their permits are due for renewal; specifying that permit holders are required to provide a compliance certification or a signed certification of accuracy in certain additional circumstances; and various clarifications and corrections to the rules.

The adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes include: appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally not specifically discussed in this preamble.

In a concurrent rulemaking published in this issue of the *Texas Register,* TCEQ has made revisions to 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, to implement another section of HB 4181 relating to the use of an electronic method to notify air permit holders that an air permit is due for renewal.

Section by Section Discussion

§122.143, General Terms and Conditions

The commission adopts an amendment to §122.143(15) to delete the term "annual" from the language referring to compliance certifications. This change is adopted in conjunction with the adopted changes to §122.146(1), which specify that permit holders must submit a compliance certification for certain additional types of events. Since the amended rules would now require compliance certifications for some events in addition to the annual certification, the language in §122.141(15) is adopted to be phrased more generally to encompass all situations for which a compliance certification is required.

§122.146, Compliance Certification Terms and Conditions

The commission adopts an amendment to §122.146(1) that would require permit holders to submit a compliance certification after an issued permit has been voided and after any change of ownership of the permitted units occurs. These compliance certifications would be required to be submitted no later than 30 days after the date the permit is voided or the effective date of the change of ownership, respectively. In the case where a permit is voided, this final compliance certification must cover the period from the date of the most recent certification to the date of the permit voidance letter. Once this final compliance certification for a voided permit is submitted, no further (i.e., annual) compliance certifications for that permit would be required. For situations involving a change of ownership, permit holders would be required to submit a compliance certification addressing compliance from the date of the last certification up to the end of their ownership period.

The addition of these specific circumstances in which a compliance certification is required is necessary to ensure that permit holders provide documentation of compliance that covers the entire active permit period and to ensure that there are no gaps in reporting or certification coverage. The adopted requirements are already a part of current TCEQ guidance relating to Title V compliance certifications, and including them in the rule will ensure that permit holders are aware of the need for these certifications to be submitted when these events occur and that these certifications are enforceable. The commission adopts related grammatical changes to §122.146(2), (5), and (5)(E) to reflect that these additional situations or events would require a compliance certification.

§122.165, Certification by a Responsible Official

The commission adopts an amendment to §122.165(a) which expands the list of documents or actions that require the submittal of a certification of accuracy and completeness signed by a responsible official. The commission adopts amendments which require a signed certification of accuracy and completeness for the following additional documents or actions: requests to void an issued permit; requests to withdraw a permit application; off-permit notices; and operational flexibility notices. The commission is adopting this change to ensure that all significant permit actions and requests are covered by a certification that is signed by a responsible official attesting to the accuracy and completeness of the information being submitted. In general, all documents submitted to the TCEQ in support of an FOP, or that are required by Chapter 122, or by an operating permit condition(s) require certification by the responsible official or appropriate designee to ensure federal enforceability of the FOP. The commission is also adopting a revision to the reference to annual compliance certifications in §122.165(a)(8) to maintain consistency with the adopted changes to §122.146 concerning compliance certifications for permit voidance and change of ownership.

§122.204, Temporary Sources

The commission is adopting an amendment to §122.204(a) to clarify the meaning of a temporary source and improve consistency with corresponding federal regulations relating to temporary sources, such as 40 Code of Federal Regulations (CFR) §70.6(e) and §71.6(e). Under applicable federal regulations, permitting authorities may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The previous rule language referring to "any five-year period" might be interpreted to mean that a stationary source which changes location, even if only once during a prior, arbitrary five-year period, could then be considered as temporary for the remainder of its operational life. The adopted language is intended to clarify that a source is only considered to be a temporary source if it has at least one change of location during the term of the permit.

§122.210, General Requirements for Revisions

The commission adopts an amendment to §122.210(g) which clarifies that, during a permit revision, the executive director may combine multiple permits at the site into a single permit or divide a single permit into multiple permits. This type of action would typically be at the request of the applicant or permit holder. Examples of situations where the division or consolidation of a permit or permits might be appropriate could include, but are not limited to, changes to the facilities, processes, or process areas at the site which affect how the site is operated or controlled or business changes to the ownership, operation, or control of facilities, processes, or process areas at the site. As a result of the addition of this adopted requirement under §122.210(g), the

content of existing §122.210(g) relating to revisions to General Operating Permits is re-lettered as §122.210(h).

§122.241, Permit Renewals

The commission adopts amended §122.241(c)(1) to add electronic communication as an available method for the executive director to provide notification to permit holders that an FOP is scheduled for review. This will provide consistency with the concurrent HB 4181 revisions to §122.345, which will allow for electronic notifications of final permit actions and with the HB 4181 changes to Chapter §116.310, currently adopted under a separate rulemaking action, which will allow the use of electronic notifications for new source review permit renewals. This adopted change is anticipated to streamline the permitting process by providing a method of notification which is faster, more automated, and less costly compared to traditional postal mail.

§122.320, Public Notice

The commission adopts an amendment to §122.320(b) to clarify that the applicant for an FOP must include the statement of basis in the materials available for review and copying at a public place in the county in which the site is to be located. The statement of basis sets forth the legal and factual basis for the draft permit conditions and is considered part of the permit record, so it is important that the public have access to it as they do to other elements of the application and draft permit. This adopted change to the rule is a clarification and does not represent a change in agency practice or policy, as the agency's current public notice instructions already direct applicants to include a copy of the statement of basis with the permit materials which are made available to the public.

The commission adopts amendments to re-letter the current language associated with §122.320(b)(6)(C) as §122.320(b)(6)(D), to allow for the addition of the statement of basis to the list of items under §122.320(b)(6). The commission also adopts several minor grammatical corrections and updates to outdated references throughout §122.320.

§122.345, Notice of Proposed Final Action

The commission adopts an amendment to §122.345(a) to add an option for the executive director to provide notice of a proposed final permit action by electronic communication, rather than by traditional first-class postal mail. This change is necessary to implement HB 4181, which revised THSC, §382.0562(a) to add electronic communication as an option for these notifications. Allowing the use of electronic methods of communication is anticipated to streamline the permitting process by providing a method of notification which is more efficient and less costly compared to traditional postal mail.

§122.503, Application Revisions for Changes at a Site

The commission adopts an amendment to §122.503(c)(1)(A) to add a reference to Chapter 106. This adopted change is necessary because some sites operating under a General Operating Permit use a Chapter 106 permit by rule as their authorization and must comply with those requirements in addition to any applicable requirements of Chapter 116. This adopted rule change does not impose any new requirements, but it is necessary to correctly reflect all the ways in which a facility may be authorized.

§122.504, Application Revisions When an Applicable Requirement or State-Only Requirement is Promulgated or Adopted or a General Operating Permit is Revised or Rescinded

The commission adopts an amendment to §122.504(a)(2)(A) to add a reference to Chapter 106. This adopted change is necessary because some sites operating under a General Operating Permit use a Chapter 106 permit by rule as their authorization and must comply with those requirements in addition to any applicable requirements of Chapter 116. This adopted rule change does not impose any new requirements, but is necessary to correctly reflect all the ways in which a facility may be authorized.

§122.505, Renewal of the Authorization to Operate under a General Operating Permit

The commission adopts an amendment to §122.505(b)(1) to add electronic communication as an available method for the executive director to provide notification to holders of a general operating permit that their authorization to operate under the permit is scheduled for review. This change is similar to the adopted change to §122.241 as discussed previously. The adopted change is anticipated to streamline the permitting process by providing a method of notification which is faster, more automated, and less costly compared to traditional postal mail.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225 and determined that the adopted rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirements to prepare a regulatory impact analysis (RIA).

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to Chapter 122 to implement HB 4181 are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, the amendments would give the commission the option of providing notice to permit applicants and permit commenters of a proposed final action on an FOP under Chapter 122 by an electronic method or system.

While the primary purpose of the rulemaking is to revise Chapter 122 to include the option to use an electronic method or system to provide notice of proposed final action on an FOP, this rulemaking also includes several unrelated adopted amendments to Chapter 122. These include expanding the use of electronic communication to notify FOP holders that their permits are due for renewal, specifying that permit holders are required to provide a compliance certification or a signed certification of accuracy in certain additional circumstances, and various other clarifications and corrections to the rules. Because these adopted rules would modify administrative procedures for notification to permit holders of renewals of FOPs, specify requirements for compliance certification and signed certification of accuracy, and make other clarifications and corrections, the amendments do not add significant permitting requirements. Therefore, these adopted amendments will not adversely affect in a material way

the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, an RIA is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "Major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and does not exceed a requirement of a delegation agreement or contract to implement a state or federal program. Finally, this rulemaking is not adopted solely under the general powers of the agency but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB or bill) 633 during the 75th Texas Legislature, 1997. The intent of SB 633 was to require agencies to conduct an RIA of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded, "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full RIA unless the rule was a major environmental rule that exceeds a federal law. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule adopted by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. The commission contends that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the adopted rule may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the Federal Clean Air Act and, in fact, creates no additional impacts since the adopted rule does not exceed the requirement to attain and maintain the National Ambient Air Quality Standards or any other federal standard. For these reasons, the adopted rule falls under the exception in Texas Government Code, §2001.0225(a), because it is required by, and does not exceed, federal law.

The commission consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (Central Power & Light Co. v. Sharp, 919 S.W.2d 485, 489 (Tex. App. -- Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); Bullock v. Marathon Oil Co., 798 S.W.2d 353, 357 (Tex. App. -- Austin 1990, no writ); Cf. Humble Oil & Refining Co. v. Calvert, 414 S.W.2d 172 (Tex. 1967); Dudney v. State Farm Mut. Auto Ins. Co., 9 S.W.3d 884, 893 (Tex. App. -- Austin 2000); Southwestern Life Ins. Co. v. Montemayor, 24 S.W.3d 581 (Tex. App. -- Austin 2000, pet. denied); and Coastal Indust. Water Auth. v. Trinity Portland Cement Div., 563 S.W.2d 916 (Tex. 1978)).

The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission substantially complied with the requirements of Texas Government Code, §2001.0225.

The primary purpose of the adopted amendments is to give the commission the option of providing notice to permit applicants and permit commenters of a proposed final action on an FOP under Chapter 122 by an electronic method or system. An additional purpose is to address other parts of Chapter 122 that require clarification, as discussed elsewhere in this preamble. The adopted amendments were not developed solely under the general powers of the agency, but are authorized by specific sections of THSC, Chapter 382, and the Texas Water Code, which are cited in the Statutory Authority sections of this preamble. Therefore, this adopted rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

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% 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 adopted rulemaking action under Texas Government Code, §2007.043. The primary purpose of this adopted rulemaking action, as discussed elsewhere in this preamble, is to give the commission the option of providing notice by an electronic method or system to permit applicants and permit commenters of a proposed final action on an FOP under Chapter 122. An additional purpose is to address other parts of Chapter 122 that require clarification, as discussed elsewhere in this preamble. The adopted rulemaking action will not create any additional burden on private real property. The adopted 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 adoption 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 adopted rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). The adopted rules amend and update rules that govern the FOPs Program, including amendments which allow for certain notices to be sent to permit holders electronically and revise certain requirements for the documentation associated with certain permit actions. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). This rulemaking complies with 40 CFR Part 70, State Operating Permit Programs. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

The adopted amendments specify that holders of FOPs would be required to submit compliance certifications for situations involving the voidance of an FOP or any change of ownership of the permitted site. In addition, the adopted amendments specify that the owner or operator must provide a signed certification of accuracy and completeness when submitting documentation for certain additional permit actions. Finally, the adopted amendments require that applicants for an FOP include a copy of the Statement of Basis with the permit materials made available for public comment. These adopted requirements impose minimal burden and are already practiced through existing guidance and policy.

Public Comment

The commission offered a public hearing on June 22, 2018. The comment period closed on June 26, 2018. The commission received comments from the Texas Chemical Council (TCC) and EPA Region 6. One commenter was generally supportive of the proposed amendments but suggested certain additional changes to the rules or agency procedures. One commenter did not express support or opposition to the proposed amendments but requested that TCEQ ensure that the permit record address any changes in permit conditions which may occur as a result of one of the rule changes.

Response to Comments

Comment

TCC stated that they support TCEQ's efforts to increase the efficiency of the permit renewal and final action notice processes, but expressed concern that electronic notices may be lost or misplaced due to company email changes or personnel changes. TCC stated that TCEQ should use a robust verification process to provide confirmation that the electronic notices are received by the permitted entities.

Response

The provisions of HB 4181 which allow for TCEQ to provide Title V proposed final action notices electronically do not require TCEQ to employ a verification method. In most cases, Title V proposed final action notices are currently sent to persons commenting on a permit by first class mail, without tracking or confirmation of delivery. At the filing of this response, the TCEQ's Air Permits Division (APD) does not intend to incorporate a verification or delivery confirmation method when these types of notices are sent electronically. However, APD will evaluate the performance of the electronic delivery of these notices and may implement some type of verification if experience shows it to be justified.

Title V SOP and GOP renewal notices are currently sent using certified mail so delivery can be tracked and confirmed. To maintain continuity with this approach, when SOP and GOP renewal notices begin to be issued electronically, APD intends to employ a verification method. APD is planning to employ a system that will provide APD with a receipt when the electronic renewal notice is opened by the permit holder's designated recipient. If APD does not receive a receipt confirming that the electronic renewal notice was received and opened within a reasonable time frame, APD will assume that the electronic delivery was not successful. In such a case, APD will contact the recipient by other means (such as by telephone or postal mail) and verify the recipient's contact information to ensure that the notice is delivered in a manner that provides APD with verification that the notice was delivered successfully. No change to the rule was made in response to this comment.

Comment

TCC suggested that the electronic renewal notices also be sent to a permit's technical contact, rather than just the company's re-

sponsible official. TCC stated that roles may change frequently, and that the responsible official may not be located at the site where the permit is issued.

Response

TCEQ concurs that it would be beneficial to include both the permit technical contact and the responsible official in the distribution of electronic notices. In cases where APD has the email address of a designated technical contact on file, APD will send an electronic copy of the notice to the technical contact as well as the responsible official. However, no change to the rule was made in response to this comment.

Comment

Regarding proposed §122.210(g), which would provide the executive director with the discretion to combine multiple permits into a single permit or divide a single permit into multiple permits, TCC stated that the regulated entity has a better understanding of its operations and organization to determine how the site's permits should be structured. TCC stated that the decision to combine or separate the permits should remain at the discretion of the regulated entities.

Response

TCEQ agrees that the owner or operator of a permitted site would generally have the best understanding of the site's operational and business needs. The proposed rule is intended to ensure that the executive director has the authority to combine or divide a permit in situations where it is appropriate to do so. It is expected that any action to combine or divide an existing permit would usually be taken at the direction of, or in close consultation with, the owner or operator responsible for the site. The commission does not anticipate that the proposed rule would be used to combine or divide permits without the approval of the affected entity, except in extraordinary circumstances. No change to the rule was made in response to this comment.

Comment

EPA Region 6 stated that when multiple Title V permits are to be combined into a single permit pursuant to proposed §122.210(g), TCEQ should ensure that the permit record clearly delineates that all the provisions of the underlying permits are retained in the single combined permit; or if removed, the regulatory and/or legal basis for removal of individual conditions.

Response

In such a case, the TCEQ will carefully review all permits being combined to ensure that the combined final permit contains all appropriate applicable requirements and conditions. The requirements and conditions of the final permit, including any significant changes, will be explained in the Statement of Basis for the new permit. No change to the rule was made in response to this comment.

SUBCHAPTER B. PERMIT REQUIREMENTS

DIVISION 4. PERMIT CONTENT

30 TAC §122.143, §122.146

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rules are also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0514, concerning Sampling, Monitoring, and Certification, which authorizes the commission to require sampling, monitoring and certification of compliance of the permitted federal source as a condition of the permit and a periodic report of sampling and monitoring results and certification of compliance; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; and THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits.

The adopted rules would implement THSC, §§382.051, 382.0513, 382.0514, 382.0515, 382.054, 382.0541, and 382.0543.

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

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DIVISION 5. MISCELLANEOUS

30 TAC §122.165

Statutory Authority

The rule is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102,

concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rule is also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0514, concerning Sampling, Monitoring, and Certification, which authorizes the commission to require sampling, monitoring and certification of compliance of the permitted federal source as a condition of the permit and a periodic report of sampling and monitoring results and certification of compliance; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; and THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits.

The adopted rule will implement THSC, §§382.051, 382.0514, 382.054, 382.0541, and 382.0543.

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

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SUBCHAPTER C. INITIAL PERMIT ISSUANCES, REVISIONS, REOPENINGS, AND RENEWALS

DIVISION 1. INITIAL PERMIT ISSUANCES

30 TAC §122.204

Statutory Authority

The rule is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rule is also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; and THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits.

The adopted rule will implement THSC, §§382.051, 382.0513, 382.054, 382.0541, and 382.0543.

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

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DIVISION 2. PERMIT REVISIONS

30 TAC §122.210

Statutory Authority

The rule is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rule is also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; and THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits.

The adopted rule will implement THSC, §§382.051, 382.054, 382.0541, and 382.0543.

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DIVISION 4. PERMIT RENEWALS

30 TAC §122.241

Statutory Authority

The rule is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.128, concerning Electronic Reporting to Commission; Electronic Transmission of Information by Commission; Reduction of Duplicate Reporting, which authorizes the commission to utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission. The rule is also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; and THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits.

The adopted rule will implement TWC, §5.128, THSC, §§382.051, 382.054, 382.0541, and 382.0543.

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

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SUBCHAPTER D. PUBLIC ANNOUNCEMENT, PUBLIC NOTICE, AFFECTED STATE REVIEW, NOTICE AND COMMENT HEARING, NOTICE OF PROPOSED FINAL ACTION, EPA REVIEW, AND PUBLIC PETITION

30 TAC §122.320, §122.345

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.128, concerning Electronic Reporting to Commission; Electronic Transmission of Information by Commission; Reduction of Duplicate Reporting, which authorizes the commission to utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission. The rules are also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; THSC, §382.0561, concerning Federal Operating Permits; Hearings, which authorizes the commission to conduct a public hearing, hold a public comment period, and provide notice of the public comment period and opportunity for a hearing in accordance with THSC, §382.056, on applications for issuance, revision, reopening, or renewal of a federal operating permit; THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which authorizes the commission to provide notice of permit applications; THSC, §382.0562, concerning Notice of Decision, which requires the commission to send notice of a proposed final action on a federal operating permit; THSC, §382.0563, concerning Public Petition to the Administrator, which authorizes the commission to provide for public petitions to the administrator; and THSC, §382.0564, concerning Notification to Other Governmental Entities, which authorizes the commission to allow for notification of and review by the administrator and affected states of permit applications, revisions, renewals, or draft permits.

The adopted rules will implement House Bill 4181 (85th Texas Legislature, 2017), TWC §5.128, and THSC, §§382.051, 382.054, 382.0541, 382.056, 382.0561, 382.0562, 382.0563, and 382.0564.

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

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SUBCHAPTER F. GENERAL OPERATING PERMITS

DIVISION 1. PROCEDURAL REQUIREMENTS FOR GENERAL OPERATING PERMITS

30 TAC §§122.503 - 122.505

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.128, concerning Electronic Reporting to Commission; Electronic Transmission of Information by Commission; Reduction of Duplicate Reporting, which authorizes the commission to utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission. The rule is also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0514, concerning Sampling, Monitoring, and Certification, which authorizes the commission to require sampling, monitoring and certification of compliance of the permitted federal source as a condition of the permit and a periodic report of sampling and monitoring results and certification of compliance; THSC, §382.0515, concerning Application for Permit, which specifies permit application

requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits; and THSC, §382.0564, concerning Notification to Other Governmental Entities, which authorizes the commission to allow for notification of and review by the administrator and affected states of permit applications, revisions, renewals, or draft permits.

The adopted rules will implement TWC, §5.128, and THSC, §§382.051, 382.0513, 382.0514, 382.0515, 382.054, 382.0541, 382.0543, and 382.0564.

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

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

TRD-201804765
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: November 22, 2018
Proposal publication date: May 25, 2018
For further information, please call: (512) 239-2678

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 449. HEAD OF A FIRE DEPARTMENT

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 449, Head of a Fire Department, Subchapter A, Minimum Standards for Head of a Suppression Fire Department, concerning §449.1, Minimum Standards for the Head of a Suppression Fire Department, §449.3, Minimum Standards for Head of a Suppression Fire Department Certification; and Subchapter B, Minimum Standards For Head of a Prevention Only Fire Department, concerning §449.201, Minimum Standards for the Head of a Prevention Only Fire Department, §449.203, Minimum Standards for Head of a Prevention Only Fire Department Certification. The amendments are adopted with changes to the proposed text as published in the September 14, 2018, *Texas Register* (43 TexReg 5938). The commission felt that an additional sentence should be added to Subchapter A, §449.1(a) and Subchapter B, §449.201(a) to clarify that even an individual appointed on an interim basis as head of a fire department must follow all commission rules the same as a permanently appointed fire chief.

The adopted amendments clarify the requirements for an individual being appointed to a head of department position. Current rule language is confusing to the applicant and difficult to implement by agency staff.

The commission received no comments on the proposed amendments during the 30-day public comment period.

SUBCHAPTER A. MINIMUM STANDARDS FOR HEAD OF A SUPPRESSION FIRE DEPARTMENT

37 TAC §449.1, §449.3

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties and §419.032 which provides the commission the authority to adopt rules regarding qualifications and competencies for fire protection personnel.

§449.1. Minimum Standards for the Head of a Suppression Fire Department.

(a) An individual who becomes employed and is appointed as the head of a suppression fire department must be certified by the commission as Head of a Suppression Fire Department within one year of appointment. The requirements in this subchapter also apply to an individual who is appointed on an interim basis to head of a suppression fire department.

(b) Prior to being appointed as the head of a suppression fire department, an individual must:
hold a Texas Commission on Fire Protection certification as fire protection personnel in any discipline that has a commission approved curriculum that requires structural fire protection personnel certification. The individual must have five years of experience in a full-time fire suppression position or ten years in a part-time fire suppression position at the time of appointment, or attain the required years of experience within one year of the appointment; or provide documentation of accreditation from the International Fire Service Accreditation Congress that is deemed equivalent to the commission's approved basic fire suppression curriculum, and provide documentation in the form of a sworn non-self-serving affidavit of five years of experience in a full-time fire suppression position in a jurisdiction other than Texas; or provide documentation in the form of a sworn non-self-serving affidavit of ten years of experience as an employee of a local governmental entity in a full-time structural fire protection personnel position in a jurisdiction other than Texas; or provide documentation in the form of a sworn non-self-serving affidavit of ten years of experience as an active volunteer fire fighter in one or more volunteer fire departments. The ten years of volunteer service must include documentation of attendance at 40% of the drills for each year and attendance of at least 25% of a department's emergencies in a calendar year while a member of a volunteer fire department or departments with ten or more active members that conducts a minimum of 48 hours of drills in a calendar year.

(c) Holding the Head of a Fire Suppression Fire Department certification does not qualify an individual for any other certification. An individual who seeks certification in another discipline must meet the requirements for that discipline.

(d) Nothing contained in this chapter shall be construed to supersede Chapter 143, Local Government Code, in regard to appointment of a head of a suppression fire department.

(e) Individuals certified as the Head of a Suppression Fire Department must meet the continuing education requirement as provided for in Chapter 441 of this title (relating to Continuing Education).

(f) An individual certified as Head of a Suppression Fire Department under this subchapter may engage in fire fighting activities only as the head of a suppression fire department. These activities include incident command, direction of fire fighting activities or other emergency activities typically associated with fire fighting duties, i.e. rescue, confined space and hazardous materials response.

§449.3. Minimum Standards for Head of a Suppression Fire Department Certification.

Applicants for Head of a Suppression Fire Department Certification must complete the following requirements:

(1) must be appointed as head of a fire department; and

(2) complete the Standards Review Assignment for Head of a Fire Department identified in the applicable chapter of the Certification Curriculum Manual; and

(3) meet with a Texas Commission on Fire Protection Compliance Section representative for review and approval of the Standards Review Assignment; and

(4) attend at least one Texas Commission on Fire Protection regularly scheduled commission meeting or one regularly scheduled fire fighter advisory committee meeting in the first year of appointment; and

(5) document completion of the National Incident Management System courses 100, 200, 300, 400, 700, and 800.

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

Filed with the Office of the Secretary of State on October 29, 2018.

TRD-201804699
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: November 18, 2018
Proposal publication date: September 14, 2018
For further information, please call: (512) 936-3812

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SUBCHAPTER B. MINIMUM STANDARDS FOR HEAD OF A PREVENTION ONLY FIRE DEPARTMENT

37 TAC §449.201, §449.203

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties and §419.032 which provides the commission the authority to adopt rules regarding qualifications and competencies for fire protection personnel.

§449.201. Minimum Standards for the Head of a Prevention Only Fire Department.

(a) An individual who becomes employed and is appointed as the head of a prevention only fire department must be certified by the commission as Head of a Prevention Only Fire Department, within one year of appointment. The requirements in this subchapter also apply to an individual who is appointed on an interim basis to head of a prevention only fire department.

(b) Prior to being appointed as the head of a prevention only fire department, an individual must:

(1) hold a Texas Commission on Fire Protection certification as a fire inspector, fire investigator, or arson investigator. The individual must have five years of experience in a full-time fire prevention position or ten years in a part-time fire prevention position at the time of appointment, or attain the required years of experience within one year of the appointment; or

(2) possess valid documentation of accreditation from the International Fire Service Accreditation Congress that is deemed equivalent to the commission's approved basic arson investigator, fire investigator or fire inspector curriculum and provide documentation in the form of a sworn non-self-serving affidavit of five years of experience in a full-time fire prevention position in a jurisdiction other than Texas; or

(3) provide documentation in the form of a sworn non-self-serving affidavit of ten years of experience as an employee of a local governmental entity in a full-time fire inspector, fire investigator, or arson investigator position in a jurisdiction other than Texas; or

(4) provide documentation in the form of a sworn non-self-serving affidavit of ten years of experience as a certified fire investigator, fire inspector or arson investigator as a part-time fire prevention employee; or

(5) provide documentation in the form of a sworn non-self-serving affidavit of ten years of fire prevention experience as an active volunteer fire inspector, fire investigator, or arson investigator.

(c) Holding the Head of a Prevention Only Fire Department certification does not qualify an individual for any other certification. An individual who seeks certification in another discipline must meet the requirements for that discipline.

(d) Nothing contained in this chapter shall be construed to supersede Chapter 143, Local Government Code, regarding appointment as the head of a prevention only fire department.

(e) Individuals certified as the Head of a Prevention Only Fire Department must meet the continuing education requirement as provided for in Chapter 441 of this title (relating to Continuing Education).

§449.203. Minimum Standards for Head of a Prevention Only Fire Department Certification.

Applicants for Head of a Prevention Only Fire Department Certification must complete the following requirements:

(1) must be appointed as head of a prevention only fire department; and

(2) complete the Standards Review Assignment for Head of a Fire Department identified in the applicable chapter of the Certification Curriculum Manual; and

(3) meet with a Texas Commission on Fire Protection Compliance Section representative for review and approval of the Standards Review Assignment; and

(4) attend at least one Texas Commission on Fire Protection regularly scheduled commission meeting or one regularly scheduled fire fighter advisory committee meeting in the first year of appointment; and

(5) document completion of National Incident Management System courses 100, 200, 300, 400, 700 and 800.

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

Filed with the Office of the Secretary of State on October 29, 2018.

TRD-201804700
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: November 18, 2018
Proposal publication date: September 14, 2018
For further information, please call: (512) 936-3812

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CHAPTER 455. MINIMUM STANDARDS FOR WILDLAND FIRE PROTECTION CERTIFICATION

37 TAC §455.5

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 455, Minimum Standards for Wildland Fire Protection Certification, concerning §455.5 Minimum Standards for Intermediate Wildland Fire Protection Certification. The amendment is adopted without changes to the proposed text as published in the September 14, 2018, *Texas Register,* (43 TexReg 5940).

The adopted amendments will update the wildland training requirements used toward obtaining a commission wildland fire protection certification since two previous courses that were required are now combined into a single course.

The commission received no comments on the proposed amendments during the 30-day public comment period.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties and §419.032 which provides the commission the authority to adopt rules regarding qualifications and competencies for fire protection personnel.

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

Filed with the Office of the Secretary of State on October 29, 2018.

TRD-201804701
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: November 18, 2018
Proposal publication date: September 14, 2018
For further information, please call: (512) 936-3812

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PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.203

The Texas Forensic Science Commission ("Commission") adopts an amendment to 37 TAC §651.203 related to its Forensic Analyst Licensing Program without changes as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6639). The adopted amendment provides an exemption for forensic analysts employed by federal laboratories. The amendment is necessary to reflect adoptions made by the Commission at its July 20, 2018, quarterly meeting. The adoptions were made in accordance with the Commission's authority under Article 38.01 §4-a(d), Code of Criminal Procedure which requires the Commission to create a forensic analyst licensing program that establishes the qualifications and term for a license and sets fees for the issuance and renewal of a license. Under §4-a(b), the Commission may establish classifications of licenses to the extent needed to ensure the availability of properly trained and qualified forensic analysts to perform activities regulated by the Commission. Because the United States Department of Justice has made clear in written communications to the Commission that the federal government will not comply with Texas forensic analyst licensing requirements, the Commission has no choice but to carve out an exception for federal analysts or risk a reduction in service by federal forensic laboratories.

Summary of Comments. No comments were received regarding the amendment to this section.

Statutory Authority. The amendment is adopted under Article 38.01 §4(d), Code of Criminal Procedure.

Cross reference to statute. The amendment affects 37 TAC Chapter 651, §651.203.

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

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

Filed with the Office of the Secretary of State on November 5, 2018.

TRD-201804770
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Effective date: November 25, 2018
Proposal publication date: October 5, 2018
For further information, please call: (512) 936-0661

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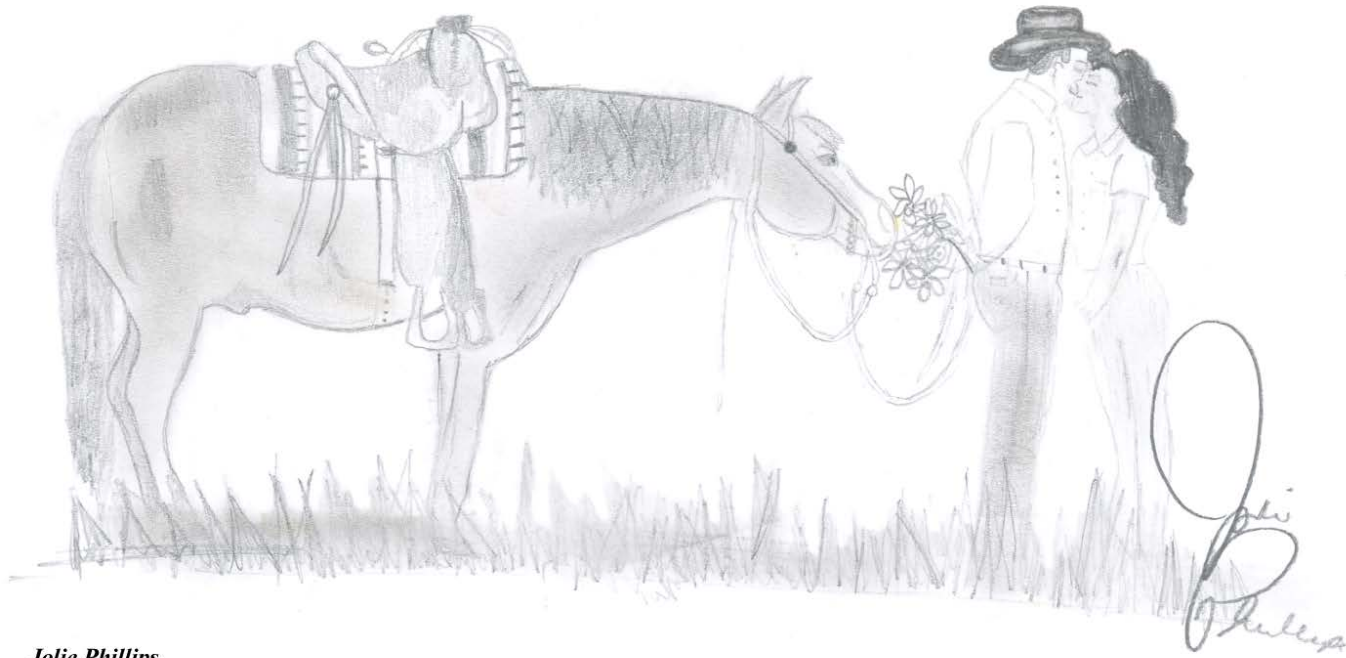

Jolie Phillips
10th Grade

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 Workforce Commission

Title 40, Part 20

The Texas Workforce Commission (TWC) files this notice of its intent to review Chapters 800, 801, 803, 813, 815, 817, 821, and 843 in accordance with Texas Government Code §2001.039.

An assessment will be made by TWC as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of TWC.

Comments on the review 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 emailed to TWCPolicyComments@twc.state.tx.us. TWC must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

Chapters:

800. General Administration

801. Local Workforce Development Boards

803. Skills Development Fund

813. Supplemental Nutrition Assistance Program Employment and Training

815. Unemployment Insurance

817. Child Labor

821. Texas Payday Rules

843. Job Matching Services

TRD-201804736
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Filed: November 1, 2018

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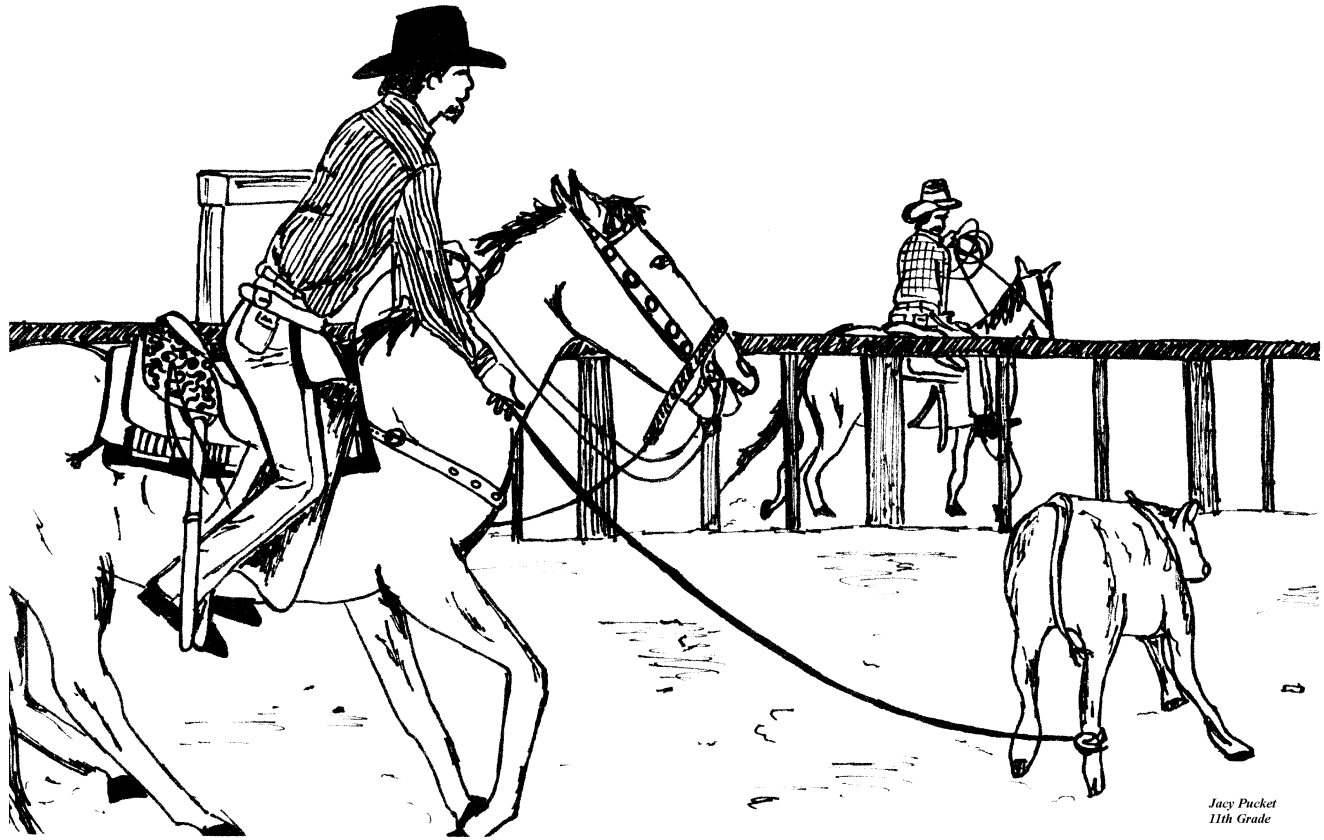

Jacy Pucket
11th Grade

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.

Texas State Affordable Housing Corporation

Notice of Request for Qualifications

Request for Qualifications Design-Build Services for Commercial Property Improvements

The Texas State Affordable Housing Corporation (the "Corporation") has issued a Request for Qualifications ("RFQ") for services of office space planners, architects and contractors to complete renovations to the Corporation's new offices. The RFQ provides further details for the planned improvements that the Corporation is seeking to complete for its future offices to be located at 6701 Shirley Avenue, Austin, Texas 78756. A copy of the full RFQ can be found on the Corporation's website at:

www.tsahc.org/about/plans-reports.

The Corporation requests that responses to this RFQ be submitted via email on or before 5:00 p.m. (CST) Friday, November 30, 2018, with the intention of selecting a Design/Build team no later than December 31, 2018. All submissions should be emailed in PDF format to David Danenfelzer at: ddanenfelzer@tsahc.org. If you prefer to deliver a PDF copy in a USB drive, please address it to:

David Danenfelzer

Texas State Affordable Housing Corporation

2200 East MLK Jr. Blvd.

Austin, Texas 78702

Any deliveries must be submitted no later than 5:00 p.m. on Friday, November 30, 2018.

If you would like to inspect the building prior to submitting a proposal, please contact David Danenfelzer at ddanenfelzer@tsahc.org, or James Matias at jmatias@tsahc.org. Applicants may contact David Danenfelzer at ddanenfelzer@tsahc.org or by phone at (512) 477-3562 to ask questions and request clarification of any details included in this RFQ.

The Corporation is a self-sustaining non-profit entity whose mission is to facilitate the provision of affordable housing for low-income Texans who do not have access to comparable housing options through conventional financial channels. Enabling legislation, as amended, is found in the Texas Government Code, Chapter 2306, Subchapter Y, §§2306.551, *et seq.* All operations of the Corporation are conducted within the State of Texas. The Corporation's offices are located in Austin, Texas.

TRD-201804780
David Long
President
Texas State Affordable Housing Corporation
Filed: November 5, 2018

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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 11/12/18 - 11/18/18 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/12/18 - 11/18/18 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and 303.009[3] for the period of 11/01/18 - 11/30/18 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 11/01/18 - 11/30/18 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-201804787
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 6, 2018

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 19, 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 **December 19, 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: 3S Leasing, LLC; DOCKET NUMBER: 2018-1124-PWS-E; IDENTIFIER: RN110307634; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: $321; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(2) COMPANY: Armor Energy, LLC; DOCKET NUMBER: 2018-1496-WR-E; IDENTIFIER: RN110476546; LOCATION: Giddings, Lee County; TYPE OF FACILITY: energy company; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: BARNETT CONTRACTING, INCORPORATED; DOCKET NUMBER: 2018-1497-WR-E; IDENTIFIER: RN110459302; LOCATION: Gholson, McLennan County; TYPE OF FACILITY: building contractor; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: $420; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: City of Rockdale; DOCKET NUMBER: 2018-1013-MWD-E; IDENTIFIER: RN101388288; LOCATION: Rockdale, Milam County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (4), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010658001 Effluent Limitations and Monitoring Requirements Number 4 and Permit Conditions Number 2.d, by failing to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment; PENALTY: $39,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $39,250; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: DAVE'S ROOFING, SIDING AND METAL BUILDINGS, LLC; DOCKET NUMBER: 2018-0912-PWS-E; IDENTIFIER: RN101190007; LOCATION: Wolfforth, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate (as nitrogen); 30 TAC §290.109(d)(4)(B) (formerly §290.109(c)(4)(B)), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on March 27, 2013, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform-positive samples were collected; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification to the executive director regarding the failure to report the results of nitrate sampling for the fourth quarter of 2015 and the first quarter of 2016; PENALTY: $865; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(6) COMPANY: ETC Field Services LLC; DOCKET NUMBER: 2017-0885-AIR-E; IDENTIFIER: RN100238633; LOCATION: Kermit, Winkler County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§101.20(2), 113.1090, and 122.143(4), Federal Operating Permit Number O2940, General Terms and Conditions and Special Terms and Conditions Number 5, 40 Code of Federal Regulations §63.6655(d), and Texas Health and Safety Code, §382.085(b), by failing to record the catalyst pressure drop once per month; PENALTY: $11,403; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(7) COMPANY: FOOTHILLS MOBILE HOME RANCH, INCORPORATED; DOCKET NUMBER: 2018-0936-PWS-E; IDENTIFIER: RN102687563; LOCATION: Boerne, Kendall County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 4.0 milligrams per liter for fluoride based on the running annual average; PENALTY: $175; ENFORCEMENT COORDINATOR: Soraya Bun, (512) 239-2695; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: German Pellets Texas, LLC; DOCKET NUMBER: 2017-1529-AIR-E; IDENTIFIER: RN106530108; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: wood pellet storage facility; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance odor conditions; PENALTY: $15,000; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: HENDERSON DRIVE INN, INCORPORATED; DOCKET NUMBER: 2018-1142-PST-E; IDENTIFIER: RN102462249; LOCATION: Palacios, Matagorda County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $8,649; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Interstate Fuel, LLC dba MLK Fuel; DOCKET NUMBER: 2018-1313-PST-E; IDENTIFIER: RN109120162; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: motor fuel dispensing facility with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $4,875; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: LCY Elastomers LP; DOCKET NUMBER: 2018-1104-IWD-E; IDENTIFIER: RN102325974; LOCATION: Bay-

town, Harris County; TYPE OF FACILITY: chemical manufacturing facility with a wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0004772000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $28,800; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $11,520; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: M. Jack Coker, Jr. dba Leonard Service Center; DOCKET NUMBER: 2018-1019-PST-E; IDENTIFIER: RN101556959; LOCATION: Leonard, Fannin 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: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: MCCART INVESTMENTS INC dba C & D Kwik Stop 2; DOCKET NUMBER: 2018-0938-PST-E; IDENTIFIER: RN102781150; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the agency within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: $15,102; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Naylene Dillingham dba Mac & Ernie's Roadside Eatery and DILLINGHAM-STOLZER, INCORPORATED dba Mac & Ernie's Roadside Eatery; DOCKET NUMBER: 2018-0718-PWS-E; IDENTIFIER: RN104966239; LOCATION: Tarpley, Bandera County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual of sufficient detail to provide the operator with routine maintenance and repair procedures, with protocols to be utilized in the event of a natural or man-made catastrophe, as well as provide telephone numbers of water system personnel, system officials, and local/state/federal agencies to be contacted in the event of an emergency; 30 TAC §290.43(c)(4) and (7), by failing to cover and design, fabricate, erect, test and disinfect all potable water storage facilities in strict accordance with American Water Works Association standards, and to provide facilities with the minimum number, size, and type of roof vents, man ways, drains, sample connections, access ladders, overflows, liquid level indicators and other appurtenances; 30 TAC §290.43(e), by failing to provide all potable water storage tanks and pressure maintenance facilities with an intruder-resistant fence with a lockable gate; 30 TAC §290.44(h)(4), by failing to have the backflow prevention assemblies tested and certified to be operating within specifications on an annual basis by a licensed backflow prevention assembly tester; 30 TAC §290.45(d)(2)(B)(v) and Texas Health and Safety Code, §341.0315(c), by failing to provide a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the executive director (ED); 30 TAC §290.46(f)(2) and (3)(A)(i)(III), by failing to maintain and provide facility records to commission personnel upon request; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's two ground storage tanks; 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the public water system until the facility is decommissioned; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay public health service fees, including associated late fees, for TCEQ Financial Administration Account Number 90100090 for Fiscal Year 2018; 30 TAC §290.110(d)(1), by failing to measure the free chlorine residual to a minimum accuracy of plus or minus 0.1 milligrams per liter using methods approved by the ED; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan at each water treatment plant that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: $1,948; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: Signature Car Wash I, Ltd.; DOCKET NUMBER: 2018-0902-PST-E; IDENTIFIER: RN101534873; LOCATION: Mckinney, Collin County; TYPE OF FACILITY: car wash with retail sales of fuel; RULES VIOLATED: 30 TAC §334.49(a)(4) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to ensure that spill and overfill prevention devices are maintained in good operating condition; PENALTY: $8,750; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: SOUTH LAKE PARK SERVICES, INCORPORATED; DOCKET NUMBER: 2018-1052-PWS-E; IDENTIFIER: RN101199123; LOCATION: Southlake, Tarrant County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous service to new construction or any existing service when the water purveyor has reason to believe cross-connections or other potential contamination hazards exists; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's ground storage tank; 30 TAC §290.46(m)(1)(B), by failing to inspect the interior surface of the facility's pressure tank provided with an inspection port once every five years, and failing to conduct the annual inspection of the exterior of the facility's pressure tank; 30 TAC §290.46(n)(3), by failing to maintain copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; and 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; PENALTY: $861; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: TEXAS KSD ENTERPRISE INC dba Savannah Food & Deli; DOCKET NUMBER: 2018-0725-PST-E; IDENTIFIER: RN101774040; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: convenience store with out-of-service underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.49(c)(2)(C)

and (4)(C) and TWC, §26.3475(d), by failing to inspect the corrosion protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, and failing to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.72, by failing to report a release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a release of a regulated substance within 30 days of discovery; PENALTY: $17,769; ENFORCEMENT COORDINATOR: Berenice Munoz, (512) 239-2617; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: THE CONSOLIDATED WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-0855-PWS-E; IDENTIFIER: RN101285989; LOCATION: Grapeland, Houston County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(D), by failing to ensure that livestock in pastures are not allowed within 50 feet of water supply wells; 30 TAC §290.41(c)(3)(B), by failing to provide a well casing that extends a minimum of 18 inches above the elevation of the finished floor of the pump house or natural ground surface; 30 TAC §290.42(l), by failing to provide a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.45(b)(1)(D)(iii) and Texas Health and Safety Code, §341.0315(c) and TCEQ Agreed Order Docket Number 2008-0046-PWS-E, Ordering Provision Number 2.e.iii, by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's two ground storage tanks located at Plant S in 2015; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: $6,441; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(19) COMPANY: Tracy Logan; DOCKET NUMBER: 2018-1524-WR-E; IDENTIFIER: RN110485307; LOCATION: Tyler, Smith County; TYPE OF FACILITY: water well drilling 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: Claudia Corrales, (432) 620-6138; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: VALESKA'S, INCORPORATED; DOCKET NUMBER: 2018-1075-PWS-E; IDENTIFIER: RN110050077; LOCATION: Fredericksburg, Gillespie County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate (as nitrogen); PENALTY: $660; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201804783

Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 6, 2018

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Notice of District Petition

Notice issued November 7, 2018

TCEQ Internal Control No. D-08152018-034; Woodbine Water Supply Corporation (Petitioner) filed an application with the Texas Commission on Environmental Quality (TCEQ) to convert Woodbine Water Supply Corporation to Woodbine Special Utility District (District). Woodbine Special Utility District's business address will be: P.O. Box 1257, 17 CR 209 Gainesville, Texas 76241. The petition was filed pursuant to Chapter 65 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The nature and purpose of the petition are for the conversion of Woodbine Water Supply Corporation and the organization, creation and establishment of Woodbine Special Utility District of Cooke and Grayson Counties under the provisions of Article XVI, §59 Texas Constitution, and Chapter 65 of the Texas Water Code, as amended. The District shall have the purposes and powers provided in Chapter 65 of the Texas Water Code, as amended. The nature of the services presently performed by Woodbine Water Supply Corporation is to purchase, own hold, lease and otherwise acquire sources of water supply; to build, operate and maintain facilities for the transportation of water; and to sell water to individual members, towns, cities, private businesses, and other political subdivisions of the State. The nature of the services proposed to be provided by Woodbine Special Utility District is to purchase, own, hold, lease, and otherwise acquire sources of water supply; to build, operate, and maintain facilities for the storage, treatment, and transportation of water; and to sell water to individuals, towns, cities, private business entities and other political subdivisions of the State. Additionally, it is proposed that the District will protect, preserve and restore the purity and sanitary condition of the water within the District. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers. The proposed District, is located in Cooke and Grayson Counties, and will contain approximately 77,342 acres.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and

will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.state.tx.us.

Bridget C. Bohac, Chief Clerk, Texas Commission on Environmental Quality

TRD-201804800
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 7, 2018

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 19, 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 19, 2018.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Jesus Espinoza; DOCKET NUMBER: 2017-1611-MLM-E; TCEQ ID NUMBER: RN107326126; LOCATION: 5305 Rattlesnake Road, Georgetown, Williamson County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §342.25 and TCEQ AO Docket Number 2014-1016-MLM-E, Ordering Provision 2.b.iii., by failing to register the site as an APO; PENALTY: $10,000; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: Oxy USA WTP LP; DOCKET NUMBER: 2016-2134-AIR-E; TCEQ ID NUMBER: RN101222602; LOCATION: approximately 10.5 miles west of Clairemont on United States Highway 380, then approximately four miles north of the intersection of United States Highway 380 and Farm-to-Market Road 1081 and then approximately four miles east on a private road, Kent County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b), 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Federal Operating Permit (FOP) Number O550, Special Terms and Conditions Number 6, and New Source Review (NSR) Permit Number 20660 and PSDTX795M2, Special Condition Number 1, by failing to comply with the maximum allowable emissions rates (MAERs); THSC, §382.085(b), 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), FOP Number O550, Special Terms and Conditions Number 6, and NSR Permit Number 20660 and PSDTX795M2, Special Condition Number 1, by failing to comply with the MAERs; and THSC, §382.085(b), 30 TAC §122.143(4) and §122.145(2)(A) and FOP Number O550, General Terms and Conditions, by failing to report all instances of deviations; PENALTY: $62,937; Supplemental Environmental Project offset amount of $31,468 applied to *Clean Buses Project*; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: RED EWALD, INC.; DOCKET NUMBER: 2017-1735-AIR-E; TCEQ ID NUMBER: RN100212612; LOCATION: 2669 South United States Highway 181 near Karnes City, Karnes County; TYPE OF FACILITY: fiberglass tank manufacturing plant; RULES VIOLATED: Texas Health and Safety Code, §382.085(b), 30 TAC §§101.20(2), 113.1060, and 122.143(4), 40 Code of Federal Regulations §63.5805(b), and Federal Operating Permit Number O3616, Special Terms and Conditions Number 1.E., by failing to comply with the organic hazardous air pollutants emissions limit for manual resin applications; PENALTY: $31,950; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: S F K R LLC dba Tyler Truck Stop; DOCKET NUMBER: 2018-0430-PST-E; TCEQ ID NUMBER: RN101446672; LOCATION: 801 South Southeast Loop 323, Tyler, Smith County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(e)(2), by failing to fill out a UST registration form completely and accurately; 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; TWC, §26.3475(c)(2) and 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $5,826; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: SAI UDHDIM INC dba Sachse Food Mart; DOCKET NUMBER: 2017-0719-PST-E; TCEQ ID NUMBER: RN102250149; LOCATION: 5444 Highway 78, Sachse, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a conve-

nience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C), by failing to inspect the cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; PENALTY: $3,855; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: TEXAS AIRSTREAM HARBOR, INC.; DOCKET NUMBER: 2017-1740-PWS-E; TCEQ ID NUMBER: RN101182509; LOCATION: 714 Angelina Boulevard, Zavalla, Angelina County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.0315(c) and 30 TAC §290.115(f)(1), 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; and 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 for each year, and failing to submit to the TCEQ 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; PENALTY: $255; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Williamson County; DOCKET NUMBER: 2017-1660-EAQ-E; TCEQ ID NUMBER: RN108736927; LOCATION: 3801 County Road 175, Leander, Williamson County; TYPE OF FACILITY: real property; RULES VIOLATED: TWC, §26.121(a)(2), 30 TAC §213.4(k), and Edwards Aquifer Protection Program (EAPP) ID Number 11-15082601, Standard Condition Number 12, by failing to filter discharges from dewatering activities through appropriately selected best management practices; and 30 TAC §213.4(a)(1) and (j)(3) and EAPP Number 11-15082601, Standard Conditions Number 6, by failing to obtain approval of a modification to an approved Water Pollution Abatement Plan prior to initiating a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $4,063; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

TRD-201804784
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 6, 2018

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, Agency, or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 19, 2018.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 19, 2018.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Alex Rangel; DOCKET NUMBER: 2017-1723-AIR-E; TCEQ ID NUMBER: RN109741785; LOCATION: 7047 Barney Road, Houston, Harris County; TYPE OF FACILITY: stone cutting warehouse plant; RULES VIOLATED: Texas Health and Safety Code, §382.085(a) and (b) and 30 TAC §101.4, by causing, suffering, allowing, or permitting the emission of air contaminants or the performance of an activity that causes or contributes to nuisance conditions; PENALTY: $3,376; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: MPRM Investments, Inc. dba Quik Pantry; DOCKET NUMBER: 2017-0120-PST-E; TCEQ ID NUMBER: RN102356433; LOCATION: 814 East Blanco Road, Boerne, Kendall County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(2), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $7,879; STAFF ATTORNEY: Amanda Patel, Litigation Division, MC 175, (512) 239-3990; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201804785
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 6, 2018

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Notice of Public Meeting for an Air Quality Permit: Proposed Permit Number 152417L001

APPLICATION.

Ingram Concrete, LLC, P.O. Box 1166, Brownwood, Texas 76804-1166, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 152417L001, which would authorize construction of a Rock Crusher located at 1346 County Road 401, Nemo, Somervell County, Texas 76070. 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=32.248056&lng=-97.7&zoom=13&type=r. The proposed facility will emit the following contaminants: particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations.

PUBLIC COMMENT/PUBLIC MEETING.

You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, December 6, 2018, at 7:00 p.m.

Oakdale Park Convention Center 1019 NE Barnard Street

Glen Rose, Texas 76043

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at http://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our website at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ Dallas/Fort Worth regional office, and at Somervell County Library, 108 Allen Drive, Glen Rose, Somervell County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Dallas/Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas. Further information may also be obtained from Ingram Concrete, LLC at the address stated above or by calling Mrs. Melissa Fitts, Vice President, Westward Environmental, Inc. at (830) 249-8284.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice Issuance Date: November 5, 2018

TRD-201804801
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 7, 2018

Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Amendment Proposed Limited Scope Amendment to Permit No. 2370

Application. Wastewater Residuals Management, LLC, 10217A Wallisville Road, Houston, Harris County, Texas 77013, the owner and operator of a Type V Grease and Grit Trap Waste Processing Facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a limited scope permit amendment to authorize: a change in operating hours to 24 hours a day and 7 days a week; an increase from 12,000 to 17,000 gallon working capacity storage tanks in Phase II; and a revised spill containment and closure cost estimate. The facility is located at the address noted above. The TCEQ received this application on September 7, 2018. The permit application is available for viewing and copying at the Jacinto City Library, 921 Akron Street, Jacinto City, Harris County, Texas 77029, and may be viewed online at http://cook-joyce.com/permits. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.8&lng=-95.250555&zoom=13&type=r. For exact location, refer to application.

The TCEQ Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Directors decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at *<www.tceq.texas.gov/goto/cid>,* Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at *<www14.tceq.texas.gov/epic/eComment/>* or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at *<www.tceq.texas.gov/goto/pep>* Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Wastewater Residuals Management, LLC, at the address stated above or by calling Mr. Leo Ounanian, President at (713) 828-5487.

TRD-201804803
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 7, 2018

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Notice of Water Quality Application

The following notice was issued on November 1, 2018.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 102 has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0011523001 to authorize change in the disinfection system from Ultra violet to chlorination. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201804802
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 7, 2018

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Texas Department of Housing and Community Affairs

Request for Qualifications

The Texas Department of Housing and Community Affairs has posted a Request for Qualification ("RFQ") #332-RFQ19-1001, for an attorney to serve as an independent fact-finder. If you are interested in providing a response to this RFQ please view the Request for Qualifications posting on the Electronic State Business Daily ("ESBD"). The website is *http://esbd.cpa.state.tx.us/, and you can search by RFQ number listed above.*

TRD-201804773
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 5, 2018

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Legislative Budget Board

Tax Relief Amendment Implementation - Limit on Growth of Certain State Appropriations

Legal References

The Texas Constitution, Article VIII, Section 22(a), restriction on rate of growth of appropriations, commonly referred to as the spending limit, was established by the passage of a constitutional amendment in 1978. It states that:

In no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by this constitution exceed the estimated rate of growth of the state's economy. The legislature shall provide by general law procedures to implement this subsection.

This provision does not alter, amend, or repeal the Texas Constitution, Article III, Section 49a, known as the pay-as-you-go provision.

To implement this provision of the Texas Constitution, the Sixty-sixth Legislature, 1979, passed Article 9, Chapter 302, Laws 1979 (the Texas Government Code, Chapter 316), which placed with the Legislative Budget Board the responsibility for approval of a limitation on the growth of certain state appropriations. A part of the procedure for approving the limitation is set forth in Sections 316.003 and 316.004 as follows:

Section 316.003. Before the Legislative Budget Board approves the items of information required by Section 316.002, the board shall publish in the *Texas Register* the proposed items of information and a description of the methodology and sources used in the calculations.

Section 316.004. Not later than December 1 of each even-numbered year, the Legislative Budget Board shall hold a public hearing to solicit testimony regarding the proposed items of information and the methodology used in making the calculations required by Section 316.002.

These items of information are identified as follows in the Texas Government Code, Section 316.002:

(1) the estimated rate of growth of the state's economy from the current biennium to the next biennium;

(2) the level of appropriations for the current biennium from state tax revenues not dedicated by the constitution; and

(3) the amount of state tax revenues not dedicated by the constitution that could be appropriated for the next biennium within the limit established by the estimated rate of growth of the state's economy.

In this memorandum, each item of information is discussed in this same order.

Estimated Rate of Growth of the State's Economy

A definition of the "estimated rate of growth of the state's economy" is set in the Texas Government Code, Section 316.002(b), in the following words:

(b) Except as provided by Subsection (c), the board shall determine the estimated rate of growth of the state's economy by dividing the estimated Texas total personal income for the next biennium by the estimated Texas total personal income for the current biennium. Using standard statistical methods, the board shall make the estimate by projecting through the biennium the estimated Texas total personal income reported by the United States Department of Commerce or its successor in function.

(c) If a more comprehensive definition of the rate of growth of the state's economy is developed and is approved by the committee established by Section 316.005, the board may use that definition in calculating the limit on appropriations.

The U.S. Commerce Department's Bureau of Economic Analysis defines state personal income as follows:

...the income received by persons from all sources, that is, from participation in production, from both government and business transfer payments, and from government interest. Personal income is the sum of wage and salary disbursements, supplements to wages and salaries, proprietors' income, rental income of persons, personal dividend income, personal interest income, and transfer payments, less contributions for social insurance.

Table 1 shows the U.S. Commerce Department's personal income account for Texas for calendar year 2017. The largest component of Texas personal income is wage and salary disbursements, estimated at $700.2 billion during calendar year 2017. Salary and wage disbursements are added with supplements to wages and salaries, primarily employer contributions to private pensions and welfare funds, and proprietors' income to arrive at total earnings by place of work. Texas total earnings by place of work reached an estimated $999.4 billion in calendar year 2017.

In deriving Texas total personal income, adjustments are made to total earnings by place of work. Personal and employee contributions for social insurance, principally Social Security payroll taxes paid by employees and self-employed individuals, are deducted. A place-of-residence adjustment also is made to reflect the earnings of workers who cross state borders to live or work. Dividends, interest, and rent income are then added, along with transfer payments. The major types of transfer payments include Social Security, various retirement and unemployment insurance benefits, welfare, and disability and health insurance payments. Texas total personal income is estimated to be $1,340.6 billion for calendar year 2017.

The U.S. Department of Commerce reports personal income estimates by calendar quarter and year. Because the state's fiscal year begins on September 1 and ends August 31, an adjustment is required to present these data on a biennial basis. The Legislative Budget Board uses the data for the first three calendar quarters of a year plus the fourth quarter of the preceding year to represent the state's fiscal year. A biennium is the sum of two fiscal years. Table 2 shows the historical record of the rate of growth in Texas personal income for the past 18 completed biennia, using the data published by the U.S. Department of Commerce.

Forecasting Texas Personal Income

In reviewing standard statistical techniques for forecasting or projecting Texas personal income, the Legislative Budget Board has obtained the latest economic forecasts from the following sources, listed alphabetically: (1) IHS Markit, (2) Moody's Analytics, (3) Perryman Group, (4) Texas A&M University - Department of Economics, and (5) Texas Comptroller of Public Accounts. These forecasts are based on econometric models developed and maintained by the forecasting services listed.

Although each forecasting service approaches the development of economic projections differently, several characteristics are common to the econometric models from which the Texas total personal income estimates are derived. First, each model assumes that the U.S. economy is the driving force behind Texas economic activity. As a result, forecasts of U.S. economic variables are needed to drive each model. Secondly, each of the econometric models is structural in nature, representing certain assumptions about the structure of the Texas economy, consistent with economic theory. Structural models typically entail detailed modeling of key sectors of the state's economy, followed by statistical testing to establish relationships with other sectors of the economy.

Previous memoranda published on the constitutional limit include additional discussion of the forecasting methods used and can be found in the following issues of the *Texas Register:* 5 TexReg 4272, 7 TexReg 3727, 9 TexReg 5219, 11 TexReg 4590, 13 TexReg 4599, 15 TexReg 6876, 17 TexReg 7702, 19 TexReg 9053, 21 TexReg 10919, 23 TexReg 11472, 25 TexReg 11735, 27 TexReg 10977, 29 TexReg 10612, 31 TexReg 9641, 33 TexReg 9109, 35 TexReg 10081, 37 TexReg 9031, 39 TexReg 9391, and 41 TexReg 9360.

Table 3 shows details of the Texas personal income growth rates of the various forecasting services for the 2020-21 biennium over the 2018-19 biennium. These forecasts range from 8.34 percent to 11.37 percent.

The personal income growth rates shown in Table 3, or any more recent forecasts if available, will be presented to the Legislative Budget Board for its consideration in adopting this item of information. The Board is not limited to one, or any combination of the growth rates, when adopting a Texas personal income growth rate for the 2020-21 biennium.

Table 4 shows the sources and dates for the Texas personal income growth rates presented in Table 3.

Appropriations from State Tax Revenue Not Dedicated by the Constitution 2018-19 Biennium

The amount of appropriations from state tax revenue that are not dedicated by the constitution in the 2018-19 biennium, the base biennium, is the second item of information to be determined by the Legislative Budget Board. As of November 7, 2018, the Legislative Budget Board (LBB) staff estimates this amount to be $91,482,990,002. This item multiplied by the estimated rate of growth of Texas personal income from the 2018-19 biennium to the 2020-21 biennium produces the limitation on appropriations for the 2020-21 biennium pursuant to the Texas Constitution, Article VIII, Section 22.

Calculating the 2020-21 Limitation

The limitation on appropriations of state tax revenue that is not dedicated by the state constitution in the 2020-21 biennium, the third item of information, may be illustrated by selecting a growth rate and applying it to the 2018-19 biennial appropriations base. A change to the 2018-19 biennial appropriations base would result in a corresponding change to the 2020-21 biennial limit.

Method of Calculating 2018-19 Appropriations from State Tax Revenue Not Dedicated by the Constitution

As previously stated, LBB staff estimates the amount of appropriations from state tax revenue that are not dedicated by the constitution in the 2018-19 biennium to be $91,482,990,002. This section details the sources of information used in this calculation.

Total appropriations for the 2018-19 biennium include those made by the Eighty-fifth Legislature, Regular Session, 2017, in Senate Bill 1, House Bill 2, House Bill 3849, and other legislation affecting appropriations. Appropriations totals have been adjusted to incorporate the Governor's vetoes. Any subsequent appropriations made by the Eighty-sixth Legislature, 2019, for the 2018-19 biennium also would be included in total appropriations.

Table 5, Section B, shows General Revenue Funds appropriations, which is the method of finance for general-purpose spending. General Revenue Funds appropriations are financed with revenues in the following General Revenue Funds: General Revenue Fund (Fund No. 0001), Available School Fund (Fund No. 0002), Technology and Instructional Materials Fund (Fund No. 0003), Foundation School Fund (Fund No. 0193), and Tobacco Settlement Fund (Fund No. 5040). Section B shows the total amount of General Revenue Funds appropriations, the amount of appropriations financed from constitutionally dedicated tax revenue, the amount financed from nontax revenue and the remainder--the amount financed from tax revenue that is not dedicated by the constitution--which is the amount subject to the limitation.

I. General Revenue-Related Funds

A. Appropriations are classified in this table as the following: (1) "estimated to be" line item appropriations, and (2) sum-certain line item appropriations.

1. "Estimated to Be" Line Item Appropriations:

Each of these items under the subheading "estimated to be" may change under certain circumstances. For purposes of this calculation, most fiscal year 2018 amounts are based on actual 2018 expenditures. Most amounts for fiscal year 2019 are taken from Senate Bill 1, Eighty-fifth Legislature, Regular Session, 2017.

2. Sum-certain Line Item Appropriations:

As calculated in Table 6, the amount shown for "Total Sum Certain Line Item Appropriations" is the difference between total appropriations and the items listed separately as "estimated to be appropriations." General Revenue Funds appropriations in Table 6 include those made by the Eighty-fifth Legislature, Regular Session, 2017, in Senate Bill 1, House Bill 2, House Bill 3849, and other legislation affecting appropriations. Totals have been adjusted to incorporate the Governor's vetoes.

B. Source of Funding - General Revenue-Related: Table 5, Part B, shows that of the $106,867,925,606 of General Revenue Fund appropriations, $87,199,964,763 is subject to the limitation because it is financed from state tax revenue that is not dedicated by the Constitution.

Constitutionally dedicated state tax revenues deposited into General Revenue Funds are estimated to total $5,979,818,194 during the 2018-19 biennium. Appropriations from General Revenue Funds financed from nontax revenue are estimated at $13,688,142,649 for the 2018-19 biennium. Revenue analysis in this calculation applies actual fiscal year 2018 revenue collections and the most recent revenue estimates by the Comptroller of Public Accounts for fiscal year 2019.

II. Appropriations from Funds Outside of General Revenue

Certain tax revenues are deposited into funds and accounts outside of the General Revenue Funds. Appropriations from these funds and accounts financed with state tax revenue that are not dedicated by the constitution are included in this calculation.

The state imposes a sales and use tax on boats and boat motors, of which 95.0 percent is deposited into the General Revenue Funds and the remaining 5.0 percent is deposited into General Revenue-Dedicated Account No. 0009, Game, Fish, and Water Safety. The state imposes an insurance companies maintenance tax, which is deposited into General Revenue-Dedicated Account No. 0036, Texas Department of Insurance.

A portion of the motor vehicles sales tax, franchise tax, and cigarette tax is deposited into the Property Tax Relief Fund (Fund No. 0304). The state transfers revenue in the General Revenue Funds to the Economic Stabilization Fund (Fund No. 0599) based on the amount of severance tax collections during the previous year. Most of the transferred revenue is tax revenue.

General Revenue-Dedicated Account No. 5066, Rural Volunteer Fire Department Insurance, includes deposits of taxes on the sales of fireworks. Part of the sales tax and the motor vehicles sales tax is deposited into General Revenue-Dedicated Account No. 5071, Emissions Reduction Plan. In addition, General Revenue-Dedicated Account No. 5144, Physician Education Loan Repayment, includes deposits of tobacco tax revenue.

Grand Total

A grand total of $111,749,308,679 in 2018-19 biennial appropriations is included in this analysis. Of this amount, $5,979,818,194 is financed out of taxes dedicated by the state constitution. Another $14,286,500,483 is financed out of nontax revenue. The remaining $91,482,990,002 is financed out of state tax revenue that is not dedicated by the state constitution. This amount serves as the base for calculating the limitation on 2020-21 biennial appropriations from state tax revenue that is not dedicated by the constitution, as required by the Texas Constitution Article VIII, Section 22.

Figure 1 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 1
U.S. DEPARTMENT OF COMMERCE PERSONAL
INCOME ACCOUNT FOR TEXAS, CALENDAR YEAR 2017
In Millions of Current Dollars

Earnings by Place of Work	**Amount**	**Percent of Total**
Wage and Salary Disbursements	$ 700,181	70.1%
Supplements to Wages and Salaries	148,861	14.9%
Proprietors' Income	150,349	15.0%
Total Earnings by Place of Work	$999,391	100.0%
Derivation of Total Personal Income		
Earnings by Place of Work (from above)	$999,391	
Less: Personal Contributions for Social Insurance	*(53,478)*	
Less: Employee Contributions for Social Insurance	*(48,267)*	
Less: Adjustment for Residence	*(1,933)*	
Equals: Net Earnings by Place of Residence	$895,713	66.8%
Plus: Dividends, Interest and Rent	238,805	17.8%
Plus: Personal Current Transfer Receipts	206,050	15.4%
Total Personal Income	$1,340,568	100.0%

Note: Totals may not add due to rounding.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, September 2018.

Figure 2 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 2
BIENNIUM-TO-BIENNIUM GROWTH RATES IN TEXAS PERSONAL INCOME
1982-83 TO 2016-17 BIENNIA

Base Biennium	Target Biennium	Growth Rate	Percent Increase
1980-81	1982-83	1.252	25.2
1982-83	1984-85	1.170	17.0
1984-85	1986-87	1.087	8.7
1986-87	1988-89	1.096	9.6
1988-89	1990-91	1.144	14.4
1990-91	1992-93	1.138	13.8
1992-93	1994-95	1.125	12.5
1994-95	1996-97	1.156	15.6
1996-97	1998-99	1.172	17.2
1998-99	2000-01	1.157	15.7
2000-01	2002-03	1.068	6.8
2002-03	2004-05	1.100	10.0
2004-05	2006-07	1.182	18.2
2006-07	2008-09	1.121	12.1
2008-09	2010-11	1.064	6.4
2010–11	2012-13	1.143	14.3
2012–13	2014-15	1.106	10.6
2014-15	2016-17	1.040	4.0

Figure 3 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 3
ESTIMATED GROWTH RATES FOR TEXAS PERSONAL INCOME
USING FIVE ECONOMETRIC MODELS
2018-19 BIENNIUM TO 2020-21 BIENNIUM

Source of Forecast	**2020-21 Texas Personal Income Growth Rate**
1. IHS Markit	11.01%
2. Moody's Analytics	11.37%
3. Perryman Group	11.26%
4. Texas A&M University, Department of Economics	8.34%
5. Texas Comptroller of Public Accounts	10.41%

Figure 4 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 4
SUMMARY OF SOURCES AND METHODS FOR
TEXAS PERSONAL INCOME GROWTH RATES FOR THE
2020-21 BIENNIUM

Source of Forecast	**Type of Forecast**	**Date of Forecast**
1. IHS Markit	Econometric	October 2018
2. Moody's Analytics	Econometric	October 2018
3. Perryman Group	Econometric	October 2018
4. Texas A&M University, Department of Economics	Econometric	October 2018
5. Texas Comptroller of Public Accounts	Econometric	October 2018

Source: Compiled by the Legislative Budget Board, October 2018.

Figure 5 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 5
2018-19 BIENNIAL ADJUSTED APPROPRIATIONS
INCLUDED IN THE CALCULATION OF
THE LIMITATION BASE

			2018 Expenditures/ 2019 Appropriations
I.	General Revenue Related Funds		
	A. Appropriations		
	1. "Estimated To Be" Line Item Appropriations in General Appropriations Act, 85th Legislature		
	(a)	Fiscal Programs - Comptroller of Public Accounts	20,266,496
		A.1.1. Strategy: Miscellaneous Claims	
	(b)	Fiscal Programs - Comptroller of Public Accounts	444,001,347
		A.1.2. Reimbursement - Beverage Tax	
	(c)	Fiscal Programs - Comptroller of Public Accounts	13,332,375
		A.1.4. County Taxes - University Lands	
	(d)	Fiscal Programs - Comptroller of Public Accounts	553,076,461
		A.1.6. Unclaimed Property	
	(e)	Funds Appropriated to the Comptroller for Social Security and BRP	1,283,997,924
		A.1.1. Strategy: State Match - Employer (GR Portion) & A.1.2 Benefit Replacement Pay (GR Portion)	
	(f)	Employees Retirement System	3,937,015,845
		A. Goal: Administer Retirement Program (GR Portion) & B. Goal: Provide Health Program (GR Portion)	
	(g)	Secretary of State	1,306,626
		B.1.5. Strategy: Voter Registration	
	(h)	Department of State Health Services	605,366
		C.1.5. Strategy: TEXAS.GOV	
	(i)	Health and Human Services Commission	96,949,081
		Medicaid Program Income No. 705	
	(j)	Health and Human Services Commission	1,850,152,313
		Vendor Drug Rebates—Medicaid No. 706	
	(k)	Health and Human Services Commission	11,405,986
		Premium Co-Payments, Low Income Children No. 3643	
	(l)	Health and Human Services Commission	21,589,388
		Vendor Drug Rebates–Public Health No. 8046	
	(m)	Health and Human Services Commission	9,270,750
		Experience Rebates-CHIP No. 8054	
	(n)	Health and Human Services Commission	12,742,880
		Vendor Drug Rebates-CHIP No. 8070	
	(o)	Health and Human Services Commission	5,764,982
		Cost Sharing - Medicaid Clients No. 8075	
	(p)	Health and Human Services Commission	148,830,881
		Vendor Drug Rebates-Supplemental Rebates No. 8081	

Figure 5 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

(q)	Texas Education Agency B.3.6. Strategy: Certification Exam Administration	35,252,773
(r)	Teacher Retirement System A.1.1. Strategy: TRS - Public Education Retirement	3,544,224,289
(s)	Teacher Retirement System A.1.2. Strategy: TRS - Higher Education Retirement (GR Portion)	429,873,282
(t)	Teacher Retirement System A.2.1. Strategy: Retiree Health - Statutory Funds	1,223,926,787
(u)	Optional Retirement Program A.1.1. Strategy: Optional Retirement Program (GR Portion)	245,793,122
(v)	Office Of Court Administration, Texas Judicial Council C.1.2. Strategy: TEXAS.GOV	12,571
(w)	Department Of Housing And Community Affairs E.1.4. Strategy: TEXAS.GOV	21,080
(x)	Board Of Chiropractic Examiners A.1.2. Strategy: TEXAS.GOV	60,474
(y)	Texas State Board Of Dental Examiners A.2.2. Strategy: TEXAS.GOV	448,583
(z)	Funeral Service Commission A.1.2. Strategy: TEXAS.GOV	92,037
(aa)	Board Of Professional Geoscientists A.1.2. Strategy: TEXAS.GOV	45,174
(ab)	Department Of Insurance (GR Portion) A.3.2. Strategy: TEXAS.GOV	13,300
(ac)	Board Of Professional Land Surveying A.1.3. Strategy: TEXAS.GOV	33,257
(ad)	Department Of Licensing And Regulation A.1.5. Strategy: TEXAS.GOV	1,209,972
(ae)	Texas Board of Nursing A.1.2. Strategy: TEXAS.GOV	1,154,217
(af)	Optometry Board A.1.2. Strategy: TEXAS.GOV	41,030
(ag)	Optometry Board A.1.3. Strategy: National Practitioner Data Bank	9,092
(ah)	Board Of Pharmacy A.1.2. Strategy: TEXAS.GOV	482,159
(ai)	Executive Council Of Physical Therapy & Occupational Therapy Examiners A.1.2. Strategy: TEXAS.GOV	372,365
(aj)	Board Of Plumbing Examiners A.1.2. Strategy: TEXAS.GOV	312,452

Figure 5 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

(ak)	Board Of Examiners Of Psychologists	76,076	
	A.1.2. Strategy: TEXAS.GOV		
(al)	Board Of Veterinary Medical Examiners	79,986	
	A.1.2. Strategy: TEXAS.GOV		
(am)	Multiple Agencies: Earned Federal Funds	122,028,232	
	Sec. 13.11. Definition, Appropriation, Reporting and Audit of Earned Federal Funds		
(an)	Adjustment for Property Tax Relief Fund Revenue	231,756,732	
(ao)	Adjustment for Texas Education Agency Attendance Credit Revenue	(24,500,000)	
	Subtotal, "Estimated to Be" Line Items (Expended/ Appropriated)		$ 14,223,127,744
2.	Total Sum-certain Line Item Appropriations (Appropriated)		$ 92,644,797,862
TOTAL General Revenue Related Fund Appropriations, *adjusted for 2018 estimated amounts*			$ 106,867,925,606

Figure 5 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

B.	Source of Funding - General Revenue Related	Total Appropriations	Constitutionally Dedicated State Tax Revenues	Non Tax Revenues	State Tax Revenue Not Dedicated by the Constitution
1.	Occupation Taxes	$4,065,606,018	$4,065,606,018	$0	$0
2.	Motor Fuel Taxes	1,938,120,410	1,914,212,176	-	23,908,234
3.	Education Revenues	5,708,644,292	-	5,708,644,292	-
4.	Insurance Maintenance Tax	294,150,937	-	-	294,150,937
5.	Hotel Tax	34,150,223	-	-	34,150,223
6.	Sporting Good Sales Tax	295,596,120	-	-	295,596,120
7.	Appropriations from Other Revenue	94,531,657,606	-	7,979,498,357	86,552,159,249
	SUBTOTAL(General Revenue Related)	$106,867,925,606	$5,979,818,194	$13,688,142,649	$87,199,964,763
II.	Appropriations from Funds Outside of GR				
1.	Account 0009 – Game, Fish, and Water Safety	$212,759,164	$0	$207,031,146	$5,728,018
2.	Account 0036 – Texas Department of Insurance Operating	133,364,820	-	128,997,054	4,367,766
3.	Fund 0304 – Property Tax Relief Fund	3,362,443,268	-	2,741,001	3,359,702,267
4.	Fund 0599 – Economic Stabilization Fund	988,908,961	-	153,620,583	835,288,378
5.	Account 5066 – Rural Volunteer Fire Department Insurance	2,930,000	-	-	2,930,000
6.	Account 5071 – Emissions Reduction Plan	155,626,860	-	105,759,090	49,867,770
7.	Account 5144 - Physician Education Loan Repayment Program	25,350,000	-	208,959	25,141,041
	GRAND TOTAL	$111,749,308,679	$5,979,818,194	$14,286,500,483	$91,482,990,002

Figure 6-502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 6
CALCULATION OF "SUM CERTAIN LINE ITEMS APPROPRIATIONS"
FOR THE 2018-19 BIENNIUM

	2018	2019	2018-19
General Revenue Funds "Recap" Amount	$54,609,012,361	$52,054,223,965	$106,663,236,326
Less "Estimated to Be" Items:			
Fiscal Programs - Comptroller of Public Accounts A.1.1. Strategy: Miscellaneous Claims (SB1, Article I-22)	13,000,000	13,000,000	26,000,000
Fiscal Programs - Comptroller of Public Accounts A.1.2. Reimbursement - Beverage Tax (SB1, Article I-22)	216,143,000	226,949,000	443,092,000
Fiscal Programs - Comptroller of Public Accounts A.1.4. County Taxes - University Lands (SB1, Article I-22)	7,296,814	7,807,591	15,104,405
Fiscal Programs - Comptroller of Public Accounts A.1.6. Unclaimed Property (SB1, Article I-22)	275,000,000	300,000,000	575,000,000
Funds Appropriated to the Comptroller for Social Security and BRP A.1.1. Strategy: State Match - Employer (GR Portion) & A.1.2 Benefit Replacement Pay (GR Portion) (SB1, Article I-28)	648,181,049	654,687,321	1,302,868,370
Employees Retirement System A. Goal: Administer Retirement Program (GR Portion) & B. Goal: Provide Health Program (GR Portion) (SB1, Article I-33)	1,941,818,645	1,995,197,200	3,937,015,845
Secretary of State B.1.5. Strategy: Voter Registration (SB1, Article I-84)	4,777,500	1,000,000	5,777,500
Department of State Health Services	388,416	388,416	776,832

Figure 6-502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

C.1.5. Strategy: TEXAS.GOV (SB1, Article II-21)			
Health and Human Services Commission Medicaid Program Income No. 705 (SB1, Article II-35)	50,000,000	50,000,000	100,000,000
Health and Human Services Commission Vendor Drug Rebates—Medicaid No. 706 (SB1, Article II-35)	904,008,613	940,938,469	1,844,947,082
Health and Human Services Commission Premium Co-Payments, Low Income Children No. 3643 (SB1, Article II-35)	5,654,878	5,841,004	11,495,882
Health and Human Services Commission Vendor Drug Rebates–Public Health No. 8046 (SB1, Article II-35)	7,886,357	7,886,357	15,772,714
Health and Human Services Commission Experience Rebates-CHIP No. 8054 (SB1, Article II-35)	508,740	506,770	1,015,510
Health and Human Services Commission Vendor Drug Rebates-CHIP No. 807 (SB1, Article II-35)	5,736,519	5,802,717	11,539,236
Health and Human Services Commission Cost Sharing - Medicaid Clients No. 8075 (SB1, Article II-35)	200,000	200,000	400,000
Health and Human Services Commission Vendor Drug Rebates-Supplemental Rebates No. 8081 (SB1, Article II-35)	78,937,285	82,205,281	161,142,566
Texas Education Agency B.3.6. Strategy: Certification Exam Administration (SB1, Article III-2)	18,766,445	18,766,445	37,532,890
Teacher Retirement System A.1.1. Strategy: TRS - Public Education Retirement (SB1, Article III-34)	1,741,633,557	1,802,590,732	3,544,224,289

Figure 6-502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

Teacher Retirement System A.1.2. Strategy: TRS - Higher Education Retirement (GR Portion) (SB1, Article III-34)	211,736,248	218,137,034	429,873,282
Teacher Retirement System A.2.1. Strategy: Retiree Health - Statutory Funds (SB1, Article III-34)	795,729,797	413,867,839	1,209,597,636
Optional Retirement Program A.1.1. Strategy: Optional Retirement Program (GR Portion) (SB1, Article III-38)	123,514,132	122,278,990	245,793,122
Office Of Court Administration, Texas Judicial Council C.1.2. Strategy: TEXAS.GOV (SB1, Article IV-24)	10,290	12,571	22,861
Department Of Housing And Community Affairs E.1.4. Strategy: TEXAS.GOV (SB1, Article VII-2)	19,120	19,120	38,240
Board Of Chiropractic Examiners A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-5)	29,850	29,850	59,700
Texas State Board Of Dental Examiners A.2.2. Strategy: TEXAS.GOV (SB1, Article VIII-7)	250,000	250,000	500,000
Funeral Service Commission A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-10)	46,500	46,500	93,000
Board Of Professional Geoscientists A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-12)	25,000	25,000	50,000
Department Of Insurance (GR Portion) A.3.2. Strategy: TEXAS.GOV (SB1, Article VIII-18)	6,520	6,520	13,040
Board Of Professional Land Surveying A.1.3. Strategy: TEXAS.GOV (SB1, Article VIII-27)	17,150	17,150	34,300

Figure 6-502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

Department Of Licensing And Regulation A.1.5. Strategy: TEXAS.GOV (SB1, Article VIII-28)	500,000	500,000	1,000,000
Texas Board of Nursing A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-37)	594,902	594,903	1,189,805
Optometry Board A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-41)	21,230	18,625	39,855
Optometry Board A.1.3. Strategy: National Practitioner Data Bank (SB1, Article VIII-41)	9,092	9,092	18,184
Board Of Pharmacy A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-43)	210,500	222,200	432,700
Executive Council Of Physical Therapy & Occupational Therapy Examiners A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-47)	206,215	157,715	363,930
Board Of Plumbing Examiners A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-49)	155,000	155,000	310,000
Board Of Examiners Of Psychologists A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-52)	37,000	37,000	74,000
Board Of Veterinary Medical Examiners A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-66)	40,000	40,000	80,000
Multiple Agencies: Earned Federal Funds Sec. 13.11. Definition, Appropriation, Reporting and Audit of Earned Federal Funds (SB1, Article IX-65)	47,572,739	47,576,949	95,149,688
Subtotal, Estimated Appropriations	$7,100,669,103	$6,917,769,361	$14,018,438,464
Total Sum-certain Line Item Appropriations	$47,508,343,258	$45,136,454,604	$92,644,797,862

TRD-201804804
Sarah Keyton and John McGeady
Assistant Directors
Legislative Budget Board
Filed: November 7, 2018

♦ ♦ ♦

Texas Department of Licensing and Regulation

Correction of Error

The Texas Commission of Licensing and Regulation adopted an amendment to 16 TAC §100.1 as well as new rules 16 TAC §100.31 and 16 TAC §100.50 in the October 19, 2018, issue of the *Texas Register* (43 TexReg 6949). Due to a *Texas Register* editing error, these rules were published with an incorrect effective date. The correct effective date is November 1, 2018.

TRD-201804737

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Texas Lottery Commission

Scratch Ticket Game Number 2109 "30X"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2109 is "30X". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2109 shall be $3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2109.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 10X SYMBOL, 30X SYMBOL, $3.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $90.00, $300, $1,500 and $75,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2109 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
10X SYMBOL	WINX10
30X SYMBOL	WINX30
$3.00	THR$
$5.00	FIV$

$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$30.00	TRTY$
$50.00	FFTY$
$90.00	NITY$
$300	THHN
$1,500	15HN
$75,000	75TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2109), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2109-0000001-001.

H. Pack - A Pack of the "30X" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 125 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "30X" Scratch Ticket Game No. 2109.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "30X" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 35 (thirty-five) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. If the player reveals a "30X" Play Symbol, the player wins 30 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 35 (thirty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 35 (thirty-five) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 35 (thirty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 35 (thirty-five) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

C. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 03 and $3).

D. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

E. No matching WINNING NUMBERS Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

F. A non-winning Prize Symbol will never match a winning Prize Symbol.

G. A Ticket may have up to three (3) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. The "10X" (WINX10) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

I. The "30X" (WINX30) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "30X" Scratch Ticket Game prize of $3.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $90.00 or $300, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, $90.00 or $300 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "30X" Scratch Ticket Game prize of $1,500 or $75,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "30X" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "30X" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "30X" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "30X" Scratch Ticket may be entered into one of five promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 16,080,000 Scratch Tickets in Scratch Ticket Game No. 2109. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2109 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3	1,672,320	9.62
$5	643,200	25.00
$10	900,480	17.86
$15	257,280	62.50
$20	128,640	125.00
$30	128,640	125.00
$50	20,100	800.00
$90	9,380	1,714.29
$300	2,144	7,500.00
$1,500	268	60,000.00
$75,000	10	1,608,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.27. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2109 without advance notice. Scratch Tickets may not be sold after the closing date. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2109, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201804775
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 5, 2018

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Scratch Ticket Game Number 2110 "5X El Dinero"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2110 is "5X EL DINERO". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2110 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2110.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 5X SYMBOL, $5.00, $10.00, $20.00, $25.00, $50.00, $100, $500, $1,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2110 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET

39	TRNI
40	FRTY
5X SYMBOL	WINX5
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$25.00	TWFV$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$1,000	ONTH
$100,000	100TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2110), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2110-0000001-001.

H. Pack - A Pack of "5X EL DINERO" Scratch Ticket Games contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "5X EL DINERO" Scratch Ticket Game No. 2110.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "5X EL DINERO" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 35 (thirty-five) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. Si el jugador iguala cualquier Símbolo de Juego de TUS NÚMEROS con cualquier Símbolo de Juego de los NÚMEROS GANADORES, el jugador gana el premio para ese número. Si el jugador revela un Símbolo de Juego de "5X", el jugador gana 5 VECES el premio para ese símbolo. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 35 (thirty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 35 (thirty-five) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 35 (thirty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 35 (thirty-five) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to fifteen (15) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have five (5) different WINNING NUMBERS/NÚMEROS GANADORES Play Symbols.

E. Non-winning YOUR NUMBERS/TUS NÚMEROS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than three (3) times.

G. The "5X" (WINX5) Play Symbol will never appear in the WINNING NUMBERS/NÚMEROS GANADORES Play Symbol spots.

H. The "5X" (WINX5) Play Symbol will appear as dictated by the prize structure.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS/TUS NÚMEROS Play Symbol (i.e., 20 and $20).

2.3 Procedure for Claiming Prizes.

A. To claim a "5X EL DINERO" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $25.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "5X EL DINERO" Scratch Ticket Game prize of $1,000 or $100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "5X EL DINERO" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "5X EL DINERO" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "5X EL DINERO" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2110. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2110 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	576,000	12.50
$10	1,056,000	6.82
$20	192,000	37.50
$25	96,000	75.00
$50	48,000	150.00
$100	12,000	600.00
$500	960	7,500.00
$1,000	120	60,000.00
$100,000	6	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.63. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2110 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2110, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201804776
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 5, 2018

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on October 30, 2018, to amend a state-issued certificate of franchise authority, pursuant to Public Utility Regulatory Act §66.001 through §66.016.

Project Title and Number: Application of Cebridge Acquisition, L.P. dba Suddenlink Communications to Amend its State-Issued Certificate of Franchise Authority, Project Number 48822.

The Application: The requested amendment is to expand Cebridge Acquisition, L.P.'s service area for cable service to include the city of New Waverly.

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 48822.

TRD-201804738
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: November 1, 2018

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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 October 29, 2018, in accordance with the Texas Water Code.

Docket Style and Number: Application of BHP Water Supply Corporation and City of Royse City for Sale, Transfer, or Merger of Facilities and Certificate Rights in Hunt and Collin Counties, Docket Number 48816.

The Application: BHP Water Supply Corporation and the City of Royse City seek to transfer a portion of BHP's facilities and water service area under water certificate of convenience and necessity number 10064 to Royse City. The requested transfer includes approximately 32.9 acres and 52 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 48816.

TRD-201804793
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: November 6, 2018

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Notice of Application for True-Up of 2016 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on October 26, 2018, for true-up of 2016 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Dell Telephone Cooperative, Inc. for a True-Up of 2016 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 48811.

The Application: Dell Telephone Cooperative, Inc. (Dell) filed a true-up report in accordance with findings of fact 6, 7, 8, 9 and 10 of the final Order in Docket No. 45971. The Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that Dell received in FUSF revenue by $899,034.00 for 2016. Dell recovered $899,034.00 from the TUSF, but argued that it did not fully recover the actual reduction of FUSF revenue for calendar year 2016. Dell is seeking to recover an additional $169,704.00 from the TUSF.

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 48811.

TRD-201804734
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 31, 2018

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Notice of Application for True-Up of 2016 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 31, 2018, for

true-up of 2016 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Border to Border Communications, Inc. for True-Up of 2016 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 48831.

The Application: Border to Border Communications, Inc. (Border to Border) filed a true-up report in accordance with Findings of Fact 11 and 12 of the final Order in Docket No. 45944. The Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that Border to Border received in FUSF revenue by $859,754.00 for calendar year 2016. Border to Border recovered $859,754.00 from the TUSF, but stated it did not fully recover the actual reduction in FUSF revenue for calendar year 2016. Border to Border seeks an additional $171,377.00 from the TUSF.

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 48831.

TRD-201804777
Andrea Gonzales
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2018

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Notice of Application for True-Up of 2016 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 31, 2018, for true-up of 2016 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Alenco Communications, Inc. for True-Up of 2016 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 48833.

The Application: Alenco Communications, Inc. (Alenco) filed a true-up report in accordance with Findings of Fact 15 and 16 of the final Order in Docket No. 47678. The Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that Alenco received in FUSF revenue by $252,106.00 for calendar year 2016. It was estimated that Alenco would recover $89,165.00 of the projected FUSF revenue impact from rate increases or imputed increases implemented for the time period. Further, Alenco recovered $162,833.00 from the TUSF, but stated that it did not fully recover the actual reduction of FUSF revenue for calendar year 2016. Alenco seeks an additional $105,044.00 from the TUSF.

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 48833.

TRD-201804778
Andrea Gonzales
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2018

♦ ♦ ♦

Notice of Application for True-Up of 2016 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 31, 2018, for true-up of 2016 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of XIT Rural Telephone Cooperative, Inc. for a true-up of 2016 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 48830.

The Application: XIT Rural Telephone Cooperative, Inc. (XIT Rural) filed a true-up report in accordance with Findings of Fact 15 and 16 of the final Order in Docket No. 47677. The Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that XIT Rural received in FUSF revenue by $502,011.00 for 2016. It was estimated that XIT Rural would recover $28,734.00 of the projected FUSF revenue impact from rate increases or imputed increases implemented for the time period and $473,277.00 from the TUSF. XIT Rural stated that it did not fully recover the actual reduction of FUSF revenue for calendar year 2016 and seeks to recover an additional $145,381.00 from the TUSF.

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 48830.

TRD-201804779
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2018

♦ ♦ ♦

Notice of Application for True-Up of 2016 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 31, 2018, for true-up of 2016 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Santa Rosa Telephone Cooperative, Inc. for True-Up of 2016 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 48832.

The Application: Santa Rosa Telephone Cooperative, Inc. (Santa Rosa) filed a true-up report in accordance with Findings of Fact 16 and 17 of the final Order in Docket No. 46714. The Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that Santa Rosa received in FUSF revenue by $188,281.00 for calendar year 2016. It was estimated that Santa Rosa would recover $88,097.00 of the projected FUSF revenue impact from rate increases or imputed increases implemented for the time period and $100,184.00 from the TUSF. Santa Rosa stated that it did not fully recover the actual FUSF

reduction for calendar year 2016 and seeks an additional $13,555.00 from the TUSF.

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 48832.

TRD-201804781
Andrea Gonzalez
Assistant General Counsel
Public Utility Commission of Texas
Filed: November 5, 2018

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Notice of Application for True-Up of 2016 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 31, 2018, for true-up of 2016 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Valley Telephone Cooperative, Inc. for True-Up of 2016 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 48837.

The Application: Valley Telephone Cooperative, Inc. (Valley Telephone) filed a true-up report in accordance with Findings of Fact 14, 15, and 16 of the final Order in Docket No. 47525. The Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that Valley Telephone received in Federal Universal Service Fund (FUSF) revenue by $1,410,903.00 for calendar year 2016. It was estimated that Valley Telephone would recover $510,938.00 of the projected FUSF revenue impact from rate increases implemented for the time period and $899,965.00 from the Texas Universal Service Fund (TUSF). Valley Telephone stated that it did not fully recover the actual FUSF reduction for calendar year 2016 and seeks an additional $44,432.00 from the TUSF.

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 48837.

TRD-201804782
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2018

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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 October 25, 2018, to amend a certificate of convenience and necessity (CCN).

Docket Style and Number: Application of SWWC Utilities, Inc. dba Windermere Utility Company Inc. to Amend a Sewer Certificate of Convenience and Necessity in Williamson County, Docket Number 48810.

The Application: SWWC Utilities, Inc. seeks to amend CCN number 20542 to include an area proposed for future development with no current customers. The requested service area consists of approximately six acres.

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) 935-7120 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 48810.

TRD-201804794
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: November 6, 2018

♦ ♦ ♦

Notice of Petition for Amendment to Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of a petition filed with the Public Utility Commission of Texas (commission) on November 2, 2018, to amend a water certificate of convenience and necessity (CCN) in Montgomery County by expedited release.

Docket Style and Number: Petition of Sig-Waukegan Willis, LLC to Amend the Town of Cut and Shoot's Certificate of Convenience and Necessity in Montgomery County by Expedited Release, Docket Number 48846.

The Petition: Sig-Waukegan Willis requests the expedited release of 262.89 acres of land located within the boundaries of Town of Cut and Shoot's water CCN number 11615 in Montgomery County.

Persons wishing to file a written protest or motion to intervene and file comments on the petition should contact the commission no later than December 2, 2018, 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 comments should reference Docket Number 48846.

TRD-201804792
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: November 6, 2018

♦ ♦ ♦

Notice of Petition for Amendment to Certificates of Convenience and Necessity by Expedited Release

Notice is given to the public of a petition filed with the Public Utility Commission of Texas (commission) on October 30, 2018, to amend a water and sewer certificate of convenience and necessity (CCN) in Montgomery County by expedited release.

Docket Style and Number: Petition of Tejas Creek, Ltd. to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Montgomery County by Expedited Release, Docket Number 48824.

The Petition: Tejas Creek, Ltd. filed a petition requesting the expedited release of approximately 108 acres of land located within the boundaries of Aqua Texas, Inc.'s water CCN number 13203 and sewer CCN number 21065 in Montgomery County.

Persons wishing to file a written protest or motion to intervene and file comments on the petition should contact the commission no later than November 29, 2018, 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 comments should reference Docket Number 48824.

TRD-201804735
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 31, 2018

♦ ♦ ♦

South Plains Association of Governments

Public Notice: Solicitation of Nominations

PUBLIC NOTICE:

LLANO ESTACADO REGIONAL WATER PLANNING GROUP - REGION O

SOLICITATION OF NOMINATIONS

Regional Water Planning in the State of Texas is the local process which guides conservation and water projects. The Regional Water Plans, upon approval by the Texas Water Development Board (TWDB), are used to help develop the State Water Plan, which guides state funding of water projects.

The South Plains Association of Governments (SPAG), is the designated political subdivision (Administrative Agency) approved by the Llano Estacado Regional Water Planning Group (LERWPG) and encompasses the following counties: Bailey, Briscoe, Castro, Cochran, Crosby, Dawson, Deaf Smith, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Lamb, Lubbock, Lynn, Motley, Parmer, Swisher, Terry, and Yoakum.

Notice is hereby given that the Llano Estacado Regional Water Planning Group (LERWGP) - Region O is soliciting nominations for the following interest category seat whose 5-year term expires effective December 31st, 2018:

Interest Group: Water Districts

Voting Member: Jason Coleman

Seeking Re-Election: Yes

Nominees must represent the interest group category for which a member is sought within the Region O planning area, be willing to participate in the regional water planning process, and abide by the Bylaws of the planning group, to qualify for voting membership on the Llano Estacado Regional Water Planning Group (LERWPG). If you would like to submit a nomination for a voting member representative of the interest category listed above, you may do so by emailing your nomination packet to *kdavila@spag.org* or by sending your nomination packet to the administrative agency listed below:

South Plains Association of Governments

Attention: Kelly Davila

P.O. Box 3730

Lubbock, Texas 79452

A nomination packet for candidates should include a cover letter from the nominee explaining how the nominee is qualified to serve on the LERWPG, a resume, and a minimum of two and a maximum of six letters of support. At least one recommendation letter should be from a member of the Regional Water Planning Group. **Deadline for submission for all nominations is Monday, December 31, 2018, to be considered.** Consideration of nominations and voting will take place at the next FY2019 regular public meeting of the Llano Estacado Regional Water Planning Group (LERWPG), date to be determined.

If you have any questions, please contact Kelly Davila at (806) 762-8721 or email at *kdavila@spag.org.*

TRD-201804733
Belinda Solis
Regional Services Program Assistant
South Plains Association of Governments
Filed: October 31, 2018

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Texas Water Development Board

Applications for October 2018

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73819 a request from the City of Dripping Springs, 511 Mercer Street, Dripping Springs, Texas 78620-0384, received on October 1, 2018, for $44,395,000 financing from the Clean Water State Revolving Fund for expansion of Dripping Springs South Regional wastewater system. Including the construction of a new wastewater treatment plant.

Project ID #62820 a request from the City of Nome, 1586 2nd Street, Nome, Texas 77629-0010, received on October 2, 2018, for $485,500 financing from the Texas Water Development Fund for the rehabilitation of the existing Nome surface water treatment plant items due to flooding caused from Hurricane Harvey.

Project ID #62821 a request from Palo Pinto Water Supply Corporation, 238 Oak Street, Palo Pinto, Texas 76484, received on October 2, 2018, for $1,650,000 financing from the Drinking Water State Revolving Fund for the replacement of existing distribution lines and installation of an elevated storage tank.

Project ID #73820 a request from the City of Lubbock, 1625 13th Street, Lubbock, Texas 79401-3830, received on October 3, 2018, for $20,638,069 financing from the Clean Water State Revolving Fund for construction of Advanced Metering Infrastructure for the City.

Project ID #62822 a request from the City of Wolfforth, 302 Main Street, Wolfforth, Texas 79382-0036, received on October 3, 2018, for $499,900 financing from the Drinking Water State Revolving Fund for the consolidation of Wolfforth Place and City of Wolfforth public water systems.

Project ID #62823 a request from Fort Griffin Special Utility District, 1180 County Road 109, Albany, Texas 76430-4141 received on October 3, 2018, for $1,525,000 financing from the Drinking Water State Revolving Fund for the planning, design, acquisition, and construction of a water treatment plant project.

Project ID #73796 a request from the City of San Juan, 709 South Nebraska, San Juan, Texas 78589 received on October 3, 2018, for $9,250,000 financing from the Clean Water State Revolving Fund for the planning, design, and construction on phase two of the wastewater treatment plant improvement project.

Project ID #62824 a request from the City of Euless, 201 North Ector Drive, Euless, Texas 76039-3595 received on October 3, 2018, for $9,275,000 financing from the Drinking Water State Revolving Fund for the planning, design, acquisition, and construction for the improvements at the City of Cleburne wastewater treatment facility and the construction of pump station and pipeline on the City's west side.

Project ID #62826 a request from the City of Groveton, 115 West Front Street, Groveton, Texas 75845-0037 received on October 4, 2018, for $2,195,000 financing from the Drinking Water State Revolving Fund for the planning, design, acquisition, and construction of a water well and transmission project.

Project ID #73638 a request from the City of Brady, 201 East Main Street, Brady, Texas 76825-4525 received on October 4, 2018, for $14,685,000 financing from the Clean Water State Revolving Fund for the construction of the wastewater treatment plant replacement project.

Project ID #62828 a request from Borden County, 117 East Wassom, Gail, Texas 79738-4005 received on October 4, 2018, for $2,000,000 financing from the Drinking Water State Revolving Fund for the installation of the arsenic and fluoride removal equipment.

Project ID #62829 a request from Brookshire Municipal Water District, 4004 6th Street, Brookshire, Texas 77423-1850 received on October 4, 2018, for $2,575,000 financing from the Drinking Water State Revolving Fund for the design and construction to replace asbestos cement pipe with PVC C900 pipe in order to reduce water losses from existing antiquated and brittle asbestos cement pipe and reduce perceived and potential health concerns.

Project ID #73822 a request from the City of Marlin, 101 Fortune Street, Marlin, Texas 76661-2823 received on October 5, 2018, for $6,975,000 financing from the Clean Water State Revolving Fund for the planning, design, and construction to improve street drainage in an area generally bounded by 1st St., Williams St., Little St., and Lincoln St. Relocated utilities as necessary to install the improvements. The storm sewer collection system will drain to a new water quality pond in the City of Mun Park. The new water quality pond will drain into the existing pond in Mun Park and then to Perry Creek which drains into the Brazos River.

Project ID #62830 a request from Eastland County Water Supply District, P.O. Box 16, Ranger, Texas 76470-0016 received on October 5, 2018, for $2,921,350 financing from the Drinking Water State Revolving Fund for the planning, design, and construction to complete source and treatment improvements to restore and maintain DBP compliance

Project ID #73823 a request from Greater Texoma Utility Authority Pottsboro, 5100 Airport Drive, Denison, Texas 75020-8448 received on October 5, 2018, for $9,640,000 financing from the Clean Water State Revolving Fund for the planning, design, acquisition, and construction of a wastewater treatment plant in the City of Pottsboro.

Project ID #62831 a request from Greater Texoma Utility Authority on behalf of the City of Whitewright, 5100 Airport Drive, Denison, Texas 75020-8448 received on October 5, 2018, for $6,350,000 financing from the Drinking Water State Revolving Fund for the planning, design, acquisition, and construction for a water distribution system improvement project for the City of Whitewright.

Project ID #62832 a request from the City of Roscoe, 115 Cypress Street, Roscoe, Texas 79545-0340 received on October 5, 2018, for $2,305,000 financing from the Drinking Water State Revolving Fund for the planning, design, acquisition, and construction for implementation of upsized water lines to ensure all Texas Commission on Environmental Quality regulations are met and to better serve customers that are connected to these water lines.

Project ID #62833 a request from the City of Rockdale, 505 West Cameron, Rockdale, Texas 76567-0586 received on October 5, 2018, for $48,690,000 financing from the Drinking Water State Revolving Fund for the planning, design, acquisition, and construction the improvements and rehabilitation of the City's water infrastructure, including improvements, repairs and upgrades to the City's water treatment plant, pump stations, tanks, meters, and water lines.

Project ID #736824 a request from the City of Port Arthur, 444 4th Street, Port Arthur, Texas 77641-1089 received on October 5, 2018, for $56,311,000 financing from the Clean Water State Revolving Fund for the construction to the existing main wastewater treatment plant improvement project.

Project ID #73825 a request from the Orange County Water Control and Improvement District No. 1, 460 East Bolivar, Vidor, Texas 77662-5052 received on October 5, 2018, for $500,000 loan forgiveness financing from the Clean Water State Revolving Fund for the planning, design, and construction to replace infrastructure at the Lower Lift Station damaged by Hurricane Harvey flooding.

Project ID #62834 a request from the City of Paint Rock, P.O. Box 157, Paint Rock, Texas 76866-0157 received on October 5, 2018, for $300,000 financing from the Drinking Water State Revolving Fund for the planning, design, acquisition, and construction of a distribution line improvement project.

Project ID #62835 a request from the Alice Water Authority, 500 East Main Street, Alice, Texas 78333-3229 received on October 5, 2018, for $5,500,000 financing from the Drinking Water State Revolving Fund for the planning, design, and construction of a sustainable water resource project.

Project ID #10422 a request from the City of Iola, 23574 Brazos Avenue, Iola, Texas 77861 received on October 5, 2018, for $10,995,000 financing from the Economically Distressed Area Program for construction of a first-time sanitary sewer system project.

Project ID #62836 a request from the City of Ropesville, 107 Mail Street, Ropesville, Texas 79358-0096 received on October 5, 2018, for $1,257,500 financing from the Drinking Water State Revolving Fund for planning, design, acquisition, and construction for a water treatment or water purchase project.

Project ID #73827 a request from the City of Arlington, 101 West Abram Street, Arlington, Texas 76010-7102 received on October 5, 2018, for $5,074,568 financing from the Clean Water State Revolving Fund for construction to replace existing wastewater pipelines that have deteriorated.

Project ID #73828 a request from the City of Grand Prairie, 317 West College Street, Grand Prairie, Texas 75050-5636 received on October 5, 2018, for $3,370,800 financing from the Clean Water State Revolving Fund for replacement project to the City's wastewater mains.

Project ID #73829 a request from the Angelina and Neches River Authority, 210 East Lufkin Avenue, Lufkin, Texas 75901-0310 received on October 5, 2018, for $6,075,000 financing from the Clean Water State Revolving Fund to decommission existing Angelina County Fresh Water Supply District No. 1 wastewater treatment facility and transfer flow to the Angelina & Neches River Authority's North Angelina County Regional Wastewater Facility, install new and upgrade existing lift stations, forcemain, and upgrade existing for increased flow.

Project ID #62837 a request from Comanche County Water Supply Corporation, 800 South Texas Street, De Leon, Texas 76444 received on October 5, 2018, for $300,000 financing from the Drinking Water State Revolving Fund for the planning design, and construction to re-

place existing inline pump station located on SH 36 with a new 40,000 gallon GST and new pumps.

Project ID #62838 a request from Presidio County, 300 N. Highland Avenue, Marfa, Texas 79843-0606 received on October 5, 2018, for $300,000 financing from the Drinking Water State Revolving Fund for the planning, design, and construction to evaluate two wells separately to review arsenic levels. Absent any blending options the proposed project will evaluate, pilot and construct an arsenic removal treatment to meet primary drinking water standards, and complete an asset management plan.

Project ID #62839 a request from Ellinger Sewer and Water Supply Corporation, P.O. Box 130, Ellinger, Texas 78938-0130 received on October 5, 2018, for $300,000 financing from the Drinking Water State Revolving Fund for the planning, design, and construction for new ground storage tank and piping at existing water plant to replace existing standpipe.

Project ID #62840 a request from the City of Lyford, 13550 Main Avenue, Lyford, Texas 78569-0310 received on October 5, 2018, for $3,200,000 financing from the Drinking Water State Revolving Fund for the planning, design, and construction of a water distribution system improvement project.

Project ID #62841 a request from the City of Rhome, 105 West First, Rhome, Texas 76078-0228 received on October 5, 2018, for $850,000 financing from the Drinking Water State Revolving Fund for the planning, design, and construction for a new blending waterline to improve water quality at Well 6, looping deadend lines, and replacing deteriorated water lines

Project ID #62842 a request from the City of Garland, 2343 Forest Lane, Garland, Texas 75042 received on October 8, 2018, for $7,665,000 financing from the Drinking Water State Revolving Fund for the construction of meter replacement project.

Project ID #62843 a request from Parker County Special Utility District, 500 Brock Spur, Millsap, Texas 76066 received on October 9, 2018, for $15,080,000 financing from the Drinking Water State Revolving Fund for the planning, design, acquisition, and construction to complete critical operational and capacity improvements at their desalination wastewater treatment plant.

Project ID #10445 a request from North Alamo Water Supply Corporation, 420 South Doolittle Road, Edinburg, Texas 78542 received on October 10, 2018, for $15,854,000 financing of $4,565,000 in financing and $500,000 in principal forgiveness from the Clean Water State Revolving Fund, and $3,062,520 in grant funding from the Economically Distressed Areas Program for construction of a wastewater collection and treatment system to provide first-time wastewater service to ten unincorporated subdivisions north of the City of Weslaco.

TRD-201804789
Todd Chenoweth
General Counsel
Texas Water Development Board
Filed: November 6, 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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