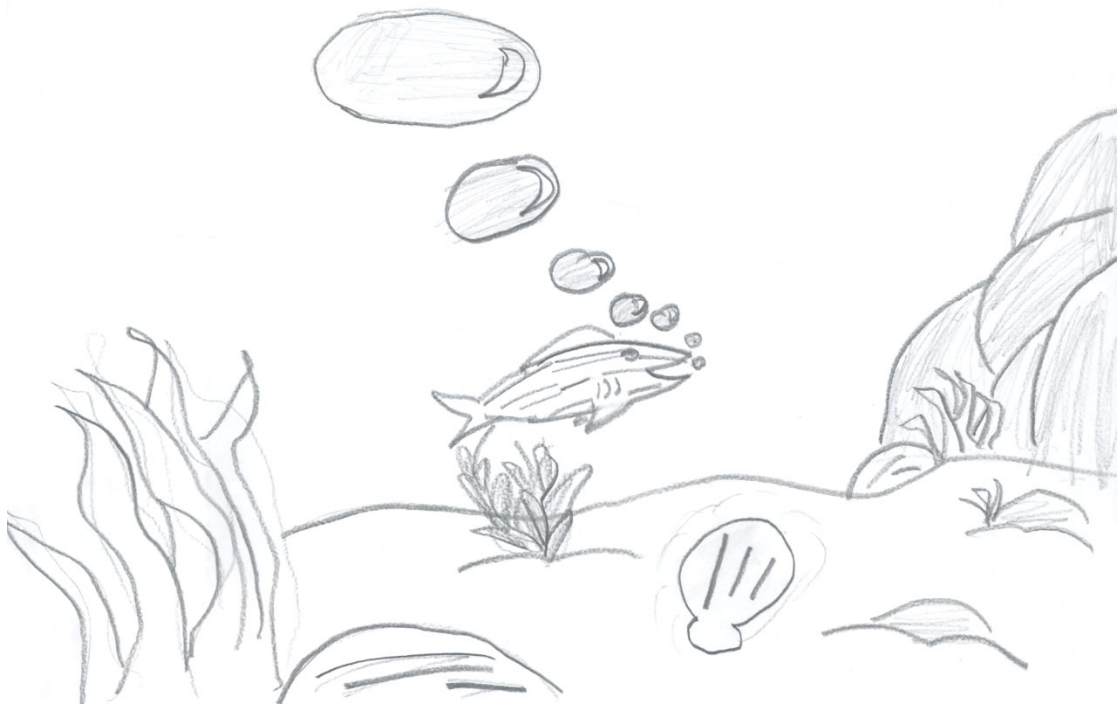

TEXAS REGISTER

Volume 44 Number 26

June 28, 2019

Pages 3193 - 3344



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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<http://www.sos.state.tx.us>
register@sos.texas.gov

Director - Robert Summers

Staff

Lauri Caperton
Cristina Jaime
Belinda Kirk
Jill S. Ledbetter
Cecilia Mena
Joy L. Morgan
Breanna Mutschler
Andrea Reyes
Barbara Strickland

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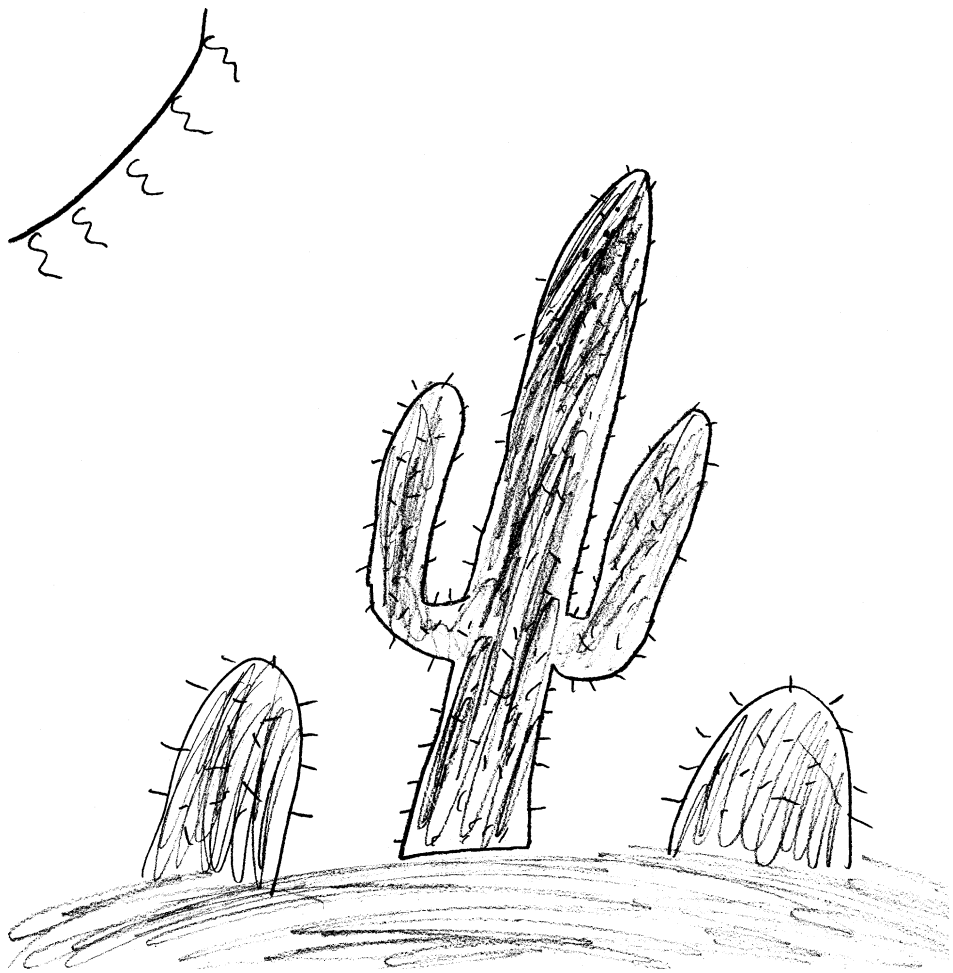
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THE GOVERNOR

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

Executive Order GA-06

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on August 23, 2017, as subsequently amended on August 26, August 27, August 28, and September 14, 2017, certifying that Hurricane Harvey posed a threat of imminent disaster for certain counties in the State of Texas; and

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

WHEREAS, recovery from the catastrophic damage caused by Hurricane Harvey continues for millions of Texans living in no fewer than sixty counties across the state; and

WHEREAS, the magnitude of what still must be rebuilt is reflected in the more than \$10 billion of federal funds that are newly or nearly available to Texas for areas impacted by Hurricane Harvey, including through the disaster aid bill signed by President Donald J. Trump on June 6, 2019; and

WHEREAS, a qualified workforce of licensed plumbers throughout the state, including from areas not directly affected by Hurricane Harvey, will be essential as those funds are being invested in crucial infrastructure, medical facilities, living facilities, and other construction projects; and

WHEREAS, Texas must also be ready for future disasters, by building sound infrastructure that can withstand major weather or other events and by ensuring that qualified workers stand ready to rebuild, and June 1, 2019, marked the beginning of the 2019 hurricane season; and

WHEREAS, the Texas State Board of Plumbing Examiners, whose mission is "to protect Texas citizens against the health and safety hazards that can result from improperly installed plumbing, gas, and medical gas systems," will continue to play an essential role in all these efforts by ensuring that the plumbers who rebuild Texas and prepare for future disasters do so in a manner that will safeguard public health, safety, and property; and

WHEREAS, Section 1301.003 of the Texas Occupations Code provides that the Board is to be abolished on September 1, 2019, along with expiration of the Plumbing License Law, Texas Occupations Code, Chapter 1301, because they were not continued in existence by the 86th Legislature pursuant to the Texas Sunset Act, Texas Government Code, Chapter 325; and

WHEREAS, abolition of the Board would threaten recovery efforts, diminish hurricane preparedness, and heighten the dangers I am responsible for meeting under the Texas Disaster Act of 1975, Texas Government Code, Chapter 418; and

WHEREAS, in Section 418.016(a) of the Texas Government Code, the legislature has empowered the governor to "suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business . . . if strict compliance with the provisions . . . would in any way prevent, hinder, or delay necessary action in coping with a disaster"; and

WHEREAS, the 86th Legislature further expanded the governor's authority in Senate Bill 285 by enacting Section 418.128(b) of the Texas Government Code, effective September 1, 2019, pursuant to which, "(n)otwithstanding any other law, the governor may, by executive order, take any action necessary to ensure each state agency . . . is able to respond to a hurricane"; and

WHEREAS, to fulfill the demands for rebuilding after Hurricane Harvey and keeping Texas prepared and able to recover from future disasters, it is necessary to continue the Board to perform its indispensable role in protecting Texans;

NOW, THEREFORE, by virtue of the power and authority vested in me by the Texas Constitution and the Texas Disaster Act of 1975, I do hereby suspend Section 1301.003 of the Texas Occupations Code to prevent the imminent abolition of the Texas State Board of Plumbing Examiners and expiration of the Plumbing License Law on September 1, 2019, and to delay that abolition and expiration until disaster needs subside or the 87th legislature addresses the matter. To facilitate the legislature's consideration of the issue, this suspension shall have the force and effect of law until May 31, 2021.

This executive order supersedes all previous orders on this matter that are in conflict or inconsistent with its terms, and this order shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding governor.

Given under my hand this the 13th day of June, 2019.

Greg Abbott, Governor

TRD-201901813



Proclamation 41-3629

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, Greg Abbott, Governor of Texas, do hereby certify that severe storms occurring on June 9, 2019, have caused widespread damage to the electrical infrastructure in North Texas.

Therefore, in accordance with the authority vested in me by Sections 418.016, 418.017, and 418.025 of the Texas Government Code, I do hereby declare a limited purpose disaster. Based on the existence of electrical infrastructure damage, I direct that all necessary measures, both public and private as authorized under Section 418.017, be implemented to restore electricity.

Pursuant to Section 418.016, I hereby suspend the statutes and regulations administered by the Texas Department of Motor Vehicles, to the extent necessary to facilitate the restoration of electricity in North Texas. The executive director of the Texas Department of Motor Vehicles is directed to impose all necessary and proper conditions and restrictions regarding this suspension and shall notify the Texas Department of Public Safety and the motor carrier industry of this suspension.

This suspension is in effect for 30 days or until terminated by the Office of the Governor.

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 10th day of June, 2019.

Greg Abbott, Governor

TRD-201901783



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-0291-KP

Requestor:

The Honorable Poncho Nevárez

Chair, Committee on Homeland Security and Public Safety

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: County authority and responsibility for stray livestock
(RQ-0291-KP)

Briefs requested by July 17, 2019

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

TRD-201901859

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: June 18, 2019



Opinions

Opinion No. KP-0257

Ms. Shelly Atteberry

Cooke County Auditor

Cooke County Courthouse

101 South Dixon Street

Gainesville, Texas 76240

Re: Whether a private attorney or collection agency that contracts with a county to collect delinquent amounts owed to county courts may charge defendants a fee for the use of credit cards (RQ-0261-KP)

S U M M A R Y

Section 604A.0021 of the Business and Commerce Code prohibits imposing a surcharge for the use of a credit card in certain instances. Although a recent judicial decision held section 604A.0021 unconstitutional as applied to specific facts, it remains enforceable in some con-

texts. But it does not apply to a county imposing a surcharge on a payee using a credit card for the payment of money owed to the county.

Section 103.0031 of the Code of Criminal Procedure authorizes a county to contract with a private attorney or a public or private vendor for the provision of collection services for fees. If a county is entitled to impose a surcharge fee for credit card use, a court would likely conclude that a private attorney or collections agency acting as agent for the county could collect that surcharge on behalf of the county when collecting other fees, taxes, or other charges.

Opinion No. KP-0258

Mr. Joe A. Garcia

Executive Director

Manufactured Housing Division

Texas Department of Housing and Community Affairs

Post Office Box 12489

Austin, Texas 78711-2489

Re: Whether an arbitration decision binds the Manufactured Housing Division of the Texas Department of Housing and Community Affairs with respect to payment amounts under the Manufactured Homeowner Consumer Claims Program (RQ-0262-KP)

S U M M A R Y

The Manufactured Housing Division of the Department of Housing and Community Affairs administers the Manufactured Homeowner Consumer Claims Program ("Program"), provided for in Occupations Code chapter 1201, which provides relief to certain consumers of a manufactured housing licensee. In establishing damages for the consumers, subsection 1201.405(e) provides that the director of the Program shall make an independent inquiry into the amount of damages actually incurred, "unless the damages have been previously established through a contested trial." A court would likely conclude that neither an arbitration nor a judicial confirmation of an arbitration judgment is a "contested trial" within the scope of subsection 1201.405(e).

Subsection 1201.404(a) limits payments from the Program to violations of specified rules or statutes. Even were a judicially confirmed arbitration award to constitute a contested trial under subsection 1201.405(e), an arbitration judgment cannot bind the Program for payment of a claim that is outside the statutory limits of the Program. However, such an award could serve as supporting evidence for the director to consider in determining actual damages for a claim within the scope of the Program.

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



TRD-201901858

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: June 18, 2019

PROPOSED RULES

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

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

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 101. GENERAL ADMINISTRATION

7 TAC §101.6

The Texas State Securities Board proposes an amendment to §101.6, concerning Historically Underutilized Business Program. The text of the proposed amendment is identical to the one published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 7991), which has expired and has been automatically withdrawn.

The amendment would update references to the Comptroller of Public Accounts' rules found at 34 TAC, Part 1 Comptroller of Public Accounts, Chapter 20 Statewide Procurement and Support Services, Subchapter D Socio-Economic Program, Division 1 Historically Underutilized Businesses, §§20.281 - 20.298. This amendment is necessary to reflect changes the Comptroller of Public Accounts made to 34 TAC §§20.281 - 20.298.

Derek Lauterjung, Director, Staff Services Division, has determined that for the first five-year period the proposed rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Lauterjung has also determined that for each year of the first five years the proposed rule is in effect, the public benefit expected as a result of adoption of the proposed amendment will be accurate and current information regarding the Board's participation in the Historically Underutilized Business Program. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Lauterjung has determined that for the first five-year period the proposed rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1 and Texas Government Code, §2161.003. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 2161.003 requires a state agency adopt the rules of the Comptroller of Public Accounts regarding Historically Underutilized Businesses under Government Code §2161.002 as its own.

The proposed amendment affects Texas Government Code, §2161.003.

§101.6. Historically Underutilized Business Program.

The State Securities Board adopts by reference the rules of the Comptroller of Public Accounts relating to the Historically Underutilized Business Program, contained in Title 34, Part 1, Chapter 20, Subchapter D [B], of the Texas Administrative Code.

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

Filed with the Office of the Secretary of State on June 14, 2019.

TRD-201901785

Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: July 28, 2019

For further information, please call: (512) 305-8303



CHAPTER 103. RULEMAKING PROCEDURE

7 TAC §103.5

The Texas State Securities Board proposes an amendment to §103.5, concerning Petitions, to add a cross-reference to §2001.021 of the Texas Government Code, which is implemented by this provision. The text of the proposed amendment is identical to the one published in the December 14, 2018, issue

of the *Texas Register* (43 TexReg 7991), which has expired and has been automatically withdrawn.

In connection with any proposed rulemaking (new or amendment), the Government Code requires the Agency to engage in certain analyses of the economic, fiscal, employment, and cost impact of the proposal. To help facilitate the Staff being able to compile this information in connection with rulemaking requested through the petition process, paragraph (5) would be added to the rule to collect that information, to the extent that it is available to the petitioner.

Travis J. Iles, Securities Commissioner; Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; Derek Lauterjung, Director, Staff Services Division; Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; and Joseph Rotunda, Director, Enforcement Division, have determined that for the first five-year period the proposed rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Iles, Mr. Edgar, Mr. Green, Mr. Lauterjung, Ms. Diaz, Mr. Yarroll, and Mr. Rotunda have determined that for each year of the first five years the proposed rule is in effect the public benefit expected as a result of the adoption of the proposed amendment will be that the public will have accurate information regarding the petition process and the petitioner will be alerted of the cost information that the Agency will need to go forward with proposing a new rule or rule change. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Iles, Mr. Edgar, Mr. Green, Mr. Lauterjung, Ms. Diaz, Mr. Yarroll, and Mr. Rotunda have determined that for the first five-year period the proposed rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1, and Texas Government Code, §2001.021. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms;

classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 2001.021 requires state agencies to adopt rules prescribing the form for a rulemaking petition and the procedure for its submission, consideration, and disposition.

The proposed amendment affects Texas Civil Statutes, Articles 581-2-5, 581-4.N, 581-4.P, 581-5.T, 581-7.A, 581-8, 581-12.C, 581-12-1.B, 581-13.D, 581-19.B, 581-28.A, 581-28.B, 581-28-1.B, 581-28-1.D, 581-42.A, 581-42.B, 581-44, 581-45.N, and Texas Government Code §2001.021.

§103.5. Petitions.

Pursuant to Texas Government Code, §2001.021, any [Any] interested person may petition the Commissioner requesting the adoption of a rule, and within 60 days the Commissioner will initiate rulemaking proceedings, or deny the petition in writing, stating his or her reasons therefor. The petition must set forth the following:

(1) The text of the proposed rule and a brief explanation thereof.

(2) A statement of the statutory or other authority under which the rule is proposed.

(3) A statement of the particular statute or statutes and sections thereof to which the proposed rule relates.

(4) A concise statement of the principal reasons for adoption of the rule; and the date submitted and by whom.

(5) If available to the petitioner(s), the following analyses related to the adoption of the rule:

(A) an analysis supporting the draft government growth impact statement required by Texas Government Code, §2001.0221;

(B) an analysis supporting the economic impact statement required by Texas Government Code, §2006.002;

(C) an analysis supporting the regulatory flexibility analysis required by Texas Government Code, §2006.002;

(D) an analysis supporting the takings impact assessment required by Texas Government Code, §2007.043;

(E) an analysis supporting the local employment impact statement required by Texas Government Code, §2001.024(a)(6);

(F) an analysis supporting the cost-benefit analysis required by Texas Government Code, §2001.024(a)(5);

(G) an analysis supporting the fiscal note required by Texas Government Code, §2001.024(a)(4); and

(H) if Texas Government Code, §2001.0045(b) would apply to the adopted rule:

(i) identify the proposed repeal or amendment that is being suggested to offset costs of the adopted rule; and

(ii) explain the reasoning behind the estimate of the costs that would be offset by the proposed repeal or amendment.

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

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Travis J. Iles
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8303



CHAPTER 104. PROCEDURE FOR REVIEW OF APPLICATIONS

7 TAC §104.5

The Texas State Securities Board proposes an amendment to §104.5, concerning Registration of Dealers and Investment Advisers--Review of Applications, to recognize the recent reorganization of the Registration Division and to more closely mirror the review process in §104.4 for securities registration. The text of the proposed amendment is identical to the one published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 7992), which has expired and has been automatically withdrawn.

Clint Edgar, Deputy Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; have determined that for the first five-year period the proposed rule is in effect there will be no foreseeable fiscal implications for the state or local government as a result of enforcing or administering the proposed rule.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll also have determined that for each year of the first five years the proposed rule is in effect the public benefit expected as a result of adoption of the proposed rule will be to accurately reflect the review process for registrations. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have determined that for the first five-year period the proposed rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the proposed rule's applicability; and it does not positively or negatively affect the state's economy. The rule as proposed does not create a new regulation, and it does not expand, limit or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Comments should be sent to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1 and Texas Government Code §2005.003. Section 28-1

provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 2005.003 requires state agencies issuing permits to adopt procedural rules for processing permit applications and issuing permits.

The proposal affects Texas Civil Statutes, Articles 581-13 and 581-15, and Texas Government Code §2005.003.

§104.5. Registration of Dealers and Investment Advisers--Review of Applications.

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

(e) Within 14 days of the division staff's recommendation, any remaining issues shall be addressed by the Director (or an Assistant Director) of the Registration Division and the Deputy Commissioner. Additional comments, if any, raised at this stage of review must be communicated to the applicant immediately.

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

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

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State Securities Board

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CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §113.14

The Texas State Securities Board proposes an amendment to §113.14, concerning Statements of Policy. The amendment would adopt by reference certain updated North American Securities Administrators Association ("NASAA") statements of policy ("SOPs") that were amended by NASAA on May 6, 2018. The amendment would also correct the placement of an apostrophe in subsection (b)(6). The text of the proposed amendment is identical to the one published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 7993), which has expired and has been automatically withdrawn, except that a slight change to the name of the underwriting Statement of Policy (SOP) would also be made.

Clint Edgar, Deputy Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; have determined that for the first five-year period the proposed rule is in effect there will be no foreseeable fiscal implications for the state or local government as a result of enforcing or administering the proposed rule.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll also have determined that for each year of the first five years the proposed rule is in effect the public benefit expected as a result of adoption of the proposed amendment will be to increase uniformity with other states

when reviewing applications to register securities. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have determined that for the first five-year period the proposed rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. The rule as proposed does not create a new regulation, and it does not expand, limit or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Comments should be sent to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Article 581-7.

§113.14. *Statements of Policy.*

(a) (No change.)

(b) In order to promote uniform regulation, the following NASAA Statements of Policy shall apply to the registration of securities:

(1) Corporate Securities Definitions, as amended by NASAA on May 6, 2018 [~~March 31, 2008~~];

(2) (No change.)

(3) Loans and Other Material Affiliated Transactions, as amended by NASAA on May 6, 2018 [~~March 31, 2008~~];

(4) - (5) (No change.)

(6) Promoters' [~~Promoter's~~] Equity Investment, as amended by NASAA on September 11, 2016;

(7) - (8) (No change.)

(9) Underwriting and Selling Expenses, Underwriter's Warrants, [~~Selling Expenses,~~] and Selling Security Holders, as amended by NASAA on May 6, 2018 [~~March 31, 2008~~];

(10) Unsound Financial Condition, as amended by NASAA on May 6, 2018 [~~March 31, 2008~~];

(11) - (21) (No change.)

(c) (No change.)

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

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Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



CHAPTER 133. FORMS

7 TAC §133.17

The Texas State Securities Board proposes the repeal of §133.17, which adopts by reference the Crowdfunding Exemption Notice form used to claim the exemption in §139.25, which is concurrently being proposed for repeal. The form and exemption are being repealed because they have been replaced with a new, more-flexible offering exemption and form to coordinate with the recently-adopted SEC Rule 147A. The proposed repeal is identical to the one published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 7994), which has expired and has been automatically withdrawn.

Clint Edgar, Deputy Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; have determined that for the first five-year period the proposed repeal is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed repeal.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll also have determined that for each year of the first five years the proposed repeal is in effect the public benefit expected as a result of adoption of the proposed repeal will be that a form that is no longer needed will be eliminated. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed repeal will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have determined that for the first five-year period the proposed repeal of the rule adopting by reference the form is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; it does not positively or negatively affect the state's economy; it does not create a new regulation; and it does not limit or expand an existing regulation. The proposal repeals an existing form that is used to claim an exemption that has also been proposed for repeal.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed repeal in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The repeal is proposed under Texas Civil Statutes, Article 581-5.T and Article 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeal affects Texas Civil Statutes, Article 581-7.

§133.17. Crowdfunding Exemption Notice.

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 June 14, 2019.

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Travis J. Iles

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.25

The Texas State Securities Board proposes the repeal of §139.25, concerning Intrastate Crowdfunding Exemption. The exemption is being repealed because it has been replaced with a new, more-flexible offering exemption (§139.26) to coordinate with the recently-adopted SEC Rule 147A. The proposed repeal is identical to the one published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 7995), which has expired and has been automatically withdrawn.

Clint Edgar, Deputy Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; have determined that for the first five-year period the proposed repeal is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed repeal.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll also have determined that for each year of the first five years the proposed repeal is in effect the public benefit expected as a result of the adoption of the proposed repeal will be that an exemption that is no longer needed will be eliminated. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed repeal will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is

not required. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have determined that for the first five-year period the proposed repeal of the rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; it does not positively or negatively affect the state's economy; it does not create a new regulation; and it does not limit or expand an existing regulation. The proposed repeal repeals an existing regulation that has been replaced with a new, more-flexible intrastate offering exemption.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed repeal in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The repeal is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeal affects Texas Civil Statutes, Articles 581-7 and 581-12.

§139.25. Intrastate Crowdfunding Exemption.

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

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Travis J. Iles

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 6. STATE RECORDS

SUBCHAPTER A. RECORDS RETENTION SCHEDULING

13 TAC §6.10

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 13 TAC §6.10 is not included in the print version of the Texas Register. The figure is available in the on-line version of the June 28, 2019, issue of the Texas Register.)

The Texas State Library and Archives Commission (Commission) proposes amendments to 13 Texas Administrative Code §6.10, which establishes minimum records retention requirements for universities and institutions of higher-education. These rules are necessary to improve retention of public records.

SUMMARY. The proposed amendments to §6.10 (b) adopt the University Records Retention Schedule (URRS) as an administrative rule of the Commission. This retention schedule indicates minimum length of time records series must be retained by a public university or institution of higher education in the State of Texas before destruction or archival preservation. The URRS does not take the place of a university's retention schedule but is to be used as a reference resource by the university in creating and updating its schedule. Additionally, the URRS does not replace the Texas State Records Retention Schedule (RRS). Both the URRS and RRS should be used by universities when developing their own schedule for approval by TSLAC. Records series listed on the URRS are those that are commonly found in most public universities. The retention periods given in the URRS are required minimums. TSLAC also recommends them as appropriate maximum retention periods.

FISCAL NOTE. Craig Kelso, Director, State & Local Records Management Division, has determined that for each of the first five-years the proposed amendments are in effect, there may be an additional estimated cost to the state expected as a result of enforcing or administering the rule. Although minimal fiscal impact is anticipated for most institutions, the rule may incur records storage and maintenance costs for institutions keeping the state records for the prescribed minimum retention periods. However, Mr. Kelso does not anticipate either a loss of, or an increase in, revenue to state or local governments as a result of enforcing or administering the rule.

PUBLIC BENEFIT/COST NOTE. Mr. Kelso has also determined that for the first five-year period the amended rules are in effect, the public benefit will be that the amended schedules will help universities and institutions of higher education better manage, retain, and increase access to public records.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT. The Commission has determined that the proposed amendments do not require an environmental impact analysis because these amendments are not major environmental rules under Texas Government Code §2001.0225.

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

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

GOVERNMENT GROWTH IMPACT STATEMENT. Commission staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specific in Texas Government Code §2006.0221. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be directed to Sarah Jacobson, Manager, Records Management Assistance, via email sjacobson@tsl.texas.gov, or mail, P.O. Box 12927, Austin, Texas 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. The amended section is proposed under Government Code §441.185(f) which grants authority to the Texas State Library and Archives Commission to prescribe a minimum retention period for any state record unless a minimum retention period for the record is prescribed by another federal or state law, regulation, or rule of court.

CROSS REFERENCE TO STATUTE. The amended and new rules are proposed under Texas Government Code §441.185(f) which grants authority to the Texas State Library and Archives Commission to prescribe a minimum retention period for any state record unless a minimum retention period for the record is prescribed by another federal or state law, regulation, or rule of court.

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

§6.10. Texas State Records Retention Schedule.

(a) A record listed in the Texas State Records Retention Schedule (Revised 4th Edition) must be retained for the minimum retention period indicated by any state agency that maintains a record of the type described.

Figure: 13 TAC §6.10(a) (No change.)

(b) A record listed in the University Records Retention Schedule must be retained for the minimum retention period indicated by any university or institution of higher-education.

Figure: 13 TAC §6.10(b)

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

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TRD-201901848

Sarah Jacobson

Manager, Records Management Assistance

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5449



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §26.409

The Public Utility Commission of Texas (commission) proposes new rule 16 Texas Administrative Code (TAC) §26.409, relating to the review of Texas Universal Service Fund (TUSF) support received by competitive Eligible Telecommunications Providers (ETPs). Senate Bill 1476 of the 85th Legislature, Regular Session (2017), amended Public Utility Regulatory Act (PURA) §56.023(p) and (r). Under PURA §56.023(p), in an exchange where an incumbent local exchange company or cooperative is ineligible for TUSF support under a plan established by PURA §56.021(1), a competitive ETP will continue receiving TUSF support until the commission determines that support should be discontinued by PURA §56.023(r). PURA §56.023(r) directs the commission to review the per-line support amounts of a competitive ETP in an exchange where the number of access lines served by competitive ETPs has decreased by at least 50% from the number of access lines served by competitive ETPs in that exchange on December 31, 2016 and determine whether TUSF support should be eliminated for that exchange. The purpose of this new rule is to establish the criteria and process for determining whether TUSF support should be eliminated under the provisions of PURA §56.023(p) and (r).

Growth Impact Statement

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

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

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

(4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

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

(6) the proposed rule will not expand an existing regulation;

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

Mariah Benson, Economist, has determined that for the first five year period the proposed section is in effect, there will be no fiscal implications for the state or for units of local government by Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mariah Benson, Economist, has also determined that for each year of the first five years the proposed section is in effect, the anticipated public benefits and costs expected as a result of the adoption of the proposed new rule will have little to no impact under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the Public Utility Commission is expressly excluded by subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking, if requested in accordance with Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 20 days after publication.

Public Comments

Comments on the proposed new rule may be filed with the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, Texas 78711-3326, within 20 days after publication. Sixteen copies of comments

to the proposed new rule are required to be filed by 16 TAC §22.71(c). Reply comments are not requested at this time. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to project number 47668.

Statutory Authority

This new rule is proposed under PURA §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and PURA §56.023(r), which directs the commission to adopt rules to establish the criteria to determine whether the TUSF support for certain competitive ETPs should be eliminated.

Cross reference to statutes: Public Utility Regulatory Act §§14.002 and 56.023.

§26.409. Review of Texas Universal Service Fund Support Received by Competitive Eligible Telecommunications Providers.

(a) Purpose. This section implements PURA §56.023(p) and (r) and establishes the criteria and process for determining whether Texas Universal Service Fund (TUSF) support under 16 TAC §26.403 to a competitive Eligible Telecommunications Provider (ETP) should be eliminated.

(b) Application. This section applies to exchanges in which an incumbent local exchange company or cooperative is ineligible for support under PURA §56.021(1) and a competitive ETP receives TUSF support under 16 TAC §26.403.

(c) Commission review.

(1) The commission must review the per-line TUSF support amount for each exchange identified by subsection (d)(1)(B) of this section to determine whether support should be eliminated. The first review of an exchange must be completed not later than the end of the year following the year in which the exchange was reported under subsection (d)(1)(B) of this section.

(2) The commission must base its decision on the following criteria:

(A) The total number of access lines in the exchange served by competitive ETPs receiving TUSF support;

(B) The number of competitors providing comparable service in the exchange; and

(C) Whether continuing the TUSF support is in the public interest.

(d) Identification of exchanges for review.

(1) No later than April 30 of each year, for each exchange described in subsection (b) of this section, commission staff must report:

(A) The number of access lines served by competitive ETPs on December 31 of the previous year; and

(B) The exchanges in which the number of access lines served by competitive ETPs has decreased by at least 50% from the number of access lines that were served in that exchange by competitive ETPs on December 31, 2016.

(2) Commission staff must file its report in central records under a control number designated for that purpose.

(e) Initiation of proceeding. For each exchange identified under subsection (d)(1)(B) of this section, commission staff will file an application to initiate a proceeding to review the per-line TUSF support amount for that exchange.

(1) The application must include a memorandum, supported by an affidavit, describing commission staff's determination that the number of access lines served by competitive ETPs in the exchange decreased by at least 50% compared to the number of access lines served by competitive ETPs in that exchange on December 31, 2016.

(2) Commission staff must serve a copy of the application to the competitive ETPs receiving TUSF support in the exchange by email, regular mail, and certified mail.

(f) Competitive ETP's response to commission staff's application.

(1) A competitive ETP serving access lines in an exchange identified under subsection (d)(1)(B) of this section may respond to commission staff's application no later than 20 days after the application is filed.

(2) A competitive ETP's response must address the criteria listed in subsection (c) of this section.

(3) The response must be in writing, supported by affidavit, and filed with the commission as prescribed by 16 TAC §22.71.

(g) Commission staff's recommendation. In accordance with the schedule established by the presiding officer, but no earlier than 30 days after filing the application described in subsection (e) of this section, commission staff will file a recommendation, supported by affidavit, on whether the commission should eliminate TUSF support in the identified exchange. In its recommendation, commission staff must address the criteria listed in subsection (c) of this section.

(h) Competitive ETP's response to commission staff's recommendation. No later than 10 days after commission staff files its recommendation, a competitive ETP may file a response to commission staff's recommendation. The response must state whether the competitive ETP agrees or disagrees with commission staff's recommendation and may include a request for a hearing.

(i) Commission determination.

(1) If a competitive ETP does not request a hearing within the time prescribed by subsection (h) of this section, the commission will determine whether to eliminate TUSF support for the exchange based on the filings submitted by commission staff and the competitive ETPs.

(2) If a competitive ETP requests a hearing, the proceeding will be conducted as a contested case.

(j) Further review. If the commission does not eliminate TUSF support for an exchange after a review conducted under subsections (c) - (i) of this section, the commission must review the TUSF per-line support amount for that exchange at least every three years.

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 June 13, 2019.
TRD-201901784



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS AND STATE LAW

19 TAC §89.1094

The Texas Education Agency (TEA) proposes new §89.1094, concerning special education services. The proposed new section would establish provisions for TEA's approval and monitoring of off-campus programs for students receiving special education and related services.

BACKGROUND INFORMATION AND JUSTIFICATION: Proposed new 19 TAC §89.1094 would establish the process for placing a student in an off-campus setting or program to fulfill the requirements under the Individuals with Disabilities Education Act (IDEA) to provide a continuum of alternative placements, ensure monitoring of placements to maintain the provision of a free appropriate public education, ensure state monitoring of implementation of IDEA, and ensure appropriateness of state and federal funding for students placed in off-campus programs. The proposed new rule would apply to all non-district facilities where special education services are provided.

Specifically, the proposed new rule would provide procedures for placement of students in off-campus programs that are on approved provider lists, programs not on the approved provider list, and programs in which a student is ordered to be placed by a special education hearing officer or judge.

The proposed new rule would also establish a process for the approval and renewal of off-campus programs, identify the period of approval and renewal, and establish funding procedures and parameters for students placed in such settings.

FISCAL IMPACT: Matthew Montaño, deputy commissioner for special populations and monitoring, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic

impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation that codifies current agency procedures related to the placement of a child with a disability in an off-campus program. The new rule would expand the agency's authority by defining "off-campus program provider" to include county systems, regional education service centers, non-public day schools, or any other public or private entity with which a school district enters into a contract for the provision of special education services in a facility other than a school district campus operated by a school district.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Montaño has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be increasing the accountability of school districts that contract for the placement of children with disabilities in off-campus programs that are not operated by the school district. It would also provide for increased monitoring and oversight of off-campus programs through the approval process articulated in the proposed new rule. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have a data and reporting impact. School districts would be required to submit documentation for contracting for educational purposes along with student-level documentation (the student's individualized education program) to evidence the need for the contract for services and other associated verification documents in compliance with the proposed new rule. These data collections already occur for the vast majority of students in off-campus programs, specifically nonpublic day programs. The proposed new rule would expand the data collection to include any other public or private entity with which a school district enters into a contract under Texas Education Code, §11.157, for the provision of special education services in a facility not operated by the school district.

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

PUBLIC COMMENTS: The public comment period on the proposal begins June 28, 2019, and ends July 29, 2019. Public hearings to solicit testimony and input on the proposal will be held at 1:00 p.m. on July 15, 2019, and on July 18, 2019, in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Anyone wishing to testify at one of the hearings must sign in between 12:45 p.m. and 1:30 p.m. on the day of the respective hearing. The hearing will conclude once all who have signed in have been given the opportunity to comment. Due to construction work around the William B. Travis Building, parking for persons with physical disabilities is limited, but spaces are available in Garage R, located on the block directly east of the William B. Travis Building, on every level nearest to the elevators. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §29.001, which requires the state to have a statewide design, consistent with federal law, for the delivery of services to children with disabilities in the state; 34 Code of Federal Regulations (CFR), §300.115, which requires local education agencies (LEAs) to have available a continuum of alternative placements for students with disabilities; 34 CFR, §300.146 and §300.147, which require the state to monitor and ensure that students placed in or referred to a private school or facility by an LEA receive a free appropriate public education; and 34 CFR, §300.600, which gives the state general supervisory authority to monitor the implementation of the Individuals with Disabilities Education Act, Part B.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §29.001, and 34 Code of Federal Regulations, §§300.115, 300.146, 300.147, and 300.600.

§89.1094. Students Receiving Special Education and Related Services in an Off-Campus Program.

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

(1) School district--The definition of a school district includes independent school districts established under Texas Education Code (TEC), Chapter 11, Subchapters A-F, and open-enrollment charter schools established under TEC, Chapter 12, Subchapter D.

(2) Off-campus program--An off-campus program includes special education and related services provided during school hours in a facility other than a school district campus.

(3) Off-campus program provider--An off-campus program provider is an entity that provides the services identified in subsection (a)(2) of this section and includes:

(A) a county system operating under application of former law as provided in TEC, §11.301;

(B) a regional education service center established under TEC, Chapter 8;

(C) a nonpublic day school; or

(D) any other public or private entity with which a school district enters into a contract under TEC, §11.157, for the

provision of special education services in a facility other than a school district campus operated by a school district.

(b) Off-campus program placement. A school district may contract with an off-campus program provider to provide some or all of the special education and related services to a student in accordance with the requirements in this section.

(1) Before the school district places a student with a disability in, or refers a student to, an off-campus program, the district shall initiate and conduct an onsite review to ensure that the off-campus program is appropriate for meeting the student's educational needs.

(2) Before the school district places a student with a disability in, or refers a student to, an off-campus program, the district shall initiate and conduct a meeting of the student's admission, review, and dismissal (ARD) committee to develop an individualized education program (IEP) for the student in accordance with 34 Code of Federal Regulations (CFR), §§300.320-300.325, state statutes, and commissioner of education rules in Chapter 89 of this title (relating to Commissioner's Rules Concerning Special Education Services).

(3) The appropriateness of the off-campus program for each student placed shall be documented in the IEP annually. The student's ARD committee may only recommend an off-campus program placement for a student if the committee determines that the nature and severity of the student's disability and special education needs are such that the student cannot be satisfactorily educated in the school district.

(A) The student's IEP must list which services the school district is unable to provide and which services the facility will provide.

(B) The ARD committee shall establish, in writing, criteria and estimated timelines for the student's return to the school and document this information in the IEP.

(C) The school district shall make two on-site visits annually, one announced and one unannounced, to:

(i) verify that the off-campus program can, and will, provide the services listed in the student's IEP that the off-campus program has agreed to provide to the student;

(ii) obtain written verification that the facility meets minimum standards for health and safety and holds applicable local and state accreditation and permit requirements; and

(iii) verify the educational program provided at the off-campus program facility is the least restrictive environment for the student.

(4) The placement of more than one student in the same off-campus program facility may be considered in the same on-site visit to a facility. However, the IEP of each student must be individually reviewed, and a determination of appropriateness of placement and services must be made for each student.

(c) Notification. Within 30 calendar days from an ARD committee's decision to place a student in an off-campus program, a school district must electronically submit to the Texas Education Agency (TEA) notice of, and information regarding, the placement in accordance with submission procedures specified by the TEA.

(1) If the off-campus program is on the commissioner's list of approved off-campus programs, the TEA will review the student's IEP and placement as required by 34 CFR, §300.120, and, in the case of a placement in or referral to a private school or facility, 34 CFR, §300.146. After review, the TEA will notify the school district whether

federal or state funds for the off-campus program placement are approved. If the TEA does not approve the use of funds, it will notify the school district of the basis for the non-approval.

(2) If the off-campus program is not on the commissioner's list of approved off-campus programs, the TEA will begin the approval procedures described in subsection (d) of this section. School districts must ensure there is no delay in implementing a child's IEP in accordance with 34 CFR, §300.103(c).

(3) If an off-campus program placement is ordered by a special education hearing officer or court of competent jurisdiction, the school district must notify the TEA of the order within 30 calendar days. The off-campus program serving the student is not required to go through the approval procedures described in subsection (d) of this section for the ordered placement. If, however, the school district or other school districts intend to place other students in the off-campus program, the off-campus program will be required to go through the approval procedures to be included on the commissioner's list of approved off-campus programs.

(d) Approval of the off-campus program. Off-campus programs must have their educational programs approved for contracting purposes by the commissioner.

(1) For a program to be approved, the school district must electronically submit to the TEA notice of, and information regarding, the placement in accordance with submission procedures specified by the TEA. The TEA shall begin approval procedures and conduct an on-site visit to the facility within 30 calendar days after the TEA has been notified by the school district. Initial approval of the off-campus program shall be for one calendar year.

(2) The off-campus program may be approved only after, at minimum, a programmatic evaluation of personnel qualifications, adequacy of physical plant and equipment, and curriculum content.

(3) The commissioner shall renew approvals and issue new approvals only for those facilities that have a contract already in place with a school district for the placement of one or more students or that have a pending request from a school district. This approval does not apply to facilities that only provide related services. Nor does it apply to facilities when the school district, within which the facility is located, provides the educational program. Re-approval of the off-campus program may be for one, two, or three years at the TEA's discretion.

(e) Funding procedures and other requirements. The cost of off-campus program placements will be funded according to TEC, §42.151 (Special Education), and §89.63(e) of this title (relating to Instructional Arrangements and Settings).

(1) Contracts between school districts and approved off-campus programs must not exceed a school district's fiscal year and shall not begin prior to July 1 of the contracted fiscal year.

(2) Amendments to a contract must be electronically submitted to the TEA in accordance with submission procedures specified by the TEA no later than 30 calendar days from the change in placement or services within the school district's fiscal year.

(3) If a student who is placed in an off-campus program by a school district changes his or her residence to another Texas school district during the school year, the school district must notify the TEA within 10 calendar days of the date on which the school district ceased contracting with the off-campus program for the student's placement. The student's new school district must meet the requirements of 34 CFR, §300.323(e), by providing comparable services to those described in the student's IEP from the previous school district until the new school district either adopts the student's IEP from the previous

school district or develops, adopts, and implements a new IEP. The new school district must comply with all procedures described in this section for continued or new off-campus program placement.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION

STATUS, STANDARDS, AND SANCTIONS

DIVISION 1. STATUS, STANDARDS, AND SANCTIONS

19 TAC §97.1051, §97.1060

The Texas Education Agency (TEA) proposes an amendment to §97.1051 and new §97.1060, concerning accreditation status, standards, and sanctions. The proposed amendment to §97.1051 would expand the definition for *campus turnaround*, remove the definition for *professional service provider*, and add definitions for *chain of unacceptable performance ratings* and *intervention pause*. Proposed new §97.1060 would implement and clarify the interventions that will result from an assignment of a "D" rating to a public school in accordance with statutory provisions.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 97.1051 establishes the definitions used throughout the rules implementing interventions and sanctions in Chapter 97, Subchapter EE. The proposed amendment would modify existing definitions and add new definitions to ensure clarity when implementing statutory requirements. Specifically, the following changes would be made. The definition of *campus turnaround* in paragraph (4) provides references to various ratings that constitute an unacceptable performance rating. The proposed amendment would add a rating of needs improvement in accordance with proposed new §97.1060. The definition of *professional service provider* in paragraph (10) would be removed because the new Effective Schools Framework does not utilize a professional service provider and the definition is no longer necessary. New paragraph (12) would be added to provide a definition of *chain of unacceptable performance ratings* since different interventions are required after certain numbers of consecutive unacceptable performance ratings. New paragraph (13) would be added to define *intervention pause* as one that continues interventions from the prior year but does not increase or break the chain of consecutive unacceptable performance ratings.

Proposed new §97.1060 would provide for implementation of the needs improvement ("D") rating established under Texas Education Code (TEC), Chapter 39.

Proposed new subsection (a) would provide clarification regarding an initial and subsequent assignment of needs improvement as statute treats the consequences of a "D" rating differently depending on whether it is the first assignment after receiving a "C" rating or higher or a subsequent assignment. A first assignment requires a targeted improvement plan, while a subsequent assignment requires interventions based on an increased chain of consecutive unacceptable performance.

Proposed new subsection (b) would implement the statutory provision requiring a school district or campus that receives any assignment of a "D" rating, whether in a domain or overall, to implement a targeted improvement plan. The proposed new rule would require these schools to comply with 19 TAC §97.1061(a)-(d), which implements targeted improvement plans that include the assignment of campus intervention teams, campus leadership teams, and root cause analysis.

Proposed new subsection (c) would make clear than an initial "D" rating (the first "D" rating since receiving a rating of "C" or higher) that occurs the year following the receipt of a "C" or higher rating does not constitute unacceptable performance. This provision would implement the statutory provisions that treat a "D" rating as acceptable performance unless, per TEC, §39.101, it comes after the assignment of a previous "D" or "F" rating.

Proposed new subsection (d) would implement a pause of intervention when the initial "D" rating (the first "D" rating since receiving a rating of "C" or higher) occurs the year following the receipt of an "F" rating. The pause of intervention does not count toward consecutive years of unacceptable performance but does not break the count of consecutive years of unacceptable performance. This provision would implement the statutory provisions that treat a "D" rating as acceptable performance unless, per TEC, §39.101, it comes after the assignment of a previous "D" or "F" rating.

Proposed new subsection (e) would make clear that subsequent assignments of a "D" rating constitute unacceptable performance and are included in the chain of unacceptable performance. This provision would implement the statutory provisions that require interventions for additional "D" ratings after an initial assignment of a "D" rating.

Proposed new subsection (f) would itemize the campus-level interventions that could be applied to a school district that is assigned a "D" rating after the initial assignment of a "D" rating. In accordance with statute, campus-level interventions may be applied to a school district when the intervention, based on the years of consecutive unacceptable performance, is due to the assignment of a "D" rating.

Proposed new subsection (g) would make clear that the campus-level intervention applied to a school district would be based on the years of consecutive performance of either an "F" or a "D" rating. This provision would implement the statutory provisions that require increased interventions based on consecutive years of unacceptable performance to account for both "D" and "F" ratings.

Proposed new subsection (h) would apply proposed new §97.1060 to campus performance with the 2018-2019 school year in accordance with statutory application of A-F ratings in the 2018-2019 school year.

FISCAL IMPACT: Tim Regal, associate commissioner for instructional support, has determined that for the first five-year period the proposal is in effect there are no additional costs to state

or local government, including school districts and open-enrollment charter schools, required to comply with the proposal beyond what is required by statute. TEC, §39.101(a)(1), requires a district or campus receiving its first overall or domain rating of "D" to develop a targeted improvement plan. In addition, TEC, §39.101(c), specifies that districts or campuses that are required to prepare a targeted improvement plan may be required to prepare a turnaround plan based on future ratings of "D" or "F." Districts may incur costs to prepare the targeted improvement plan or turnaround plan required by statute.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation. Proposed new §97.1060 would implement and clarify the interventions that will result from an assignment of a "D" rating to a public school in accordance with statutory provisions. The proposed rulemaking would also expand an existing regulation. In §97.1051, the definition for *campus turnaround* would be amended to include an additional performance rating, and definitions for *chain of unacceptable performance ratings* and *intervention pause* would be added. In addition, the proposed rulemaking would limit an existing regulation by removing the definition for *professional service provider* from §97.1051.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Regal has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring appropriate interventions and sanctions for school districts and campuses. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal

would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins June 28, 2019, and ends July 29, 2019. The public comment period on the proposal begins June 28, 2019, and ends July 29, 2019. A public hearing on the proposal will be held at 9:30 a.m. on July 15, 2019, in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Anyone wishing to testify at the hearing must sign in between 9:00 a.m. and 9:30 a.m. on the day of the hearing. The hearing will conclude once all who have signed in have been given the opportunity to comment. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment and new section are proposed under Texas Education Code (TEC), §39.001, which authorizes the commissioner to adopt rules necessary to administer TEC, Chapter 39; TEC, §39.054, which requires the commissioner to evaluate and assign ratings to public schools. The section defines a rating of "D" as "needs improvement" and includes a rating of "D" within the ratings that qualify as acceptable performance. TEC, §39.054(a-4), applies A-F performance ratings to campuses in the 2018-2019 school year; TEC, §39.101, which requires a public school assigned a "D" rating to implement a targeted improvement plan and prescribes interventions imposed under TEC, Chapter 39, Subchapter E, for those public schools. Once required to implement a targeted improvement plan due to the assignment of a "D" rating, TEC, §39.101, requires that interventions and sanctions that apply to an unacceptable rating apply to public schools that receive a subsequent "F" or "D" rating; TEC, §39A.115, which authorizes the commissioner to adopt rules to implement campus interventions, including the application of campus turnaround plans; TEC, §39A.251, which applies the interventions and sanctions to charters in the same manner as they apply to school districts and campuses; TEC, §39A.252, which requires the commissioner to adopt rules applying the interventions and sanctions to open-enrollment charter schools; and TEC, §39A.901, which requires the commissioner to annually review performance of public schools and determine the appropriate levels of sanctions or interventions. It prohibits the commissioner from raising the accreditation or performance rating unless the district has demonstrated improved student performance. It also requires the commissioner to increase the level of sanction or intervention due to lack of improvement.

CROSS REFERENCE TO STATUTE. The amendment and new section implement Texas Education Code, §§39.001, 39.054, 39.101, 39A.115, 39A.251, 39A.252, and 39A.901.

§97.1051. Definitions.

For purposes under Texas Education Code (TEC), Chapters 39 and 39A, and this subchapter, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise:

(1) Board of managers--A board appointed by the commissioner of education to serve as a governing body that must, if possible, include:

(A) community leaders;

(B) business representatives who have expertise in leadership; and

(C) individuals who have knowledge or expertise in the field of education.

(2) Board of trustees--The definition of this term includes a governing body of a charter holder as defined by TEC, §12.1012.

(3) Campus--An organizational unit operated by the school district that is eligible to receive a campus performance rating in the state accountability rating system under §97.1001 of this title (relating to Accountability Rating System), including a rating of Not Rated or Not Rated: Data Integrity Issues. The definition of this term includes a charter school campus as defined by §100.1001(3)(C) of this title (relating to Definitions).

(4) Campus turnaround--A comprehensive change in an academically unacceptable campus that produces significant and sustainable gains in achievement within two years. For the purposes of this subchapter [chapter], the term "academically unacceptable" performance means a rating of:

(A) Academically Unacceptable; [5]

(B) AEA: Academically Unacceptable; [5]

(C) Improvement Required; [5; ✕]

(D) Unacceptable Performance; [✕]

(E) Academically unacceptable as [otherwise] indicated in the applicable year's academic accountability manual; or [-]

(F) Needs improvement in accordance with §97.1060 of this title (relating to Considerations Regarding Needs Improvement Rating).

(5) Charter school--This term has the meaning assigned by §100.1001(3) of this title. References to a charter school in TEC, Chapters 39 and 39A, and rules adopted under it, shall mean either the board of trustees or the school district, as appropriate.

(6) Charter school site--This term has the meaning assigned by §100.1001(3)(D) of this title.

(7) District coordinator of school improvement (DCSI)--An employee of a school district in a leadership position in school improvement, in curriculum and instruction, or in another position with responsibility for student performance.

(8) Newspaper of general circulation--A newspaper, as defined in Texas Government Code, §2051.044, that has more than a minimum number of subscribers among a particular geographic region, that has a diverse subscribership, and that publishes some news items of general interest to the community.

(9) Person--This term has the meaning assigned by the Code Construction Act, Government Code, §311.005(2), and includes a school district.

[(10) Professional service provider (PSP)--An approved service provider who has been vetted through an application or a request for qualifications (RFQ) process to provide on-site technical assistance for underperforming schools and districts either by the Texas Education Agency (TEA) or the TEA's technical assistance provider.]

(10) [(H)] Root cause--The education-related factors resulting in a campus's low performance and lack of progress.

(11) ~~[(42)]~~ School district and district--The definition of these terms includes a charter operator, which is the same as a charter holder as defined by TEC, §12.1012.

(12) Chain of unacceptable performance ratings--A set of consecutive performance ratings that authorizes sanctions, interventions, or other actions.

(13) Intervention pause or pause of intervention--The result of a performance rating:

(A) where the Texas Education Agency does not pursue additional interventions or sanctions for the applicable school year but may continue interventions and sanctions from the prior year;

(B) that does not increase the count of consecutive years of unacceptable performance; and

(C) that does not break the chain of performance ratings.

§97.1060. *Considerations Regarding Needs Improvement Rating.*

(a) In this section:

(1) an initial assignment of a needs improvement ("D") rating means the first assignment of a "D" rating after the most recent assignment of "C" or higher rating; and

(2) a subsequent assignment of a "D" rating means an assignment of a "D" rating during any year after an initial assignment of a "D" rating where no intervening assignment of a "C" or higher rating occurs.

(b) A school district or campus assigned an initial "D" rating shall assign a campus or district intervention team and develop and implement a targeted improvement plan addressing campus-level or district-level needs and root cause analysis that is approved by the board of trustees and complies with the requirements of §97.1061(d) of this title (relating to Interventions and Sanctions for Campuses), except that the district is not required to submit the plan to the commissioner of education for approval. This subsection applies to an overall or domain "D" rating.

(c) An initial assignment of an overall "D" rating the year after receiving an overall rating of "C" or higher does not constitute unacceptable performance.

(d) An initial assignment of an overall "D" rating the year after receiving an overall rating of "F" shall constitute an intervention pause, except for implementing the requirements specified in subsection (b) of this section.

(e) Each subsequent assignment of an overall "D" rating shall constitute unacceptable performance and be included in a chain of unacceptable performance ratings.

(f) In addition to interventions authorized by other law, interventions and sanctions applicable for the year of unacceptable performance of a campus may be applied at the school district level if a needs improvement rating is the most recent performance rating assigned to the school district, including:

(1) ordering the development or updating of a targeted improvement plan;

(2) ordering the preparation and need for approval of a turnaround plan and its subsequent elements, from which the commissioner will issue modified timelines as necessary to implement the intervention;

(3) ordering alternative management at the school district level or at any campus;

(4) ordering closure and, if applicable, annexation of the school district or of any campus; and

(5) ordering a board of managers for the school district.

(g) The commissioner may pursue an intervention under subsection (f) of this section based on the number of consecutive years of unacceptable performance without regard to whether a previous year's associated intervention was ordered or required.

(h) This section applies to campus performance ratings assigned for the campus performance starting with the 2018-2019 school year.

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 June 17, 2019.

TRD-201901843

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: July 28, 2019

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

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.14

The Texas State Board of Pharmacy proposes a new rule §281.14, concerning Vendor Protest Procedures. The new rule, if adopted, establishes policy and procedures for resolving vendor protests relating to purchasing issues, as required by §2155.076 of the Government Code.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the proposed rule will be in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to provide consistent standards for filing and resolving a vendor protest. There is no anticipated impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. An economic impact statement and regulatory flexibility analysis is not required because the proposed rule will not have an adverse economic effect on Texas small businesses or rural communities.

For each year of the first five years the proposed rule will be in effect, Ms. Benz 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 the 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 create a new regulation;
- (6) The proposed rule does not limit or expand an existing regulation;
- (7) The proposed rule does increase the number of individuals subject to the rule's applicability; and
- (8) The proposed rule does not positively or adversely affect this state's economy.

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 31, 2019.

The new rule is proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the proposed rule: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.14. Vendor Protest Procedures.

(a) The purpose of this section is to establish procedures for resolving vendor protests relating to purchasing issues.

(b) A vendor who submitted a written response to a solicitation may file a protest with the executive director for actions taken by the board on the following:

(1) the solicitation documents or actions associated with the publication of solicitation documents;

(2) the evaluation or method of evaluation for a solicitation; or

(3) the award of a contract.

(c) Filing requirements.

(1) To be considered, a protest must be:

(A) in writing and contain:

(i) the specific rule, statute or regulation the protesting vendor alleges the solicitation, contract award, or tentative award violated;

(ii) a specific description of each action by the board that the protesting vendor alleges is a violation of the statutory or regulatory provision the protesting vendor identified in subparagraph (A)(i) of this paragraph;

(iii) a precise statement of the relevant facts including:

(I) sufficient documentation to establish that the protest has been timely filed;

(II) a description of the adverse impact to the board and the state; and

(III) a description of the resulting adverse impact to the protesting vendor;

(iv) a statement of the argument and authorities that the protesting vendor offers in support of the protest; and

(v) an explanation of the subsequent action the vendor is requesting;

(B) signed by an authorized representative and the signature notarized; and

(C) filed with the board in the time period specified in this section.

(2) To be considered timely, the protest must be filed:

(A) by the end of the posted solicitation period, if the protest concerns the solicitation documents or actions associated with the publication of solicitation documents;

(B) by the day of the award of a contract resulting from the solicitation, if the protest concerns the evaluation or method of evaluation for a solicitation; or

(C) no later than 10 days after the notice of award, if the protest concerns the award.

(d) Timeliness of Protest.

(1) If a timely protest of a solicitation or contract award is filed under this section, the executive director may delay the solicitation or award of the contract if the executive director makes a determination that the contract must be awarded without delay to protect the best interests of the state.

(2) A protest that is filed untimely under this section shall not be considered unless the executive director determines that good cause for delay is shown or that a protest raises issues that are significant to the agency's procurement practices or procedures in general.

(e) Authority of the Executive Director to Settle the Protest.

(1) Upon receipt of a protest, the executive director may dismiss the protest if it is not timely or does not meet the requirements of this section.

(2) The executive director shall have the authority to settle and resolve the protest. The executive director may solicit written responses to the protest from other interested parties.

(3) If the protest is not resolved through mutual agreement, the executive director shall issue a written determination responding to the protest.

(f) Appeal.

(1) If a protest is based on a solicitation or contract award, the protesting party may appeal a determination of a protest by the executive director to the general counsel. An appeal of the executive director's determination must be in writing and received not later than 10 days after the date the executive director sent written notice of the executive director's determination. The scope of the appeal shall be limited to review of the executive director's determination. The protesting party must mail or deliver to all other interested parties a copy of the appeal, which must contain a certified statement that such copies have been provided.

(2) The general counsel may refer the matter to the board for consideration or may issue a written decision that resolves the protest.

(3) An appeal that is not filed timely shall not be considered unless good cause for delay is shown or the general counsel determines that an appeal raises issues that are significant to the agency's procurement practices or procedures in general.

(4) A written decision issued by the general counsel or the board shall be the final administrative action of the board.

(g) The board shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the board's records retention schedule.

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 June 17, 2019.

TRD-201901833

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: July 28, 2019

For further information, please call: (512) 305-8010



22 TAC §281.15

The Texas State Board of Pharmacy proposes the repeal of §281.15, concerning Vehicle Inscription Information. The proposed repeal of §281.15 provides for a more organized subchapter by moving the language from the previous §281.15 to an amended §281.19, allowing the agency to adopt a new §281.15, concerning Negotiated Rulemaking.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of repealing the rule. Ms. Benz has determined that, for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of the repeal will be to improve the organization of the agency's regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed repeal will be in effect, Ms. Benz has determined the following:

- (1) The proposed repeal does not create or eliminate a government program;
- (2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed repeal does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed repeal does not require an increase or decrease in fees paid to the agency;
- (5) The proposed repeal does not create a new regulation;
- (6) The proposed repeal does limit an existing regulation by moving existing language out of §281.15;

(7) The proposed repeal does not increase or decrease the number of individuals subject to the rule's applicability; and

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

Written comments on the proposed repeal may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 31, 2019.

The repeal is proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the proposed repeal: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.15. Vehicle Inscription Information.

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

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8010



22 TAC §281.15

The Texas State Board of Pharmacy proposes a new rule §281.15, concerning Negotiated Rulemaking. The new rule, if adopted, establishes policy and procedures for the use of negotiated rulemaking for the adoption of board rules in appropriate situations, as required by §554.0011 of the Pharmacy Act.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the proposed rule will be in effect, the public benefit anticipated as a result of enforcing the proposed rule will be a clear and consistent process for negotiated rulemaking. There is no anticipated impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. An economic impact statement and regulatory flexibility analysis is not required because the proposed rule will not have an adverse economic effect on Texas small businesses or rural communities.

For each year of the first five years the proposed rule will be in effect, Ms. Benz 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 the 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 create a new regulation;

(6) The proposed rule does not limit or expand an existing regulation;

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

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

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 31, 2019.

The new rule is proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code) and §481.003 of the Texas Controlled Substances Act (Chapter 481, Texas Health and Safety Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §481.003 of the Texas Controlled Substances Act as authorizing the agency to adopt rules to administer §§481.075 - 481.0766 of the Texas Controlled Substances Act.

The statutes affected by the proposed rule: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.15. Negotiated Rulemaking.

(a) The board's policy is to encourage the use of negotiated rulemaking for the adoption of board rules in appropriate situations.

(b) The board's general counsel or the designee of the general counsel shall be the board's negotiated rulemaking coordinator (NRC). The NRC shall perform the following functions, as required:

(1) coordinate the implementation of the policy set out in subsection (a) of this section and in accordance with the Negotiated Rulemaking Act, Chapter 2008, Government Code;

(2) serve as a resource for any staff training or education needed to implement negotiated rulemaking procedures; and

(3) collect data to evaluate the effectiveness of negotiated rulemaking procedures implemented by the board.

(c) The board or the executive director may direct the NRC to begin negotiated rulemaking procedures on a specified subject.

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 June 17, 2019.
TRD-201901835

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: July 28, 2019

For further information, please call: (512) 305-8010



22 TAC §281.16

The Texas State Board of Pharmacy proposes a new rule §281.16, concerning Alternative Dispute Resolution. The new rule, if adopted, establishes policy and procedures for the use of alternative dispute resolution to resolve internal and external disputes, as required by section 554.0011 of the Pharmacy Act.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the proposed rule will be in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to provide a clear and consistent process for resolving disputes through alternative dispute resolution. There is no anticipated impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. An economic impact statement and regulatory flexibility analysis is not required because the proposed rule will not have an adverse economic effect on Texas small businesses or rural communities.

For each year of the first five years the proposed rule will be in effect, Ms. Benz 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 the 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 create a new regulation;

(6) The proposed rule does not limit or expand an existing regulation;

(7) The proposed rule does increase the number of individuals subject to the rule's applicability; and

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

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 31, 2019.

The new rule is proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a)

as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the proposed rule: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.16. Alternative Dispute Resolution.

(a) The board's policy is to encourage the resolution and early settlement of internal and external disputes, including contested cases, through voluntary settlement processes, which may include any procedure or combination of procedures described by Chapter 154, Civil Practice and Remedies Code. Any ADR procedure used to resolve disputes before the board shall comply with the requirements of Chapter 2009, Government Code, and any model guidelines for the use of ADR issued by the State Office of Administrative Hearings.

(b) The board's general counsel or the designee of the general counsel shall be the board's dispute resolution coordinator (DRC). The DRC shall perform the following functions, as required:

(1) coordinate the implementation of the policy set out in subsection (a) of this section;

(2) serve as a resource for any staff training or education needed to implement the ADR procedures; and

(3) collect data to evaluate the effectiveness of ADR procedures implemented by the board.

(c) The board, a committee of the board, a respondent in a disciplinary matter pending before the board, the executive director, or a board employee engaged in a dispute with the executive director or another employee, may request that the contested matter be submitted to ADR. The request must be in writing, be addressed to the DRC, and state the issues to be determined. The person requesting ADR and the DRC will determine which method of ADR is most appropriate. If the person requesting ADR is the respondent in a disciplinary proceeding, the executive director shall determine if the board will participate in ADR or proceed with the board's normal disciplinary processes.

(d) Any costs associated with retaining an impartial third party mediator, moderator, facilitator, or arbitrator, shall be borne by the party requesting ADR.

(e) Agreements of the parties to ADR must be in writing and are enforceable in the same manner as any other written contract. Confidentiality of records and communications related to the subject matter of an ADR proceeding shall be governed by §154.073 of the Civil Practice and Remedies Code.

(f) If the ADR process does not result in an agreement, the matter shall be referred to the board for other appropriate disposition.

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

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8010



22 TAC §281.19

The Texas State Board of Pharmacy proposes amendments to §281.19, concerning Restrictions on Assignment of Vehicles. The amendments, if adopted, update the section title, add updated vehicle inscription information (formerly located in §281.15), and remove outdated references to an agency pool car.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to improve the organization of the agency's regulations, increase the effectiveness of agency field employees in detecting and investigating violations of state and federal laws relating to the practice of pharmacy, and provide clearer regulatory language by removing an outdated reference. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendment will be in effect, Ms. Benz 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 the 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 expand an existing regulation by adding language formerly located in §281.15;

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 31, 2019.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.19. Vehicles/Restrictions on Assignments of Vehicles].

(a) Vehicle Inscription Information.

(1) Exemption. As specified in §554.009 of the Act and §721.003 of the Transportation Code, vehicles assigned to or used by the compliance or investigation divisions for enforcement of pharmacy laws and rules are exempt from bearing the inscription required by §721.002 of the Transportation Code. These vehicles are to be used primarily in the inspection of pharmacies and the investigation of violations of state and federal laws and rules relating to the practice of pharmacy. In addition, as specified in §554.009 of the Act, the vehicles may be registered with the Texas Department of Transportation in an alias name for investigative personnel.

(2) Purpose. The purpose of exempting these vehicles from the inscription requirements of §721.002 of the Transportation Code is to increase the effectiveness of agency field employees in detecting and investigating violations of state and federal laws relating to the practice of pharmacy, thereby allowing compliance and investigative personnel to accomplish their tasks undetected, and to provide a greater degree of safety for these staff and the state property being used in the enforcement and a greater degree of case integrity.

(b) Restrictions on Assignments of Vehicles.

(1) [(a)] Each agency vehicle[; with the exception of the agency pool ear;] will be assigned to an individual field employee.

(2) [(b)] The agency may assign a vehicle to a board member or an individual administrative or executive employee:

(A) [(1)] on a temporary basis if field personnel are not available to assume responsibility for the car; or

(B) [(2)] on a regular basis only if the agency makes a written documented finding that the assignment is critical to the needs and mission of the agency.

[(e) The agency pool ear is assigned to the agency motor pool and is available for checkout.]

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 June 17, 2019.

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8010



CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.11

The Texas State Board of Pharmacy proposes amendments to §283.11, concerning Examination Retake Requirements. The amendments, if adopted, update the examination retake requirements and remove outdated references to an examination retake committee.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the

first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide accurate requirements and procedures for requesting an examination retake by removing outdated references. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendment will be in effect, Ms. Benz 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 the 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 expand an existing regulation;

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 31, 2019.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§283.11. Examination Retake Requirements.

(a) Licensing by examination. Should an applicant fail to achieve the minimum grade on the NAPLEX or Texas Pharmacy Jurisprudence Examination or both, the following is applicable.

(1) If the applicant fails to achieve the minimum grade on NAPLEX as specified in §283.7 of this title (relating to Examination Requirements), the applicant may retake NAPLEX four additional times for a total of five exam administrations. Prior to any subsequent retakes of NAPLEX, the applicant must:

[(A) request in writing an analysis of the applicant's performance on the most recent NAPLEX and provide this analysis to the Examination Retake Committee;]

(A) [(B)] complete [college] course work in subject areas recommended by the board [Examination Retake Committee];

(B) [(C)] submit documentation to the board [from the Examination Retake Committee] which specifies that the applicant has successfully completed the course work specified; and

(C) [(D)] comply with the requirements of §283.7 of this title (relating to Examination Requirements).

(2) If the applicant fails to achieve the minimum grade on the Texas Pharmacy Jurisprudence Examination as specified in §283.7 of this title (relating to Examination Requirements), the applicant may retake the examination four additional times for a total of five exam administrations. Prior to any subsequent retake of the Texas Pharmacy Jurisprudence Examination, the applicant must:

[(A) request in writing an analysis of the applicant's performance on the most recent Texas Pharmacy Jurisprudence Examination and provide this analysis to the Examination Retake Committee;]

(A) [(B)] complete [college] course work recommended by the board [Examination Retake Committee];

(B) [(C)] submit documentation to the board [from the Examination Retake Committee] which specifies that the applicant has successfully completed the recommended [college] course work; and

(C) [(D)] comply with the requirements of §283.7 of this title (relating to Examination Requirements).

(3) If the applicant fails to achieve the minimum grade on both NAPLEX and the Texas Pharmacy Jurisprudence Examination, the applicant shall retake the examinations until a passing grade is achieved on one of the examinations. Such retakes shall be as specified in paragraphs (1) and (2) of this subsection.

(b) Licensing by reciprocity. If an applicant fails to achieve the minimum grade on the Texas Pharmacy Jurisprudence Examination as specified in §283.8 of this title (relating to Reciprocity Requirements), the applicant may retake the examination four additional times for a total of five exam administrations. Prior to any subsequent retake of the Texas Pharmacy Jurisprudence Examination, the applicant must:

[(1) request in writing an analysis of the applicant's performance on the most recent Texas Pharmacy Jurisprudence Examination and provide this analysis to the Examination Retake Committee;]

(1) [(2)] complete [college] course work recommended by the board [Examination Retake Committee];

(2) [(3)] submit documentation to the board [from the Examination Retake Committee] which specifies that the applicant has successfully completed the recommended [college] course work; and

(3) [(4)] comply with the requirements of §283.8 of this title (relating to Reciprocity Requirements).

[(e) Examination Retake Committee. The board shall appoint one representative from each Texas college/school of pharmacy and one current board member to serve on the Examination Retake Committee. The Examination Retake Committee shall:]

[(1) meet as necessary but no more than twice each calendar year;]

[(2) review the analysis of an applicant's performance on failed examination(s);]

[(3) recommend college course work which the applicant must successfully complete before the applicant may retake the examination(s);]

[(4) specify the requirements for completion of the recommended college course work and the documentation required to vali-

date successful completion of the recommended college course work; and]

[(5) once the applicant has met the requirements set out by the committee, certify to the board that the applicant has successfully completed the required college course work.]

(c) [(d)] Course [College course] work. For the purpose of this subsection, [college] course work shall be:

(1) one or more standard courses or self-paced work offered in a college of pharmacy's academic program; [or]

(2) one or more courses presented by a board-approved provider of continuing pharmacy education as specified in §295.8 of this title (relating to Continuing Education Requirements); or

(3) any course specified by the board [Examination Retake Committee].

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

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8010



CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.6

The Texas State Board of Pharmacy proposes amendments to §291.6, concerning Pharmacy License Fees. The amendments, if adopted, will increase pharmacy license fees based on expected expenses.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended rule as follows:

Revenue Increase

FY2020 = \$540,375

FY2021 = \$543,650

FY2022 = \$550,200

FY2023 = \$553,475

FY2024 = \$556,750

Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to assure that the Texas State Board of Pharmacy is adequately funded to carry out its mission. The economic cost to large, small or micro-businesses (pharmacies) required to comply with the amended rule will be an increase of \$131 for an initial license and an increase of \$134 for the renewal of a license. The economic cost to an

individual will be the same as the economic cost to a business, if the individual chooses to pay the license fee for the business. An economic impact statement and regulatory flexibility analysis are not required because the proposed rule will have a de minimis economic effect on Texas small businesses or rural communities.

For each year of the first five years the proposed amendment will be in effect, Ms. Benz 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 the future legislative appropriations to the agency;
- (4) The proposed rule does require an increase in fees paid to the agency;
- (5) The proposed rule does not create a new regulation;
- (6) The proposed rule does not limit or expand an existing regulation;
- (7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed rule does not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 31, 2019.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.6. *Pharmacy License Fees.*

(a) **Initial License Fee.** The fee for an initial license shall be \$590 [~~\$459~~] for the initial registration period.

(b) **Biennial License Renewal.** The Texas State Board of Pharmacy shall require biennial renewal of all pharmacy licenses provided under the Act §561.002.

(c) **Renewal Fee.** The fee for biennial renewal of a pharmacy license shall be \$590 [~~\$456~~] for the renewal period.

(d) **Duplicate or Amended Certificates.** The fee for issuance of a duplicate pharmacy license renewal certificate shall be \$20. The fee for issuance of an amended pharmacy license renewal certificate shall be \$100.

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 June 17, 2019.

TRD-201901838

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: July 28, 2019

For further information, please call: (512) 305-8010



CHAPTER 295. PHARMACISTS

22 TAC §295.8

The Texas State Board of Pharmacy proposes amendments to §295.8, concerning Continuing Education Requirements. The amendments, if adopted, clarify the definition of initial license period, remove an outdated reference to the Commission for Certification in Geriatric Pharmacy, and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clearer regulatory language and grammatically correct regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendment will be in effect, Ms. Benz 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 the 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 expand an existing regulation;
- (7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed rule does not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 31, 2019.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control

and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§295.8. *Continuing Education Requirements.*

(a) Authority and purpose.

(1) Authority. In accordance with §559.053 of the Texas Pharmacy Act, (Chapters 551 [- 566, and 568]- 569, Occupations Code), all pharmacists must complete and report 30 contact hours (3.0 CEUs) of approved continuing education obtained during the previous license period in order to renew their license to practice pharmacy.

(2) Purpose. The board recognizes that the fundamental purpose of continuing education is to maintain and enhance the professional competency of pharmacists licensed to practice in Texas, for the protection of the health and welfare of the citizens of Texas.

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

(1) ACPE--Accreditation Council for Pharmacy Education.

(2) Act--The Texas Pharmacy Act, Chapters 551 - [566 and 568 -] 569, Occupations Code.

(3) Approved programs--Live programs, home study, and other mediated instruction delivered by an approved provider or a program specified by the board and listed as an approved program in subsection (e) of this section.

(4) Approved provider--An individual, institution, organization, association, corporation, or agency that is approved by the board.

(5) Board--The Texas State Board of Pharmacy.

(6) Certificate of completion--A certificate or other official document presented to a participant upon the successful completion of an approved continuing education program.

(7) Contact hour--A unit of measure of educational credit which is equivalent to approximately 60 minutes of participation in an organized learning experience.

(8) Continuing education unit (CEU)--A unit of measure of education credit which is equivalent to 10 contact hours (i.e., one CEU = 10 contact hours).

(9) CPE Monitor--A collaborative service from the National Association of Boards of Pharmacy and ACPE that provides an electronic system for pharmacists to track their completed CPE credits.

(10) Credit hour--A unit of measurement for continuing education equal to 15 contact hours.

(11) Enduring Materials (Home Study)--Activities that are printed, recorded or computer assisted instructional materials that do not provide for direct interaction between faculty and participants.

(12) Initial license period--The time period between the date of issuance of a pharmacist's license and the next expiration date following the initial 30 day expiration date. This time period ranges from eighteen to thirty months depending upon the birth month of the licensee.

(13) License period--The time period between consecutive expiration dates of a license.

(14) Live programs--Activities that provide for direct interaction between faculty and participants and may include lectures, symposia, live teleconferences, workshops, etc.

(15) Standardized pharmacy examination--The North American Pharmacy Licensing Examination (NAPLEX).

(c) Methods for obtaining continuing education. A pharmacist may satisfy the continuing education requirements by either:

(1) successfully completing the number of continuing education hours necessary to renew a license as specified in subsection (a)(1) of this section;

(2) successfully completing during the preceding license period, one credit hour for each year of their license period, which is a part of the professional degree program in a college of pharmacy the professional degree program of which has been accredited by ACPE; or

(3) taking and passing the standardized pharmacy examination (NAPLEX) during the preceding license period as a Texas licensed pharmacist, which shall be equivalent to the number of continuing education hours necessary to renew a license as specified in subsection (a)(1) of this section.

(d) Reporting Requirements.

(1) Renewal of a pharmacist license. To renew a license to practice pharmacy, a pharmacist must report on the renewal application completion of at least thirty contact hours (3.0 CEUs) of continuing education. The following is applicable to the reporting of continuing education contact hours: [-]

(A) [~~For renewals received after January 1, 2015,~~] at least one contact hour (0.1 CEU) specified in paragraph (1) of this subsection shall be related to Texas pharmacy laws or rules; [-]

(B) [~~For renewals received after January 1, 2019,~~] at least one contact hour (0.1 CEU) specified in paragraph (1) of this subsection shall be related to opioid abuse; and [-]

(C) any [~~Any~~] continuing education requirements which are imposed upon a pharmacist as a part of a board order or agreed board order shall be in addition to the requirements of this section.

(2) Failure to report completion of required continuing education. The following is applicable if a pharmacist fails to report completion of the required continuing education: [-]

(A) the [~~The~~] license of a pharmacist who fails to report completion of the required number of continuing education contact hours shall not be renewed and the pharmacist shall not be issued a renewal certificate for the license period until such time as the pharmacist successfully completes the required continuing education and reports the completion to the board; and [-]

(B) a [~~A~~] pharmacist who practices pharmacy without a current renewal certificate is subject to all penalties of practicing pharmacy without a license including the delinquent fees specified in the Act, §559.003.

(3) Extension of time for reporting. A pharmacist who has had a physical disability, illness, or other extenuating circumstances which prohibits the pharmacist from obtaining continuing education credit during the preceding license period may be granted an extension of time to complete the continued education requirement. The following is applicable for this extension:

(A) the [~~The~~] pharmacist shall submit a petition to the board with his/her license renewal application which contains:

(i) the name, address, and license number of the pharmacist;

(ii) a statement of the reason for the request for extension;

(iii) if the reason for the request for extension is health related, a statement from the attending physician(s) treating the pharmacist which includes the nature of the physical disability or illness and the dates the pharmacist was incapacitated; and

(iv) if the reason for the request for the extension is for other extenuating circumstances, a detailed explanation of the extenuating circumstances and if because of military deployment, documentation of the dates of the deployment;[-]

(B) after [After] review and approval of the petition, a pharmacist may be granted an extension of time to comply with the continuing education requirement which shall not exceed one license renewal period;[-]

(C) an [An] extension of time to complete continuing education credit does not relieve a pharmacist from the continuing education requirement during the current license period; and[-]

(D) if [If] a petition for extension to the reporting period for continuing education is denied, the pharmacist shall:

(i) have 60 days to complete and report completion of the required continuing education requirements; and

(ii) be subject to the requirements of paragraph (2) of this subsection relating to failure to report completion of the required continuing education if the required continuing education is not completed and reported within the required 60-day time period.

(4) Exemptions from reporting requirements.

(A) All pharmacists licensed in Texas shall be exempt from the continuing education requirements during their initial license period.

(B) Pharmacists who are not actively practicing pharmacy shall be granted an exemption to the reporting requirements for continuing education provided the pharmacists submit a completed renewal application for each license period which states that they are not practicing pharmacy. Upon submission of the completed renewal application, the pharmacist shall be issued a renewal certificate which states that pharmacist is inactive. Pharmacists who wish to return to the practice of pharmacy after being exempted from the continuing education requirements as specified in this subparagraph must:

(i) notify the board of their intent to actively practice pharmacy;

(ii) pay the fee as specified in §295.9 of this title (relating to Inactive License); and

(iii) provide copies of completion certificates from approved continuing education programs as specified in subsection (e) of this section for 30 contact hours (3.0 CEUs). Approved continuing education earned within two years prior to the licensee applying for the return to active status may be applied toward the continuing education requirement for reactivation of the license but may not be counted toward subsequent renewal of the license.

(e) Approved Programs.

(1) Any program presented by an ACPE approved provider subject to the following conditions;[-]

(A) pharmacists [Pharmacists] may receive credit for the completion of the same ACPE course only once during a license period;[-]

(B) pharmacists [Pharmacists] who present approved ACPE continuing education programs may receive credit for the time expended during the actual presentation of the program. Pharmacists may receive credit for the same presentation only once during a license period; and[-]

(C) proof [Proof] of completion of an ACPE course shall contain the following information:

(i) name of the participant;

(ii) title and completion date of the program;

(iii) name of the approved provider sponsoring or cosponsoring the program;

(iv) number of contact hours and/or CEUs awarded;

(v) the assigned ACPE universal program number and a "P" designation indicating that the CE is targeted to pharmacists; and

(vi) either:

(I) a dated certifying signature of the approved provider and the official ACPE logo; or

(II) the CPE Monitor logo.

(2) Courses which are part of a professional degree program or an advanced pharmacy degree program offered by a college of pharmacy which has a professional degree program accredited by ACPE.

(A) Pharmacists may receive credit for the completion of the same course only once during a license period. A course is equivalent to one credit hour for each year of the renewal period.

(B) Pharmacists who teach these courses may receive credit towards their continuing education, but such credit may be received only once for teaching the same course during a license period.

(3) Basic cardiopulmonary resuscitation (CPR) courses which lead to CPR certification by the American Red Cross or the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacists may receive credit for one contact hour (0.1 CEU) towards their continuing education requirement for completion of a CPR course only once during a license period. Proof of completion of a CPR course shall be the certificate issued by the American Red Cross or the American Heart Association or its equivalent.

(4) Advanced cardiovascular life support courses (ACLS) or pediatric advanced life support (PALS) courses which lead to initial ACLS or PALS certification by the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacists may receive credit for twelve contact hours (1.2 CEUs) towards their continuing education requirement for completion of an ACLS or PALS course only once during a license period. Proof of completion of an ACLS or PALS course shall be the certificate issued by the American Heart Association or its equivalent.

(5) Advanced cardiovascular life support courses (ACLS) or pediatric advanced life support (PALS) courses which lead to ACLS or PALS recertification by the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacists may receive credit for four contact hours (0.4 CEUs) towards their continuing education requirement for completion of an ACLS or PALS recertifica-

tion course only once during a license period. Proof of completion of an ACLS or PALS recertification course shall be the certificate issued by the American Heart Association or its equivalent.

(6) Attendance at Texas State Board of Pharmacy Board Meetings shall be recognized for continuing education credit as follows: [-]

(A) pharmacists [~~Pharmacists~~] shall receive credit for three contact hours (0.3 CEUs) towards their continuing education requirement for attending a full, public board business meeting in its entirety; [-]

(B) a [A] maximum of six contact hours (0.6 CEUs) are allowed for attendance at a board meeting during a license period; and [-]

(C) proof [~~Proof~~] of attendance for a complete board meeting shall be a certificate issued by the Texas State Board of Pharmacy.

(7) Participation in a Texas State Board of Pharmacy appointed Task Force shall be recognized for continuing education credit as follows: [-]

(A) pharmacists [~~Pharmacists~~] shall receive credit for three contact hours (0.3 CEUs) towards their continuing education requirement for participating in a Texas State Board of Pharmacy appointed Task Force; and [-]

(B) proof [~~Proof~~] of participation for a Task Force shall be a certificate issued by the Texas State Board of Pharmacy.

(8) Attendance at programs presented by the Texas State Board of Pharmacy or courses offered by the Texas State Board of Pharmacy as follows:

(A) pharmacists [~~Pharmacists~~] shall receive credit for the number of hours for the program or course as stated by the Texas State Board of Pharmacy; and [-]

(B) proof [~~Proof~~] of attendance at a program presented by the Texas State Board of Pharmacy or completion of a course offered by the Texas State Board of Pharmacy shall be a certificate issued by the Texas State Board of Pharmacy.

(9) Pharmacists shall receive credit toward their continuing education requirements for programs or courses approved by other state boards of pharmacy as follows:

(A) pharmacists [~~Pharmacists~~] shall receive credit for the number of hours for the program or course as specified by the other state board of pharmacy; and [-]

(B) proof [~~Proof~~] of attendance at a program or course approved by another state board of pharmacy shall be a certificate or other documentation that indicates:

- (i) name of the participant;
- (ii) title and completion date of the program;
- (iii) name of the approved provider sponsoring or cosponsoring the program;
- (iv) number of contact hours and/or CEUs awarded;
- (v) a dated certifying signature of the provider; and
- (vi) documentation that the program is approved by the other state board of pharmacy.

(10) Completion of an Institute for Safe Medication Practices' (ISMP) Medication Safety Self Assessment for hospital pharmacies or for community/ambulatory pharmacies shall be recognized for continuing education credit as follows: [-]

(A) pharmacists [~~Pharmacists~~] shall receive credit for three contact hours (0.3 CEUs) towards their continuing education requirement for completion of an ISMP Medication Safety Self Assessment; and [-]

(B) proof [~~Proof~~] of completion of an ISMP Medication Safety Self Assessment shall be:

- (i) a continuing education certificate provided by an ACPE approved provider for completion of an assessment; or
- (ii) a document from ISMP showing completion of an assessment.

~~[(11) Pharmacists shall receive credit for three contact hours (0.3 CEUs) toward their continuing education requirements for taking and successfully passing the initial Geriatric Pharmacy Practice certification examination administered by the Commission for Certification in Geriatric Pharmacy. Proof of successfully passing the examination shall be a certificate issued by the Commission for Certification in Geriatric Pharmacy.]~~

~~(11) [(12)]~~ Pharmacist shall receive credit for three contact hours (0.3 CEUs) toward their continuing education requirements for taking and successfully passing an initial Board of Pharmaceutical Specialties certification examination administered by the Board of Pharmaceutical Specialties. Proof of successfully passing the examination shall be a certificate issued by the Board of Pharmaceutical Specialties.

~~(12) [(13)]~~ Programs approved by the American Medical Association (AMA) as Category 1 Continuing Medical Education (CME) and accredited by the Accreditation Council for Continuing Medical Education subject to the following conditions: [-]

(A) pharmacists [~~Pharmacists~~] may receive credit for the completion of the same CME course only once during a license period; [-]

(B) pharmacists [~~Pharmacists~~] who present approved CME programs may receive credit for the time expended during the actual presentation of the program. Pharmacists may receive credit for the same presentation only once during a license period; and [-]

(C) proof [~~Proof~~] of completion of a CME course shall contain the following information:

- (i) name of the participant;
 - (ii) title and completion date of the program;
 - (iii) name of the approved provider sponsoring or cosponsoring the program;
 - (iv) number of contact hours and/or CEUs awarded;
- and
- (v) a dated certifying signature of the approved provider.

(f) Retention of continuing education records and audit of records by the board.

(1) Retention of records. Pharmacists are required to maintain certificates of completion of approved continuing education for three years from the date of reporting the contact hours on a license renewal application. Such records may be maintained in hard copy or electronic format.

(2) Audit of records by the board. The board shall audit the records of pharmacists for verification of reported continuing education credit. The following is applicable for such audits: [-]

(A) upon [Uˈpɒn] written request, a pharmacist shall provide to the board documentation of proof for all continuing education contact hours reported during a specified license period(s). Failure to provide all requested records during the specified time period constitutes prima facie evidence of failure to keep and maintain records and shall subject the pharmacist to disciplinary action by the board; [-]

(B) credit [ˈkredɪt] for continuing education contact hours shall only be allowed for approved programs for which the pharmacist submits documentation of proof reflecting that the hours were completed during the specified license period(s). Any other reported hours shall be disallowed. A pharmacist who has received credit for continuing education contact hours disallowed during an audit shall be subject to disciplinary action; and [-]

(C) a [ə] pharmacist who submits false or fraudulent records to the board shall be subject to disciplinary action by the board.

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

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: July 28, 2019

For further information, please call: (512) 305-8010



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 222. SUBSURFACE AREA DRIP DISPERSAL SYSTEMS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§222.1, 222.3, 222.5, 222.31, 222.33, 222.73, 222.75, 222.81, 222.83, 222.85, 222.87, 222.115, 222.119, 222.127, 222.157, 222.159, and 222.163.

Background and Summary of the Factual Basis for the Proposed Rules

On March 14, 2016, the commission received a petition from the City of Austin (petitioner). The petitioner requested that the commission initiate rulemaking to amend 30 TAC Chapters 222 and 309 (Project Number 2016-033-PET-NR). The rulemaking would allow permittees and applicants to rely on the beneficial reuse of treated wastewater when calculating the amount of land required for disposal of treated wastewater. This would allow permittees and applicants to reduce the acreage dedicated for land application that is currently required by rule. The commission approved the petition to initiate rulemaking with stakeholder involvement. The executive director held a stakeholder meeting on August 9, 2016 and the public was invited to comment on the petition. The

public comment period was from August 28, 2016 through October 28, 2016.

Based on information presented at the stakeholder meeting, the executive director understands that the petition was made in response to increasing demands on water supplies and decreasing availability of contiguous or neighboring tracts of land that are large enough for domestic wastewater disposal under the commission's current rules. This trend is currently appearing in parts of Central Texas where wastewater discharge to water in the state is restricted by the commission's rules and land application of treated wastewater is the only permissible disposal option. The executive director recognizes that land availability may also be limited in other parts of the state, and that practicable land application options are especially important wherever discharge to water in the state is restricted or infeasible.

The proposed revisions in this chapter, and the corresponding proposed revisions in Chapter 309, would allow a reduction in the acreage dedicated for land application of treated effluent by applying a "beneficial reuse credit" when calculating the disposal site area required. An applicant could also foreseeably request to use a beneficial reuse credit to increase the permitted flow without changing the disposal tract acreage or to change both the acreage and the permitted flow. The beneficial reuse credit will be based on the demonstrated firm reclaimed water demand. The effluent storage size required by Chapter 222 may not be reduced by the beneficial reuse credit. The proposed rulemaking would establish the criteria for demonstrating firm reclaimed water demand, the procedure for calculating and applying the beneficial reuse credit, and the requirements for a permittee who has been granted a beneficial reuse credit. The proposed amendments correct inaccurate or outdated references to TAC or provide additional clarity.

Section by Section Discussion

The commission proposes to amend Chapter 222 to replace the term "waste" with "wastewater" throughout to clarify that regulations in this chapter apply to wastewater.

The commission proposes to amend Chapter 222 to update references to ensure current and accurate cross-references, improve readability, improve rule structure, and use consistent terminology. These changes are non-substantive and are not specifically discussed in the Section by Section Discussion of this preamble (i.e., §§222.1, 222.3, 222.73, 222.75, 222.87, 222.115, 222.119, and 222.163).

§222.5, Definitions

The commission proposes §222.5(2) to define "Beneficial reuse credit" as the term is proposed to be defined in Chapter 309 for consistency and to establish usage of the term as it relates to proposed §222.83(d) and (e) and §222.127(c). The commission proposes to renumber the subsequent paragraphs accordingly to accommodate the proposed definition.

The commission proposes to amend the definition of "Domestic waste" in renumbered §222.5(5) to include a reference to 30 TAC §210.82 to clarify the term "Graywater" used in the definition.

The commission proposes to amend the definition of "Industrial waste" in renumbered §222.5(14) to correct the term to "Industrial wastewater" and clarify the term to be more consistent with the definition in 30 TAC §312.8.

The commission proposes to amend the definition of "Public contact" in renumbered §222.5(20) to replace the existing definition

with language similar to the definition of "Public contact site" in §312.8 to prevent ambiguity and for consistency.

§222.31, *Application Process*

The commission proposes to amend §222.31(a) to remove reference to systems that did not have a permit prior to the adoption of the rules as this reference is obsolete.

The commission proposes to remove §222.31(b) and (c) since the references are obsolete. Subsurface area drip dispersal system facilities that held permits prior to July 31, 2006, have applied for permits under this chapter and therefore these subsections are obsolete. The commission proposes to re-letter the subsequent subsections accordingly to accommodate the proposed deletions.

The commission proposes to amend relettered §222.31(d) to remove redundant language.

The commission proposes to amend §222.31(l)(6) to change "poor performer" to "unsatisfactory performer" to be consistent with the definition in §60.2(g)(2) and correct the reference from §60.3 to §60.2.

§222.33, *Public Notice*

The commission proposes to delete §222.33(a) to remove redundancy.

§222.81, *Buffer Zone Requirements*

The commission proposes to amend §222.81(a)(2) to remove the reference to §309.13(c)(1) as the reference is not necessary.

§222.83, *Hydraulic Application Rate*

The commission proposes §222.83(d) to allow the beneficial reuse credit to be used when calculating the disposal area required based on the hydraulic application rate. The applicant, if granted a beneficial reuse credit by the executive director in accordance with Chapter 309, Subchapter D (Beneficial Reuse Credit), may reduce the permitted wastewater flow volume by the beneficial reuse credit when calculating the disposal area required based on the hydraulic application rate. This allows a person to reduce the required size of the disposal site. An applicant could also foreseeably request to use a beneficial reuse credit to increase the permitted flow without changing the disposal tract acreage or to change both the acreage and the permitted flow.

The commission proposes §222.83(e) to prohibit reducing the disposal site area by more than 50% of the area required based on the permitted flow. The applicant must have a disposal site area that can receive at least 50% of the permitted flow, even if 100% of the effluent is used as reclaimed water. If an applicant who was granted a beneficial reuse credit in a previous permit action requests an increase in permitted flow, they must still satisfy this requirement. This requirement provides a reasonable margin of safety against unauthorized discharges (e.g., if a user is not able to accept reclaimed water).

§222.85, *Effluent Quality*

The commission proposes to amend §222.85(b)(1) to remove redundant language.

§222.127, *Storage*

The commission proposes §222.127(c) to prohibit the reduction of the required storage. Effluent storage is especially necessary if the disposal site acreage has been reduced by the beneficial

reuse credit and the amount of reclaimed water distributed to users declines. Not allowing reductions in effluent storage provides an extra safety measure against unauthorized discharges (e.g., if a user is not able to accept reclaimed water).

§222.157, *Soil Sampling*

The commission proposes to amend §222.157(c) to remove "or extractable" to provide clarity. Acceptable methods that use extractions make it possible to report nutrients on a plant-available basis, which is more meaningful for calculating soil nutrient balances.

§222.159, *Operator Licensing*

The commission proposes to remove §222.159(d) because the compliance period has passed, and all facilities are required to meet the requirement.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to allow permittees and applicants to rely on the beneficial reuse of treated wastewater when calculating the amount of land required for disposal of treated wastewater. This would allow permittees and applicants to reduce the acreage dedicated for land application that is currently required by rule.

The state may see an insignificant increase in revenue because the rulemaking provides for a five-year permit instead of a ten-year permit; this would only apply to a very small subset of permits, Texas Land Application Permits with a beneficial reuse credit. The permit fee ranges from \$315 to \$2,050 depending on the size of facility and type of application.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be the potential for a reduced demand on potable water supplies, increased land-use flexibility while protecting human health and the environment, and providing for local economic growth.

The proposed rules are not compulsory and are not expected to result in significant fiscal implications for businesses or individuals. The proposed rules establish requirements for obtaining and maintaining a beneficial reuse credit. Because the proposed rules are optional, it is assumed that a unit of local government or entity that would apply for the beneficial reuse credit would see a net benefit.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rulemaking would apply statewide

and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rules are not compulsory and are not expected to result in significant fiscal implications for businesses or individuals. The proposed rules establish requirements for obtaining and maintaining a beneficial reuse credit. Because the proposed rules are optional, it is assumed that an entity that would apply for the beneficial reuse credit would see a net benefit.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require a significant increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal or limit an existing regulation, nor does the rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in that statute. Texas Government Code, §2001.0225 applies to major environmental rules, the result of which are to exceed standards set by federal law, express requirements of state law, requirements of delegation agreements between the state and the federal governments to implement a state and federal program, or rules adopted solely under the general powers of the agency instead of under a specific state law.

A "Major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the proposed rulemaking is to adopt rules that identify best management practices that achieve the highest practicable level of water conservation and efficiency, including practices, techniques, and technologies that make water use more efficient, by allowing permittees and appli-

cants to rely on the beneficial reuse of treated wastewater as an additional alternative means to dispose of a portion of its treated wastewater when calculating the amount of land required for disposal of wastewater. The proposed rulemaking affects the same class of regulated entities, except that the entities may be able to reduce the dedicated land application acreage that is currently required by rule, which incentivizes and encourages wastewater permittees and applicants to reuse treated wastewater.

The proposed rulemaking modifies the state rules related to subsurface irrigation and land application of treated wastewater. This may have a positive impact on the environment, human health, or public health and safety; however, the proposed rulemaking will not adversely affect the economy, a sector of the economy, productivity, competition, or jobs within the state or a sector of the state. Therefore, the commission concludes that the proposed rulemaking does not meet the definition of a "Major environmental rule."

Furthermore, even if the proposed rulemaking did meet the definition of a "Major environmental rule," it is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a state agency's adoption of a "Major environmental rule" that: 1) exceeds a standard set by federal law, unless state law specifically requires the rule; 2) exceeds an express requirement of state law, unless federal law specifically requires the rule; 3) exceeds 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) is adopted solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rulemaking does not meet any of the four requirements in Texas Government Code, §2001.0225(a). First, this rulemaking does not exceed standards set by federal law. Second, the proposed rulemaking does not exceed an express requirement of state law, but rather meets the requirements under state law to adopt rules suggesting best management practices for achieving the highest practicable levels of water conservation and efficiency, and regulate more efficiently, the land disposal of treated wastewater by identifying practices, techniques, and technologies that make water use more efficient. Third, the proposed rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the commission proposes the rulemaking under Texas Water Code, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271, 26.011, 26.027, 26.034, and 26.041. Therefore, the commission does not propose the rulemaking solely under the commission's general powers.

Written comments on the Draft Regulatory Impact Analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, §2007.043. The following is a summary of that analysis. The specific purpose of the proposed rulemaking is to adopt rules that identify best management practices that achieve the highest practicable level of water conservation and efficiency by modifying TAC to allow permittees and applicants to rely on the beneficial reuse of treated wastewater as an ad-

ditional alternative means to dispose of a portion of its treated wastewater when calculating the amount of land required for disposal of wastewater. The proposed rulemaking will substantially advance this stated purpose by adopting language intended to regulate more efficiently the land application of treated wastewater by incentivizing and encouraging wastewater permittees and applicants to reuse treated wastewater.

Promulgation and enforcement of the proposed rules will not be a statutory or constitutional taking of private real property. Specifically, the proposed rulemaking does not apply to or affect any landowner's rights in private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These actions will not affect private real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on July 25, 2019, at 10:00 a.m. in Building E, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-042-309-OW. The comment period closes on July 30, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Rebecca Moore, Wastewater Permitting Section, at (512) 239-0058.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§222.1, 222.3, 222.5

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state; TWC, §26.034, which provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes; TWC, §26.041, which gives the commission the authority to set standards to prevent the disposal of waste that is injurious to the public health; and TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

The amendments are also proposed under TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121.

§222.1. Purpose and Scope.

The purpose of this chapter is to:

- (1) maintain the quality of fresh water in the state to the extent consistent with the public health and welfare and the operation of existing industries;
- (2) promote the beneficial reuse of commercial, industrial, and municipal wastewater [~~waste~~] for the economic development of the state, thereby reducing the demand on the state's supply of fresh water;
- (3) prevent underground injection that may pollute fresh water; and
- (4) require the use of all reasonable methods to implement this policy.

§222.3. Applicability.

(a) This chapter applies to any person who operates a wastewater [~~waste~~] dispersal system that:

- (1) injects processed commercial, industrial, or municipal wastewater effluent into the ground at a depth of not more than 48 inches; and

(2) spreads the wastewater [~~waste~~] over the area so that the soil hydrologic absorption rate and crop/plant root absorption rate are not exceeded.

(b) This chapter does not apply to:

(1) wastewater disposal systems authorized under Chapter 285 of this title (relating to On-Site Sewage Facilities) and Texas Health and Safety Code (THSC), Chapter 366;

(2) disposal systems for oil and gas waste, tar sands, sulfur, brine from desalination plants, and hazardous waste as defined by THSC, §361.003;

(3) drainfields, leaching chambers, or other gravity trench systems;

(4) subsurface drip irrigation systems that do not meet the definition of "Subsurface [~~subsurface~~] area drip dispersal systems," as defined in §222.5 of this title (relating to Definitions); or

(5) systems regulated in §331.8 of this title (relating to Prohibition of Motor Vehicle Waste Disposal Wells and Large Capacity Cesspools).

§222.5. *Definitions.*

The definitions contained in Texas Water Code, §§26.001, 27.002, 28.001, and 32.003 apply to this chapter. The following words and terms, when used in this chapter, have the following meanings.

(1) Aquifer--As defined or amended under Chapter 331 of this title (relating to Underground Injection Control).

(2) Beneficial reuse credit--As defined by Chapter 309, Subchapter D of this title (relating to Beneficial Reuse Credit).

(3) [~~2~~] Buffer zone--The area between a subsurface area drip dispersal system boundary and surface water [~~waters~~] in the state, public and private [~~domestic~~] water wells [~~well~~], and springs.

(4) [~~3~~] Crop requirement--The amount of nutrients that must be present in order to ensure that the crop nutrient needs are met, while accounting for nutrients that may become unavailable to the crop due to absorption to soil particles or other natural causes.

(5) [~~4~~] Domestic wastewater [~~waste~~]--Waste and wastewater from humans and household operations that are discharged to a wastewater collection system or otherwise enters a treatment facility. This includes waterborne human waste and waste from domestic activities such as washing, bathing, and food preparation, including graywater (as defined or amended in §210.82 of this title (relating to Definitions and General Requirements)) and blackwater.

(6) [~~5~~] Emitter--A device designed to discharge into the soil, a small uniform flow of water at a constant rate.

(7) [~~6~~] Evapotranspiration--The water lost from an area through the combined effects of evaporation from the ground surface and transpiration from the vegetation.

(8) [~~7~~] Facility--All land and fixtures, structures, or appurtenances used for storing, processing, treating, or disposing of wastewater [~~waste~~], or for injection activities. A facility may consist of several storage, processing, treatment, disposal, or injection operational units.

(9) [~~8~~] Floodway--A channel of a river or watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the surface elevation more than one foot. Federal Emergency Management Agency [~~FEMA~~] maps are prima facie evidence of floodway locations.

(10) [~~9~~] Fresh water--As defined or amended under Texas Water Code, §27.002.

(11) [~~10~~] Groundwater--Subsurface water occurring in soils and geologic formations that are fully saturated year-round, seasonally, or intermittently.

(12) [~~11~~] Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

(13) [~~12~~] Hydrologic connection--The connection and exchange between surface water and groundwater.

(14) [~~13~~] Industrial wastewater [~~waste~~]--Wastewater generated in a commercial or industrial process. [~~Any non-domestic wastewater.~~]

(15) [~~14~~] Infiltration--The passage of water through the soil surface into the soil profile.

(16) [~~15~~] Licensed professional engineer--An individual licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the state [~~State~~] of Texas.

(17) [~~16~~] Licensed professional geoscientist--An individual licensed by the Texas Board of Professional Geoscientists in accordance with its requirement for professional practice in the state [~~State~~] of Texas.

(18) [~~17~~] Local government--An incorporated city, county, river authority, groundwater conservation district, or a water district or authority acting under Texas Constitution, Article III, §52 or Article XVI, §59.

(19) [~~18~~] Owner--The person, corporation, partnership, or other legal entity that owns or partially owns a facility or part of a facility, or that owns or partially owns the land on which a facility or part of a facility is located.

(20) [~~19~~] Public contact--Contact with the soil over the dispersal zone by persons engaged in activities not associated with wastewater disposal. [~~Significant dermal contact with soil.~~]

(21) [~~20~~] Recharge feature--Those natural or artificial features either on or beneath the ground surface at the site that provide or create a significant hydrologic connection between the ground surface and the underlying groundwater within an aquifer. Significant artificial features include, but are not limited to, wells and excavation or material pits. Significant natural hydrologic connections include, but are not limited to: faults, fractures, karst features, or other macro pores that allow direct surface infiltration; a permeable or shallow soil material that overlies an aquifer; exposed geologic formations that are identified as an aquifer; or a water course bisecting an aquifer.

(22) [~~21~~] Soil--The upper layer of the surface of the earth that serves as a natural medium for the growth of plants.

(23) [~~22~~] Subsurface area drip dispersal systems--A wastewater [~~waste~~] disposal system that injects processed commercial, industrial, or municipal wastewater [~~waste~~] into the ground at a depth of not more than 48 inches and spreads the wastewater [~~waste~~] over a large enough area that the soil hydrologic absorption rate and crop/plant root absorption rate are not exceeded.

(24) [~~23~~] Surface water in the state--Water in the state as defined in Texas Water Code, §26.001(5), except that "groundwater, percolating or otherwise," is specifically excluded.

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

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6812



SUBCHAPTER B. ADMINISTRATIVE PROCEDURES

30 TAC §222.31, §222.33

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state; TWC, §26.034, which provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes; TWC, §26.041, which gives the commission the authority to set standards to prevent the disposal of waste that is injurious to the public health; and TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

The amendments are also proposed under TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121.

§222.31. Application Process.

(a) An owner of a subsurface area drip dispersal system shall apply for a permit in accordance with the provisions of this section [fer

any subsurface area drip dispersal system that did not have an application for a subsurface area drip dispersal system permit that had been declared administratively complete or was authorized by a permit in effect at the time of the adoption of these rules].

[(b) A permittee who holds a valid permit for a subsurface area drip dispersal system issued prior to July 31, 2006, and who wishes to renew that permit shall apply for a permit according to the requirements of this chapter upon the expiration date of the current permit.]

[(e) A permittee who holds a valid permit for a subsurface area drip dispersal system issued prior to July 31, 2006, and who wishes to amend that permit shall apply for a permit amendment according to the requirements of this chapter.]

(b) [(4)] Application for a permit shall be made on forms provided by the executive director. Applicants shall comply with §§305.41, 305.43, 305.44, [305.46,] and 305.47 of this title (relating to Applicability; Who Applies; Signatories to Applications; [Designation of Material as Confidential;] and Retention of Application Data).

(c) [(e)] Upon receiving an administratively complete application for a permit, the executive director shall:

(1) inspect the location of the proposed subsurface area drip dispersal system to evaluate the local conditions and the probable effect of the subsurface area drip dispersal system;

(2) forward a copy of the permit application to the Texas Department of State Health Services for the purpose of soliciting comments on the application; and

(3) allow 30 days for the Texas Department of State Health Services to submit comments on the permit application.

(d) [(f)] The applicant shall submit an application that demonstrates compliance with the [technical] requirements set forth in this chapter [and shall demonstrate compliance with the requirements of Subchapter C of this chapter (relating to Siting Requirements and Effluent Limitations)].

(e) [(g)] The applicant shall include the site preparation plan in the permit application packet. The site preparation plan shall comply with the requirements of §222.75 of this title (relating to Site Preparation Plan).

(f) [(h)] The applicant shall provide such additional information in support of the application as may be necessary, as determined by the executive director, for an adequate technical review of the application.

(g) [(i)] Each applicant and permittee shall comply with §§305.61 and §§305.63 - 305.68 of this title (relating to Applicability; Renewal; Transfer of Permits; Renewal; Permit Denial,[:] Suspension, and Revocation; Revocation and Suspension upon [Upon] Request or Consent; and Action and Notice on Petition for Revocation or Suspension).

(h) [(j)] The permittee must file the application for renewal of an existing permit no later than 180 days before the expiration date of the current permit. Upon request, the executive director may grant an exception to this requirement, but in no case may the executive director grant permission for applications to be submitted later than the expiration date of the existing permit.

(i) [(k)] Except as provided in §222.33 [§222.33(b)] of this title (relating to Public Notice), notice, public comment, and hearing on applications shall be conducted in accordance with commission rules governing individual permits issued under Texas Water Code (TWC), Chapter 26. Each permittee shall comply with §305.125 of this title (relating to Standard Permit Conditions).

(j) [(h)] A permittee who holds a valid permit for a subsurface area drip dispersal system under TWC [Texas Water Code], Chapter 26 issued prior to July 31, 2006, may apply for and be granted a variance from the site requirements and design criteria in this chapter, if the subsurface area drip dispersal system is:

- (1) not in need of repair;
- (2) not causing pollution as determined by the executive director;
- (3) not causing soil saturation or a build-up of waterborne constituents within the soil;
- (4) not prohibited by §213.8 of this title (relating to Prohibited Activities);
- (5) not prohibited by §331.8 of this title (relating to Prohibition of Motor Vehicle Waste Disposal Wells and Large Capacity Cesspools); and
- (6) the permittee is not a repeat violator or an unsatisfactory [poor] performer [or repeat violator] as defined in §60.2(f) and (g)(2) of this title (relating to Classification) [§60.3(a) of this title (relating to Use of Compliance History)] or has other compliance history issues that may indicate the lack of ability of the permittee to comply with the permit and commission rules.

(k) [(m)] The executive director may grant a period of up to three years, in accordance with §305.127(3)(A) of this title (relating to Conditions to be Determined for Individual Permits) to meet the requirements that were the basis for a denial of a variance to a permittee that applies for and is denied a variance, provided that the system meets the requirements in subsection (j) [(h)] of this section.

§222.33. *Public Notice.*

[(a)] For the purpose of public notices, subsurface area drip dispersal systems shall be subject to the same public notice provisions required for wastewater discharge permits described in §39.403(b)(2) of this title (relating to Applicability).]

[(b)] Applicants for subsurface area drip dispersal system permits shall comply with the regulations regarding public notice of applications for wastewater discharge permits found in Chapter 39 of this title (relating to Public Notice).

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

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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SUBCHAPTER C. SITING REQUIREMENTS AND EFFLUENT LIMITATIONS

30 TAC §§222.73, 222.75, 222.81, 222.83, 222.85, 222.87

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the au-

thority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state; TWC, §26.034, which provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes; TWC, §26.041, which gives the commission the authority to set standards to prevent the disposal of waste that is injurious to the public health; and TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

The amendments are also proposed under TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121.

§222.73. *Soil Evaluation.*

(a) The applicant shall conduct and submit, with the application, a soils evaluation to identify the soils associated with the proposed site. At least one profile hole per soil type must be included in the evaluation. The applicant shall use soil borings, where appropriate, for enhancement of the profile hole determinations. The profile holes used [utilized] in the site evaluation must be no more than five feet deep, or to the first continuous lateral lithic contact. The evaluation must include the following information:

- (1) total depth of the profile hole;
- (2) primary rooting depth;
- (3) secondary rooting depth;
- (4) horizon descriptions which shall include:
 - (A) depth of the horizon;
 - (B) soil texture;
 - (C) soil structure;
 - (D) soil color;
 - (E) mottling; and
 - (F) percent coarse fragments;
- (5) boundary descriptions (soil horizons);
- (6) restrictive horizons;

- (7) potential water bearing zones; and
- (8) active water bearing zones.

(b) The soil evaluation shall be performed by a licensed professional engineer or licensed professional geoscientist ~~or engineer~~.

§222.75. *Site Preparation Plan.*

The applicant shall develop and submit, with the permit application, a site preparation plan that illustrates how site preparation will alleviate potential site-specific limitations and ensure suitability for the subsurface area drip dispersal system ~~of wastewater~~. This plan must include the following if applicable:

- (1) a site plan to minimize rainfall run-on and maximize rainfall runoff from the dispersal zones;
- (2) design criteria to compensate for any restrictive horizons within the soil column;
- (3) soil importation with descriptions of the chemical and physical characteristics of the proposed import material; and
- (4) any planned removal of existing vegetation.

§222.81. *Buffer Zone Requirements.*

(a) The permittee must locate the subsurface area drip dispersal system a minimum horizontal distance of:

- (1) 500 feet from public water wells, springs, or other similar sources of public drinking water;
- (2) 150 feet from private water wells ~~[as described in §309.13(c)(1) of this title (relating to Unsuitable Site Characteristics)]~~; and
- (3) 100 feet from surface water ~~[waters]~~ in the state.

(b) The permittee ~~[permittees]~~ must locate the wastewater treatment plant unit in accordance with §290.41(c)(1)(B) of this title (relating to Water Sources) and §309.13(c) of this title (relating to Unsuitable Site Characteristics).

(c) Buffer variance.

(1) The executive director may grant a variance to a permittee operating a subsurface area drip dispersal system under an existing authorization issued prior to November 1, 2006, to continue the operation and use of any existing subsurface area drip dispersal system located within the buffer zones listed in this section provided that the system:

(A) is in compliance with the recharge feature plan required by §222.79 of this title (relating to the Recharge Feature Plan); or

(B) is certified by a licensed professional engineer or licensed professional geoscientist determining that the existing buffers will be protective of water quality.

(2) The permittee shall maintain documentation authorizing variances of buffer zones on-site ~~[on site]~~ for the duration of the permit and make it available to executive director staff ~~[commission personnel]~~ upon request.

(d) The permittee shall not locate a subsurface area drip dispersal system within a floodway. The permittee shall provide the source of all data for determination of the floodway locations and include a copy of the relevant Federal Emergency Management Agency (FEMA) flood map or the calculations and maps used where a FEMA map is not available.

§222.83. *Hydraulic Application Rate.*

(a) The permittee must demonstrate in the engineering report and ensure that the hydraulic application rate for a subsurface area drip dispersal system meets one of the following.

(1) The hydraulic application rate shall not exceed 0.1 gallons per square foot per day for a subsurface area drip dispersal system located west of the boundary shown in Figure 1 in paragraph (2) of this subsection, ~~[Figure 1]~~ and using a vegetative cover of non-native grasses that are over seeded with cool season grasses in the winter months (October - March) ~~[shall not exceed 0.1 gallons per square foot per day]~~.

(2) The hydraulic application rate for a subsurface area drip dispersal system located east of the boundary shown in Figure 1 of this paragraph or in any part of the state when the vegetative cover is any crop other than non-native grasses, the permittee shall use the ~~[following]~~ equations in Figure 2 or 3 of this paragraph to establish the rate.

Figure 1: 30 TAC §222.83(a)(2) (No change.)

Figure 2: 30 TAC §222.83(a)(2) (No change.)

Figure 3: 30 TAC §222.83(a)(2) (No change.)

(3) The applicant must calculate the hydraulic application rate for each month of the year. A monthly water balance is computed that includes soil moisture storage. Any available soil moisture is carried over to the next month. The maximum application rate is exceeded when the total hydraulic loading (rainfall and irrigation) exceeds the total of the available soil moisture storage, the actual water requirement of crop (inches per month), and leaching.

Figure: 30 TAC §222.83(a)(3) (No change.)

(4) The permittee may use an alternative method to calculate the hydraulic application rate with ~~[the]~~ approval from ~~[of]~~ the executive director.

(b) The nitrogen application rate for a subsurface area drip dispersal system must be calculated using the anticipated nitrogen concentration of wastewater effluent prior to land application.

(1) The permittee must calculate the allowable annual hydraulic loading rate based on nitrogen limits using the ~~[following]~~ equation in this paragraph.

Figure: 30 TAC §222.83(b)(1) (No change.)

(2) Upon request by the applicant, the executive director may approve other fractions of applied nitrogen removed based upon special conditions relating to a proposed site, if justified in the engineering report.

(c) The result obtained from calculation of the allowable annual hydraulic loading rate that is based upon nitrogen limits must be compared to the hydraulic loading rate that is based on crop need and soil water holding capacity in the figure in subsection (a)(3) of this section. The more restrictive of the two calculations will set the maximum hydraulic application rate.

(d) The volume of wastewater used when calculating the disposal area required based on the hydraulic application rate as described in this section may be reduced by the beneficial reuse credit, as calculated in accordance with Chapter 309, Subchapter D of this title (relating to Beneficial Reuse Credit) and approved by the commission.

(e) The disposal site area required may not be reduced by more than 50% of what the disposal site requirement would be using the permitted flow without the beneficial reuse credit.

§222.85. *Effluent Quality.*

(a) Protection of fresh water. The applicant must demonstrate that both surface and subsurface fresh water will not be polluted by the application of wastewater by the subsurface area drip dispersal system.

(b) Domestic wastewater [waste].

(1) The permittee shall maintain the pH of the effluent within the limits of 6.0 - 9.0 standard units immediately prior to dispersal [in accordance with §309.20(b)(5)(E) of this title (relating to Land Disposal of Sewage Effluent)], unless a specific variance is approved by the executive director based upon site-specific conditions.

(2) When a subsurface area drip dispersal system applies effluent on land where there is the potential for public contact with the soil, the permittee shall comply with Effluent Set 4 located in §309.4 of this title (relating to Table 1, Effluent Limitations for Domestic Wastewater Treatment Plants), or with more stringent effluent limitations prescribed by the executive director, if warranted to protect human health or [and] the environment.

(3) When a subsurface area drip dispersal system applies effluent on land where there is not the potential for public contact with the soil, the permittee shall comply with Effluent Set 5 located in §309.4 of this title, or with more stringent effluent limitations prescribed by the executive director, if warranted to protect human health or [and] the environment.

(4) Disinfection.

(A) Permittees applying treated effluent to land where there is the potential for public contact with the soil must disinfect the effluent prior to it entering the subsurface area drip dispersal system in accordance with §309.3(g) of this title (relating to Application of Effluent Sets).

(B) If the effluent is to be transferred to a holding pond or tank prior to dispersal, the permittee shall ensure that the effluent meets the relevant criteria of §222.87 of this title (relating to Effluent Limitations) at the time it enters the distribution system.

(C) Permittees are allowed to use ultraviolet disinfection systems only with effluent having a daily average five-day biochemical oxygen demand [(BOD₅)] concentration and total suspended solids concentration that are less than 20 milligrams per liter each.

(5) The permittee must comply with requirements other than those specified in this section, if determined by the executive director to be necessary to protect human health.

§222.87. *Effluent Limitations.*

(a) Domestic wastewater [waste]. The permittee shall comply with the effluent limitations in §309.3 and §309.4 of this title (relating to Application of Effluent Sets and Table 1, Effluent Limitations for Domestic Wastewater Treatment Plants) and any specific effluent limitations placed in the permit by the executive director.

(b) Industrial wastewater [waste].

(1) The permittee is prohibited from introducing the following wastes into a subsurface area drip dispersal system:

(A) characteristically hazardous wastes as determined in 40 Code of Federal Regulations (CFR) Part 261, Subpart C;

(B) listed hazardous wastes as defined in 40 CFR Part 261, Subpart D;

(C) wastes specifically prohibited for land disposal in 40 CFR Part 268, Subpart C; and

(D) wastes containing radioactive materials unless the permittee is authorized to store, process, and dispose of these wastes in compliance with the Atomic Energy Act of 1954 (as amended) or in compliance with the Texas Radiation Control Act.

(2) Effluent limitations.

(A) The permittee shall comply with the effluent limitations established by the executive director in an individual permit [permits].

(B) The permittee shall demonstrate compliance with technology-based effluent limitations by monitoring the effluent prior to introduction into the subsurface area drip dispersal system.

(C) If the soil pH is less than 6.5 standard units at a subsurface area drip dispersal system site, the permittee shall monitor certain trace elements, including phosphorus, fluoride, and heavy metals as specified by the executive director in the individual permit.

(D) Prior to disposal, the permittee shall ensure that the effluent from a treatment system meets Effluent Set 5, established in §309.4 of this title.

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

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SUBCHAPTER D. DESIGN CRITERIA

30 TAC §§222.115, 222.119, 222.127

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state; TWC, §26.034, which provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes; TWC, §26.041, which gives the commission the authority to set standards to prevent the disposal of waste that is injurious to the public health; and TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

The amendments are also proposed under TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121.

§222.115. *Treatment System.*

(a) For the systems and processes used to provide treatment of domestic wastewater prior to the wastewater entering the subsurface area drip dispersal system the applicant shall use the design criteria in Chapter 217 of this title (relating to Design Criteria for Domestic Wastewater Systems) or Chapter 317 of this title (relating to Design Criteria Prior to 2008) as applicable [for Sewerage Systems].

(b) If using septic tanks as the treatment system, the applicant shall design, construct, and install the tanks in accordance with Chapter 285, Subchapter D of this title (relating to Planning, Construction, and Installation Standards for [o]f OSSFs).

(c) If using anaerobic biological reactors (ABRs) as the treatment system, the permittee must comply with the following criteria.

(1) The ABR must have a container that is a structural unit such as a concrete tank, or an earthen berm with a membrane liner [that] may be used for larger installations.

(A) The container must be designed for the internal and external stresses that may be placed on the container during fabrication and use.

(B) Materials used to construct an ABR structural container must meet the requirements for septic tanks in §285.32 of this title (relating to Criteria for Sewage Treatment Systems).

(C) Containers using compacted earthen berms must use a membrane of vinyl or other plastic with a minimum thickness of 40 mils as the waterproofing component.

(D) A cover is required unless a covering layer of gravel or other media is placed above the liquid level to present a dry surface.

(2) The ABR must have media that is inert, stable, of uniform size, and free of fines.

(A) Clean washed gravel, crushed rock, or plastic filter media made for trickling filter use is acceptable.

(B) Minimum media effective size must be one inch and the uniformity coefficient must be less than 3.0.

(3) The ABR must have a distribution system over the bottom of the ABR and a collection system near the top of the ABR.

(A) The piping for the distribution system must be constructed of pipe that:

(i) is class 200 or schedule 40 polyvinyl chloride (PVC);

(ii) meets ASTM International [American Standard Testing Material] (ASTM) Standards [standards] D-2241 or D-1785; and

(iii) has a one-inch [one inch] nominal diameter.

(B) The ABR must incorporate a sight well that allows monitoring the liquid level in the unit.

(C) The ABR must have a means to flush and remove excessive biomat buildup from the media.

(d) If using sand filters as the treatment system, the permittee shall use sand filters that have the following components and meet the following requirements.

(1) Sand filters must be contained in a structural unit designed for all internal and external stresses that may be placed on the containment device during fabrication and use such as:

(A) a septic tank unit that meets the requirements in Chapter 285, Subchapter D of this title;

(B) a poured in place concrete structure; or

(C) an earthen berm with an impermeable membrane liner that has a minimum thickness of 40 mils and an under-drain leak detection system.

(2) The permittee shall use a detention time of at least 24 hours for dosing to a sand filter at rates up to ten gallons per day per square foot.

(3) All sand filter containment devices shall provide sufficient freeboard above the filter surface to hold four dosing volumes.

(4) A sand filter must have a collection pipe system to collect the filtered effluent that meets the following requirements.

(A) The piping shall be arranged so that the maximum horizontal travel distance of water through the under-drain media is less than four feet.

(B) The collection piping and the drain pipe from the filter shall be sized to remove a filter dose volume from the filter within a ten-minute period.

(C) The ends of the collection lines shall be extended above the surface of the filter to allow aeration of the drained filter.

(D) The collection piping system shall be constructed of pipe that:

(i) is class 200 or schedule 40 PVC;

(ii) meets ASTM Standards [standards] D-2241 or D-1785; and

(iii) has a two-inch nominal diameter.

(E) The sand filter media must:

(i) be an inert, clean washed material that is free of fines, dirt, and organic material;

(ii) have an effective size and uniformity coefficient suitable for the design loading rate;

(iii) have a depth based on the effective grain size and the design effluent quality with coarse media requiring a greater media depth; and

(iv) be placed on top of a bottom drain media.

(F) The sand filter bottom media must:

(i) cover the effluent collection piping;

(ii) have an effective grain size from two to four times the effective grain size of the filter media; and

(iii) support the filter media, prevent washout, and hydraulic removal of the filter media.

(5) The surface distribution mechanism must distribute the liquid to be filtered over the surface of the filter in a uniform manner.

(A) If a filter receives the liquid by gravity, distribution shall be accomplished by troughs or channels using splash pads to reduce surface erosion.

(B) Pressure-dosed sand filters must have a distribution system that:

(i) provides even distribution of the liquid;

(ii) consists of a pipe network with discharge holes or spray nozzles; and

(iii) provides a uniform pressure at the discharge outlets.

(6) Loading rates and filter sizing must be designed to treat the specific characteristics of the incoming wastewater and the effluent quality.

(7) The loading rate shall be designed based on the influent qualities, the selected media, and the acceptable run time between filter media cleaning or replacement.

(e) The permittee must submit a design that specifies the minimum frequency for solids removal from the treatment system and the justification of the frequency based on the type of system and good engineering practice.

(f) The permittee shall design the treatment system with the capacity to process the peak flow from the wastewater producer. The following criteria shall be the basis to determine peak flow:

(1) wastewater design values will be determined in accordance with §217.32 of this title (relating to Organic Loadings and Flows for New Wastewater Treatment Facilities); or §317.4(a)(1) or (2) of this title (relating to Wastewater Treatment Facilities); or

(2) the peak flows of the particular wastewater [waste] generator when the wastewater [waste] generator has unusually high peak flows.

§222.119. Delivery Systems.

(a) The permittee shall ensure that piping materials used in delivering treated effluent from the treatment facility to the dispersal zones are [is] suitable for effluent and conform [conforms] to regulations as required by Chapter 217 of this title (relating to Design Criteria for Domestic Wastewater Systems) or Chapter 317 of this title (relating to Design Criteria Prior to 2008) as applicable [for Sewerage Systems].

(b) The permittee shall identify the piping materials by referring to the appropriate ASTM International [American Standard Testing Material], American National Standard Institute, or American Water Works Association specification numbers.

(c) A permittee shall use a multiple pump system for all systems requiring pumping of effluent to the dispersal zones.

(1) The permittee shall use pumps rated by the manufacturer for effluent disposal.

(2) The permittee shall use pumps that are each rated for at least 100% of the design flow.

(3) The permittee shall include the pumping capacity and pump head calculations in the plans and specifications.

(d) The permittee shall ensure that the pump discharge piping includes a check valve, union, and gate valve for each submersible pump installed.

(e) The permittee shall use piping and valves made of corrosion-resistant materials for applications subject to corrosive gases.

(f) If self-priming pumps are used for subsurface area drip dispersal systems, the permittee shall use pumps that meet at least the minimum requirements listed under §217.61 of this title (relating to Lift Station Pumps) or §317.3 of this title (relating to Lift Stations [Station Pumps]), with the exception that the pumps are not required to meet the solids-handling requirement.

(g) The permittee shall include a check and gate valve for each unit of the discharge piping for self-priming pumps.

§222.127. Storage.

(a) The applicant must design and install temporary storage that equals at least three days of the design flow of the facility for times when the subsurface area drip dispersal system is out of service due to an emergency or scheduled maintenance.

(b) In lieu of temporary storage, the executive director may approve an alternate method of disposing of effluent, if an alternate disposal plan is submitted by the applicant.

(c) The volume of wastewater used when calculating the required effluent storage as described in this section may not be reduced by the beneficial reuse credit.

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

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SUBCHAPTER E. OPERATIONS AND MAINTENANCE

30 TAC §§222.157, 222.159, 222.163

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state; TWC, §26.034, which provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facili-

ties, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes; TWC, §26.041, which gives the commission the authority to set standards to prevent the disposal of waste that is injurious to the public health; and TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

The amendments are also proposed under TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121.

§222.157. *Soil Sampling.*

(a) The permittee shall take soil samples within the same 45-day time frame each calendar year.

(b) Laboratory analyses of the soil samples must be submitted to the executive director by September 1 following the sampling date.

(c) The plant nutrient parameters shall be analyzed on a plant available [or extractable] basis. The permittee shall provide annual soil analyses of the dispersal zones for the following substances:

(1) pH (sample consisting of two volumes of water to one volume of soil mixture), in standard units;

(2) conductivity (sample consisting of two volumes of water to one volume of soil mixture), reported in millimho per centimeter [(mmho/cm)];

(3) total Kjeldahl nitrogen [(TKN)]. Methods that rely on mercury as a catalyst are not acceptable;

(4) nitrate-nitrogen;

(5) plant-available potassium, reported on a dry-weight basis in milligrams per kilogram (mg/kg);

(6) calcium, reported on a dry-weight basis in mg/kg;

(7) magnesium [Magnesium], reported on a dry-weight basis in mg/kg;

(8) sulfur [Sulfur], reported on a dry-weight basis in mg/kg; [and]

(9) phosphorus, analyzed according to the Mehlich III procedure (the North American Proficiency Testing Program of the Soil Science Society of America) and reported on a dry-weight basis in mg/kg;

(10) sodium, reported on a dry-weight basis in mg/kg;

(11) salinity; and

(12) trace elements as specified in the individual permit.

(d) The permittee shall take samples in:

(1) the zero to 12-inch zone of the soil; and

(2) the 12- to 24-inch zone of soil in the disposal area.

(e) If soil conditions or weather preclude sampling within the time period required, the permittee may submit a request to sample at another time. The request must include justification for the schedule change and the replacement schedule.

(f) Alternate soil sampling depths and frequency may be approved by the executive director if the permittee demonstrates that the alternate depths and frequency sufficiently monitors nutrient levels.

(g) The permittee shall collect soil composite samples from each broadly defined soil characterization or texture, as defined by the United States Department of Agriculture.

(h) The permittee shall take at least one composite soil sample from each dispersal zone.

(i) The permittee must comply with any alternate sampling methods or schedules required by the executive director.

§222.159. *Operator Licensing.*

(a) The permittee shall ensure that the facility supplying treated domestic wastewater to the subsurface area drip dispersal system and the subsurface area drip dispersal system is operated by a chief operator holding a valid Class A, B, or C wastewater operator license as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(b) The permittee shall ensure that all wastewater operators have been trained to operate the specific treatment system and subsurface area drip dispersal system for which they have responsibility.

(c) Records of operator training must be made available to executive director [agency] staff upon request.

~~[(d) Any subsurface area drip dispersal system that utilizes treated domestic effluent and that is permitted under Texas Water Code, Chapter 26 before November 1, 2007, will not be required to have a chief operator with at least a Class C wastewater operator license until November 1, 2008.]~~

§222.163. *Closure Requirements.*

(a) The permittee of a subsurface area drip dispersal system that is to be permanently discontinued or abandoned shall close the system under the standards set forth in this section.

(b) If the permittee removes all tanks, lines, and other equipment from the site, the permittee may:

(1) submit to the appropriate regional office a closure report prepared by the permittee that includes sufficient soil analyses to demonstrate that there is no soil contamination at the subsurface area drip dispersal system site; and

(2) omit the requirement to deed record the location of the closed subsurface area drip dispersal system as required by subsection (f) of this section.

(c) The permittee must conduct the closure according to a system closure plan that is prepared by or under the direct supervision of a licensed professional engineer or licensed professional geoscientist.

(d) The permittee must close the system in a manner that prohibits the movement of fluids into underground sources of drinking water, in compliance with §331.5 of this title (relating to Prevention of Pollution) and 40 Code of Federal Regulations §144.12, concerning Prohibition of Movement of Fluid into Underground Sources of Drinking Water.

(1) The permittee must remove all aboveground [above ground] tanks. The permittee may remove or empty, collapse in place, and cover with clean fill material any underground tanks.

(2) The permittee must cap and remove three feet of the end sections of pipes that convey wastewater [waste] between the pump house and the dispersal lines. The permittee must cut and cap pipes every 500 linear feet between the pump house and the dispersal field.

(3) The permittee shall remove all valves and plug the lines where the valves are located.

(e) If soil, gravel, sludge, liquids, or other materials associated with the system are contaminated, the material must be disposed or otherwise managed in accordance with Chapter 350 of this title (relating to Texas Risk Reduction Program) and all other applicable federal, state, and local regulations and requirements.

(f) The permittee must deed record the location of the closed subsurface area drip dispersal system in the deed records of the county in which the site is located.

(g) The permittee shall submit, within 60 days after closing the system, a closure report:

(1) that has been prepared by a licensed professional engineer or licensed professional geoscientist;

(2) that certifies that closure was in accordance with the requirements of this section and in a manner that will prevent pollution; and

(3) includes evidence of deed recordation.

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CHAPTER 309. DOMESTIC WASTEWATER EFFLUENT LIMITATION AND PLANT SITING

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§309.1 - 309.4, 309.10 - 309.14, and 309.20; and new §§309.21 - 309.25.

Background and Summary of the Factual Basis for the Proposed Rules

On March 14, 2016, the commission received a petition from the City of Austin (petitioner). The petitioner requested that the commission initiate rulemaking to amend 30 TAC Chapters 222 and 309 (Project Number 2016-033-PET-NR). The rulemaking would allow permittees and applicants to rely on the beneficial reuse of treated wastewater when calculating the amount of land required for land application of treated wastewater. This would allow permittees and applicants to reduce the acreage dedicated for land application that is currently required by rule. The commission approved the petition to initiate rulemaking with stakeholder involvement. The executive director held a stakeholder meeting on August 9, 2016, and the public was invited to comment on the petition. The public comment period was from August 28, 2016 through October 28, 2016.

Based on information presented at the stakeholder meeting, the executive director understands that the petition was made in response to increasing demands on water supplies and decreasing availability of contiguous or neighboring tracts of land that are

large enough for domestic wastewater land application under the commission's current rules. This trend is currently appearing in parts of Central Texas where wastewater discharge to water in the state is restricted by the commission's rules and land application of treated wastewater may be the only permissible option. The executive director recognizes that land availability may also be limited in other parts of the state, and that practicable land application options are especially important wherever discharge to water in the state is restricted or infeasible.

The proposed revisions in this chapter and the corresponding proposed revisions in Chapter 222 would allow a reduction in the acreage required for land application of treated effluent by applying a "beneficial reuse credit" to reduce the flow when calculating the required land application area. An applicant could also request to use a beneficial reuse credit to increase the permitted flow without reducing the land application acreage or to use a beneficial reuse credit to reduce the acreage and increase the permitted flow. The beneficial reuse credit will be based on the demonstrated firm reclaimed water demand. The effluent storage size required by Chapter 309 may not be reduced by the beneficial reuse credit. Proposed new §§309.21 - 309.25 would establish the criteria for demonstrating firm reclaimed water demand, the procedure for calculating and applying the beneficial reuse credit, and the requirements for a permittee who has been granted a beneficial reuse credit. The proposed amendments correct inaccurate or outdated references to TAC or provide additional clarity.

Section by Section Discussion

The commission proposes to amend Chapter 309 to replace the term "disposal" with "land application" or "application" throughout to reflect that wastewater is beneficially applied and not just disposed of via land.

The commission proposes to amend Chapter 309 to replace the term "waste" with "wastewater" throughout to clarify that regulations in this chapter apply to wastewater.

The commission proposes to amend Chapter 309 to change surface water and groundwater to "water in the state" to be consistent with the definition of "water in the state" in Texas Water Code (TWC), §26.001.

The commission proposes to amend Chapter 309 to update references to ensure current and accurate cross-references, improve readability, improve rule structure, and use consistent terminology. These changes are non-substantive and may not specifically be discussed in the Section by Section Discussion of this preamble.

§309.3, *Application of Effluent Sets*

The commission proposes to amend §309.3(f)(2) to separate the existing paragraph (2) into §309.3(f)(2)(A) and (B) to make it clear when Effluent Set 1 and Effluent Set 6 apply.

The commission proposes to amend §309.3 to move §309.3(f)(7) to §309.3(f) to define primary treatment prior to use in subsection (f).

§309.10, *Purpose, Scope, and Applicability*

The commission proposes to amend §309.10 to replace the word "chapter" with the word "subchapter" throughout the section. The contents of the section are intended to apply to Subchapter B but not to Subchapters A and C.

§309.11, *Definitions*

The commission proposes to amend §309.11 to replace the word "chapter" with the word "subchapter" in the introductory paragraph. The terms defined in the section were not used in Subchapters A and C and were intended to apply in Subchapter B only. This change constrains applicability of the defined terms to Subchapter B, which also helps ensure clear understanding and applicability of terms defined and used in proposed Subchapter D.

§309.12, Site Selection To Protect Groundwater or Surface Water

The commission proposes to amend §309.12 to change the title from "Site Selection To Protect Groundwater or Surface Water" to "Site Selection to Protect Water in the State" to be consistent with the definition of water in the state in TWC, §26.001.

§309.13, Unsuitable Site Characteristics

The commission proposes to amend §309.13(c)(1) - (3) and (5) to clarify that the requirements apply to both surface and subsurface irrigation sites and to ensure consistency with the rules in 30 TAC Chapter 290 (Public Drinking Water). The rule applies to all wastewater irrigation systems, including the soil absorption systems identified in the existing rule.

The commission proposes to amend §309.13(d) to change the required thickness for a synthetic liner for a wastewater facility surface impoundment located above a recharge zone of a major or minor aquifer from 30 mils to 40 mils to be consistent with the requirements in 30 TAC Chapter 217 (Design Criteria for Domestic Wastewater Systems).

§309.20, Land Disposal of Sewage Effluent

The commission proposes to amend §309.20 to change the title from "Land Disposal of Sewage Effluent" to "Land Application of Sewage Effluent." The term "land application" clarifies that the section is for beneficial application of wastewater rather than disposal via land.

The commission proposes to amend §309.20 to move §309.20(b)(3)(B) before Figure: 30 TAC §309.20(b)(3)(A) to improve readability. The commission proposes to consolidate Tables 1 - 3 into the same figure, Figure: 30 TAC §309.20(b)(3)(B).

The commission proposes to amend §309.20(b)(4) to correct a reference to parameters listed in paragraph (3)(C) to instead reference the parameters listed earlier in the paragraph.

§309.21, Purpose, Scope, and Applicability

The commission proposes new §309.21(a) to state the purpose and scope of the proposed Subchapter D (Beneficial Reuse Credit).

The commission proposes new §309.21(b) to specify that the rules in the proposed subchapter apply to an entity who applies for or holds a Texas Land Application Permit (TLAP) for land application of treated domestic wastewater and is seeking to include a beneficial reuse credit in the permit. The proposed subchapter also applies to an entity who holds a permit that includes a beneficial reuse credit. Proposed Subchapter D is intended to give flexibility where discharge to water in the state is restricted by commission rules or is otherwise infeasible.

The commission proposes new §309.21(c)(1) to establish that the rules in the proposed subchapter do not apply to a facility that is authorized to discharge under a Texas Pollutant Discharge Elimination System (TPDES) permit issued under 30 TAC Chap-

ter 305 (Consolidated Permits). The executive director determined that since facilities authorized to discharge are not subject to the same land constraints as facilities that must dispose of their treated wastewater by land application, the proposed subchapter should not apply to facilities authorized to discharge.

The commission proposes new §309.21(c)(2) to establish that the rules in proposed Subchapter D do not apply to industrial facilities. The executive director determined that industries have flexibility through 30 TAC Chapter 210, Subchapter E (Special Requirements for Use of Industrial Reclaimed Water) that is not available to domestic wastewater treatment facilities which, by necessity, are bound to the populated areas they serve.

The commission proposes new §309.21(d) to clearly state that proposed Subchapter D does not allow the discharge of wastewater or reclaimed water to water in the state. The proposed language specifically states that a discharge from a pond or storage unit at the user's site directly resulting from rainfall events is considered an unauthorized discharge. This encourages a user to properly manage the reuse water they receive from the permittee. The proposed subchapter does not affect whether a discharge of wastewater or reclaimed water to water in the state is subject to applicable enforcement action under other law and rules.

§309.22, Definitions

The commission proposes new §309.22(1) and (2) to define "Beneficial reuse credit" and "Firm reclaimed water demand." The proposed definitions are necessary to establish the concept of the beneficial reuse credit proposed in Subchapter D. The beneficial reuse credit reduces the amount of flow used for calculating the required land application area. The firm reclaimed water demand is the amount of water used by the permittee or authorized users for beneficial reuse and is used to calculate the beneficial reuse credit.

The commission proposes new §309.22(3) to define "Reclaimed water" to establish usage of the term as it relates to proposed Subchapter D and maintain consistency with Chapter 210 (Use of Reclaimed Water).

The commission proposes new §309.22(4) to define "Total monthly volume" to clarify how to calculate the beneficial reuse credit in proposed §309.24.

The commission proposes new §309.22(5) to define "Total nitrogen" and establish the composition of the pollutant to be tested in the treated effluent as required in proposed §309.25(c), discussed later in this preamble.

The commission proposes new §309.22(6) to define "User" as the term is defined in Chapter 210 for consistency and to establish usage of the term as it relates to proposed Subchapter D.

The commission proposes new §309.22(7) to define "Water use data" to clarify that data used in demonstrating firm reclaimed water demand may be reclaimed water use data or potable water use data from a user who commits to substituting reclaimed water for existing potable water use.

§309.23, Demonstrating Firm Reclaimed Water Demand

The commission proposes new §309.23(a) to establish the requirement to submit five years of consecutive data for each user, if available, to demonstrate firm reclaimed water demand. If five years of data is not available, a minimum of two consecutive years of water use data is required. The executive director determined that at least two years of water data is necessary to

support a user's demand as firm. Data submitted must be from the period immediately preceding the date the application is received.

The commission proposes new §309.23(b) to require the applicant to report the total monthly volume of water used. The applicant shall segregate indoor uses and outdoor uses in the monthly volumes submitted. The executive director needs this information to determine the beneficial reuse credit.

The commission proposes new §309.23(c) to clarify that water use data submitted for establishing firm reclaimed water demand may be from water use by the applicant or from other users. Contractual agreements with users for reclaimed water must be for a minimum term of five years to reasonably ensure that the user intends to use reclaimed water for the five-year term of the permit.

The commission proposes new §309.23(d) to require water use data submitted for establishing firm reclaimed water demand to be for the same type of use proposed. For example, if a user commits to using reclaimed water instead of potable water for toilet flushing at a particular facility, then the water use data must be for toilet flushing at that facility.

The commission proposes new §309.23(e) to specify the requirements for water use data submitted for establishing firm reclaimed water demand for each user: the amount of water used, the type of use, and the number of acres irrigated, if for an outdoor use. The amount of water used and type of use is necessary for calculating the beneficial reuse credit, as discussed later in this preamble. The number of acres irrigated for outdoor uses is necessary for estimating the application rate of reclaimed water.

The commission proposes new §309.23(f) to provide that the executive director may exclude a user's water data if the executive director determines that the user's water data is unreliable due to the user's noncompliance with state laws, rules, or permit conditions within the five-year period immediately preceding the date the application is received.

The commission proposes new §309.23(g) to provide that the executive director may deny a beneficial reuse credit if the applicant has had a violation that resulted in an enforcement action in the five-year period immediately preceding the date the application is received. All permit applications are subject to a compliance history review, as stated in 30 TAC Chapter 60 (Compliance History). The proposed rule ensures the executive director the discretion to consider an applicant's compliance history when reviewing a request for a beneficial reuse credit.

The commission proposes new §309.23(h) to prohibit the use of prospective or speculative water use data when applying for a beneficial reuse credit. Users must be existing entities with historical water use data. Unbuilt entities or irrigation sites will not be considered when demonstrating firm reclaimed water demand, because the data are hypothetical and may not be reliable.

§309.24, Calculating and Using Beneficial Reuse Credit

The commission proposes new §309.24(a) to clarify the method for calculating beneficial reuse credit for outdoor uses. The commission proposes §309.24(a)(1) to clarify that, for users with less than five years of water use data, the beneficial reuse credit is calculated as 80% of the lowest single month of total outdoor water use. The commission proposes new §309.24(a)(2) to clarify that, for users with five or more years of water use data, it is

calculated as 80% of the average of the lowest three months of total outdoor water use. Water use for outdoor purposes can vary dramatically due to climate and weather, therefore using the lowest month or average of the lowest three months of total water use mitigates some of the seasonal variation in outdoor use. Calculating 80% of the lowest month or lowest three months of total water use provides an additional margin of safety for unforeseen changes in water use rates. Allowing the average of the lowest three months for users with five or more years of data encourages historic or more established users and provides a more accurate representation of their water use.

The commission proposes new §309.24(b) to clarify the method for calculating beneficial reuse credit for indoor uses. The commission proposes §309.24(b)(1) to clarify that, for users with less than five years of water use data, beneficial reuse credit is calculated as 100% of the lowest month of total water use.

The commission proposes new §309.24(b)(2) to clarify that, for users with five or more years of data, the beneficial reuse credit is calculated as 100% of the average of the lowest three months of total water use data. Water use for indoor purposes is not subject to the same degree of seasonal variation as outdoor use. Using the lowest month or average of the lowest three months of total water accounts for temporal variations, if present. For example, water use data for toilet flushing from a school building may decrease significantly during the summer months. Because indoor use is less variable than outdoor use, 100% of the lowest month or average of the lowest three months of total water use may be used in calculating the beneficial reuse credit. Allowing the average of the lowest three months for users with five or more years of data encourages historic or more established users and provides a more accurate representation of their water use.

The commission proposes new §309.24(c) to allow the beneficial reuse credit to be used when calculating the land application area required based on the hydraulic application rate. The applicant, if granted a beneficial reuse credit by the executive director, may reduce the permitted wastewater flow volume by the beneficial reuse credit when calculating the land application area required based on the hydraulic application rate for facilities that are regulated under Chapters 222 and 309. This allows an entity to reduce the required size of the land application site. An applicant could also foreseeably request to use a beneficial reuse credit to increase the permitted flow without changing the land application acreage or to change both the acreage and the permitted flow.

The commission proposes new §309.24(d) to prohibit reducing the land application site area by more than 50% of the area required based on the permitted flow. The applicant must have a land application site area that can receive at least 50% of the permitted flow, even if 100% of the effluent is used as reclaimed water. If an applicant who was granted a beneficial reuse credit in a previous permit action requests an increase in permitted flow, they must still satisfy this requirement. This requirement provides a reasonable margin of safety against unauthorized discharges (e.g., if a user is not able to accept reclaimed water).

The commission proposes new §309.24(e) to prohibit the reduction of the required storage. This applies to facilities that are regulated under Chapters 222 and 309. Effluent storage is especially necessary if the land application site acreage has been reduced by the beneficial reuse credit and the amount of reclaimed water distributed to users declines. Not allowing reductions in effluent storage provides an extra safety measure against unau-

thorized discharges (e.g., if a user is not able to accept reclaimed water).

The commission proposes new §309.24(f) to allow the use of water use data for a user with less than two years of data to recalculate the beneficial reuse credit during a permit renewal on a case-by-basis. Because changes in users do not require an amendment to the permit, the commission finds it appropriate to allow for newer users with less than two years of water use data to be included in the recalculation of the beneficial reuse credit during a renewal or in keeping track of their beneficial reuse credit.

§309.25, Requirements

The commission proposes new §309.25 to clarify the application requirements for an applicant seeking a beneficial reuse credit. Proposed new §309.25(a)(1) requires the applicant to provide a list of users and irrigation areas considered in demonstrating firm reclaimed water demand. For users that propose to use the reclaimed water for irrigation, the list must also include the acreage and crops irrigated at each irrigation site. The executive director needs this information for the public record and for review and enforcement of the beneficial reuse credit.

The commission proposes new §309.25(a)(2) to require the applicant to submit a map of users using the applicant's reclaimed water. The executive director needs this information for the public record and for review and enforcement of the beneficial reuse credit.

The commission proposes new §309.25(a)(3) to require the applicant to submit the water use data used to calculate firm reclaimed water demand. The executive director will review the water use data for accuracy and eligibility.

The commission proposes new §309.25(a)(4) to allow the executive director to require additional information as needed for reviewing the application. This may include additional information on firm reclaimed water demand users to provide the executive director with the information necessary to appropriately review the application.

The commission proposes new §309.25(a)(5) to require a permittee to apply for an amendment under Chapter 305 to obtain or change a beneficial reuse credit. For example, increasing the beneficial reuse credit to reduce the size of land application site would require a major amendment because it would make the permit less stringent by reducing the required land application area. Decreasing a beneficial reuse credit without decreasing the permitted flow would require a major amendment if it increases the required size of the land application site, potentially affecting adjacent landowners. Decreasing the beneficial reuse credit and the permitted flow by the same amount would require a minor amendment because this change would not result in less-restrictive permit conditions and would not affect adjacent landowners.

The commission proposes new §309.25(b)(1) to require an applicant to receive authorization in accordance with Chapter 210 before applying for a beneficial reuse credit. This requirement ensures that the applicant is an authorized provider of reclaimed water. The commission foresees that a new facility may be able to provide at least two years of data from proposed users and recognizes that a new facility would not be able to obtain authorization under Chapter 210 without an existing permit; therefore, the proposed rule provides that the executive director may temporarily waive the requirement to have a Chapter 210 authoriza-

tion if a new facility applicant provides the information required to demonstrate firm reclaimed water demand. The proposed rule requires the executive director to phase the permit for a new facility so that the beneficial reuse credit will not become effective until the applicant obtains the authorization required by Chapter 210.

The commission proposes new §309.25(b)(2) to require the permittee and users, as applicable, to maintain authorization under Chapter 210 during the term of the permit to which the beneficial reuse credit is applied. This requirement prevents unauthorized use of reclaimed water.

The commission proposes new §309.25(b)(3) to limit the wastewater permit term to five years if a beneficial reuse credit has been granted. This requirement results in a more frequent review of the water use data from authorized users and provides a more frequent assessment of the permit requirements, which helps to proactively ensure that a facility that relies on a beneficial reuse credit will be able to operate without causing or contributing to a discharge to water in the state.

The commission proposes new §309.25(b)(4) to require a permit that includes a beneficial reuse credit to specify both the permitted flow limit (the total flow the facility is permitted to treat) and the flow that may be land applied, which is equal to the permitted flow minus the beneficial reuse credit. Both flow limits are necessary to ensure protection of the environment because they are derived in different ways and are used for different purposes. For example, the permitted flow is based on wastewater generation estimates and is used for treatment facility design, but the land application limit is based on a hydraulic or nutrient application rate suitable for plant uptake during irrigation and is used to determine the required size of the land application site.

The commission proposes new §309.25(b)(5) to require a permittee that is granted a beneficial reuse credit to have a contractual agreement to pump and haul unused treated effluent and requires the applicant to dispose of excess wastewater under the contractual agreement if: a user no longer needs the reclaimed water, a new user has not been contracted to accept the unused reclaimed water, the storage capacity is not adequate to store the unused reclaimed water, and additional application to the permitted land application area would exceed the permitted application rate or is otherwise prohibited by the permit, such as when the ground is saturated or frozen. The permittee may use an alternate method of disposal previously approved by the executive director. This requirement provides a safety mechanism in case the amount of reclaimed water actually used is less than the firm reclaimed water demand demonstrated when calculating the beneficial reuse credit. A permittee who has been granted a beneficial reuse credit must remain compliant with the application rate authorized in the permit and is not authorized to discharge wastewater into water in the state, even if a reclaimed water user no longer accepts reclaimed water from the permittee.

The commission proposes new §309.25(b)(6) to require a permittee who is granted a beneficial reuse credit to meet the effluent quality standards for Type II reclaimed water, as described in §210.33 (Quality Criteria and Specific Uses for Reclaimed Water). This rule will require the effluent limits appropriate for Type II reclaimed water to be incorporated into the permit. Failure to meet the effluent limits is a permit violation that may be subject to enforcement action. These limits are necessary to protect human health and the environment.

The commission proposes new §309.25(c)(1) to require a permittee who has been granted a beneficial reuse credit to notify the executive director of any changes in users or irrigation areas within 30 days after the change. This requirement provides the commission with accurate information on the users of reclaimed water. A change in users or in areas used for outdoor use is not an amendment to the permit.

The commission proposes new §309.25(c)(2) to require a permittee that has been granted a beneficial reuse credit to maintain monthly data of the amount of reclaimed water used by each user, type of use for each site, acreage of each site for irrigation, crops irrigated at each irrigation sites, and total nitrogen concentration of the treated effluent. This data shall be sent to the executive director by September 30 of each year. The executive director will use the monthly reclaimed water use data, area of irrigation sites, crops irrigated and total nitrogen concentration of the treated effluent to determine whether the beneficial reuse credit is still appropriate and to verify that reclaimed water is not being over-applied on irrigation sites. The permittee shall also submit to the executive director a recalculation of the beneficial reuse credit by September 30 of each year. Recalculating the beneficial reuse credit with the most recent year of data will help the executive director determine whether the beneficial reuse credit is still appropriate. However, the recalculation of the beneficial reuse credit does not change the beneficial reuse credit or the required land application area in the permit unless the permit is amended. As described in proposed new §309.24(f), the permittee may use water use data from users with less than two years of data for recalculating the beneficial reuse credit on a case-by-case basis, but not to change the beneficial reuse credit.

The commission proposes new §309.25(c)(3) to state that if the recalculated beneficial reuse credit is reduced, the executive director may require a permit amendment. This allows the commission to amend permits as necessary to ensure that permits are protective of the environment.

The commission proposes new §309.25(c)(4) to establish the frequency of total nitrogen testing of the treated effluent. Total nitrogen shall be tested quarterly for the first year to provide a more comprehensive representation of the effluent quality. After the first year, total nitrogen may be sampled annually, upon approval of the executive director. Data on the total nitrogen concentration of the effluent, in conjunction with the amount of reclaimed water applied and the acreage of irrigation sites, allows the executive director to calculate the amount of nitrogen applied at outdoor use sites and determine whether nitrogen was over-applied.

The commission proposes new §309.25(c)(5) to require the permittee to submit their monthly effluent monitoring reports to the executive director. Currently, these reports are required to be maintained on site (for TLAPs) and be made available to commission staff upon request or during a permit action. The proposed rule would require permittees that have been granted a beneficial reuse credit to submit these monthly reports to the executive director, as is already required for TPDES permits. The proposed rule is necessary to verify that the permittee complies with §309.25(b)(6) pertaining to effluent quality.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the

agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed to allow permittees and applicants to rely on the beneficial reuse of treated wastewater when calculating the amount of land required for land application of treated wastewater. This would allow permittees and applicants to reduce the acreage dedicated for land application that is currently required by rule.

The state may see an insignificant increase in revenue because the rulemaking provides for a five-year permit instead of a ten-year permit; this would only apply to a very small subset of permits, TLAPs with a beneficial reuse credit. The permit fee ranges from \$315 to \$2,050 depending on the size of facility and type of application.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be the potential for a reduced demand on potable water supplies, increased land-use flexibility while protecting human health and the environment and providing for local economic growth.

The proposed rules are not compulsory and are not expected to result in significant fiscal implications for businesses or individuals. The proposed rules establish requirements for obtaining and maintaining a beneficial reuse credit. Because the proposed rules are optional, it is assumed that a unit of local government or entity that would apply for the beneficial reuse credit would see a net benefit.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rulemaking would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rules are not compulsory and are not expected to result in significant fiscal implications for businesses or individuals. The proposed rules establish requirements for obtaining and maintaining a beneficial reuse credit. Because the proposed rules are optional, it is assumed that an entity that would apply for the beneficial reuse credit would see a net benefit.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require a significant increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal or limit an existing regulation, nor does it increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in that statute. Texas Government Code, §2001.0225 applies to major environmental rules the result of which are to exceed standards set by federal law, express requirements of state law, requirements of a delegation agreements between state and the federal governments to implement a state and federal program, or rules adopted solely under the general powers of the agency instead of under a specific state law.

A "Major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the proposed rulemaking is to adopt rules that identify best management practices that achieve the highest practicable level of water conservation and efficiency, including practices, techniques, and technologies that make water use more efficient, by allowing permittees and applicants to rely on the beneficial reuse of treated wastewater as an additional alternative means to dispose of a portion of its treated wastewater when calculating the amount of land required for land application of wastewater. The proposed rulemaking affects the same class of regulated entities, except that the entities may be able to reduce the dedicated land application acreage that is currently required by rule, which incentivizes and encourages wastewater permittees and applicants to reuse treated wastewater.

The proposed rulemaking modifies the state rules related to subsurface irrigation and land application of treated wastewater. This may have a positive impact on the environment, human health, or public health and safety; however, the proposed rulemaking will not adversely affect the economy, a sector of the economy, productivity, competition, or jobs within the state or a sector of the state. Therefore, the commission concludes that the proposed rulemaking does not meet the definition of a "Major environmental rule."

Furthermore, even if the proposed rulemaking did meet the definition of a "Major environmental rule," it is not subject to Texas

Government Code, §2001.0225 because it does not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a state agency's adoption of a "Major environmental rule" that: 1) exceeds a standard set by federal law, unless state law specifically requires the rule; 2) exceeds an express requirement of state law, unless federal law specifically requires the rule; 3) exceeds 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) is adopted solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rulemaking does not meet any of the four requirements in Texas Government Code, §2001.0225(a). First, this rulemaking does not exceed standards set by federal law. Second, the proposed rulemaking does not exceed an express requirement of state law, but rather meets the requirements under state law to adopt rules suggesting best management practices for achieving the highest practicable levels of water conservation and efficiency, and regulate more efficiently, the land application of treated wastewater by identifying practices, techniques, and technologies that make water use more efficient. Third, the proposed rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the commission proposes the rulemaking under TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271, 26.011, 26.027, 26.034, and 26.041. Therefore, the commission does not propose the rulemaking solely under the commission's general powers.

Written comments on the Draft Regulatory Impact Analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, §2007.043. The following is a summary of that analysis. The specific purpose of the proposed rulemaking is to adopt rules that identify best management practices that achieve the highest practicable level of water conservation and efficiency by modifying TAC to allow permittees and applicants to rely on the beneficial reuse of treated wastewater as an additional alternative means to dispose of a portion of its treated wastewater when calculating the amount of land required for land application of wastewater. The proposed rulemaking will substantially advance this stated purpose by adopting language intended to regulate more efficiently the land application of treated wastewater by incentivizing and encouraging wastewater permittees and applicants to reuse treated wastewater.

Promulgation and enforcement of the proposed rules will not be a statutory or constitutional taking of private real property. Specifically, the proposed rulemaking does not apply to or affect any landowner's rights in private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These actions will not affect private real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) (Actions

and Rules Subject to the Coastal Management Program), and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on July 25, 2019, at 10:00 a.m. in Building E, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-042-309-OW. The comment period closes on July 30, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Rebecca Moore, Wastewater Permitting Section, at (512) 239-0058.

SUBCHAPTER A. EFFLUENT LIMITATIONS

30 TAC §§309.1 - 309.4

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and

to control the quality of, the water in the state; TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of wastewater or pollutants into or adjacent to water in the state; TWC, §26.034, which provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes; TWC, §26.041, which gives the commission the authority to set standards to prevent the disposal of wastewater that is injurious to the public health; and TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

The amendments are also proposed under TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121.

§309.1. *Scope and Applicability.*

(a) The purpose of this subchapter [these sections] is to promulgate a set of effluent quality limitations for treated domestic sewage which will be required of permittees as appropriate to maintain water quality in accordance with the commission's surface water quality standards. Any incorporation of federal regulations into this chapter shall apply only to disposal of domestic sewage.

(b) Secondary treatment, with exceptions applicable to certain stabilization pond systems and other natural systems, is defined as a minimum reduction of pollutants to meet the [following] quality specified in Figure: 30 TAC §309.1(b):
Figure: 30 TAC §309.1(b) (No change.)

(c) Effective April 1988, all permits containing an ammonia-nitrogen effluent limit are [hereby] modified to change Biochemical Oxygen Demand (BOD₅) [BOD₅] to carbonaceous biochemical oxygen demand (CBOD₅).

(d) Effective January 1, 1988, any permit containing a BOD₅ effluent limitation may be monitored and reported as CBOD₅ as long as nitrogen is monitored and reported as ammonia-nitrogen at the same sampling frequency. If the permit authorizes a discharge to land or an evaporation pond only, ammonia-nitrogen monitoring and reporting are not required to change to CBOD₅.

(e) The state [State] of Texas has established a state water quality management program and a continuing planning process which sets forth the strategy and procedures for accomplishing the management program's objectives. Essential elements of the program include updates of basin plans, total maximum daily loads, and wasteload evaluations by basin segments. In order to achieve compliance with water quality standards within certain segments, more stringent effluent quality limitations other than basic secondary treatment may be required to protect water quality.

§309.2. *Rationale for Effluent Sets.*

(a) The effluent sets in §309.4 of this title (relating to Table 1, Effluent Limitations for Domestic Wastewater Treatment Plants) are

intended to represent standard levels of treatment normally required for domestic wastewater treatment plants.

(b) Modifications to the effluent sets [~~uniform sets of effluent criteria~~] listed in §309.4 of this title may be considered by the commission when effluent limits more stringent than secondary treatment are required in order to maintain desired water quality levels.

(c) On a case-by-case basis, modifications to the effluent sets [~~uniform effluent criteria~~] listed in §309.4 of this title may be considered by the commission for certain existing, natural systems which cannot consistently meet pH or total suspended solids (TSS) limitations [~~criteria~~] due to the inherent variability of a particular system. Modifications to the effluent sets [~~criteria~~] may be allowed for a natural system designed for treatment or polishing with a discharge directly into surface water in the state [~~waters~~]. Natural systems include, but are not necessarily limited to, aerated lagoons followed by stabilization ponds, facultative ponds, stabilization ponds, and constructed wetlands. For the purpose of this chapter, playa lakes are not considered natural systems. The commission will consider the following factors in approving a modification to the effluent sets [~~criteria~~]:

(1) Any modification shall not allow a discharge which would cause a violation of the commission's surface water quality standards or any applicable total maximum daily loads [(TMDLs)] or wasteload evaluation.

(2) A proposal for a modification must be supported by an engineering report, prepared and sealed by a licensed Texas [~~qualified~~] professional engineer representing the permit applicant, which justifies the request for modification with specific information relating to the proposed design and that design's inherent limitations. For considering a request for modification of an existing system that cannot achieve permitted pH or TSS limitations, the engineering report must also document past efforts of design modification, operation, and maintenance, and include data showing for the past three years, influent and effluent hydraulic and organic loadings and the resultant effluent quality achieved.

(3) The commission may set narrative effluent limitations and effluent monitoring requirements as an alternative to a specific numerical effluent limitation when a specific numeric effluent limitation cannot be met because of, but not limited to, seasonal or operational factors. These narrative requirements shall ensure that necessary operational and maintenance actions are consistently carried out by the permittee to meet applicable water quality standards. The commission may request resumption of the original numerical limitations during the next permit renewal or amendment [~~at the expiration of the permit~~] based on a review of the discharge effluent data.

(4) The commission may suspend setting a specific numerical effluent limitation for a temporary period of time not to exceed the remainder of the permit term, pending a review of the actual performance of a natural system's design as long as the facility meets paragraph (1) of this subsection. During any temporary suspension, the permittee must document that the system is operated and maintained for optimal performance in accordance with an operation and maintenance manual prepared in accordance with Chapter 217 of this title (relating to Design Criteria for Domestic Wastewater Systems) or Chapter 317 of this title (relating to Design Criteria Prior to 2008) as applicable [~~for Sewerage Systems~~] and is meeting water quality standards. After review of performance data and related information submitted by the permittee in a permit application, for [~~at time of~~] permit renewal or amendment, or when submitted at the request of the executive director, the commission may set specific numerical effluent limitations consistent with [~~the criteria of~~] this subchapter and the performance documented for the particular system.

§309.3. *Application of Effluent Sets.*

(a) Discharges into effluent limited segments.

(1) All discharges into effluent limited segments shall, at a minimum, achieve secondary treatment. An effluent limited segment is any segment which is presently meeting or will meet applicable water quality criteria following incorporation of secondary treatment for domestic sewage treatment plants and/or best practicable treatment for industries.

(2) New or increased discharges into effluent limited segments shall achieve that level of treatment deemed necessary by the commission, based on the assimilative capacity and uses of the receiving stream.

(b) Discharges into water quality impaired [~~limited~~] segments.

(1) All discharges into water quality impaired [~~limited~~] segments for which evaluations have been developed shall, at a minimum, achieve the treatment level specified in the recommendations of the evaluation for that discharge. An impaired [~~A water quality limited~~] segment is a surface water segment classified by the commission as water quality limited where conventional treatment of wastewater [~~waste~~] discharged to the segment is not stringent enough for the segment to meet applicable water quality standards; monitoring data have shown significant violations of water quality standards; advanced waste treatment for point sources is required to protect existing exceptional water quality; or the segment is a public domestic water supply reservoir used to supply drinking water.

(2) Discharges into water quality impaired [~~limited~~] segments for which wasteload evaluations or total maximum daily loads have not been developed shall, at a minimum, achieve secondary treatment as provided by §309.1 of this title (relating to Scope and Applicability).

(c) Discharges into certain reservoirs. Any discharge made within five miles upstream of a reservoir or lake which is subject to on-site/private sewage facility regulation adopted under Texas Water Code, Chapter 26 or Texas Civil Statutes, Article 4477-7e, or which may be used as a source for public drinking water supply shall achieve, at a minimum, Effluent Set 2 in §309.4 of this title (relating to Table 1, Effluent Limitations for Domestic Wastewater Treatment Plants). Five miles shall be measured in stream miles from the normal conservation pool elevation. The commission may grant exceptions to this requirement where it can be demonstrated that the exception would not adversely impact water quality.

(d) Discharges from stabilization ponds. Effluent Set 3 in §309.4 of this title shall apply to stabilization pond facilities in which stabilization ponds are the primary process used for secondary treatment and in which the ponds have been designed and constructed in accordance with applicable design criteria. Effluent Set 3 in §309.4 of this title is considered equivalent to secondary treatment for stabilization pond systems.

(e) Discharge to an evaporation pond. Effluent discharged to evaporation ponds must receive, at a minimum, primary treatment, be within the pH limits of 6.0 - 9.0 standard units, and have a quality of 100 milligrams per liter (mg/l) five-day biochemical oxygen demand or less on a grab sample. For the purpose of this subsection, primary treatment means solids separation which is typically accomplished by primary clarifiers, Imhoff tanks, facultative lagoons, septic tanks, and other such units.

(f) Land application [~~disposal~~] of treated effluent. The commission may authorize land application [~~disposal~~] of treated effluent when the applicant demonstrates that the quality of water [~~ground or surface waters~~] in the state will not be adversely affected. Each project

must be consistent with laws relating to water rights. The primary purpose of such a project must be to dispose of treated effluent and/or to further enhance the quality of effluent prior to discharge. For the purpose of this subsection, primary treatment means solids separation which is typically accomplished by primary clarifiers, Imhoff tanks, facultative lagoons, septic tanks, and other such units.

(1) When irrigation systems ultimately dispose of effluent on land to which the public has access, Effluent Set 4 in §309.4 of this title, at a minimum, shall apply. The pH shall be within the limits of 6.0 - 9.0 standard units unless a specific variance is provided in the permit based upon site-specific conditions. When irrigation systems ultimately dispose of effluent on land to which the public does not have access [lands to which the public does not have access are to be used for ultimate disposal of effluent], the effluent must, at a minimum, receive primary treatment and [-] Effluent Set 5 in §309.4 of this title, at a minimum, shall apply and the pH shall be within the limits of 6.0 - 9.0 standard units unless a specific variance is provided in the permit based upon site-specific conditions. [For irrigation systems, primary treatment is the same as described in subsection (e) of this section.] Effluent may be used for irrigation only when consistent with Subchapters B and C of this chapter (relating to Location Standards and Land Application [~~Disposal~~] of Sewage Effluent).

(2) When overland flow systems are utilized for effluent treatment, the public shall not have access to the treatment area.

(A) For land application permits, primary [Primary] treated effluent meeting Effluent Set 6 in §309.4 of this title, within the pH limits of 6.0 - 9.0 standard units may be used consistent with environmental safeguards and protection of water in the state [ground and surface waters]. [For overland flow systems, primary treatment is the same as described in subsection (e) of this section.]

(B) For discharge permits, at [At] a minimum, Effluent Set 1 in §309.4 of this title shall apply to discharges from overland flow facilities except where more stringent treatment levels are required to meet water quality standards.

(3) When evapotranspiration beds, low pressure dosing, or similar soil absorption systems are utilized for on-site land application [~~disposal~~], the effluent shall, at a minimum, receive primary treatment and meet Effluent Set 7 in §309.4 of this title. Use of these on-site systems shall be consistent with environmental safeguards and the protection of water in the state [ground and surface waters. Primary treatment is the same as described in subsection (e) of this section].

(4) When subsurface area drip dispersal systems, or similar soil absorption systems ultimately dispose of effluent on land where there is the significant potential for public contact, as defined in §222.5 of this title (relating to Definitions), Effluent Set 4 in §309.4 of this title, at a minimum, shall apply. The pH shall be within the limits of 6.0 - 9.0 standard units unless a specific variance is provided in the permit based upon site-specific conditions.

(5) When subsurface area drip dispersal systems, or similar soil absorption systems ultimately dispose of effluent on land where there is the minimal potential for public contact, as defined in §222.5 of this title, Effluent Set 5 in §309.4 of this title, at a minimum, shall apply. The pH shall be within the limits of 6.0 - 9.0 standard units unless a specific variance is provided in the permit based upon site-specific conditions.

(6) Treated effluent may be land applied only when consistent with Subchapters B and C of this chapter. Use of subsurface area drip dispersal systems shall be consistent with environmental safeguards and the protection of water in the state [ground and surface waters].

~~[(7) For the purpose of this subsection, primary treatment means solids separation which is typically accomplished by primary clarifiers, Imhoff tanks, facultative lagoons, septic tanks, and other such units.]~~

(g) Disinfection.

(1) Except as provided in this subsection, disinfection in a manner conducive to the protection of both public health and aquatic life shall be achieved on all domestic wastewater which discharges into water [waters] in the state. Any appropriate process may be considered and approved on a case-by-case basis.

(2) Where chlorination is utilized, any combination of detention time and chlorine residual where the product of chlorine ($[Cl_2]$ mg/l) X Time ($[T]$ minutes) equals or exceeds 20 is satisfactory provided that the minimum detention time is at least 20 minutes and the minimum residual is at least 0.5 mg/l. The maximum chlorine residual in any discharge shall in no event be greater than four mg/l per grab sample, or that is necessary to protect aquatic life.

(3) On a case-by-case basis, the commission will allow chlorination or disinfection alternatives to the specific criteria of time and detention described in paragraph (2) of this subsection that achieve equivalent water quality protection. These alternatives will be considered and their performance standards determined based upon supporting data submitted in an engineering report, prepared and sealed by a licensed Texas [~~registered,~~] professional engineer. The report should include supporting data, performance data, or field tracer studies, as appropriate. The commission will establish effluent limitations as necessary to verify disinfection is adequate, including chlorine residual testing, other chemical testing, and bacteria testing as specified in subsection [subsections] (h) or (i) of this section.

(4) Except as provided in this subsection [herein], disinfection of domestic wastewater which is discharged by means of land application [~~disposal~~] or evaporation pond shall be reviewed on a case-by-case basis to determine the need for disinfection. All effluent discharged to land to which the public has access must be disinfected and if the effluent is to be transferred to a holding pond or tank, the effluent shall be rechlorinated to a trace chlorine residual at the point of irrigation application. All effluent discharged to land via a subsurface area drip dispersal system to which there is a potential for public contact shall be disinfected and shall comply with an *Escherichia coli* (*E. coli*) bacteria effluent limitation of 126 colony forming units per 100 milliliters of water or a fecal coliform effluent limitation of 200 colony forming units per 100 milliliters water, per grab sample, in accordance with paragraph (1) of this subsection.

(5) Unless otherwise specified in a permit, chemical disinfection is not required for stabilization ponds when the total retention time in the free-water-surface ponds (based on design flow) is at least 21 days.

(h) Effluent limitations for bacteria.

(1) To demonstrate the disinfection level in effluent discharged into water in the state by its wastewater treatment facility, a permittee shall measure the amount of bacteria in the effluent.

(A) *E. coli* [~~To demonstrate disinfection, Escherichia coli (E. coli)]~~ must be the indicator bacteria measured for discharges to fresh water.

(B) *Enterococci* [~~To demonstrate disinfection, Enterococci]~~ must be the indicator bacteria measured for discharges to salt water.

(2) The monthly average bacteria effluent limitation in a Texas Pollutant Discharge Elimination System (TPDES) permit must

be the applicable geometric mean for the most stringent contact recreation category as specified in Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

(3) The daily maximum bacteria effluent limitation in a TPDES permit must be the applicable single grab sample for the most stringent contact recreation category in Chapter 307 of this title.

(i) More stringent requirements. The commission may impose more stringent requirements in permits than those specified in subsections (a) - (h) of this section, on a case-by-case basis, where appropriate to maintain desired water quality levels or protect human health.

§309.4. *Table 1, Effluent Limitations for Domestic Wastewater Treatment Plants.*

Figure: 30 TAC §309.4 contains the effluent limitations for domestic wastewater treatment plants. [This table contains the sets of effluent criteria for waste discharge permits.]

Figure: 30 TAC §309.4
[Figure: 30 TAC §309.4]

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

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6812



SUBCHAPTER B. LOCATION STANDARDS

30 TAC §§309.10 - 309.14

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of wastewater or pollutants into or adjacent to water in the state; TWC, §26.034, which provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes; TWC, §26.041, which gives the commission the authority to set standards to prevent the disposal of wastewater that is injurious to the public health;

and TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

The amendments are also proposed under TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121.

§309.10. *Purpose, Scope, and Applicability.*

(a) This subchapter [chapter] establishes minimum standards for the location of domestic wastewater treatment facilities. These standards are to be applied in the evaluation of an application for a permit to treat and dispose of domestic wastewater and for obtaining approval of construction plans and specifications. This subchapter [chapter] applies to domestic wastewater permit applications and construction plans and specifications filed on or after October 8, 1990, for new facilities and substantial changes in the function or use of existing units [which undergo substantial change for the continued purpose of domestic wastewater treatment].

(b) The purpose of this subchapter [chapter] is to condition issuance of a permit and/or approval of construction plans and specifications for new domestic wastewater treatment facilities or the substantial change in the function or use of an existing unit on selection of a site that minimizes possible contamination of water in the state [ground and surface waters]; to define the characteristics that make an area unsuitable or inappropriate for a wastewater treatment facility; to minimize the possibility of exposing the public to nuisance conditions; and to prohibit issuance of a permit for a facility to be located in an area determined to be unsuitable or inappropriate, unless the design, construction, and operational features of the facility will mitigate the unsuitable site characteristics.

§309.11. *Definitions.*

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

(1) Active geologic processes--Any natural process which alters the surface and/or subsurface of the earth, including, but not limited to, erosion (including shoreline erosion along the coast), submergence, subsidence, faulting, karst formation, flooding in alluvial flood wash zones, meandering river bank cutting, and earthquakes.

(2) Aquifer--A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. Portions of formations, such as clay beds, which are not capable of yielding a significant amount of groundwater to wells or springs are not aquifers.

(3) Erosion--The group of natural processes, including weathering, deterioration, detachment, dissolution, abrasion, corrosion, wearing away, and transportation, by which earthen or rock material is removed from any part of the earth's surface.

(4) Existing facility--Any facility used for the storage, processing, or application [disposal] of domestic wastewater and which has obtained approval of construction plans and specifications as of March 1, 1990.

(5) New facility--Any domestic wastewater treatment facility which is not an existing facility.

(6) Nuisance odor prevention--The reduction, treatment, and dispersal of potential odor conditions that interfere with another's use and enjoyment of property that are caused by or generated from a wastewater treatment plant unit, which conditions cannot be prevented by normal operation and maintenance procedures of the wastewater treatment unit.

(7) One hundred-year flood plain--Any land area which is subject to a 1.0% or greater chance of flooding in any given year from any source.

(8) Substantial change in the function or use--An increase in the pollutant load or modification in the existing purpose of the unit.

(9) Wastewater treatment plant unit--Any apparatus necessary for the purpose of providing treatment of wastewater (i.e., aeration basins, splitter boxes, bar screens, sludge drying beds, clarifiers, overland flow sites, treatment ponds or basins that contain wastewater, etc.). For purposes of compliance with the requirements of §309.13(e) of this title (relating to Unsuitable Site Characteristics), this definition does not include off-site bar screens, off-site lift stations, flow metering equipment, or post-aeration structures needed to meet permitted effluent minimum dissolved oxygen limitations.

(10) Wetlands--Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, playa lakes, and similar areas.

§309.12. Site Selection to [To] Protect Water in the State [Groundwater or Surface Water].

The commission may not issue a permit for a new facility or for the substantial change of an existing facility unless it finds that the proposed site, when evaluated in light of the proposed design, construction or operational features, minimizes possible contamination of water in the state [surface water and groundwater]. In making this determination, the commission may consider the following factors:

- (1) active geologic processes;
- (2) groundwater conditions such as groundwater flow rate, groundwater quality, length of flow path to points of discharge, and aquifer recharge or discharge conditions;
- (3) soil conditions such as stratigraphic profile and complexity, hydraulic conductivity of strata, and separation distance from the facility to the aquifer and points of discharge to surface water in the state; and
- (4) climatological conditions.

§309.13. Unsuitable Site Characteristics.

(a) A wastewater treatment plant unit may not be located in the 100-year flood plain unless the plant unit is protected from inundation and damage that may occur during that flood event.

(b) A wastewater treatment plant unit may not be located in wetlands. (This prohibition is not applicable to constructed wetlands.)

(c) A wastewater treatment plant unit may not be located closer than 500 feet from a public water well as provided by §290.41(c)(1)(B) of this title (relating to [Ground] Water Sources [and Development]) nor 250 feet from a private water well. The following separation distances apply to any facility used for the storage, processing, or application [disposal] of domestic wastewater. Exceptions

to these requirements will be considered at the request of a permit applicant on a case-by-case basis, and alternative provisions will be established in a permit if the alternative condition provides adequate protection to potable water sources and supplies.[:]

(1) A wastewater treatment plant unit, or land where [surface] irrigation using wastewater effluent occurs[: or soil absorption systems (including low pressure dosing systems, drip irrigation systems, and evapotranspiration beds)] must be located a minimum horizontal distance of 150 feet from a private water well.[:]

(2) A wastewater treatment plant unit, or land where [surface] irrigation using wastewater effluent occurs, must be located a minimum horizontal distance of 500 feet from an elevated or ground potable-water storage tank as provided by §290.43(b)(1) of this title (relating to Water Storage [Location of Clear Wells, Standpipes, and Ground Storage and Elevated Tanks]).[:]

(3) A wastewater treatment plant unit, or land where [surface] irrigation using wastewater effluent occurs, must be located a minimum horizontal distance of 500 feet from a public water well site as provided by §290.41(c)(1)(C) of this title, spring, or other similar sources of public drinking water.[:]

(4) A wet well or pump station at a wastewater treatment facility must be located a minimum horizontal distance of 300 feet from a public water well site, spring, or other similar sources of public drinking water as provided by §290.41(c)(1)(B) of this title.[: and]

(5) A wastewater treatment plant unit, or land where [surface] irrigation using wastewater effluent occurs, must be located a minimum horizontal distance of 500 feet from a surface water treatment plant as provided by §290.42(a)(2)(A) [§290.41(e)(3)(A)] of this title (relating to Water Treatment).

(d) A wastewater treatment facility surface impoundment may not be located in areas overlying the recharge zones of major or minor aquifers, as defined by the Texas Water Development Board, unless the aquifer is separated from the base of the containment structure by a minimum of three feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation of pollutant migration. A synthetic membrane liner may be substituted with a minimum of 40 [30] mils thickness and an underground leak detection system with appropriate sampling points.

(e) One of the following alternatives must be met as a compliance requirement to abate and control a nuisance of odor prior to construction of a new wastewater treatment plant unit, or substantial change in the function or use of an existing wastewater treatment unit.[:]

(1) Lagoons with zones of anaerobic activity (e.g., facultative lagoons, un-aerated equalization basins, etc.) may not be located closer than 500 feet to the nearest property line. All other wastewater treatment plant units may not be located closer than 150 feet to the nearest property line. Land used to treat primary effluent is considered a plant unit. Buffer zones for land used to dispose of treated effluent by irrigation shall be evaluated on a case-by-case basis. The permittee must hold legal title or have other sufficient property interest to a contiguous tract of land necessary to meet the distance requirements specified in this paragraph during the time effluent is disposed by irrigation.[:]

(2) The applicant must submit a nuisance odor prevention request for approval by the executive director. A request for nuisance odor prevention must be in the form of an engineering report, prepared and sealed by a licensed Texas professional engineer in support of the request. At a minimum, the engineering report shall address existing

climatological conditions such as wind velocity and atmospheric stability, surrounding land use which exists or which is anticipated in the future, wastewater characteristics in affected units pertaining to the area of the buffer zone, potential odor generating units, and proposed solutions to prevent nuisance conditions at the edge of the buffer zone and beyond. Proposed solutions shall be supported by actual test data or appropriate calculations. The request shall be submitted, prior to construction, either with a permit application and subject to review during the permitting process or submitted for executive director approval after the permitting process is completed. [; øf]

(3) The permittee must submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the applicant. Sufficient evidence of legal restriction may, among others, take the form of a suitable restrictive easement, right-of-way, covenant, deed restriction, deed recorded, or a private agreement provided as a certified copy of the original document. The request shall be submitted, prior to construction, either with a permit application and subject to review during the permitting process or submitted for executive director approval after the permitting process is completed.

(f) For a facility for which a permit application, other than a renewal application, is made after October 8, 1990, if the facility will not meet the buffer zone requirement by one of the alternatives described in subsection (e) of this section, the applicant shall include in the application for the discharge permit a request for a variance. A variance will be considered on a case-by-case basis and, if granted by the commission, shall be included as a condition in the permit. This variance may be granted by the commission, consistent with the policies set out in Texas Water Code, §26.003.

(g) Any approved alternative for achieving the requirements of this section [subsection] must remain in effect as long as the wastewater treatment plant is permitted by the commission. To comply with this requirement, the permittee must carry out the nuisance odor prevention plan at all times, shall ensure sufficient property ownership or interest and shall maintain easements prohibiting residential structures, as appropriate.

(h) For a permitted facility undergoing renewal of an existing permit with plans and specifications approved prior to March 1, 1990, for which no design change is requested, the facility will not be required to comply with the requirements of this section [subsection].

(i) Facilities for which plans and specifications have been approved prior to March 1, 1990, are not required to resubmit revised plans and specifications to meet changed requirements in this section in obtaining renewal of an existing permit.

§309.14. Prohibition of Permit Issuance.

(a) The commission may not issue, amend, or renew a permit for a wastewater treatment plant if the facility does not meet the requirements of §309.13 of this title (relating to Unsuitable Site Characteristics).

(b) Nothing in this chapter shall be construed to require the commission to issue a permit, regardless of whether [notwithstanding a finding that] the proposed facility would satisfy the requirements of §309.12 of this title (relating to Site Selection to [Fo] Protect Water in the State [Groundwater or Surface Water]) and [notwithstanding the absence of site characteristics which would disqualify the site from permitting pursuant to] §309.13 of this title [(relating to Unsuitable Site Characteristics)].

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

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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SUBCHAPTER C. LAND APPLICATION OF SEWAGE EFFLUENT

30 TAC §309.20

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of wastewater or pollutants into or adjacent to water in the state; TWC, §26.034, which provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes; TWC, §26.041, which gives the commission the authority to set standards to prevent the disposal of wastewater that is injurious to the public health; and TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

The amendment is also proposed under TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The amendment implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121.

§309.20. Land Application [Disposal] of Sewage Effluent.

(a) Technical report. Each project shall be accompanied by a preliminary engineering report outlining the design of the wastewater application [disposal] system. The report shall include maps, diagrams, basis of design, calculations, and other pertinent data as described in this section.

- (1) Location.

(A) Site map. A copy of the United States Geological Survey 7 1/2 minute topographic map or equivalent for renewals of the area which indicates the exact boundaries of the application [disposal] operation must [will] be included in the technical report. A map from the 7 1/2 minute series is required if it is published for the site area.

(B) Site drawing. A scale drawing and legal description of all land which is to be a part of the application [disposal] operation will be included in the technical report. The drawing must [will] show the location of all existing and proposed facilities to include: buildings, wastewater application [waste disposal] or treatment facilities, effluent storage and tail water control facilities, buffer zones, and water wells. This drawing must [should] have an index of wells, adjacent property, and other prominent features. Ownership of land tracts adjacent to the irrigated land shall be shown on the site drawing and identified by listing legal ownership.

(2) Geology. The existence of any unusual geological formations such as faults or sink holes on the wastewater application [waste disposal] site shall be noted in the technical report and identified on the site map. The conceptual design of the wastewater application [waste disposal] system shall include appropriate engineering considerations with respect to limitations presented by these features.

(3) Soils. A general survey of soils with regard to standard classifications shall be compiled for all areas of wastewater [waste] application to the soil. Soil surveys compiled by the United States Department of Agriculture Natural Resources [Soil] Conservation Service shall be utilized where available. Conceptual design aspects related to wastewater [waste] application rates, crop systems, seepage, and runoff controls shall be based upon the soil physical and chemical properties, hydraulic characteristics, and crop use suitabilities for the wastewater [waste] application site.

(4) Groundwater quality. The technical report shall fully assess the impact of the wastewater application [waste disposal] operation on the uses of local groundwater resources. In regard to performing this assessment, the report shall systematically address subparagraphs (A) and (B) of this paragraph.

(A) All water wells within a 1/2 mile radius of the application [disposal] site boundaries shall be located. If available, the water uses from each well shall be identified. In addition, aspects of construction such as well logs, casing, yield, static elevation, water quality, and age shall be furnished and evaluated in the technical report. Local groundwater resources below the wastewater application [disposal] site shall be monitored to establish preoperational baseline groundwater quality when monitoring wells are available. Monitoring shall provide the following analytical determination: total dissolved solids, nitrate nitrogen, chlorides, sulfates, pH, and *Escherichia coli* [coliform] bacteria.

(B) Groundwater resources serving as sources or potential sources of domestic raw water supply will be protected by limiting wastewater application rates. Effluent storage and/or treatment ponds presenting seepage hazards to these groundwater resources shall be constructed with adequate liners.

(5) Agricultural practice. The technical report shall describe the crop system proposed for the wastewater application [waste disposal] operation. This description shall include a discussion of the adaptability of the crop to the particular soil, climatological, and wastewater sensitivity conditions that will exist at the wastewater application [waste disposal] site. Annual nutrient uptake of the crop system shall be specified, and crop harvesting frequencies shall be described within the report.

(b) Irrigation. Irrigation application [disposal] systems utilize effluent to supply the growth needs of the cover crop.

(1) Secondary effluent. Land application [disposal] system operators who use land accessible to the general public shall provide a degree of treatment equivalent to secondary treatment standards, as required by §309.3(f)(1) of this title (relating to Application of Effluent Sets) [defined by the commission], prior to application of wastewater [waste] to land areas.

(2) Primary effluent. Land application [disposal] systems may provide for the application [disposal] of effluent from primary treatment units provided that the wastewater application [disposal] system conforms with the requirements contained in subparagraphs (A) - (E) of this paragraph.

(A) The wastewater application [disposal] system shall be designed and operated to prevent a discharge from entering surface water in the state [waters], and to prevent recharge of groundwater resources which supply or offer the potential of supplying domestic raw water.

(B) The land application [disposal] system shall be designed and operated to achieve application [disposal] of effluent without adversely affecting the agricultural productivity of the land application [disposal] site.

(C) The economic benefits derived from agricultural operations carried out at the land application [disposal] site are secondary to the proper application [disposal] of wastewater.

(D) The sewerage system owner shall maintain direct responsibility and control over all aspects of the sewage pretreatment and application operations, as well as all aspects of any agricultural activities carried out on the application [disposal] site.

(E) The land application [disposal] system shall contain sufficient area to provide for normal expansion of the facility service area. In most cases, the application [disposal] system shall have a design life of at least 20 years.

(3) Design analysis. The designing engineers shall utilize a detailed design analysis of limiting hydraulic and nutrient application rates, and effluent storage needs, as the basis of the application [disposal] system design. All projects shall include the detailed design analysis described in subparagraphs (A) - (C) of this paragraph.

(A) Hydraulic application rate. A water balance study shall be provided as a part of a detailed application rate analysis in order to determine the irrigation water requirement, including a leaching requirement if needed, for the crop system on the wastewater application areas. The water balance study should generally follow the example [development] shown in Table 1 in Figure: 30 TAC §309.20(b)(3)(B) [of this subparagraph]. Precipitation inputs to the water balance shall utilize the average yearly rainfall and the monthly precipitation distribution based on past rainfall records. The consumptive use requirements (evapotranspiration losses) of the crop system shall be developed on a monthly basis. The method of determining the consumptive use requirement shall be documented as a part of the water balance study. A leaching requirement, calculated as shown in Table 1 of this subparagraph, shall be included in the water balance study when the total dissolved solids concentration of the effluent presents the potential for developing excessive soil salinity buildup due to the long term operation of the irrigation system.
[Figure: 30 TAC §309.20(b)(3)(A)]

(B) Effluent storage. An effluent storage study shall be performed to determine the necessary storage requirements. The storage requirements shall be based on a design rainfall year with a return

frequency of at least 25 years (the expected 25 year-one year rainfall, alternately the highest annual rainfall during the last 25 years of record may be used) and a normal monthly distribution, the application rate and cycle, the effluent available on a monthly basis, and evaporation losses. An example of an effluent storage study is shown in Table 3 in Figure: 30 TAC §309.20(b)(3)(B) [of this subparagraph].
Figure: 30 TAC §309.20(b)(3)(B)
[Figure: 30 TAC §309.20(b)(3)(B)]

(C) Nitrogen application rate. Irrigation shall be limited to prevent excessive nitrogen application. The annual liquid loading shall not exceed that which would introduce more nitrogen than is annually required by the crop plus 20% volatilization. Values of crop nitrogen requirements shall be justified in the design report. The application rate shall be calculated by the formula in Figure: 30 TAC §309.20(b)(3)(C).
Figure: 30 TAC §309.20(b)(3)(C) (No change.)

(4) Soil testing. Representative soil samples shall be taken from the root zones of wastewater application sites to establish pre-operational soil concentrations of pH, total nitrogen, potassium, phosphorus, and conductivity. Sampling procedures shall employ accepted techniques of soil science for obtaining representative analytical results. Preoperational soil concentration of the parameters listed in this paragraph [Baseline values of the parameters specified in paragraph (3)(C) of this subsection] shall be furnished in the technical report. The project development shall provide for a minimum of one soil test annually from each wastewater application site for the duration of the application [disposal] system design life.

(5) Standard irrigation best management practices.

(A) Screening devices should be installed on all lift pump suction intakes.

(B) The design of sprinkler irrigation systems should allow operational flexibility and efficiency and ease of maintenance.

(i) The system should be designed to provide a uniform water distribution.

(ii) The designing engineer should consider such items as permanently buried mains with readily accessible valve boxes, two or more lateral lines, and quick coupling valves at the main/lateral connections.

(iii) Cross connection with a potable water supply system is prohibited. Cross connection with a well water system will be reviewed on a case-by-case basis.

(C) Vehicular access to conveyance system locations and equipment should be provided at intervals of 1,000 feet to 1,300 feet.

(D) The cover crop of each wastewater application area shall be harvested a minimum of once per year. Consideration should be given to the selection of crops which will allow two or more harvests per year to be made.

(E) All effluent applied as irrigation water should have a pH within the range of 6.0 to 9.0.

(c) Percolation. Percolation application [disposal] systems provide for ultimate application [disposal] of the wastewater by evaporation and percolation with no resulting discharge to surface water in the state [waters].

(1) Percolation systems will not be permitted in those locations where seepage would adversely affect the uses of groundwater resources.

(2) Primary treatment of the raw sewage shall be provided prior to land application [disposal].

(3) Percolation systems shall be limited to sites having soil textures suitable for sustaining a rapid intake rate. Percolation dosing sites shall be limited to soils classified as sands, loamy sands, or sandy loams having a minimum infiltration rate of six inches per hour.

(4) Multiple dosing basins shall be provided for the application of wastewater. The wastewater distribution system shall be designed to provide a maximum dosing period of 24 hours upon any individual dosing basin and a minimum resting period for any individual dosing basin of five days following a period of dosing.

(5) The hydraulic loading rate will be considered on a case-by-case basis. The designing engineer shall identify the permeability of the limiting soil layer.

(6) The design shall provide an area equal to a minimum of 20% of the total application [disposal] site area for the construction of wastewater storage for use [utilization] during periods of wet or freezing weather and to provide flexibility of dosing site use [utilization].

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 June 14, 2019.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 28, 2019

For further information, please call: (512) 239-6812



SUBCHAPTER D. BENEFICIAL REUSE CREDIT

30 TAC §§309.21 - 309.25

Statutory Authority

The new sections are proposed under the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of wastewater or pollutants into or adjacent to water in the state; TWC, §26.034, which provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal

systems that transport, treat, or dispose of primarily domestic wastes; TWC, §26.041, which gives the commission the authority to set standards to prevent the disposal of wastewater that is injurious to the public health; and TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

The new sections are also proposed under TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The new sections implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121.

§309.21. Purpose, Scope, and Applicability.

(a) This subchapter provides for a beneficial reuse credit that may be used to account for beneficial reuse of treated wastewater for land application calculations. This subchapter establishes requirements for obtaining a beneficial reuse credit and requirements that apply to an entity who holds a permit that includes a beneficial reuse credit.

(b) This subchapter applies to an entity who applies for a Texas Land Application Permit (TLAP) under Chapter 305 of this title (relating to Consolidated Permits) to dispose of domestic wastewater if the application proposes a beneficial reuse credit. This subchapter also applies to an entity who holds a TLAP that includes a beneficial reuse credit.

(c) This subchapter does not apply to:

(1) domestic wastewater treatment facilities permitted to discharge to water in the state under a Texas Pollutant Discharge Elimination System permit issued under Chapter 305 of this title; and

(2) industrial facilities.

(d) This subchapter does not allow an entity to discharge wastewater or reclaimed water into water in the state. For the purpose of this subchapter, a discharge from a user's pond or storage unit that is a direct result of a rainfall event is considered an unauthorized discharge. A permit issued that includes a beneficial reuse credit in accordance with this subchapter does not protect an entity from liability for unauthorized discharges.

§309.22. Definitions.

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

(1) Beneficial reuse credit--The amount by which the permitted flow can be reduced to calculate the required land application area for a Texas Land Application Permit.

(2) Firm reclaimed water demand--The amount of water that has been historically used by the permittee or water user for beneficial reuse.

(3) Reclaimed water--As defined in Chapter 210 of this title (relating to Use of Reclaimed Water).

(4) Total monthly volume--The sum of all water use data across users of the same type of water use (i.e. indoor use or outdoor use) for the same month.

(5) Total nitrogen--Nitrate-nitrogen plus ammonia-nitrogen plus organically bound nitrogen.

(6) User--As defined in Chapter 210 of this title (relating to Use of Reclaimed Water).

(7) Water use data--Recorded monthly amounts of water for uses allowed in a reclaimed water use authorization issued under Chapter 210 of this title (relating to Use of Reclaimed Water). Water use data may include the amount of potable water used if the user has a contractual agreement with the permittee to substitute reclaimed water for potable water for the same type of use indicated.

§309.23. Demonstrating Firm Reclaimed Water Demand.

(a) The applicant shall submit five years or more of consecutive water use data for each user, if available. If five years of data is not available, the applicant shall submit a minimum of two consecutive years of water use data for each user to demonstrate firm reclaimed water demand. Water user data must be from the period immediately preceding the date the application is received.

(b) The applicant shall submit the total monthly volume of water used by users satisfying subsection (a) of this section for indoor use and outdoor use, respectively.

(c) Water use data can be for reuse conducted by either the applicant or reclaimed water users that have a contract with the applicant to reuse the applicant's reclaimed water. The contract must be for a minimum term of five years.

(d) Water use data must be for the same type of reclaimed water use proposed (for example, a user's landscape irrigation data may not be used to support the user's dust control or toilet flushing use).

(e) For each user, water use data must include:

(1) the amount of water used on a monthly basis;

(2) the type of use of the water at each site; and

(3) the number of acres irrigated at each site, if applicable.

(f) At the discretion of the executive director, a water user's data may not be counted toward the beneficial reuse credit if the executive director determines that the user's water data is unreliable due to the user's noncompliance with state laws, rules, or permit conditions within the five-year period immediately preceding the date the application is received.

(g) At the discretion of the executive director, an applicant may not be eligible for beneficial reuse credit if the applicant has been issued a violation that resulted in an enforcement case within the five-year period immediately preceding the date the application is received.

(h) Prospective or speculative reclaimed water use data may not be used to calculate the beneficial reuse credit.

§309.24. Calculating and Using Beneficial Reuse Credit.

(a) For outdoor uses.

(1) For users with less than five years of water use data, the beneficial reuse credit is calculated as 80% of the lowest total monthly volume of water used.

(2) For users with five or more years of water use data, the beneficial reuse credit is calculated as 80% of the average of the three lowest total monthly volumes of water use data submitted for the five years prior to the date the application is submitted. All users must have at least five consecutive years of data when taking the average of the lowest three months.

(b) For indoor uses.

(1) For users with less than five years of water use data, the beneficial reuse credit is calculated as 100% of the lowest total monthly volume of water used.

(2) For users with five or more years of water use data, the beneficial reuse credit is calculated as 100% of the average of the lowest three total monthly volumes of water use data submitted for the five years prior to the date the application is submitted. All users must have at least five consecutive years of data when taking the average of the lowest three months.

(c) When calculating the hydraulic application rate as described in §309.20(b)(3)(A) of this title (relating to Land Application of Sewage Effluent) or §222.83 of this title (relating to Hydraulic Application Rate) for subsurface area drip dispersal systems, the permitted flow may be reduced by the beneficial reuse credit.

(d) The size of the land application site area may not be reduced by more than 50% of the size required when calculating the hydraulic application rate using the permitted flow without the beneficial reuse credit.

(e) When calculating the required effluent storage as described in §309.20(b)(3)(B) of this title or §222.127 of this title (relating to Storage), the permitted flow may not be reduced by the beneficial reuse credit.

(f) For the purpose of recalculating the beneficial reuse credit and for renewing a permit, the executive director may accept water use data from users with less than two years of data on a case-by-case basis.

§309.25. Requirements.

(a) Application Requirements.

(1) The applicant must provide the executive director with a list of users and the type of use(s) for each user. For users that propose to use the reclaimed water for irrigation, the list must include the acreage and crop(s) irrigated for each irrigation area.

(2) The applicant must provide the executive director with a map showing the location of the water use sites at a scale specified by the executive director.

(3) The applicant must submit all water use data used to calculate firm reclaimed water demand.

(4) The executive director may request additional information as may be necessary for an adequate technical review of the application.

(5) For permits issued prior to the effective date of this subchapter, the permittee must apply for a permit amendment under Chapter 305 of this title (relating to Consolidated Permits) for approval of a new or approval of a change to an existing beneficial reuse credit.

(b) General Requirements.

(1) An applicant must receive authorization required by Chapter 210 of this title (relating to Use of Reclaimed Water) before applying for a beneficial reuse credit. The executive director may waive this requirement for a new facility if the executive director finds that the application contains all information required by §309.23 of this title (relating to Demonstrating Firm Reclaimed Water Demand). If a beneficial reuse credit is granted for a new facility, the permit must include:

(A) the requirements and conditions that apply to the regulated activity without considering the beneficial reuse credit, applicable from the date of permit issuance until the permittee receives authorization for reclaimed water use under Chapter 210 of this title; and

(B) the requirements and conditions that apply after the permittee receives authorization for reclaimed water use under Chapter 210 of this title.

(2) A permittee and, to extent applicable, a user must maintain authorization under Chapter 210 of this title during the term of the Texas Land Application Permit.

(3) The term of a permit that includes a beneficial reuse credit may not exceed five years.

(4) A permit that includes a beneficial reuse credit must include limits for both the permitted flow and the land application flow. The land application flow limit must be equal to the permitted flow limit minus the beneficial reuse credit.

(5) A permittee that is granted a beneficial reuse credit shall have a contractual agreement to dispose of unused treated effluent on an emergency basis, using the pump-and-haul method or another method approved by the executive director. The permittee shall use the contracted disposal method if all of the following conditions are met:

(A) a user of reclaimed water no longer needs the reclaimed water;

(B) a new user has not been contracted to accept the reclaimed water;

(C) the permitted facility does not have adequate capacity to store the unused reclaimed water; and

(D) additional application to the permitted land application area would exceed the permitted application rate or is otherwise prohibited by the permit.

(6) A permittee that is granted a beneficial reuse credit must meet a minimum of Type II effluent quality as described in §210.33 of this title (relating to Quality Standards for Using Reclaimed Water).

(c) Reporting Requirements.

(1) If the users or the irrigation areas change, the permittee must provide the executive director with an updated list of users and irrigations areas within 30 days after the change. A change in user or area is not an amendment to the permit.

(2) A permittee that is granted a beneficial reuse credit shall submit the following to the executive director by September 30th of each year for the reporting period of September 1st to August 31st:

(A) monthly data on the amount of reclaimed water used by each user;

(B) the type of water use(s) for each user;

(C) the acreage of each irrigation site, if applicable;

(D) the crop(s) irrigated at each irrigation site, if applicable;

(E) a recalculation of the beneficial reuse credit; and

(F) the total nitrogen concentration of the effluent.

(3) If the recalculated beneficial reuse credit submitted in the annual report is reduced, the executive director may require a permit amendment.

(4) The total nitrogen concentration of the effluent shall be tested quarterly by grab sample for the first year of the permit term, after which the frequency for testing may be reduced to annually upon approval by the executive director.

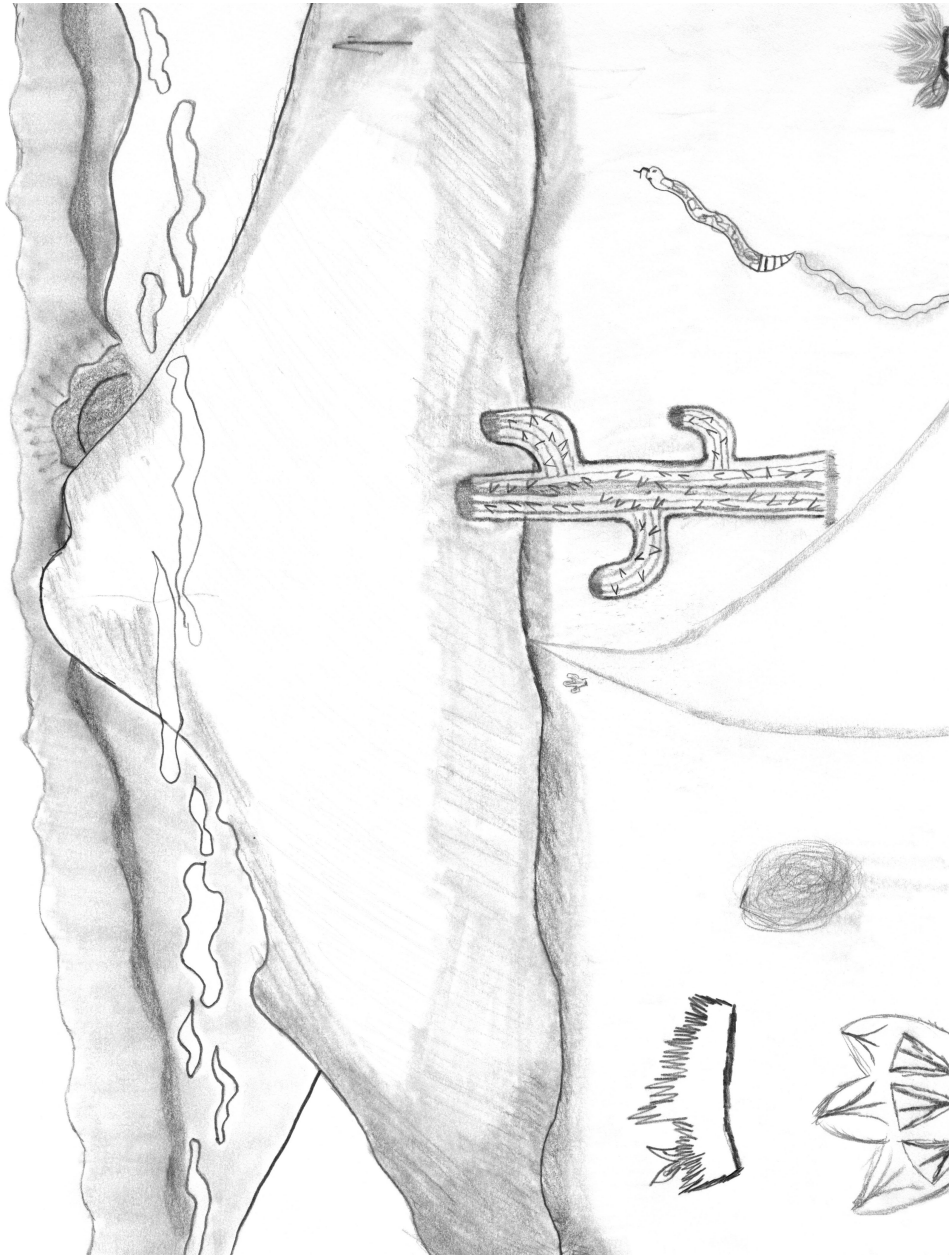
(5) The permittee shall submit monthly effluent reports to the executive director in accordance with the effluent limitations and monitoring requirements of the permit.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 28, 2019
For further information, please call: (512) 239-6812





WITHDRAWN RULES

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

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 101. GENERAL ADMINISTRATION

7 TAC §101.6

Proposed amended §101.6, published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 7991), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on June 14, 2019.

TRD-201901799



CHAPTER 103. RULEMAKING PROCEDURE

7 TAC §103.5

Proposed amended §103.5, published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 7991), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201901800



CHAPTER 104. PROCEDURE FOR REVIEW OF APPLICATIONS

7 TAC §104.5

Proposed amended §104.5, published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 7992), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201901801



CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §113.14

Proposed amended §113.14, published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 7993), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201901802



CHAPTER 133. FORMS

7 TAC §133.17

Proposed repeal of §133.17, published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 7994), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on June 14, 2019.

TRD-201901803



CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

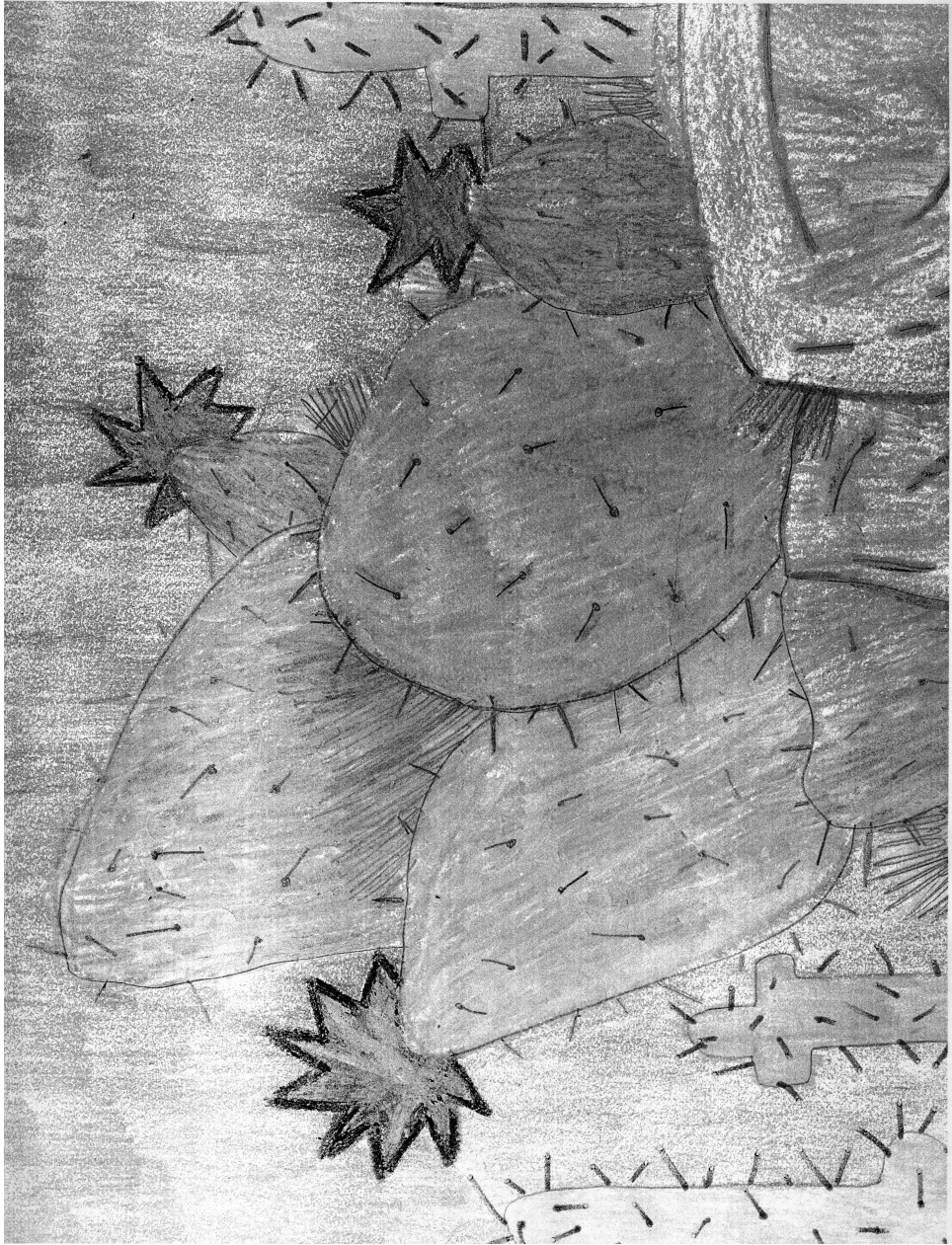
7 TAC §139.25

Proposed repeal of §139.25, published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 7995), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on June 14, 2019.

TRD-201901804





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 C. CASE MANAGEMENT FOR CHILDREN WHO ARE BLIND AND VISUALLY IMPAIRED

1 TAC §§354.1501, 354.1503, 354.1505, 354.1507, 354.1509, 354.1511

The Texas Health and Human Services Commission (HHSC) adopts the repeal of Title 1, Part 15, Chapter 354, Subchapter C, Case Management for Children Who Are Blind and Visually Impaired, in its entirety, including §354.1501, concerning Definitions; §354.1503, concerning Eligible Individuals; §354.1505, concerning Case Management Services; §354.1507, concerning Service Limitations; §354.1509, concerning Provider Qualifications; and §354.1511, concerning Right to Appeal.

The repeal of §§354.1501, 354.1503, 354.1505, 354.1507, 354.1509, and 354.1511 are adopted without changes to the proposed text, as published in the January 11, 2019, issue of the *Texas Register* (44 TexReg 173), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The repeal of the rules aligns with Medicaid State Plan changes effective February 15, 2017. The Centers for Medicare & Medicaid Services approved an administrative change for HHSC to continue to provide case management services for blind and visually impaired children and bill for service reimbursements through administrative claiming rather than the Medicaid fee-for-service reimbursement model. HHSC employees continue to provide uninterrupted case management services to eligible children who are blind or visually impaired.

COMMENTS

The 30-day comment period ended February 10, 2019.

During this period, HHSC did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055(e), Executive Commissioner: General Responsibility for Health and Human Services System, which provides that the HHSC Executive Commissioner shall adopt rules for the

operation and provision of health and human services by the health and human services system agencies.

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

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TRD-201901814

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: July 4, 2019

Proposal publication date: January 11, 2019

For further information, please call: (512) 730-7415

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.45

The Public Utility Commission of Texas (commission) adopts an amendment to 16 TAC §25.45, relating to the low-income list administrator (LILA), with changes to the proposed text as published in the February 8, 2019, issue of the *Texas Register* (44 TexReg 528). The amendment continues implementation of Senate Bill 1976 of the 85th Regular Legislative Session, which provides that the commission may not submit a request to the Health and Human Services Commission (HHSC) to develop a list of low-income electric customers unless the commission receives a request from one or more retail electric providers (REPs) not later than July 31 of the previous fiscal year, and each REP that submits a request to the commission agrees to reimburse the commission for the cost of developing of the list. This amendment is adopted under Project Number 48337.

The commission received comments on the proposed amendment from the Alliance for Retail Markets (ARM). ARM supports the proposed published amendments and offered limited revisions, primarily for clarification. No other party filed comments. No party requested a hearing.

Subsection (g)(1)

ARM believes that early public notice of the total annual cost of the list service will provide greater transparency to REPs about the service. ARM offered language revising subsection (g)(1) to require commission staff to file notice of the total annual cost of the service in the project at the time the project is opened or as soon as practicable.

Commission response

The commission agrees with ARM that including the total annual cost of the service provides greater transparency. The commission adopts ARM's proposal and revises subsection (g)(1) to require commission staff to provide notice of the total annual cost of the service at the time the project is opened or as soon as practicable.

Subsection (g)(2)

ARM recommended requiring each REP requesting the service to include its certificate number in the request. ARM further recommended clarifying in the rule that each requesting REP must agree to pay its allocated share of the total cost of the service as determined under subsection (g)(4) to avoid confusion about a requesting REP's reimbursement commitment. Finally, ARM recommended substituting the word "service" for the word "list." ARM asserted that the term "service" more appropriately reflects that the service provided by the LILA is the identification of eligible low-income customers through a comparison of separate data sets provided by REPs and the HHSC independently, rather than the creation and maintenance of a master list of all low-income electric customers. ARM also pointed out that the term "service" is consistent with the language used in other proposed amendments to this section.

Commission response

The commission agrees with ARM's comments regarding proposed subsection (g)(2) and modifies the subsection accordingly. Requiring each requesting REP to include its certificate number will clearly identify the requesting REP. In making a request for the service from the commission, a REP will be required to acknowledge its obligation to pay its allocated share of costs for the service. Replacing the word "list" with "service" is consistent with the remainder of the rule and better describes the interaction between the LILA, the REP, and the HHSC.

Subsection (g)(4)

ARM recommended clarifying that the commission may use an alternative cost allocation method, based on the agreement of requesting REPs. ARM explained that an alternative method may result in a REP agreeing to reimburse an amount greater than the REP's equally allocated share. ARM stated that the clarification is consistent with past commission practice.

Commission response

The commission agrees with ARM's suggestion regarding subsection (g)(4) and modifies the subsection accordingly to clarify that the commission may order payment arrangements other than an equal allocation among the REPs requesting the service. Current practice allows a REP to pay more than its equally allocated share of the cost of the service.

In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under §14.002 of the Public Utility Regulatory Act (PURA), which provides the commission with

the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and PURA §17.007, which requires the commission to develop a process for identifying low-income customers if a REP that requests the service agrees to reimburse the commission for the cost of developing the list.

Cross reference to statutes: PURA §§14.002 and 17.007.

§25.45. Low-Income List Administrator.

(a) Purpose. The purpose of this section is to define the responsibilities of the Low-Income List Administrator (LILA) to establish and maintain a list of eligible low-income customers and to specify the process for a retail electric provider (REP) who voluntarily seeks to obtain the low-income customer identification service from the LILA pursuant to Public Utility Regulatory Act (PURA) §17.007.

(b) Application. This section applies to the LILA, which has been contracted by the commission to administer aspects of the low-income customer identification process established under PURA §17.007 in cooperation with the Texas Health and Human Services Commission (HHSC). This section also applies to REPs that provide retail electric service in an area that has been opened to customer choice and that voluntarily seek to obtain the low-income customer identification service from the LILA.

(c) Customer identification process. The LILA must identify eligible low-income customers through a monthly automatic identification process in cooperation with the HHSC.

(1) Automatic identification is an electronic process to identify customers eligible for the low-income list by matching client data from the HHSC with residential customer-specific data from participating REPs.

(A) The HHSC must provide client information to the LILA in accordance with subsection (d)(1) of this section.

(B) REPs must provide customer information to the LILA in accordance with subsection (d)(3) of this section.

(C) The LILA shall compare the customer information from the HHSC and REPs, create files of matching customers and notify the REPs of their eligible customers.

(2) Automatically identified customers shall continue to be included on the LILA's list of eligible low-income customers as long as the customers receive qualifying HHSC benefits. Once a customer no longer receives qualifying HHSC benefits, the customer will no longer be identified by the LILA's process as an eligible low-income customer that is sent to the customer's REP.

(d) Responsibilities. In addition to the requirements established in this section, program responsibilities for the LILA may be established in the commission's contract with the LILA; program responsibilities for tasks undertaken by the HHSC may be established in the memorandum of understanding between the commission and the HHSC.

(1) HHSC's responsibilities. The HHSC must assist in the implementation and maintenance of the automatic enrollment process by providing a database of customers receiving qualifying HHSC benefits as detailed in the memorandum of understanding between the HHSC and the commission.

(2) The LILA's responsibilities. The LILA must:

(A) receive customer lists from participating REPs on at least a monthly basis through data transfer;

(B) retrieve the database of clients from the HHSC on at least a monthly basis;

(C) establish a list of eligible customers, by comparing customer lists from the REPs with HHSC databases and identifying customer records that reasonably match;

(D) make available to each participating REP, on a date prescribed by the commission on at least a monthly basis, a list of eligible low-income customers; and

(E) protect the confidentiality of the customer information provided by the REPs and the client information provided by the HHSC.

(3) A participating REP's responsibilities. A REP that voluntarily seeks to obtain a list of eligible low-income customers must:

(A) provide residential customer information to the LILA through data transfer on a date prescribed by the commission on at least a monthly basis. The customer information shall include, to the greatest extent possible, each full name of the primary and secondary customer on each account, billing and service addresses, primary and secondary social security numbers, primary and secondary telephone numbers, Electric Service Identifier (ESI ID), service provider account number, and premise code;

(B) retrieve from the LILA the list of eligible low-income customers; and

(C) assist the LILA in working to resolve issues concerning customer eligibility.

(e) Confidentiality of information.

(1) The data acquired from HHSC pursuant to this section is subject to a HHSC confidentiality agreement.

(2) All data transfers from REPs to the LILA pursuant to this section shall be conducted under the terms and conditions of a standard confidentiality agreement to protect customer privacy and REPs' competitively sensitive information.

(3) The LILA may use information obtained pursuant to this section only for purposes prescribed by commission rule.

(f) Delegation of authority. The commission may delegate to the executive director the authority to contract with a third-party vendor to administer aspects of the low-income customer identification process established under PURA §17.007 in cooperation with HHSC, and to negotiate the LILA's annual fee for the provision of the low-income customer identification service.

(g) REP annual election process. REPs may elect to obtain the low-income customer identification service from the LILA on an annual basis.

(1) Not later than May 1 of each year, commission staff must open a project in which a REP may request the low-income customer identification service for the upcoming fiscal year beginning September 1. Commission staff must file notice in the project of the total annual cost of the service at the time the project is opened or as soon as practicable.

(2) Not later than July 31 of each year, a REP must file its request for the low-income customer identification service in the project opened for that purpose. The filing must include the REP's certificate number. In its filing, the REP must state that it agrees to reimburse the commission for its allocated share of the total cost of providing the service.

(3) Not later than August 31 of each year, if the commission has received a request from one or more REPs under paragraph (2) of this subsection, the commission will enter an order listing the name of each REP that filed a request, and establishing the amount that each REP will pay as determined under paragraph (4) of this subsection.

(4) The total cost of the low-income customer identification service will be allocated equally among the REPs that have filed a request under paragraph (2) of this subsection unless otherwise provided by the commission based on the agreement of REPs requesting the low-income customer identification service.

(5) Provided that at least one REP requests the low-income customer identification service in a program year in accordance with paragraph (2) of this subsection, a REP that is newly certificated after July 31 may obtain the low-income customer identification service at no cost to the REP until the next program year, when the REP has the opportunity to submit a timely request under paragraph (2) of this subsection. To obtain the low-income customer identification service, the newly-certificated REP must file a request in the project opened under paragraph (1) of this subsection.

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 June 14, 2019.

TRD-201901807

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Effective date: July 4, 2019

Proposal publication date: February 8, 2019

For further information, please call: (512) 936-7244



PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS

DIVISION 2. PROGRAM FOR HORSES

16 TAC §303.93

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §303.93, Quarter Horse Rules, without changes to the text as proposed in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1627), which will not be republished. The amendments eliminate the requirement that a broodmare be permanently domiciled in Texas in order for the foal to qualify to be accredited as a Texas-bred quarter horse and also include a non-substantive update to this section to update citations to Vernon's Civil Statutes in light of SB 1969 (85th Legislature, Regular Session, 2017), which codified the Texas Racing Act as Subtitle A-1, Title 13, Texas Occupations Code, effective April 1, 2019.

REASONED JUSTIFICATION

The reasoned justification for the amendments is the economic benefit of an increase in horses foaled and raised in Texas, as well as accuracy in the statutory citations.

SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE

No comments were received in response to the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

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

Filed with the Office of the Secretary of State on June 11, 2019.

TRD-201901753
Chuck Trout
Executive Director
Texas Racing Commission
Effective date: July 1, 2019
Proposal publication date: April 5, 2019
For further information, please call: (512) 833-6699



CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER B. OPERATIONS OF RACETRACKS

DIVISION 2. FACILITIES AND EQUIPMENT

16 TAC §309.129

The Texas Racing Commission ("the Commission") adopts an amendment to 16 TAC §309.129 Automatic Banking Machines, without changes to the text as proposed in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1628), which will not be republished. The amendment is a non-substantive change to this section to update the citation to Vernon's Civil Statutes in light of SB 1969 (85th Legislature, Regular Session, 2017), which codified the Texas Racing Act as Subtitle A-1, Title 13, Texas Occupations Code, effective April 1, 2019.

REASONED JUSTIFICATION

The reasoned justification for the amendment is accuracy in the statutory citation.

SUMMARY OF PUBLIC COMMENTS

No comments were received in response to the proposed amendments.

STATUTORY AUTHORITY

The amendment is adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

The amendments implement Subtitle A-1, Title 13, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on June 11, 2019.

TRD-201901755
Chuck Trout
Executive Director
Texas Racing Commission
Effective date: July 1, 2019
Proposal publication date: April 5, 2019
For further information, please call: (512) 833-6699



CHAPTER 321. PARI-MUTUEL WAGERING

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §321.1, Definitions and General Provisions; §321.36, Unclaimed Outs and Wagers; §321.318, Special Wager; §321.503, Purses; and §321.509, Escrowed Purse Account, without changes to the text as proposed in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1629), which will not be republished. The amendments are non-substantive updates to these sections to eliminate citations to Vernon's Civil Statutes in light of SB 1969 (85th Legislature, Regular Session, 2017), which codified the Texas Racing Act as Subtitle A-1, Title 13, Texas Occupations Code, effective April 1, 2019.

REASONED JUSTIFICATION

The reasoned justification for the amendment is accuracy in statutory citations and the elimination of outdated citations.

SUMMARY OF PUBLIC COMMENTS

No comments were received in response to the proposed amendments.

SUBCHAPTER A. MUTUEL OPERATIONS

DIVISION 1. GENERAL PROVISIONS

16 TAC §321.1

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

The amendments implement Subtitle A-1, Title 13, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on June 11, 2019.

TRD-201901758
Chuck Trout
Executive Director
Texas Racing Commission
Effective date: July 1, 2019
Proposal publication date: April 5, 2019
For further information, please call: (512) 833-6699



DIVISION 3. MUTUEL TICKETS AND VOUCHERS

16 TAC §321.36

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

The amendments implement Subtitle A-1, Title 13, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on June 11, 2019.

TRD-201901759

Chuck Trout

Executive Director

Texas Racing Commission

Effective date: July 1, 2019

Proposal publication date: April 5, 2019

For further information, please call: (512) 833-6699



SUBCHAPTER C. REGULATION OF LIVE WAGERING

DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

16 TAC §321.318

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

The amendments implement Subtitle A-1, Title 13, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on June 11, 2019.

TRD-201901760

Chuck Trout

Executive Director

Texas Racing Commission

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For further information, please call: (512) 833-6699



SUBCHAPTER D. SIMULCAST WAGERING

DIVISION 3. SIMULCASTING AT HORSE RACETRACKS

16 TAC §321.503, §321.509

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

The amendments implement Subtitle A-1, Title 13, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on June 11, 2019.

TRD-201901761

Chuck Trout

Executive Director

Texas Racing Commission

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Proposal publication date: April 5, 2019

For further information, please call: (512) 833-6699



SUBCHAPTER C. REGULATION OF LIVE WAGERING

DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

16 TAC §321.320

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §321.320, Super Hi-Five, without changes to the text as proposed in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1632), which will not be republished. This section establishes the super hi-five wager, which involves selecting the first five finishers, in order, in a race. The amendments permit a track to carry over a pool unexpectedly remaining at the end of a meet to the next meet of the same breed, rather than the next meet of a different breed.

REASONED JUSTIFICATION

The reasoned justification for the amendments is to keep dollars wagered on a particular breed going to payouts on races of the same breed.

SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE

No comments were received in response to the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and §2027.001, which requires the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races.

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 June 11, 2019.

TRD-201901752

Chuck Trout

Executive Director

Texas Racing Commission

Effective date: July 1, 2019

Proposal publication date: April 5, 2019

For further information, please call: (512) 833-6699



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 53. REGIONAL EDUCATION

SERVICE CENTERS

SUBCHAPTER AA. COMMISSIONER'S

RULES

19 TAC §53.1001

The Texas Education Agency adopts an amendment to §53.1001, concerning regional education service centers (RESCs). The amendment is adopted with changes to the proposed text as published in the March 22, 2019 issue of the *Texas Register* (44 TexReg 1498). The adopted amendment specifies that a board of trustees member for an RESC may not be engaged professionally in prekindergarten-Grade 12 education.

REASONED JUSTIFICATION. Texas Education Code, §8.003, requires the commissioner to adopt rules concerning the selection of members of the boards of trustees for RESCs. To implement the statute, §53.1001 sets out the requirements for members of the board of directors of RESCs, including the term of office, election procedures, and eligibility criteria for members. In order to avoid a conflict of interest while allowing more individuals with experience in education to serve on RESC boards of directors, the proposed amendment would have updated the eligibility criteria in subsection (b)(1) to specify that a member of an RESC board of directors may not be engaged professionally in Kindergarten-Grade 12 education. In response to public comment, a change was made at adoption to also exclude any individual engaged professionally in prekindergarten education from serving as a member of an RESC board of directors.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began March 22, 2019, and ended April 22, 2019. Following is a summary of the public comment received and the response.

Comment: An administrator suggested aligning the eligibility of a board of trustees member to prekindergarten to Grade 12 instead of Kindergarten to Grade 12.

Response: The agency agrees and has modified subsection (b)(1) at adoption to specify that an RESC board member may not be engaged professionally in prekindergarten-Grade 12 education.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §8.003, which requires the commissioner to adopt rules concerning the selection of members of the boards of trustees for regional education service centers.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §8.003.

§53.1001. *Board of Directors.*

(a) Term of office.

(1) A member of a regional education service center (RESC) board of directors shall be elected for a three-year term. The term of office shall begin June 1.

(2) If a vacancy occurs due to death or resignation of a member of an RESC board of directors, a 30-day period shall elapse,

after notice has been given to the board chair, before the vacancy is filled.

(3) At the beginning of the 30-day period, notice of any vacancy shall be given to the president of the board of trustees and the superintendent of each school district in the education service center region and shall be posted in appropriate locations.

(4) A vacancy for the unexpired term of a member of an RESC board of directors shall be filled by appointment by the remaining board members.

(b) Election procedures.

(1) A member of an RESC board of directors must be a United States citizen, at least 18 years of age, and a resident of that education service center region. He or she may not be engaged professionally in prekindergarten-Grade 12 education or be a member of a board of any educational agency or institution other than the State Board of Education. The eligibility of an RESC board member under this subsection is determined by the requirements specified in this subsection as they existed on the date the RESC board member was elected or appointed to office.

(2) A member of an RESC board of directors shall be elected by the boards of trustees of the school districts in that education service center region.

(3) Any eligible person wishing to seek election to an RESC board of directors shall file at the headquarters of that RESC in person or by certified mail between February 1 and February 20. No filing fee shall be required. Each RESC board of directors shall adopt policies concerning filing procedures.

(4) By February 1, notice of the time and place for filing shall be posted in appropriate locations and submitted to appropriate newspapers in the education service center region for publication and to the superintendent of each school district in the education service center region.

(5) A ballot shall be developed and submitted to the board of trustees of each school district in the education service center region by March 1. Placement on the ballot shall be determined by drawing. Each member of the board of trustees of each school district in the education service center region shall have one vote for each vacancy on the RESC board of directors. Completed ballots shall be returned to the chair of the RESC board of directors by April 5. The RESC board of directors shall canvass the ballots at its next regularly scheduled or special meeting, but not later than May 31, and determine the winner by a plurality of the votes cast. In the event of a tie, the names of the candidates who have tied shall be resubmitted to the board of trustees of each school district in the education service center region.

(6) The provisions described in subsection (b)(2) and (5) of this section do not apply if all positions in the election are uncontested. In the event of an uncontested election, the RESC board of directors may determine that no election will be held. The RESC board of directors must make this determination prior to March 1. If, due to an uncontested election, the RESC board of directors determines that an election should not be held, the RESC board shall declare the unopposed candidates elected to office. The RESC executive director shall notify the commissioner of education of the results of an election, whether contested or uncontested.

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 June 12, 2019.

TRD-201901781
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: July 2, 2019
Proposal publication date: March 22, 2019
For further information, please call: (512) 475-1497

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 303. PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR)

The Texas Health and Human Services Commission (HHSC) adopts new Chapter 303, Preadmission Screening and Resident Review (PASRR), comprising §§303.101 - 303.103, 303.201 - 303.204, 303.301 - 303.303, 303.401, 303.501 - 303.504, §303.601, 303.602, 303.701 - 303.703, and 303.801, in Title 26, Part 1, Texas Administrative Code (TAC). Sections 303.102, 303.201, 303.301, 303.302, 303.504, 303.601, 303.602, and 303.701 are adopted with changes to the proposed text as published in the February 8, 2019, issue of the *Texas Register* (44 TexReg 530). These sections will be republished. Sections 303.101, 303.103, 303.202 - 303.204, 303.303, 303.401, 303.501 - 303.503, 303.702, 303.703, and 303.801 are adopted without changes to the proposed text as published in the February 8, 2019, issue of the *Texas Register* (44 TexReg 530). These sections will not be republished.

BACKGROUND AND JUSTIFICATION

The Texas Secretary of State created Title 26, Part 1, of the TAC to consolidate rules that govern functions of HHSC. These rules are currently in Titles 1, 25, and 40. As part of the consolidation into Title 26, HHSC adopts new rules in Title 26, Chapter 303 to replace rules in Title 40, Chapter 17, Preadmission Screening and Resident Review (PASRR). The rules in Chapter 17 are repealed elsewhere in this issue of the *Texas Register*.

The new rules describe the responsibilities of a local intellectual and developmental disability authority (LIDDA), a local mental health authority (LMHA), and a local behavioral health authority (LBHA) related to PASRR. PASRR is a federal requirement in the Code of Federal Regulations, Title 42, Part 483, Subpart C. PASRR is a process to identify individuals with a mental illness (MI), an intellectual disability (ID), or a developmental disability (DD) who choose admission into a Medicaid-certified nursing facility (NF) or who are residing in a NF. PASRR is intended to ensure that a NF admission is appropriate and that an individual with MI, ID, or DD receives specialized services as appropriate.

The new Subchapters E, F, G, and H contain provisions that were not in Title 40, Chapter 17. The new provisions in Subchapters E, F, and G describe the role and responsibilities of a LIDDA for providing habilitative service planning and transition planning for a designated resident. A designated resident is a NF resident who is a Medicaid recipient age 21 years or older with ID or DD. Since 2015, LIDDAs have provided service coordination to designated residents. Service coordination includes habilitative service planning, monitoring specialized services, providing information about community living options, and transition plan-

ning. In accordance with a Medicaid State Plan amendment approved by the Centers for Medicare & Medicaid (CMS), a new Medicaid-funded service "habilitation coordination" will replace all LIDDA service coordination activities for a designated resident, except for transition planning. The new rules reflect this change. The new rule in Subchapter H allows HHSC to review a LIDDA's compliance with the requirements in Chapter 303.

The new rules change references to the Department of Aging and Disability Services (DADS) that were in Chapter 17 to HHSC to reflect that DADS was abolished effective September 1, 2017, and its functions have transferred to HHSC.

COMMENTS

The 30-day comment period ended March 10, 2019.

During this period, HHSC received 40 comments regarding the proposed rules from three commenters: Disability Rights Texas, Texas Council of Community Centers, and West Texas Centers. A summary of comments relating to the Preadmission Screening and Resident Review (PASRR) rules and HHSC's responses follows.

Comment: A commenter asked whether diversion coordinators will be required in the rule or just in the performance contract.

Response: These rules do not require a LIDDA to employ a diversion coordinator, but the current LIDDA performance contract does require a diversion coordinator.

Comment: Regarding the definition for durable medical equipment (DME) in §303.102(14), one commenter suggested expanding the definition to include any DME and not just the ones listed in the definition.

Response: HHSC declines to revise the definition as suggested. The definition of DME in this section must be the same as the definition of DME in 40 TAC §19.2703 because both sections deal with responsibilities related to PASRR and must use the same or similar definitions to avoid confusion. Furthermore, changing the definition in §303.102(14) would not change the type of DME a nursing facility is required to provide under the PASRR program. The definition of DME in 40 TAC §19.2703 governs nursing facilities. HHSC notes that the PASRR program is not the only source of funding to cover DME. For example, a nursing facility may be required to cover DME as a nursing facility service, or a managed care organization may be required to cover DME as an acute care service.

Comment: Regarding the definition of expedited admission in §303.102(19), a commenter suggested deleting "convalescent care" and "severe physical illness." The commenter stated, "many individuals who should qualify as PASRR designated residents are excluded from the Preadmission process due to these two categories, resulting in under-identification of potentially eligible individuals seeking admission or admitted to NFs."

Response: HHSC declines to make the suggested change. All seven categories in the definition of expedited admission are in the Medicaid State Plan, which is approved by CMS.

Comment: Regarding the definition of intellectual and developmental disability (IDD) habilitative specialized services in §303.102(25), a commenter noted that determination of intellectual disability (DID) was formerly listed as a specialized service but is not included in the proposed definition. The commenter requested language be added in the IDD PASRR Handbook clarifying the role of the LIDDA in conducting DIDs for individuals

in the PASRR population and how HHSC reimburses a LIDDA for conducting a DID.

Response: HHSC declines to make the suggested change. The definition of specialized services in 40 TAC Chapter 17, which is repealed in this issue of the *Texas Register*, did not include a DID. HHSC's IDD PASRR Handbook provides directions for completing a DID. The process for requesting reimbursement for a DID remains unchanged.

Comment: Regarding the definition of independent living skills training in §303.102(27), a commenter suggested including activities that "maintain" the person's ability to perform daily living activities.

Response: HHSC agrees and has revised the definition to allow for maintenance of a person's ability to perform functional living skills and other daily living activities, rather than solely improvement of such skills.

Comment: Regarding the definition of nursing facility PASRR support activities in §303.102(42), a commenter suggested adding "or providing" between "arranging" and "transportation" to ensure the person receives transportation when using any specialized service that requires transportation.

Response: HHSC declines to revise the definition as suggested. The definition of nursing facility PASRR support activities in this section must be the same as the definition in 40 TAC §19.2703 because both sections deal with responsibilities related to PASRR and must use the same or similar definitions to avoid confusion. Furthermore, if HHSC wanted to require a nursing facility to provide transportation as part of PASRR support activities, it would have to do so by amending 40 TAC Chapter 19, Subchapter BB, which are the rules that govern a nursing facility's responsibilities related to PASRR. HHSC notes that a LIDDA may bill independent living skills training when providing transportation activities unrelated to independent living skills training activities.

Comment: Regarding the definition of preadmission process in §303.102(49), a commenter suggested replacing "a category of nursing facility admission" with "process for determining appropriate placement options including alternative community placements or nursing facility admission."

Response: HHSC declines to revise the definition as suggested. The definition of preadmission process in this section must be substantively the same as the definition in 40 TAC §19.2703 because both sections deal with responsibilities related to PASRR and must use the same or similar definitions to avoid confusion. HHSC notes that the PASRR evaluation (PE) includes a process for informing an individual and the individual's legally authorized representative (LAR) of alternate placement options.

Comment: Regarding the definition of surrogate decision maker in §303.102(63), a commenter suggested adding language to clarify that a surrogate decision maker can only consent "to medical treatment" on behalf of the resident as provided under Texas Health and Safety Code, Chapter 313.

Response: HHSC agrees and has revised the definition as suggested.

Comment: Regarding the definition of surrogate decision maker in §303.102(63), a commenter asked for clarification for situations in which a resident has a surrogate decision maker and the resident is unable to communicate consent. The commenter

noted that the service planning team (SPT) should discuss who can be a surrogate decision maker.

Response: HHSC declines to change this definition in response to this comment. The SPT has the authority to discuss when an individual needs a surrogate decision maker and who can be a surrogate decision maker without changing the definition.

Comment: Regarding the preadmission process in §303.201, a commenter supported the inclusion of §303.201(b)(3) requiring a LIDDA, LMHA, or LBHA to make reasonable efforts to find community supports in a less restrictive setting.

Response: HHSC appreciates the comment of support.

Comment: Regarding referring entity responsibilities in §303.301(c), a commenter suggested deleting "nursing facility" from the list of organizations from whom a family member, LAR, other personal representative selected by the individual, or representative from an emergency placement source can request assistance. The commenter stated this adds an opportunity for discussion of "community living options" by a knowledgeable party.

Response: HHSC declines to revise the rule as suggested. HHSC believes an NF is an appropriate source of assistance. If an individual does not have ID, DD, or MI, the individual's referring entity would have no reason to contact a LIDDA, LMHA, or LBHA, and the NF is the entity available to provide assistance. HHSC notes that the NF provides assistance only if requested by a family member, LAR, other personal representative selected by the individual, or representative from an emergency placement source.

Comment: A commenter suggested deleting the reference in §303.302(a)(2)(B)(i)(I)(-b-) to the long-term care (LTC) online portal. The commenter indicated that the LIDDAs, LMHAs, and LBHAs currently cannot view information entered in the portal by other LIDDAs, LMHAs, or LBHAs. The commenter states "this ability would be beneficial, and if enabled, the language should be kept in the rule."

Response: HHSC declines to revise the rule as suggested in this comment. It is advantageous for LIDDAs, LMHAs, and LBHAs to review their own records in the LTC online portal for an individual or resident they have previously served. Additionally, HHSC is evaluating the addition of the requested functionality to the LTC online portal.

Comment: A commenter suggested adding to §303.302(a)(2)(B)(i) a requirement to provide a brief explanation of community services to individuals living in the community during the PE.

Response: HHSC believes that discussing community services with everyone receiving a PE is appropriate. Accordingly, HHSC amended the rule to require a LIDDA, LMHA, or LBHA to provide information to individuals, residents, and their LARs during the PE about community services, supports, and programs for which they may be eligible.

Comment: A commenter suggested deleting "or resident review" from proposed §303.302(b). The commenter's rationale is that the resident review currently is a service provided by the NF's social worker, not the LIDDA, LMHA, or LBHA.

Response: HHSC declines to revise the rule as suggested. The LIDDA, LMHA, or LBHA is responsible for completing a resident review as required in §303.302(a)(2). Additionally, if the resident's current NF will not certify that it can meet the resident's

needs, the LIDDA, LMHA, or LBHA is also responsible for assisting the resident in finding a NF that will certify it can meet the resident's needs.

Comment: A commenter suggested amending §303.302(c)(2)(C) to require the LIDDA, LMHA, or LBHA to describe community living options during a resident's interdisciplinary team (IDT) meeting.

Response: HHSC declines to revise the rule as suggested because it revised §303.302(a)(2)(B)(i) upon adoption to require information be provided about community services, supports, and programs during the PE, which is before the IDT meeting.

Comment: A commenter noted that the process in §303.302(c)(3) requiring a LIDDA, LMHA, or LBHA to confirm information in the LTC online portal does not match the current information in the portal and suggests revising the rule to be consistent with the current information in the LTC online portal.

Response: HHSC agrees and has revised the rule as suggested.

Comment: A commenter stated that §303.302(c)(3)(B) does not allow for extenuating circumstances in which the staff member who conducted the PE is not available to attend the IDT. The commenter suggested revising the rule to require a LIDDA, LMHA, or LBHA representative to attend the IDT. The commenter further requested that information be included in the IDD PASRR Handbook to elaborate on HHSC's expectations.

Response: HHSC has revised the rule as suggested. HHSC will provide direction in the IDD PASSR Handbook encouraging the LIDDA to assign the PASRR evaluator to attend the IDT meeting as the LIDDA representative.

Comment: As proposed, §303.302(c)(3)(D) requires the LIDDA, LMHA, or LBHA to confirm in the LTC online portal that the IDT determined whether the resident is best served in the NF or community. A commenter suggested adding to this requirement that the LIDDA, LMHA, or LBHA also confirm "whether community living options were discussed."

Response: HHSC declines to revise the rule as suggested. HHSC deleted proposed §303.302(c)(3)(D) to make the rule requirement consistent with the requirements in the LTC online portal.

Comment: As proposed, §303.302(c)(4) requires a LIDDA, LBHA, or LMHA to initiate and provide specialized services. A commenter suggested revising this language to require a LIDDA, LMHA, or LBHA to "assist with access" and "ensure" the provision of specialized services. The commenter noted that the revised language will be necessary when IDD habilitative specialized services are no longer provided exclusively by LIDDAs.

Response: HHSC declines to revise the rule as suggested. The LIDDA, LMHA, and LBHA currently are responsible for the initiation and provision of IDD habilitative specialized services and MI specialized services. The LIDDA, LMHA, or LBHA will remain responsible for coordinating the specialized services even if it is not actually delivering the services.

Comment: As proposed, §303.502(a)(2) and §303.703(b)(2) require a habilitation coordinator or service coordinator to complete person-centered thinking training before providing habilitation coordination or service coordination. A commenter requested flexibility in this requirement because of barriers to staff attending in-person trainings approved by HHSC. The commenter noted that service coordinators currently must complete

person-centered thinking training within two years after being hired and that online training would mitigate these barriers.

Response: HHSC declines to make the requested change. HHSC is working directly with LIDDAs to ensure they can meet the training requirements for habilitation coordination. Additionally, web-based person-centered thinking trainings approved by HHSC are currently available to LIDDA staff.

Comment: Regarding the documentation requirement for habilitation contacts in §303.503(a)(2), a commenter suggested requiring a habilitation coordinator to document the length of a contact, as well as the date of the contact.

Response: HHSC declines to revise the rule as suggested because the length of the contact is already captured and reported in data entry for billing.

Comment: As proposed, §303.504(a)(1) requires the habilitation coordinator to maintain all assessments used for service planning in the designated resident's record. A commenter suggested adding "related to implementation of active treatment" after "service planning."

Response: HHSC declines to revise the rule as suggested. HHSC's position on active treatment has been and continues to remain the same. The minutiae of the services and methodology for the provision of such services is outlined extensively in statute, the TAC, contract, and guidance such that active treatment is achieved through separately identified requirements. Further, the definition of active treatment is currently a point of contention in the *Steward v Phillips* lawsuit. Should a court-ordered definition of active treatment require different interpretation of the term, HHSC will take steps to act accordingly when required to do so.

Comment: A commenter suggested that HHSC change the title of §303.602 from "Service Planning Team Responsibilities Related to Specialized Services" to "Service Planning Team Responsibilities Related to Specialized Services and Active Treatment."

Response: HHSC declines to revise the rule as suggested for the reasons provided in the previous response.

Comment: Regarding the requirement in §303.504(a)(3)(C) to document progress or lack of progress, a commenter suggested adding maintenance of the resident's goals and outcomes.

Response: HHSC agrees and has revised the rule to add "including whether the designated resident is maintaining progress toward achieving goals and outcomes."

Comment: Regarding the requirement in §303.504(a)(6)(A) to maintain documents and forms used to identify the need for specialized services, a commenter asked whether the rule refers to recommended services identified in the PE or related forms.

Response: The rule refers to services identified in any of the documents. The rule states "all documents and forms used to identify the designated resident's need for specialized services." The IDD PASRR Handbook will elaborate on documents and forms maintained in the resident's record.

Comment: Regarding the requirement in §303.601(b)(3)(A) to ensure specialized services are initiated within 20 business days, a commenter suggested replacing "ensuring" with "monitor to determine" because a habilitation coordinator does not have authority over a provider to ensure when a service is

initiated. The commenter also suggested revising the deadline to 30 business days.

Response: HHSC agrees with the first suggestion and has revised the rule to replace "ensuring" with "monitoring to determine if." HHSC declines to revise the deadline from 20 business days to 30 business days. However, HHSC did revise the word "initiated" to "requested." This change makes the rule consistent with the requirement in 40 TAC §19.2704(i)(7) that a NF request NF specialized services within 20 business days after the IDT or SPT meeting.

Comment: Regarding the requirement in §303.601(b)(9)(B)(i) that the habilitation coordinator provide information about community living options, a commenter suggested revising the timeline from 45 days after completion of the PE to six months after the IDT meeting. The commenter suggested aligning this timeline with the second quarterly SPT meeting.

Response: HHSC agrees and has revised the rule to require discussion of community living services, supports, and alternatives to occur six months after the initial presentation during the PE and "at least every six months thereafter, but no more than 30 days before a scheduled quarterly SPT meeting."

Comment: A commenter suggested amending §303.601(b)(9)(B)(iii). The suggested amendment would allow the LIDDA staff responsible for transition planning to provide information about community living options when the designated resident or LAR on the resident's behalf is interested in speaking with someone about transitioning to the community.

Response: HHSC declines to revise the rule as suggested. The Medicaid State Plan approved by CMS designates providing information about community living options as a function of habilitation coordination. Furthermore, the rules, as written, do not prevent other LIDDA staff from addressing community living options with a designated resident or LAR.

Comment: Regarding the requirement in §303.601(b)(9)(C) to arrange visits to community providers, a commenter suggested replacing "arranging" with "facilitating" to clarify that the LIDDA is not responsible for providing transportation to community visits.

Response: HHSC declines to revise the rule as suggested. The rule must be consistent with the Medicaid State Plan approved by CMS, which requires habilitation coordination to include arranging visits to community providers. In addition, the process of arranging a visit can include identifying transportation options and coordinating with another entity to provide transportation without obligating the LIDDA to provide the transportation.

Comment: Regarding the requirement in §303.602(a)(1) that the SPT meet at least quarterly, a commenter asked HHSC to clarify that an annual face-to-face with the LAR or actively involved individual is adequate or that the LAR can attend SPT meetings by phone.

Response: In §303.602(b)(2), the rule already states that each member of the SPT may participate in meetings in person or by phone. The rules do not require an annual face-to-face meeting with the LAR or actively involved individual.

Comment: Regarding the requirement in §303.602(a)(4) to identify and address risk factors for a resident, such as choking, falling, or skin breakdown, a commenter suggested replacing "ensure they are addressed" with "monitor and report if they are not addressed."

Response: HHSC agrees with the substance of this comment. Accordingly, HHSC has revised §303.602(a)(4) to read as follows: "review and monitor identified risk factors, such as choking, falling, and skin breakdown, and report to the proper authority if they are not addressed."

Comment: A commenter stated that the Contract Accountability and Oversight unit has determined that the specific risks listed in §303.602(a)(4), choking, falling, and skin breakdown, need to be documented and addressed for each individual, each month. If HHSC expects this level of detail, the commenter requested that appropriate prompts be included in the documentation.

Response: HHSC declines to revise the rule as suggested. HHSC does not specify a monthly timeframe for reviewing and monitoring risk factors. However, HHSC does expect documentation to demonstrate compliance with §303.602(a)(4) related to the SPT's responsibility for reviewing and monitoring risk factors and taking appropriate action if they are not addressed. The designated resident's condition and the nature of the risks will dictate how intensively the SPT must review and monitor risk factors.

Comment: Section 303.602(a)(6) requires the SPT to ensure the designated resident has opportunities to engage in integrated activities at the NF and in community settings. A commenter stated that, because some designated residents are non-verbal or medically fragile, a LIDDA cannot "ensure" that all designated residents have opportunities to engage in integrated activities at the NF and in community settings. The commenter suggested replacing "ensure the designated resident is provided opportunities for engaging in integrated activities" with "monitor to determine if the designated resident is provided opportunities for engaging in integrated activities."

Response: HHSC agrees and has revised the rule as suggested.

Comment: A commenter suggested deleting or adding more information about the requirements in §303.602(c) that a provider of a specialized service submit a written report and actively participate in an SPT meeting. The commenter noted that providers do not always comply with these requirements and "the LIDDA does not have the authority to require a provider report within five days and would create a hardship to ensure this takes place." The commenter suggested that the rules require a specialized service provider to submit a summary each quarter and the LIDDA to document that it requested the summary.

Response: HHSC declines to revise the rule as suggested. This change would make this rule conflict with 40 TAC §19.2706(c)(1), which requires NF staff and contractors who are members of the SPT to attend and participate in SPT meetings. If a NF or other provider of specialized services does not comply with this rule, the LIDDA should notify HHSC or the appropriate regulatory agency.

Comment: Regarding the requirement in §303.602(e) that the habilitation coordinator facilitate the quarterly SPT meeting in person, a commenter suggested revising the rule to allow the habilitation coordinator to participate by phone.

Response: HHSC declines to revise the rule as suggested. The quarterly SPT meetings occur infrequently enough that attending in person should not present a hardship for the habilitation coordinator. The habilitation coordinator may participate in SPT meetings other than the quarterly or annual SPT meetings in person or by phone.

Comment: Regarding proposed new §303.701, a commenter asked when the LIDDA changes the assignment from the habilitation coordinator to the service coordinator and whether habilitation coordination continues concurrently with service coordination for transition planning.

Response: Section 303.601(a) requires the LIDDA to provide habilitation coordination to the designated resident for as long as the resident is living in the NF. If the designated resident wants to transition to the community and has selected a community program, the LIDDA assigns a service coordinator to conduct transition planning. This means that some designated residents will receive habilitation coordination concurrently with service coordination.

Comment: Section 303.701(a) requires a LIDDA to assign a service coordinator if the designated resident or LAR on the resident's behalf expresses an interest in moving to the community. A commenter suggested delaying the assignment of a service coordinator because extenuating circumstances can cause the transition to the community to extend beyond the 180 days during which a LIDDA can bill for targeted case management.

Response: HHSC agrees and has revised the rule to require assignment of a service coordinator when the designated resident has selected a community program, which will allow the LIDDA to bill Medicaid targeted case management for more of the service coordination.

Comment: Section 303.701(h) requires the service coordinator to conduct a pre-move site review. Section 303.702 requires a service coordinator to conduct post-transition monitoring activities. A commenter asked whether these functions should be completed by the enhanced community coordinator (ECC) as required in the LIDDA performance contract.

Response: Transition planning and post-move monitoring can be conducted by either a service coordinator or an ECC as described in the IDD PASRR Handbook. An ECC meets the same qualifications as a service coordinator and complies with the same rules governing service coordination in 40 TAC Chapter 2, Subchapter L. HHSC notes that enhanced community coordination is a funding source that is not guaranteed to continue indefinitely.

Comment: Regarding the requirement in §303.702 to conduct post-move monitoring visits, a commenter suggested adding "more frequently if needed" to the timeframes listed.

Response: HHSC declines to revise the rule as suggested because LIDDAs already have the flexibility to complete more frequent post-move monitoring visits based on an individual's needs.

Comment: A commenter asked if a LIDDA must provide habilitation coordination to a resident who is not a Medicaid recipient or who loses Medicaid eligibility.

Response: A person is eligible for Medicaid-funded habilitation coordination if the person meets the definition of "designated resident." A "designated resident" is a Medicaid recipient with ID or DD who is 21 years of age or older and who is a resident of a NF. These rules do not address the provision of habilitation coordination for a person who does not meet the definition of "designated resident."

Revisions were made to §303.201 and §303.301 to correct a conflict with 40 TAC §19.2704.

Minor editorial changes were made to §303.602(b)(2) and §303.701(d)(2) to add a rule reference that was inadvertently omitted.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §§303.101 - 303.103

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

§303.102. *Definitions.*

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

(1) Acute care hospital--A facility in which a person receives short-term treatment for a severe physical injury or episode of physical illness, an urgent medical condition, or recovery from surgery and:

(A) may include a long-term acute care hospital, an emergency room within an acute care hospital, or an inpatient rehabilitation hospital; and

(B) does not include a stand-alone psychiatric hospital or a psychiatric hospital within an acute care hospital.

(2) Alternate placement assistance--Assistance provided to a resident to locate and secure services chosen by the resident or LAR that meets the resident's needs in a setting other than a nursing facility. Alternate placement assistance includes transition planning, pre-move site review, and post-move monitoring.

(3) APRN--Advance practice registered nurse. A person licensed to practice professional nursing as an advance practice registered nurse in accordance with Texas Occupations Code, Chapter 301.

(4) Behavioral support--Specialized interventions by a qualified service provider to assist a person to increase adaptive behaviors and to replace or modify maladaptive behaviors that prevent or interfere with the person's inclusion in home and family life or community life.

(A) Behavioral support includes:

(i) assessing and analyzing assessment findings so that an appropriate behavior support plan may be designed;

(ii) developing an individualized behavior support plan consistent with the outcomes identified in the HSP;

(iii) training and consulting with family members or other providers and, as appropriate, the person; and

(iv) monitoring and evaluating the success of the behavior support plan and modifying the plan as necessary.

(B) A qualified service provider of behavioral support:

(i) is licensed as a psychologist in accordance with Texas Occupations Code, Chapter 501;

(ii) is licensed as a psychological associate in accordance with Texas Occupations Code, Chapter 501;

(iii) has been issued a provisional license to practice psychology in accordance with Texas Occupations Code, Chapter 501;

(iv) is a certified authorized provider as described in 40 TAC §5.161 (relating to Certified Authorized Provider);

(v) is an LCSW;

(vi) is an LPC; or

(vii) is licensed as a behavior analyst in accordance with Texas Occupations Code, Chapter 506.

(5) CMWC--Customized manual wheelchair. In accordance with 40 TAC §19.2703 (relating to Definitions), a wheelchair that consists of a manual mobility base and customized seating system and is adapted and fabricated to meet the individualized needs of a designated resident.

(6) Collateral contact--A person who is knowledgeable about the individual seeking admission to a nursing facility or the resident, such as family members, previous providers or caregivers, and who may support or corroborate information provided by the individual or resident.

(7) Coma--A state of unconsciousness characterized by the inability to respond to sensory stimuli as documented by a physician.

(8) Comprehensive care plan--A plan, defined in 40 TAC §19.2703.

(9) Convalescent care--A type of care provided after an individual's release from an acute care hospital that is part of a medically prescribed period of recovery.

(10) Day habilitation--Assistance to a person to acquire, retain, or improve self-help, socialization, and adaptive skills necessary to live successfully in the community and participate in home and community life. Day habilitation provides:

(A) individualized activities consistent with achieving the outcomes identified in the person's service plan;

(B) activities necessary to reinforce therapeutic outcomes targeted by other support providers and other specialized services;

(C) services in a group setting, other than the person's residence, for typically up to five days a week, six hours per day on a regularly scheduled basis;

(D) personal assistance for a person who cannot manage personal care needs during the day habilitation activities; and

(E) transportation during the day habilitation activity necessary for a person's participation in the day habilitation activities.

(11) DD--Developmental disability. A disability that meets the criteria described in the definition of "persons with related conditions" in 42 Code of Federal Regulations (CFR) §435.1010.

(12) Delirium--A serious disturbance in an individual's mental abilities that results in a decreased awareness of the individual's environment and confused thinking.

(13) Designated resident--An individual:

(A) whose PE or resident review is positive for ID or DD;

(B) who is 21 years of age or older;

(C) who is a Medicaid recipient; and

(D) who is a resident or has transitioned to the community from a nursing facility within the previous 365 days.

(14) DME--Durable Medical Equipment. In accordance with 40 TAC §19.2703, the following items, including any accessories and adaptations needed to operate or access the item:

(A) a gait trainer;

(B) a standing board;

(C) a special needs car seat or travel restraint;

(D) a specialized or treated pressure-reducing support surface mattress;

(E) a positioning wedge;

(F) a prosthetic device; and

(G) an orthotic device.

(15) Emergency protective services--Services furnished by the Department of Family and Protective Services to an elderly or disabled individual who has been determined to be in a state of abuse, neglect, or exploitation.

(16) Employment assistance--Assistance provided to a person to help the person locate competitive employment in the community, consisting of a service provider performing the following activities:

(A) identifying a person's employment preferences, job skills, and requirements for a work setting and work conditions;

(B) locating prospective employers offering employment compatible with a person's identified preferences, skills, and requirements;

(C) contacting a prospective employer on behalf of a person and negotiating the person's employment;

(D) transporting the person to help the person locate competitive employment in the community; and

(E) participating in SPT meetings.

(17) Essential supports--Those supports identified in a transition plan that are critical to a designated resident's health and safety and that are directly related to a designated resident's successful transition to living in the community from residing in a nursing facility.

(18) Exempted hospital discharge--A category of nursing facility admission that occurs when a physician has certified that an individual who is being discharged from an acute care hospital is likely to require less than 30 days of nursing facility services for the condition for which the individual was hospitalized.

(19) Expedited admission--A category of nursing facility admission that occurs when an individual meets the criteria for one of the following categories: convalescent care, terminal illness, severe physical illness, delirium, emergency protective services, respite, or coma.

(20) Habilitation coordination--Assistance for a designated resident residing in a nursing facility to access appropriate specialized services necessary to achieve a quality of life and level of community participation acceptable to the designated resident and LAR on the designated resident's behalf.

(21) Habilitation coordinator--An employee of a LIDDA who provides habilitation coordination.

(22) HHSC--The Texas Health and Human Services Commission.

(23) HSP--Habilitation service plan. A plan developed by the SPT while a designated resident is residing in a nursing facility that:

(A) is individualized and developed through a person-centered approach;

(B) identifies the designated resident's:

(i) strengths;

(ii) preferences;

(iii) desired outcomes; and

(iv) psychiatric, behavioral, nutritional management, and support needs as described in the comprehensive care plan or MDS assessment; and

(C) identifies the specialized services that will accomplish the desired outcomes of the designated resident, or the LAR's on behalf of the designated resident, including amount, frequency, and duration of each service.

(24) ID--Intellectual disability, as defined in 42 CFR §483.102(b)(3)(i).

(25) IDD habilitative specialized services--The following specialized services available to a resident with ID or DD:

(A) habilitation coordination;

(B) day habilitation;

(C) independent living skills training;

(D) behavioral support;

(E) employment assistance; and

(F) supported employment.

(26) IDT--Interdisciplinary team. A team consisting of:

(A) a resident with MI, ID, or DD;

(B) the resident's LAR, if any;

(C) a registered nurse from the nursing facility with responsibility for the resident;

(D) a representative of:

(i) the LIDDA, if the resident has ID or DD;

(ii) the LMHA or LBHA, if the resident has MI; or

(iii) the LIDDA and the LMHA or LBHA, if the resident has MI and DD, or MI and ID; and

(E) others as follows:

(i) a concerned person whose inclusion is requested by the resident or LAR;

(ii) a person specified by the resident, LAR, nursing facility, LIDDA, LMHA, or LBHA, as applicable, who is professionally qualified, certified, or licensed with special training and experience in the diagnosis, management, needs, and treatment of people with MI, ID, or DD; and

(iii) a representative of the appropriate school district if the resident is school age and inclusion of the district representative is requested by the resident or LAR.

(27) Independent living skills training--Individualized activities that are consistent with the HSP and provided in a person's residence and at community locations, such as libraries and stores. These activities include:

(A) habilitation and support activities that foster or facilitate improvement or maintenance of the person's ability to perform functional living skills and other daily living activities;

(B) activities for the person's family that help preserve the family unit and prevent or limit out-of-home placement of the person; and

(C) transportation to facilitate the person's employment opportunities and participation in community activities, and between the person's residence and day habilitation site.

(28) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual seeking admission to a nursing facility or resident with regard to a matter described by this chapter, and who may be the parent of a minor child, the legal guardian, or the surrogate decision maker.

(29) LBHA--Local behavioral health authority. An entity designated by the executive commissioner of HHSC, in accordance with Texas Health and Safety Code, §533.0356.

(30) LCSW--Licensed clinical social worker. A person who is licensed as a licensed clinical social worker in accordance with Texas Occupations Code, Chapter 505.

(31) Licensed psychologist--A person who is licensed as a psychologist in accordance with Texas Occupations Code, Chapter 501.

(32) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with Texas Health and Safety Code, §533A.035

(33) LMFT--Licensed marriage and family therapist. A person who is licensed as a licensed marriage and family therapist in accordance with Texas Occupations Code, Chapter 502.

(34) LMHA--Local mental health authority. An entity designated by the executive commissioner of HHSC, in accordance with Texas Health and Safety Code, §533.035.

(35) LPC--Licensed professional counselor. A person who is licensed as a licensed professional counselor in accordance with Texas Occupations Code, Chapter 503.

(36) LTC online portal--Long term care online portal. A web-based application used by Medicaid providers to submit forms, screenings, evaluations, and other information.

(37) MCO service coordinator--Medicaid managed care organization service coordinator. The staff person assigned by a resident's Medicaid managed care organization to ensure access to and coordination of needed services.

(38) MDS assessment--Minimum data set assessment. A standardized collection of demographic and clinical information that describes a resident's overall condition, which a licensed nursing facility in Texas is required to submit for a resident admitted into the facility.

(39) MI--Mental illness. Serious mental illness, as defined in 42 CFR §483.102(b)(1).

(40) MI specialized services--Specialized services available to a resident with MI as described in the Texas Resilience and Recovery Utilization Management Guidelines, including:

- (A) skills training;
- (B) medication training;
- (C) psychosocial rehabilitation;
- (D) case management;
- (E) psychiatric diagnostic interview exam; and
- (F) supported housing, which includes alternate placement assistance and transitioning to the community.

(41) Nursing facility--A Medicaid-certified facility that is licensed in accordance with the Texas Health and Safety Code, Chapter 242.

(42) Nursing facility PASRR support activities--Consistent with 40 TAC §19.2703, actions a nursing facility takes in coordination with a LIDDA, LMHA, or LBHA to facilitate the successful provision of an IDD habilitative specialized service or MI specialized service, including:

- (A) arranging transportation for a nursing facility resident to participate in an IDD habilitative specialized service or a MI specialized service outside the facility;
- (B) sending a resident to a scheduled IDD habilitative specialized service or MI specialized service with food and medications required by the resident; and
- (C) stating in the comprehensive care plan an agreement to avoid, when possible, scheduling nursing facility services at times that conflict with IDD habilitative specialized services or MI specialized services.

(43) Nursing facility specialized services--The following specialized services available to a resident with ID or DD:

- (A) therapy services;
- (B) CMWC; and
- (C) DME.

(44) PA--Physician Assistant. A person who is licensed as a physician assistant in accordance with Texas Occupations Code, Chapter 204.

(45) PASRR--Preadmission screening and resident review.

(46) PE--PASRR level II evaluation. A face-to-face evaluation:

- (A) of an individual seeking admission to a nursing facility who is suspected of having MI, ID, or DD; and
- (B) performed by a LIDDA, LHMA, or LBHA to determine if the individual has MI, ID, or DD and, if so, to:
 - (i) assess the individual's need for care in a nursing facility;
 - (ii) assess the individual's need for specialized services; and
 - (iii) identify alternate placement options.

(47) Physician--A person who is licensed as a physician in accordance with Texas Occupations Code, Chapter 155.

(48) PL1--PASRR level I screening. The process of screening an individual seeking admission to a nursing facility to identify whether the individual is suspected of having MI, ID, or DD.

(49) Preadmission process--A category of nursing facility admission:

(A) from a community setting, such as a private home, an assisted living facility, a group home, a psychiatric hospital, or jail, but not an acute care hospital or another nursing facility; and

(B) that is not an expedited admission or an exempted hospital discharge.

(50) QIDP--Qualified intellectual disability professional. A person who meets the qualifications described in 42 CFR §483.430(a).

(51) QMHP-CS--Qualified mental health professional-community services. A person who meets the qualifications of a QMHP-CS as defined in 25 TAC §412.303 (related to Definitions).

(52) Referring entity--The entity that refers an individual to a nursing facility, such as a hospital, attending physician, LAR or other personal representative selected by the individual, a family member of the individual, or a representative from an emergency placement source, such as law enforcement.

(53) Resident--An individual who resides in a nursing facility and receives services provided by professional nursing personnel of the facility.

(54) Resident review--A face-to-face evaluation of a resident performed by a LIDDA, LMHA, or LBHA:

(A) for a resident with MI, ID, or DD who experienced a significant change in status, to:

- (i) assess the resident's need for continued care in a nursing facility;
- (ii) assess the resident's need for specialized services; and
- (iii) identify alternate placement options; and

(B) for a resident suspected of having MI, ID, or DD, to determine whether the resident has MI, ID, or DD and, if so:

- (i) assess the resident's need for continued care in a nursing facility;
- (ii) assess the resident's need for specialized services; and
- (iii) identify alternate placement options.

(55) Respite--Services provided on a short-term basis to a person because of the absence of or the need for relief by the person's unpaid caregiver for a period not to exceed 14 days.

(56) RN--Registered nurse. A person licensed to practice professional nursing as a registered nurse in accordance with Texas Occupations Code, Chapter 301.

(57) Service coordination--Assistance in accessing medical, social, educational, and other appropriate services and supports, including alternate placement assistance, that will help a person achieve a quality of life and community participation acceptable to the person and LAR on the person's behalf.

(58) Service coordinator--An employee of a LIDDA who provides service coordination.

(59) Severe physical illness--An illness resulting in ventilator dependence or a diagnosis, such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, or congestive heart failure, that results in a level of impairment so severe that the individual could not be expected to benefit from specialized services.

(60) Specialized services--The following support services, other than nursing facility services, that are identified through the PE or resident review and may be provided to a resident who has a PE or resident review that is positive for MI, ID, or DD:

- (A) nursing facility specialized services;
- (B) IDD habilitative specialized services; and
- (C) MI specialized services.

(61) SPT--Service planning team. A team convened by a LIDDA staff person that develops, reviews, and revises the HSP and the transition plan for a designated resident.

(A) The team must include:

- (i) the designated resident;
- (ii) the designated resident's LAR, if any;
- (iii) the habilitation coordinator for discussions and service planning related to specialized services or the service coordinator for discussions related to transition planning if the designated resident is transitioning to the community;

(iv) the MCO service coordinator, if the designated resident does not object;

(v) while the designated resident is in a nursing facility:

(I) a nursing facility staff person familiar with the designated resident's needs; and

(II) a person providing a specialized service to the designated resident or a representative of a provider agency that is providing specialized services for the designated resident;

(vi) if the designated resident is transitioning to the community:

(I) a representative from the community program provider, if one has been selected; and

(II) a relocation specialist; and

(vii) a representative from the LMHA or LBHA, if the designated resident has MI.

(B) Other participants on the SPT may include:

(i) a concerned person whose inclusion is requested by the designated resident or the LAR; and

(ii) at the discretion of the LIDDA, a person who is directly involved in the delivery of services to people with ID or DD.

(62) Supported employment--Assistance to sustain competitive employment for a person who, because of a disability, requires intensive, ongoing support to be self-employed, work from the person's residence, or perform in a work setting at which persons without disabilities are employed. Assistance consists of the following activities:

(A) making employment adaptations, supervising, and providing training related to the person's assessed needs;

(B) transporting the person to support the person to be self-employed, work from the person's residence, or perform in a work setting; and

(C) participating in SPT meetings.

(63) Surrogate decision maker--An actively involved family member of a resident who has been identified by an IDT in accor-

dance with Texas Health and Safety Code, §313.004 and who is available and willing to consent to medical treatment on behalf of the resident.

(64) Terminal illness--A medical prognosis that an individual's life expectancy is six months or less if the illness runs its normal course and that is documented by a physician's certification in the individual's medical record maintained by a nursing facility.

(65) Therapy services--In accordance with 40 TAC §19.2703, assessment and treatment to help a designated resident learn, keep, or improve skills and functioning of daily living affected by a disabling condition. Therapy services are referred to as habilitative therapy services. Therapy services are limited to:

(A) physical therapy;

(B) occupational therapy; and

(C) speech therapy.

(66) Transition plan--A plan developed by the SPT that describes the activities, timetable, responsibilities, services, and essential supports involved in assisting a designated resident to transition from residing in a nursing facility to living in the community.

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

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Karen Ray

Chief Counsel

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SUBCHAPTER B. PASRR SCREENING AND EVALUATION PROCESS

26 TAC §§303.201 - 303.204

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

§303.201. Preadmission Process.

(a) A referring entity must complete a PL1 when an individual is seeking admission into a nursing facility through the preadmission process, and:

(1) if the PL1 indicates the individual is suspected of having MI, ID, or DD:

(A) must notify the LIDDA, LMHA, or LBHA, as applicable; and

(B) must provide a copy of the PL1 to the LIDDA, LMHA, or LBHA, as applicable; and

(2) if the PL1 indicates the individual is not suspected of having MI, ID, or DD, must provide a copy of the completed PL1 to the nursing facility.

(b) If a LIDDA, LMHA, or LBHA is provided a copy of a PL1 in accordance with subsection (a)(1)(B) of this section, the LIDDA, LMHA, or LBHA must:

(1) complete a PE in accordance with §303.302(a)(2) of this chapter (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process);

(2) comply with §303.302(b) and (c) of this chapter; and

(3) make reasonable efforts to arrange for available community services and supports in the least restrictive setting to avoid nursing facility admission, if the individual seeking admission to a nursing facility, or the individual's LAR on the individual's behalf, wants to remain in the community.

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. RESPONSIBILITIES

26 TAC §§303.301 - 303.303

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

§303.301. *Referring Entity Responsibilities Related to the PASRR Process.*

(a) A referring entity must:

(1) complete the PL1 for an individual seeking admission into a nursing facility;

(2) contact a nursing facility selected by the individual or LAR to notify the nursing facility of the individual's interest in admission; and

(3) provide the completed PL1 as follows:

(A) to the nursing facility selected by the individual or LAR:

(i) for an individual who is being admitted through an expedited admission or an exempted hospital discharge; or

(ii) for an individual who is being admitted through a preadmission process and is not suspected of having MI, ID, or DD; and

(B) to the LIDDA, LMHA, or LBHA, as applicable, for an individual who is suspected of having MI, ID, or DD, and is being admitted through a preadmission process.

(b) If a referring entity is a family member, LAR, other personal representative selected by the individual, or a representative from an emergency placement source, the referring entity may request assistance from the nursing facility, LIDDA, LMHA, or LBHA in completing the PL1.

§303.302. *LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process.*

(a) A LIDDA, LMHA, or LBHA, as applicable, must:

(1) enter in the LTC online portal the data from a PL1 completed by a referring entity in accordance with §303.201(a)(1) of this chapter (relating to Preadmission Process) for an individual who is suspected of having MI, ID, or DD and who is seeking admission to a nursing facility through the preadmission process; and

(2) complete a PE or resident review as follows:

(A) within 72 hours after receiving a copy of the PL1 from the referring entity in accordance with §303.201(a)(1)(B) of this chapter or notification from the LTC online portal in accordance with §303.202 or §303.204(a) of this chapter (relating to Expedited Admission Process and Resident Review Process, respectively):

(i) call the referring entity or nursing facility to schedule the PE or resident review; and

(ii) meet face-to-face with the individual or resident at the referring entity or nursing facility to gather information to complete the PE or resident review; and

(B) within seven days after receiving a copy of the PL1 from the referring entity or notification from the LTC online portal:

(i) complete the PE or resident review by:

(I) reviewing the individual's or resident's:

(-a-) medical records;

(-b-) relevant service records, including those available in online databases, such as the Client Assignment and Registration (CARE) system, Clinical Management for Behavioral Health Services (CMBHS), and LTC online portal; and

(-c-) previous PEs, service plans, and assessments from other LIDDAs, LMHAs, or LBHAs;

(II) meeting face-to-face with the individual's or resident's LAR or communicating with the LAR by telephone if the LAR is not able to meet face-to-face;

(III) communicating with a collateral contact as necessary;

(IV) providing information to the individual seeking admission or resident and the individual's or resident's LAR, if any, about community services, supports, and programs for which the individual or resident may be eligible; and

(V) obtaining additional information as needed; and

(ii) enter the data from the PE or resident review in the LTC online portal.

(b) If an individual seeking admission to a nursing facility or a resident has a PE or resident review that is positive for ID, DD, or MI and a nursing facility certifies in the LTC online portal that it cannot meet the needs of the individual or resident, then the LIDDA, LMHA, or LBHA, as applicable, must assist the individual, resident, or LAR in choosing another nursing facility that will certify it can meet the needs of the individual or resident.

(c) If an individual seeking admission to a nursing facility or a resident has a PE or resident review that is positive for ID, DD, or MI and a nursing facility certifies in the LTC online portal that it can meet the needs of the resident or certifies in the LTC online portal that it can meet the needs of the individual and admits the individual, the LIDDA, LMHA or LBHA, as applicable, must:

(1) coordinate with the nursing facility to schedule an IDT meeting to discuss specialized services:

(A) for a PE, within 14 days after admission; or

(B) for a resident review, within 14 days after the LTC online portal generated an automated notification to the LIDDA, LMHA, or LBHA;

(2) participate in the resident's IDT meeting as scheduled by the nursing facility to, in collaboration with the other members of the IDT:

(A) identify which of the specialized services recommended for the resident that the resident, or LAR on the resident's behalf, wants to receive;

(B) identify the nursing facility PASRR support activities for the resident; and

(C) determine whether the resident is best served in a facility or community setting;

(3) within five business days after receiving notification from the LTC online portal that the nursing facility entered information from the IDT meeting, confirm that the following information is in the LTC online portal, in accordance with HHSC instructions:

(A) the LIDDA, LMHA, or LBHA representative who participated in the IDT meeting; and

(B) all specialized services that were agreed to in the IDT meeting; and

(4) if Medicaid or other funding is available:

(A) initiate IDD habilitative specialized services or MI specialized services within 20 business days after the date of the IDT meeting; and

(B) provide the IDD habilitative specialized services or MI specialized services agreed upon in the IDT meeting to the resident.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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SUBCHAPTER D. VENDOR PAYMENT

26 TAC §303.401

STATUTORY AUTHORITY

The new rule is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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

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Chief Counsel

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**SUBCHAPTER E. HABILITATION
COORDINATION**

26 TAC §§303.501 - 303.504

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

§303.504. *Documentation Maintained by a LIDDA in a Designated Resident's Record.*

(a) A LIDDA must ensure a habilitation coordinator maintains the following documentation in a designated resident's record:

(1) all assessments used for service planning;

(2) all documentation of habilitation coordination contacts as described in §303.503(a) of this chapter (relating to Documenting Habilitation Coordination Contacts);

(3) documentation related to monitoring specialized services, including:

(A) the initiation and delivery of all specialized services provided to the designated resident, including reasons for delays and all follow-up activities;

(B) the designated resident's and LAR's satisfaction with all specialized services; and

(C) the designated resident's progress or lack of progress toward achieving goals and outcomes identified in the HSP, including whether the designated resident is maintaining progress toward achieving goals and outcomes;

(4) the current comprehensive care plan;

(5) the current HSP;

(6) all documents and forms used to:

(A) identify the designated resident's need for specialized services; and

(B) conduct SPT meetings, including written reports from SPT members who are providers of specialized services and completed forms related to assessing for habilitative needs;

(7) the completed HHSC forms that document discussions with the designated resident and LAR about the range of community living services, supports, and alternatives; and

(8) all pertinent information related to the designated resident, such as guardianship paperwork and consents.

(b) For a designated resident who has refused habilitation coordination, a LIDDA must maintain the following documentation in a designated resident's record:

(1) the completed *Refusal of Habilitation Coordination* form;

(2) documentation of the specialized services discussed in the initial IDT and any annual specialized services review meeting; and

(3) the completed HHSC forms that document discussions with the designated resident and LAR about the range of community living services, supports, and alternatives.

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SUBCHAPTER F. HABILITATIVE SERVICE
PLANNING FOR A DESIGNATED RESIDENT

26 TAC §303.601, §303.602

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

§303.601. *Habilitation Coordination for a Designated Resident.*

(a) A LIDDA must assign a habilitation coordinator to each designated resident to attend the initial IDT and provide habilitation coordination while the designated resident is residing in the nursing facility. A designated resident may refuse habilitation coordination.

(b) Unless a designated resident has refused habilitation coordination, the assigned habilitation coordinator must:

(1) assess and reassess quarterly, and as needed, the designated resident's habilitative service needs by gathering information from the designated resident and other appropriate sources, such as the LAR, family members, social workers, and service providers, to determine the designated resident's habilitative needs and the specialized services that will address those needs;

(2) develop and revise, as needed, an individualized HSP in accordance with HHSC's rules and IDD PASRR Handbook, and using HHSC forms;

(3) assist the designated resident to access needed specialized services agreed upon in an IDT or SPT meeting, including:

(A) monitoring to determine if a specialized service agreed upon in an IDT or SPT meeting is requested within 20 business days after the IDT or SPT meeting or documenting delays and the habilitation coordinator's follow-up activities; and

(B) ensuring the delivery of all specialized services agreed upon in an IDT or SPT meeting or documenting delays and the habilitation coordinator's follow-up activities;

(4) coordinate other habilitative programs and services that can address needs and achieve outcomes identified in the HSP;

(5) facilitate the coordination of the designated resident's HSP and the comprehensive care plan, including ensuring the HSP is shared with members of the SPT and the nursing facility;

(6) monitor and provide follow-up activities that consist of:

(A) monitoring the initiation and delivery of all specialized services agreed upon in an IDT or SPT meeting and following up when delays occur;

(B) monitoring the designated resident's and LAR's satisfaction with all specialized services; and

(C) determining the designated resident's progress or lack of progress toward achieving goals and outcomes identified in the HSP;

(7) meet face-to-face with the designated resident to provide habilitation coordination:

(A) at least monthly or more frequently if needed; or

(B) at least quarterly if the only specialized service the designated resident is receiving is habilitation coordination;

(8) convene and facilitate an SPT meeting at least quarterly, or more frequently if there is a change in service needs, medical condition, or if requested by the designated resident or LAR;

(9) address community living options with the designated resident and LAR by:

(A) offering the educational opportunities and informational activities about community living options that are periodically scheduled by the LIDDA;

(B) providing information about the range of community living services, supports, and alternatives, identifying the services and supports the designated resident will need to live in the community, and identifying and addressing barriers to community living in accordance with HHSC's IDD PASRR Handbook and using HHSC materials at the following times:

(i) six months after the initial presentation of community living options during the PE described in §303.302(a)(2)(B)(i) of this Chapter (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process) and at least every six months thereafter, but no more than 30 days before a scheduled quarterly SPT meeting;

(ii) when requested by the designated resident or LAR;

(iii) when the habilitation coordinator is notified or becomes aware that the designated resident, or the LAR on the designated resident's behalf, is interested in speaking with someone about transitioning to the community; and

(iv) when notified by HHSC that the designated resident's response in Section Q of the MDS indicates the resident is interested in speaking with someone about transitioning to the community; and

(C) arranging visits to community providers and addressing concerns about community living;

(10) coordinate with the nursing facility in accessing medical, social, educational, and other appropriate services and supports that will help the designated resident achieve a quality of life acceptable to the designated resident and LAR on the resident's behalf; and

(11) initially and annually thereafter, provide the designated resident and LAR an oral and written explanation of the designated resident's rights contained in the *Your Rights in Local Authority Services* booklet.

§303.602. *Service Planning Team Responsibilities Related to Specialized Services.*

(a) The SPT for a designated resident must:

(1) meet at least quarterly, as convened by the habilitation coordinator;

(2) ensure that the designated resident, regardless of whether he or she has an LAR, participates in the SPT to the fullest

extent possible and receives the support necessary to do so, including communication supports;

(3) develop an HSP for the designated resident;

(4) review and monitor identified risk factors, such as choking, falling, and skin breakdown, and report to the proper authority if they are not addressed;

(5) make timely referrals, service changes, and revisions to the HSP as needed; and

(6) considering the designated resident's preferences, monitor to determine if the designated resident is provided opportunities for engaging in integrated activities:

(A) with residents who do not have ID or DD; and

(B) in community settings with people who do not have a disability.

(b) Each member of the SPT for a designated resident must:

(1) consistent with the SPT member's role, assist the habilitation coordinator in ensuring the designated resident's needs are being met; and

(2) participate in an SPT meeting in person or by phone, except as described in subsections (c)(3) or (e) of this section;

(c) An SPT member who is a provider of a specialized service must:

(1) submit to the habilitation coordinator a copy of all assessments of the designated resident that were completed by the provider or provider agency;

(2) submit a written report describing the designated resident's progress or lack of progress to the habilitation coordinator at least five days before a quarterly SPT meeting; and

(3) actively participate in an SPT meeting, in person or by phone, unless the habilitation coordinator determines active participation by the provider is not necessary.

(d) If a habilitation coordinator determines active participation by a provider is not necessary as described in subsection (c)(3) of this section, the habilitation coordinator must:

(1) base the determination:

(A) on the information in the written report submitted in accordance with subsection (c)(2) of this section; and

(B) on the needs of the SPT; and

(2) document the reasons for exempting participation.

(e) A habilitation coordinator must facilitate a quarterly SPT meeting in person.

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 G. TRANSITION PLANNING

26 TAC §§303.701 - 303.703

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

§303.701. *Transition Planning for a Designated Resident.*

(a) A LIDDA must assign a service coordinator to a designated resident if the designated resident, or the LAR on the designated resident's behalf, expresses an interest in moving to the community and has selected a community program.

(b) A service coordinator must facilitate the development, revisions, implementation, and monitoring of a transition plan in accordance with HHSC's IDD PASRR Handbook and using HHSC forms. A transition plan must identify the services and supports a designated resident needs to live in the community, including those essential supports that are critical to the designated resident's health and safety.

(c) The SPT for a designated resident must:

(1) meet as convened by the service coordinator;

(2) ensure that the designated resident, regardless of whether he or she has an LAR, participates in the SPT to the fullest extent possible and receives the support necessary to do so, including communication supports; and

(3) conduct transition planning activities and develop a transition plan for the designated resident.

(d) Consistent with an SPT member's role, each SPT member must:

(1) assist the service coordinator in developing, revising, implementing, and monitoring a designated resident's transition plan to ensure a successful transition to the community for the designated resident; and

(2) participate in an SPT meeting in person or by phone, except as described in subsections (e) or (g) of this section.

(e) An SPT member who is a provider of a specialized service must actively participate in an SPT meeting, in person or by phone, unless the service coordinator determines active participation by the provider is not necessary.

(f) If a service coordinator determines active participation by a provider is not necessary as described in subsection (e) of this section, the service coordinator must:

(1) base the determination on the needs of the SPT; and

(2) document the reasons for exempting participation.

(g) At an SPT meeting convened by a service coordinator, the service coordinator must facilitate the SPT meeting in person.

(h) For a designated resident who is transitioning to the community, a service coordinator must, in accordance with HHSC's IDD PASRR Handbook and using HHSC forms, conduct and document a pre-move site review of the designated resident's proposed residence in the community to determine whether all essential supports in the designated resident's transition plan are in place before the designated resident's transition to the community.

(i) If the SPT makes a recommendation that a designated resident continue to reside in a nursing facility, the SPT must:

(1) document the reasons for the recommendation; and

(2) include in the designated resident's transition plan:

(A) the barriers to moving to a more integrated setting; and

(B) the steps the SPT will take to address those barriers.

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

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SUBCHAPTER H. COMPLIANCE REVIEW

26 TAC §303.801

STATUTORY AUTHORITY

The new rule is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 17. PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR)

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC adopts the repeal of §§17.101 - 17.103, 17.201 - 17.204, 17.301, 17.302, 17.401, 17.501 - 17.503 in Title 40, Part 1, Chapter 17, Preadmission Screening and Resident Review (PASRR).

The repeal of §§17.101 - 17.103, 17.201 - 17.204, 17.301, 17.302, 17.401, 17.501 - 17.503 is adopted without changes to the proposed text as published in the February 8, 2019, issue of the *Texas Register* (44 TexReg 551), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The Texas Secretary of State created Title 26, Part 1 of the Texas Administrative Code to consolidate rules that govern the functions of HHSC. These rules are currently in Titles 1, 25, and 40. As part of the consolidation into Title 26, HHSC adopts the repeal of the rules in Title 40, Chapter 17. The new rules in Title 26, Part 1, Chapter 303, Preadmission Screening and Resident Review (PASRR), are adopted elsewhere in this issue of the *Texas Register*.

COMMENTS

The 30-day comment period ended March 10, 2019. During this period, HHSC did not receive any comments regarding the proposed repeal.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§17.101 - 17.103

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which gives HHSC the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion

of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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Chief Counsel

Department of Aging and Disability Services

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SUBCHAPTER B. PASRR SCREENING AND EVALUATION PROCESS

40 TAC §§17.201 - 17.204

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which gives HHSC the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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Chief Counsel

Department of Aging and Disability Services

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SUBCHAPTER C. RESPONSIBILITIES

40 TAC §17.301, §17.302

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services

system; Texas Government Code §531.021, which gives HHSC the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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SUBCHAPTER D. VENDOR PAYMENT

40 TAC §17.401

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which gives HHSC the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3135



SUBCHAPTER E. SERVICE PLANNING FOR A DESIGNATED RESIDENT

40 TAC §§17.501 - 17.503

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of

services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which gives HHSC the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 108. EARLY CHILDHOOD INTERVENTION SERVICES

As required by Texas Government Code §531.0202(a), the Department of Assistive and Rehabilitative Services (DARS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201. Rules of the former DARS are codified in Title 40, Part 2, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 2 govern functions previously performed by DARS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 2. Therefore, the Executive Commissioner of HHSC adopts amendments to Title 40, Part 2, Chapter 108, §§108.101, 108.201, 108.203, 108.207, 108.211, 108.213, 108.215, 108.217, 108.219, 108.237, 108.303, 108.309 - 108.313, 108.315, 108.409, 108.411, 108.417, 108.503, 108.505, 108.507, 108.607, 108.609, 108.611, 108.613, 108.615, 108.617, 108.709, 108.809, 108.811, 108.813, 108.815, 108.817, 108.821, 108.825, 108.829, 108.835, 108.837, 108.1003, 108.1004, 108.1007, 108.1009, 108.1015 - 108.1017, 108.1019, 108.1107, 108.1108, 108.1111, 108.1207, 108.1209, 108.1213, 108.1217, 108.1221, 108.1301, 108.1307, 108.1309, 108.1405, 108.1407, 108.1409, 108.1413, 108.1421, 108.1423, 108.1431, and 108.1439; new §§108.218, 108.314, 108.405, 108.415, 108.707, and 108.708; and the repeal of §§108.102, 108.205, 108.206, 108.218, 108.302, 108.317, 108.319, 108.405, 108.415, 108.603, 108.702, 108.706, 108.707, 108.803, 108.1002, 108.1011, 108.1102, 108.1106, 108.1202, 108.1303, 108.1403, and 108.1432, concerning Subchapter A, General Rules; Subchapter B, Procedural Safeguards and Due Process Procedures; Subchapter

C, Staff Qualifications; Subchapter D, Case Management for Infants and Toddlers with Developmental Disabilities; Subchapter E, Specialized Skills Training; Subchapter F, Public Outreach; Subchapter G, Referral, Pre-Enrollment, and Developmental Screening; Subchapter H, Eligibility, Evaluation, and Assessment; Subchapter J, Individualized Family Service Plan (IFSP); Subchapter K, Service Delivery; Subchapter L, Transition; Subchapter M, Child and Family Outcomes; and Subchapter N, Family Cost Share System. The amendments are adopted without changes to the proposed text as published in the December 21, 2018, issue of the *Texas Register* (43 TexReg 8238), and therefore will not be republished.

The amendments to §§108.103, 108.204, 108.233, 108.403, 108.501, 108.704, 108.823, 108.1104, 108.1105, and 108.1425; and new §108.706, concerning Subchapter A, General Rules; Subchapter B, Procedural Safeguards and Due Process Procedures; Subchapter D, Case Management for Infants and Toddlers with Developmental Disabilities; Subchapter E, Specialized Rehabilitative Services; Subchapter H, Eligibility, Evaluation, and Assessment; Subchapter K, Service Delivery; and Subchapter N, Family Cost Share System are adopted with changes to the proposed text as published in the December 21, 2018, issue of the *Texas Register* (43 TexReg 8238), and will be republished.

BACKGROUND AND PURPOSE

The purpose of the amendments, repeals, and new rules is to increase administrative efficiencies, improve processes for contractors, and align the rules with the Code of Federal Regulations.

The changes also contain non-substantive changes that will: (1) improve readability and understanding; (2) make the wording of the rule consistent with the new changes in this chapter; and (3) update state organizational changes as a result of Senate Bill (SB) 200, 84th Legislature, Regular Session, 2015.

The amendments, repeals, and new rules are a result of HHSC Early Childhood Intervention (ECI) Program conducting a review of current rules and visiting with current ECI contractors and stakeholders to identify ways to improve the long-term sustainability of the program. These rules address a number of areas including clarifying eligibility determination, programmatic requirements, and additional needs identified by current contractors. Additionally, this rule project has allowed the ECI program to identify opportunities to clarify targeted case management, which will assist in meeting the requirements of the 2018-19 General Appropriations Act, SB 1, 85th Legislature, Regular Session, 2017 (Article II, HHSC, Rider 114).

COMMENTS

The 30-day comment period ended January 20, 2019. The rules were also sent to the United States Department of Education Office of Special Education Programs (OSEP) for comment.

The following are comments received by HHSC from four commenters, including Easter Seals Central Texas, the United States Department of Education Office of Special Education Programs, and from Texas Medicaid and Healthcare Partnership. A summary of comments relating to the rule and HHSC's responses follows.

Comment: Two commenters suggested amending proposed §108.103 to add a definition for "telehealth."

Response: HHSC agrees and revised the rule as suggested.

Comment: Regarding §108.103, one commenter suggested including a cross reference to §108.811 to elaborate on HHSC's definition of "Qualifying Medical Diagnosis."

Response: HHSC agrees and revised the rule as suggested.

Comment: Regarding §108.204, one commenter suggested adding that prior written notice must inform the parent why an action was or wasn't taken, to comply with federal regulations.

Response: HHSC agrees and revised the rule as suggested.

Comment: One commenter suggested adding the public law number for citation of The Uninterrupted Scholars Act in §108.233.

Response: HHSC agrees and revised the rule as suggested.

Comment: Regarding §108.233, one commenter expressed concern that HHSC was expanding the instances in which information about enrolled children can be released without consent.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The list of instances in which information can be released provides more detail than the current rule but has not been expanded to include additional instances.

Comment: OSEP requested clarification be added to §108.403(1) stating that if parental consent is not given for telehealth, case management services must still be provided.

Response: HHSC has made that change.

Comment: Regarding proposed §108.403(5), one commenter stated the definition of "targeted case management" implied the service was only provided to Medicaid beneficiaries.

Response: HHSC agrees and revised the rule as suggested.

Comment: Regarding proposed §108.405, one commenter suggested clarifying expectations for the provision, documentation and reimbursement of case management provided via telehealth.

Response: HHSC disagrees and declines to revise the rule in response to this comment. Documentation, service provision, and reimbursement requirements are already codified in rule and are applicable as written regardless of service modality.

Comment: Regarding proposed §108.415, one commenter suggested adding language about documentation requirements for case management provided via telehealth.

Response: HHSC disagrees and declines to revise the rule in response to this comment. Documentation requirements for case management via telehealth will be the same as for the service provided via other service delivery modes.

Comment: OSEP requested additional language be added to §108.501(b)(2) to clarify that if parental consent is not given for telehealth, specialized rehabilitative services must be provided in person.

Response: HHSC has made that change.

Comment: Regarding proposed §108.823, one commenter suggested clarifying that evaluation for continuing eligibility must comply with the same federal regulations as evaluation for initial eligibility.

Response: HHSC agrees and revised the rule as suggested.

Comment: Regarding proposed §108.1104, one commenter suggested clarifying expectations for the provision, documentation and reimbursement of case management provided via telehealth.

Response: HHSC disagrees and declines to revise the rule in response to this comment. Documentation, service provision, and reimbursement requirements are already codified in rule and are applicable as written regardless of service modality.

Comment: OSEP reviewed amendments to §108.1104(b)(3) and requested a clarification stating that if parental consent is not given for telehealth, services must still be provided in person.

Response: HHSC has made that change.

Comment: Regarding proposed §108.1425, one commenter noted that amended language regarding claims sent to Medicaid without billing private insurance first would result in denials for all services other than specialized skills training and targeted case management.

Response: HHSC agrees and revised the rule as suggested.

SUBCHAPTER A. GENERAL RULES

40 TAC §108.101, §108.103

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.033, which provides the Health and Human Services Executive Commissioner with broad rulemaking authority; and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The amendments affect Texas Human Resources Code, Chapter 73, and Government Code, Chapter 531.

§108.103. Definitions.

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

(1) **Assessment**--As defined in 34 CFR §303.321(a)(2)(ii), the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility for early childhood intervention services to assess the child's individual strengths and needs and determine the appropriate services to meet those needs.

(2) **Child**--An infant or toddler, from birth through 35 months, as defined in 34 CFR §303.21.

(3) **Child Find**--As described in 34 CFR §§303.115, 303.302 and 303.303, activities and strategies designed to locate and identify, as early as possible, infants and toddlers with developmental delay.

(4) **Complaint**--A formal written allegation submitted to HHSC stating that a requirement of the Individuals with Disabilities Education Act, or an applicable federal or state regulation has been violated.

(5) **Comprehensive Needs Assessment**--Conducted by an interdisciplinary team as a part of the IFSP development process, the process for identifying a child's unique strengths and needs, and the family's resources, concerns, and priorities in order to develop an IFSP. The comprehensive assessment process gathers information across developmental domains regarding the child's abilities to participate in the everyday routines and activities of the family.

(6) **Condition With a High Probability of Resulting in Developmental Delay**--A medical diagnosis known and widely accepted

within the medical community to result in a developmental delay over the natural course of the diagnosis.

(7) **Consent**--As defined in 34 CFR §303.7 and meeting all requirements in 34 CFR §303.420.

(8) **Contractor**--A local private or public agency with proper legal status and governed by a board of directors or governing authority that accepts funds from HHSC to administer an early childhood intervention program.

(9) **Co-visits**--When two or more service providers deliver different services to the child during the same period of time. Co-visits are provided when a child will receive greater benefit from services being provided at the same time, rather than individually.

(10) **Days**--Calendar days, except for LEA services which are defined as "school days."

(11) **Developmental Delay**--As defined in Texas Human Resources Code §73.001(3) and determined to be significant in compliance with the criteria and procedures in Subchapter H of this chapter (relating to Eligibility, Evaluation, and Assessment).

(12) **Developmental Screenings**--General screenings provided by the early childhood intervention program to assess the child's need for further evaluation.

(13) **Early Childhood Intervention Program**--In addition to the definition of early intervention service program as defined in 34 CFR §303.11, a program operated by the contractor with the express purpose of implementing a system to provide early childhood intervention services to children with developmental delays and their families.

(14) **Early Childhood Intervention Services**--Individualized early childhood intervention services determined by the IFSP team to be necessary to support the family's ability to enhance their child's development. Early childhood intervention services are further defined in 34 CFR §303.13 and §303.16 and §108.1105 of this title (relating to Capacity to Provide Early Childhood Intervention Services).

(15) **ECI Professional**--An individual employed by or under the direction of an HHSC Early Childhood Intervention Program contractor who meets the requirements of qualified personnel as defined in 34 CFR §303.13(c) and §303.31, and who is knowledgeable in child development and developmentally appropriate behavior, possesses the requisite education and experience, and demonstrates competence to provide ECI services.

(16) **EIS**--Early Intervention Specialist. A credentialed professional who meets specific educational requirements established by HHSC ECI and has specialized knowledge in early childhood cognitive, physical, communication, social-emotional, and adaptive development.

(17) **Evaluation**--The procedures used by qualified personnel to determine a child's initial and continuing eligibility for early childhood intervention services that comply with the requirements described in 34 CFR §303.21 and §303.321.

(18) **FERPA**--Family Educational Rights and Privacy Act of 1974, 20 USC §1232g, as amended, and implementing regulations at 34 CFR Part 99. Federal law that outlines privacy protection for parents and children enrolled in the ECI program. FERPA includes rights to confidentiality and restrictions on disclosure of personally identifiable information, and the right to inspect records.

(19) **Group Services**--Early childhood intervention services provided at the same time to no more than four children and their parent or parents or routine caregivers per service provider to meet the developmental needs of the individual infant or toddler.

(20) HHSC--Texas Health and Human Services Commission. The entity designated as the lead agency by the governor under the Individuals with Disabilities Education Act, Part C. HHSC has the final authority and responsibility for the administration, supervision, and monitoring of programs and activities under this system. HHSC has the final authority for the obligation and expenditure of funds and compliance with all applicable laws and rules.

(21) HHSC ECI--The Texas Health and Human Services Commission Early Childhood Intervention Services. The state program responsible for maintaining and implementing the statewide early childhood intervention system required under the Individuals with Disabilities Education Act, Part C, as amended in 2004.

(22) IFSP--Individualized Family Service Plan as defined in 34 CFR §303.20. A written plan of care for providing early childhood intervention services and other medical, health and social services to an eligible child and the child's family when necessary to enhance the child's development.

(23) IFSP Services--The individualized early childhood intervention services listed in the IFSP that have been determined by the IFSP team to be necessary to enhance an eligible child's development.

(24) IFSP Team--An interdisciplinary team that meets the requirements in 34 CFR §303.24(b) (relating to Multidisciplinary) that works collaboratively to develop, review, modify, and approve the IFSP and includes the parent; the service coordinator, all ECI professionals providing services to the child, as planned on the IFSP, certified Teachers of the Deaf and Hard of Hearing, as appropriate, and certified Teachers of Students with Visual Impairments, as appropriate.

(25) Interdisciplinary Team--In addition to the definition of multidisciplinary team as defined in 34 CFR §303.24 (relating to Multidisciplinary), a team that consists of at least two ECI professionals from different disciplines and the child's parent. One of the ECI professionals must be an LPHA. The team may include representatives of the LEA. Professionals on the team share a common perspective regarding infant and toddler development and developmental delay and work collaboratively to conduct evaluation, assessment, IFSP development and to provide intervention.

(26) LEA--Local educational agency as defined in 34 CFR §303.23.

(27) LPHA--Licensed Practitioner of the Healing Arts. A licensed physician, registered nurse, licensed physical therapist, licensed occupational therapist, licensed speech language pathologist, licensed professional counselor, licensed clinical social worker, licensed psychologist, licensed dietitian, licensed audiologist, licensed physician assistant, licensed marriage and family therapist, licensed intern in speech language pathology, licensed behavior analyst, or advanced practice registered nurse who is an employee or a subcontractor of an ECI contractor. LPHA responsibilities are further described in §108.312 of this title (relating to Licensed Practitioner of the Healing Arts (LPHA)).

(28) Medicaid--The medical assistance entitlement program administered by HHSC.

(29) Natural Environments--As defined in 34 CFR §303.26, settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, includes the daily activities of the child and family or caregiver, and must be consistent with the provisions of 34 CFR §303.126.

(30) Native Language--As defined in 34 CFR §303.25.

(A) When used with respect to an individual who is limited English proficient (as that term is defined in section 602(18) of the Act), native language means:

(i) the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child; and

(ii) for evaluations and assessments conducted pursuant to 34 CFR §303.321(a)(5) and (a)(6), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

(B) When used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, native language means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

(31) Parent--As defined in 20 USC §1401 and 34 CFR §303.27.

(32) Personally Identifiable Information--As defined in 34 CFR §99.3 and 34 CFR §303.29.

(33) Pre-Enrollment--All family related activities from the time the referral is received up until the time the parent signs the initial IFSP.

(34) Primary Referral Sources--As defined in 34 CFR §303.303(c).

(35) Public Agency--HHSC and any other state agency or political subdivision of the state that is responsible for providing early childhood intervention services to eligible children under the Individuals with Disabilities Education Act, Part C.

(36) Qualifying Medical Diagnosis--A diagnosed medical condition that has a high probability of developmental delay as determined by HHSC, as described in §108.811 of this chapter (relating to Eligibility Determination Based on Medically Diagnosed Condition That Has a High Probability of Resulting in Developmental Delay).

(37) Referral Date--The date the child's name and sufficient information to contact the family was obtained by the contractor.

(38) Routine Caregiver--An adult who:

(A) has written authorization from the parent to participate in early childhood intervention services with the child, even in the absence of the parent;

(B) participates in the child's daily routines;

(C) knows the child's likes, dislikes, strengths, and needs; and

(D) may be the child's relative, childcare provider, or other person who regularly cares for the child.

(39) Service Coordinator--The contractor's employee or subcontractor who:

(A) meets all applicable requirements in Subchapter C of this chapter (relating to Staff Qualifications);

(B) is assigned to be the single contact point for the family;

(C) is responsible for providing case management services as described in §108.405 of this title (relating to Case Management Services); and

(D) is from the profession most relevant to the child's or family's needs or is otherwise qualified to carry out all applicable responsibilities.

(40) Surrogate Parent--A person assigned to act as a surrogate for the parent in compliance with the Individuals with Disabilities Education Act, Part C and this chapter.

(41) Telehealth services--Healthcare services, other than telemedicine medical services, delivered by a health professional licensed, certified or otherwise entitled to practice in Texas and acting within the scope of the health professional's license, certification, or entitlement to a patient at a different physical location than the health professional using telecommunications or information technology.

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Karen Ray

Chief Counsel

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40 TAC §108.102

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.033, which provides the Health and Human Services Executive Commissioner with broad rulemaking authority; and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The repeal affects Texas Human Resources Code, Chapter 73, and Government Code, Chapter 531.

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Karen Ray

Chief Counsel

Department of Assistive and Rehabilitative Services

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SUBCHAPTER B. PROCEDURAL SAFEGUARDS AND DUE PROCESS PROCEDURES

40 TAC §§108.201, 108.203, 108.204, 108.207, 108.211, 108.213, 108.215, 108.217 - 108.219, 108.233, 108.237

STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Government Code §531.033, which provides the Health and Human Services Executive Commissioner with broad rulemaking authority; and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The amendments and new section affect Texas Human Resources Code, Chapter 73, and Government Code, Chapter 531.

§108.204. *Prior Written Notice.*

In accordance with 34 CFR §303.421, prior written notice is required to inform the parent of any actions the contractor proposes to take or not take, the reason for taking or not taking the action, and to remind the parent about the parent's rights regarding these actions. These actions include identification of the child, evaluation, IFSP meetings, and the provision of early childhood intervention services. Through prior written notice, the contractor:

(1) provides the parent with sufficient notice of meetings to allow the parent time to prepare for the meeting and to invite other individuals if they choose;

(2) keeps the parent informed about any action the contractor is proposing to take or not take; and

(3) provides the parent with sufficient notice of actions the contractor will take unless the parent exercises his or her due process rights.

§108.233. *Release of Personally Identifiable Information.*

(a) Unless authorized to do so under 34 CFR §99.31 or the Uninterrupted Scholars Act (Public Law 112-278), parental consent must be obtained before personally identifiable information is:

(1) disclosed to anyone other than officials or employees of ECI participating agencies collecting or using the information; or

(2) used for any purpose other than meeting a requirement under this chapter.

(b) A contractor may request that the parent provide a release to share information with others for legitimate purposes. However, when such a release is sought:

(1) the parent must be informed of their right to refuse to sign the release;

(2) the release form must list the agencies and providers to whom information may be given and specify the type of information that might be given to each;

(3) the parent must be given the opportunity to limit the information provided under the release and to limit the agencies, providers, and persons with whom information may be shared. The release form must provide ample space for the parent to express in writing such limitations;

(4) the release must be revocable at any time;

(5) the consent to release information form must have a time limit:

(A) not to exceed seven years after the child exits services or other applicable record retention period, as described in §108.237 of this subchapter (relating to Record Retention Period) for billing records; or

(B) not to exceed one year for all other consents to release information;

(6) if the parent refuses to consent to the release of all or some personally identifiable information, the program will not release the information.

(c) The contractor may disclose personally identifiable information without prior written parental consent if the disclosure meets one or more of the following conditions:

(1) the disclosure is to another HHSC ECI contractor during a transfer of services;

(2) the disclosure is restricted to limited personal identification, as defined in §108.1203 of this chapter (relating to Definitions), being sent to the LEA for child find purposes, unless the parent opted-out of the notification in accordance with §108.1213 of this chapter (relating to LEA Notification Opt Out);

(3) the disclosure is to the Texas Department of Family and Protective Services for the purpose of reporting or cooperating in the investigation of suspected child abuse or neglect;

(4) the disclosure is in response to a court order or subpoena;

(5) the disclosure is to a federal or state oversight entity, including:

(A) United States Department of Health and Human Services or its designee;

(B) Comptroller General of the United States or its designee;

(C) Office of the State Auditor of Texas or its designee;

(D) Office of the Texas Comptroller of Public Accounts;

(E) Medicaid Fraud Control Unit of the Texas Attorney General's Office or its designee;

(F) HHSC, including:

(i) Office of Inspector General;

(ii) MCO Program personnel from HHSC or designee;

(iii) any other state or federal entity identified by HHSC, or any other entity engaged by HHSC; and

(iv) any independent verification and validation contractor, audit firm or quality assurance contractor acting on behalf of HHSC;

(G) state or federal law enforcement agency; or

(H) State of Texas Legislature general or special investigating committee or its designee; or

(6) the disclosure meets the requirements of the Uninterrupted Scholars Act, which provides that:

(A) the disclosure is to a caseworker or other representative of a State or local child welfare agency or tribal organization authorized to access the child's case plan;

(B) the child is in foster care and the child welfare agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student; and

(C) the disclosure must pertain to addressing the education needs of the child.

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

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Karen Ray

Chief Counsel

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40 TAC §§108.205, 108.206, 108.218

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.033, which provides the Health and Human Services Executive Commissioner with broad rulemaking authority; and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The repeals affect Texas Human Resources Code, Chapter 73, and Government Code, Chapter 531.

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Chief Counsel

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SUBCHAPTER C. STAFF QUALIFICATIONS

40 TAC §§108.302, 108.317, 108.319

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.033, which provides the Health and Human Services Executive Commissioner with broad rulemaking authority; and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The repeals affect Texas Human Resources Code, Chapter 73, and Government Code, Chapter 531.

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40 TAC §§108.303, 108.309 - 108.315

STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Government Code §531.033, which provides the Health and Human Services Executive Commissioner with broad rulemaking authority; and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The amendments and new section affect Texas Human Resources Code, Chapter 73, and Government Code, Chapter 531.

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**SUBCHAPTER D. CASE MANAGEMENT
FOR INFANTS AND TODDLERS WITH
DEVELOPMENTAL DISABILITIES**

**40 TAC §§108.403, 108.405, 108.409, 108.411, 108.415,
108.417**

STATUTORY AUTHORITY

The amendments and new sections are adopted under Texas Government Code §531.033, which provides the Health and Human Services Executive Commissioner with broad rulemaking authority; and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The amendments and new sections affect Texas Human Resources Code, Chapter 73, and Government Code, Chapter 531.

§108.403. Definitions.

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

(1) Case management--In compliance with §108.405 of this subchapter (relating to Case Management Services), case management means services provided to assist an eligible child and

their family in gaining access to the rights and procedural safeguards under the Individuals with Disabilities Education Act (IDEA), Part C, and to needed medical, social, educational, developmental, and other appropriate services. Case management services may be provided via telehealth with the prior written consent of the parent. If the parent declines to consent to telehealth services, case management must still be provided.

(2) Developmental disability--Children from birth to age three who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

(3) Monitoring and assessment--Activities and contacts as described in §108.405 of this subchapter (relating to Case Management Services) that are necessary to ensure that the individualized family service plan (IFSP), as described in Subchapter J of this chapter (relating to Individualized Family Service Plan (IFSP)), is effectively implemented and that the planned services adequately address the needs of the child.

(4) Service coordinator--An employee or person under the direction of an ECI contractor who meets the criteria described in Subchapter C of this chapter (relating to Staff Qualifications).

(5) Targeted case management--case management activities that are reimbursable by Medicaid when provided to Medicaid-enrolled children who are eligible for ECI.

(6) Texas Health Steps--The name adopted by the State of Texas for the federally mandated Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program.

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40 TAC §108.405, §108.415

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SUBCHAPTER E. SPECIALIZED REHABILITATIVE SERVICES

40 TAC §§108.501, 108.503, 108.505, 108.507

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The amendments affect Texas Human Resources Code, Chapter 73, and Government Code, Chapter 531.

§108.501. *Specialized Rehabilitative Services.*

(a) Specialized rehabilitative services are rehabilitative services that promote age-appropriate development by correcting deficits and teaching compensatory skills for deficits that directly result from medical, developmental or other health-related conditions. Specialized rehabilitative services include physical therapy, speech language pathology services, occupational therapy, and specialized skills training.

(1) Physical therapy.

(A) Physical therapy services are defined in 34 CFR §303.13(b)(9).

(B) Physical therapy services must meet the requirements of subsection (b) of this section.

(C) Physical therapy services must be provided by a licensed physical therapist who meets the requirements of 42 CFR §440.110(a) and all other applicable state and federal laws or a licensed physical therapy assistant (LPTA) when the assistant is acting under the direction of a licensed physical therapist in accordance with 42 CFR §440.110 and all other applicable state and federal laws.

(2) Speech language pathology services.

(A) Speech language pathology services are defined in 34 CFR 303.13(b)(15).

(B) Speech therapy services must meet the requirements of subsection (b) of this section.

(C) Speech therapy services must be provided by:

(i) a licensed speech language pathologist (SLP) who meets the requirements of 42 CFR §440.110(c) and all other applicable state and federal laws;

(ii) a licensed assistant in SLP when the assistant is acting under the direction of a licensed SLP in accordance with 42 CFR §440.110 and all other applicable state and federal laws; or

(iii) a licensed intern when the intern is acting under the direction of a qualified SLP in accordance with 42 CFR §440.110 and all other applicable state and federal laws.

(3) Occupational therapy.

(A) Occupational therapy services are defined in 34 CFR §303.13(b)(8).

(B) Occupational therapy services must meet the requirements of subsection (b) of this section.

(C) Occupational therapy services must be provided by a licensed occupational therapist who meets the requirements of 42 CFR §440.110(b) and all other applicable state and federal laws or a certified occupational therapy assistant (COTA) when the assistant is acting under the direction of a licensed occupational therapist in accordance with 42 CFR §440.110 and all other applicable state and federal laws.

(4) Specialized skills training.

(A) Specialized skills training seeks to reduce the child's functional limitations across developmental domains including, strengthening the child's cognitive skills, positive behaviors, and social interactions.

(B) Specialized skills training includes skills training and anticipatory guidance for family members or other routine caregivers to ensure effective treatment and to enhance the child's development.

(C) Specialized skills training services must meet the requirements of subsection (b) of this section.

(D) Specialized skills training must be provided by an Early Intervention Specialist.

(b) Specialized rehabilitative services must:

(1) be designed to create learning environments and activities that promote the child's acquisition of skills in one or more of the following developmental areas: physical/motor, communication, adaptive, cognitive, and social/emotional;

(2) be provided in the child's natural environment, as defined in 34 CFR Part 303, unless the criteria listed at 34 CFR §303.126 are met and documented in the case record and may be provided via telehealth with the prior written consent of the parent, and if the parent does not consent to telehealth services, will be provided in person;

(3) meet the requirements of §108.1104 of this chapter (relating to Early Childhood Intervention Services Delivery); and

(4) be provided on an individual or group basis.

(c) In addition to the criteria in subsection (b) of this section, group services must meet the requirements as described in §108.1107 of this chapter (relating to Group Services).

(d) Service Authorization.

(1) Specialized rehabilitative services must be recommended by an interdisciplinary team that includes a licensed practitioner of the healing arts and be documented in an Individualized Family Service Plan (IFSP) in accordance with Subchapter J of this chapter (relating to Individualized Family Service Plan (IFSP)).

(2) Services must be monitored by the interdisciplinary team as described in §108.1104 of this chapter (relating to Early Childhood Intervention Services Delivery).

(e) Documentation. Documentation of each specialized rehabilitative services contact must meet the requirements in §108.1111 of this chapter (relating to Service Delivery Documentation Requirements).

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SUBCHAPTER F. PUBLIC OUTREACH

40 TAC §108.603

STATUTORY AUTHORITY

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40 TAC §§108.607, 108.609, 108.611, 108.613, 108.615, 108.617

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SUBCHAPTER G. REFERRAL, PRE-ENROLLMENT, AND DEVELOPMENTAL SCREENING

40 TAC §§108.702, 108.706, 108.707

STATUTORY AUTHORITY

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40 TAC §§108.704, 108.706 - 108.709

STATUTORY AUTHORITY

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The amendments and new section affect Texas Human Resources Code, Chapter 73, and Government Code, Chapter 531.

§108.704. Referral Requirements.

(a) The contractor must:

- (1) accept referrals for children less than 36 months of age;
- (2) document in the child's record the referral date, source, and reason for referral; and
- (3) contact the family in a timely manner after receiving the referral.

(b) The contractor must follow all requirements described in this chapter when a referral is received 45 days or more before the child's third birthday.

(c) In accordance with 34 CFR §303.209(b)(iii) and §108.1207(h) of this title (relating to Transition Planning), when a referral is received less than 45 days before the child's third birthday, the contractor is not required to conduct pre-enrollment procedures, an evaluation, an assessment, or an initial IFSP meeting. In accordance with 34 CFR §303.209, with written parental consent, if the toddler is potentially eligible for special education services:

- (1) the contractor must notify the LEA; and
- (2) HHSC coordinates the notification to the State Education Agency.

§108.706. *Referrals Received While the Child is in the Hospital.*

(a) In order to facilitate discharge planning and provide continuity of care, a contractor may accept referrals for children who are residing in a hospital at the time of referral.

(b) If a referral is received for a child who has an adjusted age of 0 months or less, or who has a qualifying medical diagnosis, the contractor may choose to determine eligibility and complete the initial IFSP prior to the child's discharge from the hospital.

(1) The interdisciplinary team who determines eligibility may include a licensed or registered hospital professional, who will serve as the LPHA while the child is in the hospital. The LPHA on the IFSP team may participate by means other than face to face, if acceptable to the team and if the initial IFSP is conducted while the child is in the hospital.

(2) The interdisciplinary team must include at least one ECI professional and a licensed or registered hospital professional who is familiar with the needs of the child and knowledgeable in the area or areas of concern. The participating licensed or registered hospital professional is not required to complete the orientation training required in §108.309(b) of this chapter (relating to Minimum Requirements for All Direct Service Staff). Allowable licensed or registered hospital professionals include:

- (A) licensed physician;
- (B) registered nurse;
- (C) licensed physical therapist;
- (D) licensed occupational therapist;
- (E) licensed speech language pathologist;
- (F) licensed dietitian;
- (G) licensed audiologist;
- (H) licensed physician assistant;
- (I) licensed intern in speech language pathology; or
- (J) advanced practice registered nurse.

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SUBCHAPTER H. ELIGIBILITY, EVALUATION, AND ASSESSMENT

40 TAC §108.803

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.033, which provides the Health and Human Services Executive Commissioner with broad rulemaking authority; and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

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40 TAC §§108.809, 108.811, 108.813, 108.815, 108.817, 108.821, 108.823, 108.825, 108.829, 108.835, 108.837

STATUTORY AUTHORITY

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The amendments affect Texas Human Resources Code, Chapter 73, and Government Code, Chapter 531.

§108.823. *Continuing Eligibility Criteria.*

(a) The contractor must determine the child's eligibility for continued early childhood intervention services at least annually if the child is younger than 21 months of age. A child who is determined eligible at 21 months of age or older remains eligible for ECI until the child's third birthday or until the child has reached developmental proficiency, whichever happens first.

(b) The contractor must comply with all requirements in 34 CFR §303.321(a)(3), including ensuring that informed clinical opinion may be used as an independent basis to establish a child's continued eligibility.

(1) Continuing eligibility is based on one of the following:

(A) a qualifying medical diagnosis confirmed by a review of the child's medical records with:

(i) interdisciplinary team documentation of the continued need for early childhood intervention services; and

(ii) documentation in the child's record of any change in medical diagnosis;

(B) an auditory or visual impairment as defined by the Texas Education Agency in 19 TAC §89.1040 (relating to Eligibility Criteria) with:

(i) interdisciplinary team documentation of the continued need for early childhood intervention services; and

(ii) documentation in the child's record of any change in hearing or vision status; or

(C) a developmental delay determined by the administration of the standardized tool designated by HHSC ECI, with the child demonstrating a documented delay of at least 15 percent in one or more areas of development, including the use adjusted age as specified in §108.819 of this subchapter (relating to Age Adjustment for Children Born Prematurely), as applicable.

(2) Continuing eligibility for a child whose initial eligibility was based on a qualitative determination of developmental delay must be determined after six months.

(A) Eligibility is re-determined through an evaluation using the standardized tool designated by HHSC ECI.

(B) The child must demonstrate a documented delay of at least 15% in one or more areas of development. If applicable use adjusted age as specified in §108.819 of this subchapter.

(c) If the parent fails to consent or fails to cooperate in re-determination of eligibility, the child becomes ineligible. The contractor must send prior written notice of ineligibility and consequent discontinuation of all ECI services to the family at least 14 days before the contractor discharges the child from the program, unless the parent:

(1) immediately consents to and cooperates in all necessary evaluations and assessments; and

(2) consents to all or part of a new IFSP.

(d) The family has the right to oppose the actions described in subsection (c) of this section using their procedural safeguards including the rights to use local and state complaint processes, request mediation, or request an administrative hearing in accordance with §101.1107 of this title (relating to Administrative Hearings Concerning Individual Child Rights).

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SUBCHAPTER J. INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

40 TAC §108.1002, §108.1011

STATUTORY AUTHORITY

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40 TAC §§108.1003, 108.1004, 108.1007, 108.1009, 108.1015 - 108.1017, 108.1019

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SUBCHAPTER K. SERVICE DELIVERY

40 TAC §108.1102, §108.1106

STATUTORY AUTHORITY

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40 TAC §§108.1104, 108.1105, 108.1107, 108.1108, 108.1111

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The amendments affect Texas Human Resources Code, Chapter 73, and Government Code, Chapter 531.

§108.1104. Early Childhood Intervention Services Delivery.

(a) Early childhood intervention services needed by the child must be initiated in a timely manner and delivered as planned in the IFSP. Only qualified staff members, as described in Subchapter C of this chapter (relating to Staff Qualifications) are authorized to provide early childhood intervention services.

(b) The contractor must ensure that early childhood intervention services are appropriate, as determined by the IFSP team, and based on scientifically based research, to the extent practicable. In addition to the requirements in 34 CFR §303.13, early childhood intervention services must be provided:

(1) according to a plan and with a frequency that is individualized to the parent and child to effectively address the goals established in the IFSP;

(2) in the presence of the parent or other routine caregiver, with an emphasis on enhancing the family's capacity to meet the developmental needs of the child; and

(3) in the child's natural environment, as defined in 34 CFR Part 303.26, unless the criteria listed in 34 CFR §303.126 are met and documented in the case record, and may be provided via telehealth with the written consent of the parent. If the parent declines to consent to telehealth for some or all services, those services must be provided in person.

(c) Early Intervention services must:

(1) address the development of the whole child within the framework of the family;

(2) enhance the parent's competence to maximize the child's participation and functional abilities within daily routines and activities; and

(3) be provided in the context of natural learning activities in order to assist caregivers to implement strategies that will increase child learning opportunities and participation in daily life.

(d) The contractor must provide a service coordinator and an interdisciplinary team for the child and family throughout the child's enrollment.

(e) The contractor must make reasonable efforts to provide flexible hours in programming in order to allow the parent or routine caregiver to participate.

(f) The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures) when planning and delivering early childhood intervention services.

(g) Services must be monitored by the interdisciplinary team at least once every six months to determine:

(1) what progress is being made toward achieving goals;

(2) if services are reducing the child's functional limitations, promoting age appropriate growth and development, and are responsive to the family's identified goals for the child; and

(3) whether modifications to the plan are needed.

(h) Monitoring occurs as part of the IFSP review process and must be documented in the case record.

§108.1105. Capacity to Provide Early Childhood Intervention Services.

The contractor must have the capacity to provide all early childhood intervention services in 34 CFR §303.13 (relating to Early intervention services.) and additional early childhood intervention services described in this chapter. These services are:

(1) Assistive Technology Device and Service--As defined in 34 CFR §303.13(b)(1).

(2) Audiology Services--As defined in 34 CFR §303.13(b)(2), plus services provided by local educational agency personnel, including sign language and cued language services as defined in 34 CFR §303.13(b)(12).

(3) Behavioral Intervention--Services delivered through a structured plan to strengthen developmental skills while specifically addressing severely challenging behaviors as determined by the IFSP team. The behavior plan is developed by the IFSP team (that includes the plan supervisor) to:

(A) identify goals;

(B) conduct a functional assessment to determine the motivation for the behavior;

(C) develop a hypothesis;

(D) design support plans; and

(E) implement, monitor, and evaluate outcomes.

(4) Counseling--As family training, counseling, and home visits are defined in 34 CFR §303.13(b)(3). Counseling is provided when the nature and quality of the parent-child relationship interferes significantly with the ECI child's development. Counseling focuses on

the parent-child relationship or other critical care-giving relationships and helps the child meet developmental outcomes.

(5) Family Education and Training--As family training, counseling, and home visits are defined in 34 CFR §303.13(b)(3). Family education and training is provided when the family needs information about general parenting techniques and/or environmental concerns. Information provided follows a specific scope and sequence. Information may be based on general child care, developmental education, or other specific curriculum. Family Education and Training can be provided to parents in group settings without the children present.

(6) Health Services--As defined in 34 CFR §303.16.

(7) Medical Services--As defined in 34 CFR §303.13(b)(5).

(8) Nursing Services--As defined in 34 CFR §303.13(b)(6).

(9) Nutrition Services--As defined in 34 CFR §303.13(b)(7).

(10) Occupational Therapy--As defined in 34 CFR §303.13(b)(8).

(11) Physical Therapy--As defined in 34 CFR §303.13(b)(9).

(12) Psychological Services--As defined in 34 CFR §303.13(b)(10).

(13) Service Coordination--As defined in 34 CFR §303.13(b)(11) and includes all requirements in 34 CFR §303.34 (relating to service coordination services (case management)).

(14) Social Work Services--As defined in 34 CFR §303.13(b)(13).

(15) Sign Language and Cued Language--As defined in 34 CFR §303.13(b)(12).

(16) Specialized Skills Training--As defined in Subchapter E of this chapter (relating to Specialized Rehabilitative Services) plus the provision of special instruction as defined in 34 CFR §303.13(b)(14).

(17) Speech-Language Pathology Services--As defined in 34 CFR §303.13(b)(15) and can include sign language and cued language services as defined in 34 CFR §303.13(b)(12).

(18) Targeted Case Management--As defined in Subchapter D of this chapter (relating to Case Management for Infants and Toddlers with Developmental Disabilities).

(19) Transportation and Related Costs--As defined in 34 CFR §303.13(b)(16).

(20) Vision Services--As defined in 34 CFR §303.13(b)(17) plus services provided by local educational agency personnel.

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SUBCHAPTER L. TRANSITION

40 TAC §108.1202

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40 TAC §§108.1207, 108.1209, 108.1213, 108.1217, 108.1221

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SUBCHAPTER M. CHILD AND FAMILY OUTCOMES

40 TAC §§108.1301, 108.1307, 108.1309

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40 TAC §108.1303

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SUBCHAPTER N. FAMILY COST SHARE SYSTEM

40 TAC §108.1403, §108.1432

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40 TAC §§108.1405, 108.1407, 108.1409, 108.1413, 108.1421, 108.1423, 108.1425, 108.1431, 108.1439

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.033, which provides the Health and Human Services Executive Commissioner with broad rulemaking authority; and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The amendments affect Texas Human Resources Code, Chapter 73, and Government Code, Chapter 531.

§108.1425. *Public Benefits and Insurance.*

- (a) Medicaid, CHIP, and TRICARE are public insurance programs.
- (b) The contractor must assist the parent to:
 - (1) identify and access other available funding sources to pay for a child's early childhood intervention services; and
 - (2) enroll a potentially eligible child in Medicaid or CHIP.
- (c) The contractor must not require a parent to enroll in public benefits or insurance programs as a condition of receiving early childhood intervention services.
- (d) If the child is not already receiving public insurance, the contractor must obtain written parental consent before billing. The contractor must waive the maximum charge while eligibility is being determined, not to exceed 90 days.
- (e) The contractor must obtain written parental consent to release personally identifiable information to Medicaid, CHIP, and TRICARE. If the parent does not give consent to release personally identifiable information, the contractor bills the parent up to their maximum charge, based on their placement on the sliding fee scale.
- (f) The contractor must not bill the parent if the child is enrolled in Medicaid and the parent gives consent to release personally identifiable information to Medicaid.

(g) If the child is in foster care or kinship care, the contractor must obtain consent to release personally identifiable information to bill Medicaid.

(h) If the child has private insurance in addition to Medicaid, the private insurance is the primary payor. The contractor must bill the private insurance every time before filing a claim with Medicaid for all services other than targeted case management or specialized skills training.

(i) If the child has CHIP or TRICARE and the parent gives consent to release personally identifiable information, the contractor must bill the family for services not paid for by CHIP or TRICARE and for any co-pays, up to the family's maximum charge, based on their placement on the sliding fee scale.

(j) If the child becomes ineligible for Medicaid, CHIP, or TRICARE, the contractor bills the parent up to their maximum charge, based on their placement on the sliding fee scale.

(k) The contractor must not deny or delay a child's services if:

(1) the family does not have public insurance; or

(2) the parent does not give consent to release personally identifiable information to their public insurance. If the parent does not give consent, the contractor bills the family up to their maximum charge, based on their placement on the sliding fee scale.

(l) A family with public insurance will not be charged disproportionately more than a family without public or private insurance.

(m) If a child is covered by private insurance only, once the contractor has verified that the private insurance plan will not pay for certain ECI services for a child, the contractor is not required to continue to bill the private insurance plan for those services for that child. The contractor must verify coverage for ECI services with the private insurance plan at least annually.

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

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Karen Ray

Chief Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 776-4300



PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 854. BUSINESS ENTERPRISES OF TEXAS

The Texas Workforce Commission (TWC) adopts the following new sections to Chapter 854, relating to Business Enterprises of Texas, without changes, as published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 8056):

Subchapter A. General Provisions and Program Operations, §§854.10 - 854.12

Subchapter B. License and Assignments, §§854.20, 854.22 - 854.24

Subchapter C. Expectations of TWC and Managers, §§854.40, 854.42, 854.43

Subchapter D. BET Elected Committee of Managers, §§854.60 and 854.61

Subchapter E. Action Against a License, §§854.80 - 854.83

TWC adopts new §854.21 and §854.41 with nonsubstantive changes and will be republished.

TWC adopts the repeal of the following sections of Chapter 854, relating to Business Enterprises of Texas, without changes, as published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 8056):

Subchapter N. Business Enterprises of Texas, §§854.200 - 854.217

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the BET program is to provide training and remunerative employment opportunities on state, federal, and private properties throughout Texas for Texans who are legally blind. TWC is the state agency authorized to administer the BET program, which operates under the authority of the federal Randolph-Sheppard Act (20 USC §107 et seq.), implementing regulations (34 CFR §395.1 et seq.), and Chapter 355 of the Texas Labor Code. Participants operate vending and food services on state, federal and other properties throughout Texas, including office buildings, prisons, military installations, and highway safety rest areas. All applicants for the program are qualified by and referred to BET by TWC Vocational Rehabilitation (VR) Services. Although BET is not a VR program, it provides competitive employment for VR customers and successful case closures for the VR program.

BET program managers collaborate with the federally mandated Elected Committee of Managers (ECM), composed of elected licensed managers of BET facilities, to evaluate rules and policies and to make recommendations. The BET rules were last revised in 2012 under BET's predecessor agency, the Texas Department of Assistive and Rehabilitative Services (DARS). As required by §854.212(d), before considering these rule changes, TWC requested that the ECM participate in rule drafting workshops conducted by the BET director to deliberate regarding these adopted rules. Meetings were held between the ECM and the BET director to obtain the ECM's recommendations on the proposed rule revisions and to solicit ECM proposals on program improvement.

The TWC Chapter 854 Business Enterprises of Texas adopted rule amendments include changes to clarify procedures, update program operations, and improve operational transparency. Some of the revisions are made in response to operational enhancements resulting from TWC's adoption of Rapid Process Improvement methods. Other changes are designed to modernize the program by addressing tax lien responsibilities and the monitoring of participants' compliance with state and federal tax laws. Additional operational transparency is added by clarifying the eligibility criteria for participation in the BET program and the opportunities for assignment and advancement of licensed BET managers. Finally, because the ECM is an elected committee composed of the licensed managers of BET facilities who vote on career advancement assignment opportunities, it is important to ensure transparency and avoid the appearance of conflict of interest. Revisions are adopted to enhance fair and equal

treatment of program participants by providing a framework for addressing conflicts of interest.

Pursuant to Texas Labor Code §352.101, TWC has integrated legacy DARS VR programs--VR for individuals with visual impairments (Blind Services) and VR for individuals with other disabilities (Rehabilitation Services)--into a single VR program. The integration has resulted in the repeal of various subchapters within Chapter 854. The BET rules are currently in Chapter 854, Subchapter N, Division for Blind Services, and will be the only subchapter in Chapter 854. Accordingly, the BET rules will be renumbered and moved into Subchapter A, which is renamed to refer solely to the BET program.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

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

SUBCHAPTER A. GENERAL PROVISIONS AND PROGRAM OPERATIONS

TWC adopts adding the following new sections to Subchapter A:

§854.10. Definitions

New §854.10 replaces repealed §854.202 and updates many references to DARS and its organizational structure, and replaces the word "person" with "individual." DARS DBS definitions are removed. Additional necessary definitions are added, such as those for "immediate family" and "substantial interest," to assist in the rules on conflict of interest. "Application for Training" was added since this is the first requirement in being considered for a license. One definition regarding instruction by TWC staff members was moved and renamed, but the definition remained unchanged.

Comment: No comments were received.

§854.11. General Policies

New §854.11 replaces repealed §854.203 and revises many references to DARS, its legal authority, and its organizational structure, replacing the word "person" with "individual" and "consumer" with "customer." Subcontracting is clarified to be under the purview and approval of TWC. The rule also establishes a time frame of six months as the maximum for a subcontractor to be assigned to a facility. The modification of this rule reflects the current operation of the program and improves compliance with the governing statutes. The BET director's authorized amount of funds on an emergency basis was increased, and more detail was provided on the type of incident that may require emergency funding. The process for designating the temporary management of an unassigned facility was revised to reflect how a manager is evaluated to obtain the assignment and the role of the BET management and the local ECM in determining who is assigned as the temporary manager. To ensure sound fiscal operations and adherence to state and federal law, the manager's compliance with state and federal tax laws in running a facility is imperative.

Comment: Four commenters suggested that the BET program's goals as stated in §854.11(a) and (b) are to provide employment opportunities for qualified individuals and to stimulate and enlarge economic opportunities for Texans who are legally blind. The commenters observed that there are vending opportunities in state and federal facilities that currently are awarded to private vendors, but that BET vendors have not been informed of, or pro-

vided the chance to bid on, these prospects. The commenters asserted that TWC should be communicating these opportunities to the ECM and BET program participants.

Response: TWC agrees that ensuring opportunities for economic enlargement are communicated and provided to BET program participants is an important program goal. The BET program communicates all available established program facility opportunities to all managers through e-mail and at the following TWC website at <https://twc.texas.gov/jobseekers/business-enterprises-texas-facilities-available-assignment>. Vending contract opportunities are made available to BET managers at the following TWC website at <https://twc.texas.gov/agency/business-enterprises-texas-vending-services-contracts>. TWC also notes that this approach has been in effect throughout the tenure of the BET program and no change is being proposed under the cited rule to deviate from longstanding communication practices. Accordingly, TWC declines to modify the proposed rule.

§854.12. Consultants

New §854.12 replaces repealed §854.204 and updates its provisions to remove the BET administrator role. The rule is further updated to reflect the change from DARS DBS to TWC. Subsection (d) is modified to specify that the state procurement requirements will be followed when entering into a contract for a consultant and using facility proceeds to pay the consultant.

Comment: No comments were received.

SUBCHAPTER B. LICENSE AND ASSIGNMENTS

TWC adopts new Subchapter B, License and Assignments, as follows:

§854.20. Eligibility and License Application Process

New §854.20 replaces repealed §854.205 and establishes the eligibility criteria that a customer must meet to apply for the BET training component, which is a prerequisite for a BET license. Proficiency in math, reading, writing, and adaptive technology must be demonstrated through an assessment administered by the Criss Cole Rehabilitation Center (CCRC), as found in TWC Chapter 856 Vocational Rehabilitation Services. BET is an employment outcome for customers who are in the TWC VR program, as found in Chapter 856. The regional VR manager must approve a customer applying for the BET training program.

Comment: No comments were received.

§854.21. BET Licenses and Continuing Education Requirement

New §854.21 updates its §854.206 provisions to revise many references to DARS and its organizational structure and to replace "person" with "individual." The rules addressing the Continuing Education Requirement of a licensee were moved from §854.205 and revised solely to reflect the agency name change from "DARS DBS" to "TWC."

Comment: No comments were received.

§854.22. Initial Assignment Procedures

New §854.22 replaces repealed §854.207 and updates its provisions to replace "person" with "individual," in addition to adding a requirement in subsection (b)(5) that the licensee must be in compliance with state and federal tax laws in order to receive an initial assignment.

Comment: No comments were received.

§854.23. Career Advancement Assignment Procedures

New §854.23 replaces repealed §854.207 and updates its provisions to address the selection, transfer, and promotion for BET managers. The existing rule specifies eligibility requirements for licensees to meet in order to apply for an available facility. The added eligibility requirements include facility host requirements, such as criminal background checks, drug tests, and any other host requirements. To ensure sound fiscal operations and adherence to state and federal law, the manager's compliance with state and federal tax law is imperative and is a requirement for an advanced assignment. The rule is further updated to reflect the agency name change from DARS DBS to TWC.

Comment: No comments were received.

§854.24. Career Advancement Assignment Application

New §854.24 replaces repealed §854.207 and updates its provisions to include electronic submission of the application, notice of the available facility, and notice of the interview date, place, and time. The rule is further updated to revise many references to DARS and its organizational structure, and to replace "person" with "individual."

Comment: No comments were received.

SUBCHAPTER C. EXPECTATIONS OF TWC AND MANAGERS

TWC adopts new Subchapter C, Expectations of TWC and Managers, as follows:

§854.40. Fixtures, Furnishings, and Equipment; Initial Inventory; and Expendables

New §854.40 replaces repealed §854.208 and updates its provisions to revise many references to DARS and its organizational structure, and to replace "person" with "individual." The updates clarify that TWC is the owner of the fixtures, furnishings, and equipment. TWC establishes expectations of the managers to maintain and sanitize the equipment and document maintenance performed. Managers may face administrative action on their licenses if they do not follow the TWC upkeep and maintenance schedule.

Comment: No comments were received.

§854.41. Set-Aside Fees

New §854.41 replaces repealed §854.209 and updates its provisions to revise many references to DARS and its organizational structure, and to replace "person" with "individual." The current rate of 5 percent of net proceeds was added into the provisions. Subsection (e) was added to clarify that if ECM disagrees with the action taken to establish a new set-aside fee rate after the annual review, then the appeal process in §854.82 may be used.

Comment: No comments were received.

§854.42. Duties and Responsibilities of Managers

New §854.42 replaces repealed §854.210 and updates its provisions to revise many references to DARS and its organizational structure, and to replace "person" with "individual." Subsection (f) is removed because this DARS DBS requirement is not consistent with TWC operation of the BET program. As the owner of the equipment, TWC's purchasing of insurance will ensure adequate protection coverage for both the state-owned equipment and the host facility. An electronic mail address was added to subsection (l)(2) as most of the communication with the managers from TWC is electronic. In subsection (o), assurances were added that materials removed during an audit or review will

be returned to the facility within 90 business days to avoid disrupting the business practices of the BET manager. New subsection (p) clarifies the responsibility of managers to maintain liability insurance coverage.

Comment: No comments were received.

§854.43. Responsibilities of the Texas Workforce Commission

New §854.43 replaces repealed §854.211 and updates its provisions to reflect the agency change from DARS DBS to TWC.

Comment: Four commenters noted that §854.43(c) states that final authority for determining price ranges to be charged for products sold through BET facilities rests with the Agency. The commenters asserted that this rule is not in agreement with the Randolph-Sheppard Act (Act) or 34 CFR Part 395, and that the determination of prices at which items may be sold should be at the sole discretion of each BET manager.

Response: TWC disagrees that the proposed rule conflicts with federal law. Neither the Act nor the federal regulations thereunder state that pricing must be set by individual vendors. Federal regulations at 34 CFR §395.4 require TWC to promulgate rules that have been approved by the US Secretary of Education. This revision does not change the rules or the operation of the program from how it existed prior to being transferred to TWC and which have been reviewed and approved previously by the Rehabilitation Services Agency (RSA). Program guidelines are developed by TWC in conjunction with ECM and contain maximum prices for items sold. Accordingly, TWC declines to modify the proposed rule.

SUBCHAPTER D. BET ELECTED COMMITTEE OF MANAGERS

TWC adopts new Subchapter D, BET Elected Committee of Managers, as follows:

§854.60. BET Elected Committee of Managers' Duties and Responsibilities

New §854.60 replaces repealed §854.212 and updates its provisions to revise many references to DARS and its organizational structure, and to replace "person" with "individual." Subsection (a) has been updated to ensure compliance with 20 USC §107b(1) of Chapter 6A of Title 20, known as the Randolph-Sheppard Act.

Comment: Four commenters noted that §854.60(b) states in part that the Agency shall have the ultimate responsibility for the administration and operation of all aspects of BET and has final authority in decisions affecting BET. The commenters argue that is incongruent with §107(b)(3) of the Act and 34 CFR §395.14(b)(2), which both state that the Committee of Blind Vendors should actively participate in major administrative and policy program development decisions.

Response: TWC disagrees that the proposed rule revision is incongruent with the Act and 20 USC §107 et seq. and associated federal regulations at 34 CFR §395.1 et seq. TWC's ultimate authority and responsibility for the administration and operation of BET is established by state statute under Texas Labor Code §351.002(b)(2) and does not prohibit or restrict the ability of the Committee of Blind Vendors to actively participate with TWC in major administrative and policy program development decisions as set out in 20 USC §107(b)(1). TWC's role, as set out in these rules, is the same as that of its predecessor agency under these same rules, which have not been modified and which have been reviewed and approved previously by the Rehabilitation Services

Agency. The proposed revision will not impact operating procedures, and TWC will continue to engage and seek consensus from the committee on all major administrative decisions and policy and program development, as required by the Act. Accordingly, TWC declines to modify the proposed rule.

§854.61. BET Elected Committee of Managers' Conflict of Interest.

New §854.61 specifies when a conflict of interest may arise and what steps the ECM representative shall take to address it. This includes the disclosure of the conflict of interest and withdrawal from any action relating to the conflict.

Comment: No comments were received.

SUBCHAPTER E. ACTION AGAINST A LICENSE

TWC adopts new Subchapter E, Action Against a License, as follows:

§854.80. Termination of License for Reasons Other Than Unsatisfactory Performance

New §854.80 replaces repealed §854.213 and updates its provisions to revise many references to DARS and its organizational structure, and to replace "person" with "individual."

Comment: Four commenters noted that §854.80(a)(3) states in part that a license can be terminated if the licensee has not accepted assignment offers or applied for an assignment when facilities are available for six consecutive months. The commenters maintain that this rule is incongruent with 34 CFR §395.7(b), which prohibits the termination of a license for inactivity.

Response: TWC disagrees that 34 CFR §395.7(b) prohibits the termination of a license for inactivity. While the federal regulation does require licenses to be issued for an indefinite period, it does not prohibit termination or suspension of a license. Also, 34 CFR §395.7(c) requires TWC to "further establish in writing and maintain policies which have been developed with the active participation of the State Committee of Blind Vendors and which govern the duties, supervision, transfer, promotion, and financial participation of the vendors." These long-standing policies were developed with the input and approval of the Texas Elected Committee of Managers. Furthermore, the proposed revision does not change this rule from how it existed or how the program was operated prior to being transferred to TWC; it is only moving it to a new location. Accordingly, TWC declines to modify the proposed rule.

§854.81. Administrative Action Based on Unsatisfactory Performance

New §854.81 replaces repealed §854.214 and updates its provisions to revise many references to DARS and its organizational structure, and to replace "person" with "individual." Section 854.81 adds "advances" in subsection (a)(2), as this is another financial obligation that requires repayment and failure to fulfill this obligation is a cause for administrative action. Under subsection (a)(5), failure to comply with state and federal tax laws relating to the operation of the facility was added as a reason for administrative action. The manager's compliance with state and federal tax laws in operating a facility is imperative and a requirement for continued licensure. In subsection (a)(10), additional clarification was made of the substances that would interfere with the operation of the facility. Subsections (d)(2)(A) and (d)(2)(H) were modernized by adding an e-mail address as

a way of notifying licensees of the allegations and reasons that administrative action is being considered.

Comment: No comments were received.

§854.82. Procedures for Resolution of Manager's Dissatisfaction

New §854.82 replaces repealed §854.215 and updates its provisions to revise many references to DARS and its organizational structure, and to replace "person" with "individual."

Comment: Four commenters noted that §854.82(c) states that the Agency does not waive its right and duty to exercise its lawful and proper discretion or its sovereign immunity, which means that TWC is accountable only to itself and therefore possesses complete authority over the BET program when TWC should operate in concert with ECM to ensure that blind participants are justly represented.

Response: This revision does not change the rule or the operation of the program from how it existed prior to being transferred to TWC. This provision does not grant TWC any additional authority or reduce its accountability in any way. It simply states that the TWC is not exercising the option to waive sovereign immunity protection granted to all government agencies under state law. TWC will continue to work in partnership with ECM to ensure that all blind participants are justly represented. Accordingly, TWC declines to modify the proposed rule.

Comment: Four commenters noted that §854.82(e)(2) states that a licensee may initiate informal dispute resolution procedures by notifying the Agency in writing through the BET director. The commenters observed that 34 CFR §395.14(b)(2) states that it is the responsibility of the State Committee of Blind Vendors to transmit grievances from vendors to the Agency at the request of the vendor and to serve as advocates for the vendors.

Response: TWC disagrees that the proposed rule conflicts with federal law. Section 854.82(e)(2) refers to an informal process, separate from and in addition to the formal grievance process. The informal process is meant to provide an alternative path to quickly resolve issues that may not need to go through a full evidentiary hearing. Nothing in this section prohibits a vendor from requesting that the committee accept and transmit a formal grievance to TWC or serve as the vendor's advocate in the matter, as provided by 34 CFR §395.14(b)(2), even after the informal procedure has been initiated. Accordingly, TWC declines to modify the proposed rule.

§854.83. Establishing and Closing Facilities

New §854.83 replaces repealed §854.216 and updates its provisions to revise many references to DARS and its organizational structure, and to replace "person" with "individual."

Comment: No comments were received.

Additional Comments: Two commenters suggested that all Business Enterprises of Texas managers should be handed out a full copy of RSA -15 report. 34 CFR §395.12, Access to program and financial information, states, "Each blind vendor under this part shall be provided access to all financial data of the state licensing agency relevant to the operation of the vending facility program, including quarterly and annual financial reports, provided that such disclosure does not violate applicable Federal or State laws pertaining to the disclosure of confidential information. Insofar as practicable, such data shall be made available, in braille or recorded tape. At the request of a blind vendor, State

licensing agency staff shall arrange a convenient time to assist in the interpretation of such financial data."

Response: While TWC agrees that 34 CFR §395.12 does provide access for blind vendors to relevant state licensing agency financial data, TWC disagrees that it requires TWC to furnish a copy of the RSA-15 report to all BET managers or that such a provision should be included in these rules. TWC makes the RSA-15 report available to BET managers and the public on the TWC accessible website on the following web page: <https://twc.texas.gov/jobseekers/business-enterprises-texas-facility-management#reports>. TWC further complies efficiently with the Act by making accessible program financial information available to BET managers upon request. Accordingly, TWC declines to modify the proposed rule.

COMMENTS WERE RECEIVED FROM:

Jenna Norwood, District 4 BET Manager

Oren Reedy, Private Citizen

Leroy de la Garza, District 6 BET Manager

Bodie Dufrene, Private Citizen

SUBCHAPTER A. GENERAL PROVISIONS AND PROGRAM OPERATIONS

40 TAC §§854.10 - 854.12

The new rules are adopted under Texas Labor Code §355.012(a), authorizing the commission to promulgate rules necessary to implement Chapter 355, and under Texas Labor Code §301.0015(a)(6) which provides TWC with the authority to adopt rules as necessary to administer the commission's policies.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapter 355.

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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Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

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Proposal publication date: December 14, 2018

For further information, please call: (512) 698-9855



SUBCHAPTER B. LICENSE AND ASSIGNMENTS

40 TAC §§854.20 - 854.24

Statutory Authority. The new rules are adopted under Texas Labor Code §355.012(a), authorizing the commission to promulgate rules necessary to implement Chapter 355, and under Texas Labor Code §301.0015(a)(6) which provides TWC with the authority to adopt rules as necessary to administer the commission's policies.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapter 355.

§854.21. *BET Licenses and Continuing Education Requirement.*

(a) Natural individuals. Licenses to manage a BET facility shall be issued only to natural individuals

(1) Prerequisites. No individual may be licensed until the individual has satisfactorily completed all required BET training and otherwise continues to satisfy the criteria for entry into BET.

(2) Issuance. A license issued by the Agency shall contain the name of the licensee and the date of issue. The license shall be signed by the VRD director and the BET director on behalf of the Agency and the State of Texas.

(3) Display. The license or a copy of the license shall be displayed prominently in each BET facility to which the manager is assigned.

(4) Property right. A license shall not create any property right in the licensee and shall be considered only as a means of informing the public and other interested parties that the licensee has successfully completed BET training and is qualified and authorized to operate a BET facility.

(5) Transferability. A license is not transferable.

(6) Term. A license issued by the Agency shall be valid for an indefinite period, subject, however, to termination or revocation under conditions specified in these rules that pertain to termination of a license for reasons other than unsatisfactory performance or administrative action.

(b) Annual continuing education requirements for licensees:

(1) The Agency and ECM conduct an annual training conference for all licensees to inform them of new BET developments and to provide instruction on relevant topics to enhance licensees' business competence and upward mobility in the program. Licensees must attend the Agency's training conference or an Agency-approved alternative training event every year to maintain their licenses and eligibility to bid on available facilities. They must document their attendance at the Agency training conference by signing attendance records provided at the conference. A licensee who is unable to attend the Agency training conference may satisfy the continuing education requirement by attending a BET-approved course or training conference. Such training includes, but is not limited to, attending the national training conferences for blind vendors conducted by the Randolph-Sheppard Vendors of America or by the National Association of Blind Merchants, or by completing a business-related course from the Hadley Institute for the Blind and Visually Impaired or a business-related course offered by an accredited community college.

(2) Licensees wishing to attend an alternative training course or conference must request approval through their local Agency staff. The local Agency staff forwards the request to the BET director for approval. The licensee must also provide proof of successful completion of any business-related course or attendance at a training conference through the local Agency staff to the BET director to receive credit for attendance. All costs associated with travel, lodging, meals, and registration when attending any training other than the Agency training conference will be the responsibility of the licensee.

(3) Licensees may use an alternative approved training course or training conference to satisfy the continuing education requirement only if they are unable to attend the Agency training conference because of personal medical reasons, the death of a family member, a medical emergency or serious medical condition of an immediate family member, or if there is not an Agency training

conference offered during the licensee's 12-month evaluation period. Licensees must provide written documentation of the medical issues or death of a family member to their local Agency staff.

(4) Licensees who fail to complete continuing education requirements may be subject to administrative action up to and including termination of their licenses.

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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Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
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Proposal publication date: December 14, 2018
For further information, please call: (512) 689-9855



SUBCHAPTER C. EXPECTATIONS OF TWC AND MANAGERS

40 TAC §§854.40 - 854.43

Statutory Authority. The new rules are adopted under Texas Labor Code §355.012(a), authorizing the commission to promulgate rules necessary to implement Chapter 355, and under Texas Labor Code §301.0015(a)(6) which provides TWC with the authority to adopt rules as necessary to administer the commission's policies.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapter 355.

§854.41. *Set-Aside Fees.*

(a) The Agency requires managers to pay a set-aside fee based on the monthly net proceeds of their BET facilities. The purposes of requiring this payment are:

- (1) to promote to the greatest possible extent the concept of a manager being an independent business individual;
- (2) to cause BET to be to the greatest extent possible, self-supporting;
- (3) to encourage and stimulate growth in BET; and
- (4) to provide incentives for the increased employment opportunities for blind Texans.

(b) Use of funds. To the extent permitted or required by applicable laws, rules, and regulations, the funds collected as set-aside fees shall be used by the Agency for the following purposes:

- (1) maintenance and replacement of equipment for use in BET;
- (2) purchase of new equipment for use in BET;
- (3) management services;
- (4) ensuring a fair minimum return to managers; and
- (5) the establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time if it is so determined by a majority vote of managers assigned to a facility, after the Agency provides to each

such manager information on all matters relevant to these proposed purposes.

(c) Method of computing net proceeds.

(1) Net proceeds are the amount remaining from the sale of merchandise of a BET facility, all vending machine income, and other income accruing to the manager from the facility after deducting the reasonable and necessary cost of such sale, but excluding set-aside charges required to be paid by the manager. The manager shall not remove any items from the inventory or other stock items of the facility unless the manager pays for those items at the actual cost.

(2) Costs of sales that may be deducted from net sales to calculate net proceeds in a reporting period shall be limited to:

- (A) cost of merchandise sold;
- (B) wages paid to employees;
- (C) payroll taxes; and
- (D) the following reasonable miscellaneous operating expenses that are directly related to the operation of the BET facility. Discretionary expenses, not to exceed 1.5 percent of the monthly net sales, or \$150, whichever is greater. Expenses must be verifiable, invoiced, and directly related to the operation of the facility. Acceptable expenses include:
 - (i) rent and utilities authorized in the permit or contract;
 - (ii) business taxes, licenses, and permits;
 - (iii) telecommunication services;
 - (iv) liability, property damage, and fire insurance;
 - (v) worker's compensation insurance;
 - (vi) employee group hospitalization or health insurance;
 - (vii) employee retirement contributions (the plans must be IRS-approved and not for the manager);
 - (viii) janitorial services, supplies, and equipment;
 - (ix) bookkeeping and accounting services;
 - (x) trash removal and disposal services;
 - (xi) service contracts on file with the Agency;
 - (xii) legal fees directly related to the operation of the facility (legal fees directly or indirectly related to actions against governmental entities are not deductible);
 - (xiii) medical expenses directly related to accidents that occur to employees at the facility, not to exceed \$500;
 - (xiv) purchase of personally owned or leased equipment that has been approved by the Agency for placement in the facility;
 - (xv) repairs and maintenance to personally owned or leased equipment that has been approved by the Agency to be placed in the facility;
 - (xvi) consumable office supplies;
 - (xvii) exterminator or pest control services; and
 - (xviii) mileage expenses for vehicles required for the direct operation of vending facilities at the rate and method allowed by the Internal Revenue Service at the time the expenses are incurred.

(3) All reports by managers shall be accompanied by supporting documents required by the Agency.

(d) Method of computing monthly set-aside fee. The monthly set-aside fee of each manager shall be a percentage of the net proceeds of the facility as determined in accordance with this section. The provisions relative to the percentage required to be paid as set-aside fees shall be reviewed by the BET director with the active participation of ECM at least annually each state fiscal year. The purpose of the review shall be to determine whether the percentage needs to be adjusted in order to meet the financial needs of the program. The percentage assessed against the net proceeds of facilities may be lowered or raised to meet the needs of the program. ECM shall be provided with all relevant financial and other information concerning the financial requirements of the program no fewer than 60 days before a review by the BET director in which the percentage is to be considered. For the period from the effective date of this amended rule until BET director undertakes his or her first annual review of the set-aside fee, the percentage shall be 5 percent.

(e) If ECM disagrees with the action taken to establish a new set-aside fee rate after the annual review, then ECM may choose to use the appeal process.

(f) Payment of set-aside fee. The set-aside fee shall be submitted with the manager's monthly statement of facility operations. The manager shall use BET Monthly Facility Report, BE-117, to report monthly activities.

(g) Adjustments to monthly set-aside fee.

(1) To encourage managers to hire individuals with disabilities, managers shall deduct from their set-aside payment up to 50 percent of the wages or salary paid to an employee who is blind or who has another disability or disabilities (as defined by the Americans with Disabilities Act) during any month up to an amount not to exceed 5 percent of the set-aside payment amount for that month, or \$250, whichever is less. A manager may make this deduction for any number of employees who are blind or have another disability as long as that deduction from the set-aside payment amount does not exceed 25 percent of the total set-aside payment that is due, or \$1,250, whichever is less. The manager shall provide documentation to BET as required by the Agency to verify such employment and the right to the reduction in set-aside fees. For the purposes of this paragraph, "who is blind or who has another disability" does not include:

(A) the manager;

(B) an individual who is blind or who has another disability at the first degree of consanguinity or affinity to the manager; or

(C) an individual who is blind or who has another disability claimed as a dependent, either in whole or in part, on the manager's federal income tax return.

(2) Adjustments provided for in paragraph (1) of this subsection shall not apply for any month in which the set-aside fee is not paid in a timely manner.

(3) To encourage managers to file their monthly statement of facility operations and pay their monthly set-aside fee promptly, managers shall have their monthly set-aside fee increased by 5 percent of the total amount due if either their monthly statement or the monthly set-aside fee is not received in a timely manner, pursuant to these rules. None of the terms of this rule shall be construed to create a contract to pay interest, as consideration for the use, forbearance, or detention of money, at a rate more than the maximum rate permitted by applicable laws and rules. This adjustment to the set-aside fee is not imposed as interest.

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 June 12, 2019.

TRD-201901766

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: September 1, 2019

Proposal publication date: December 14, 2018

For further information, please call: (512) 689-9855



SUBCHAPTER D. BET ELECTED COMMITTEE OF MANAGERS

40 TAC §854.60, §854.61

Statutory Authority. The new rules are adopted under Texas Labor Code §355.012(a), authorizing the commission to promulgate rules necessary to implement Chapter 355, and under Texas Labor Code §301.0015(a)(6) which provides TWC with the authority to adopt rules as necessary to administer the commission's policies.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapter 355.

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 June 12, 2019.

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Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

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For further information, please call: (512) 689-9855



SUBCHAPTER E. ACTION AGAINST A LICENSE

40 TAC §§854.80 - 854.83

Statutory Authority. The new rules are adopted under Texas Labor Code §355.012(a), authorizing the commission to promulgate rules necessary to implement Chapter 355, and under Texas Labor Code §301.0015(a)(6) which provides TWC with the authority to adopt rules as necessary to administer the commission's policies.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapter 355.

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

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TRD-201901768

Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
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For further information, please call: (512) 689-9855



SUBCHAPTER N. BUSINESS ENTERPRISES OF TEXAS

40 TAC §§854.200 - 854.217

Statutory Authority. The repeals are adopted under Texas Labor Code §355.012(a), authorizing the commission to promulgate rules necessary to implement Chapter 355, and under Texas Labor Code §301.0015(a)(6) which provides TWC with the authority to adopt rules as necessary to administer the commission's policies.

The repealed rules affect Title 4, Texas Labor Code, particularly Chapter 355.

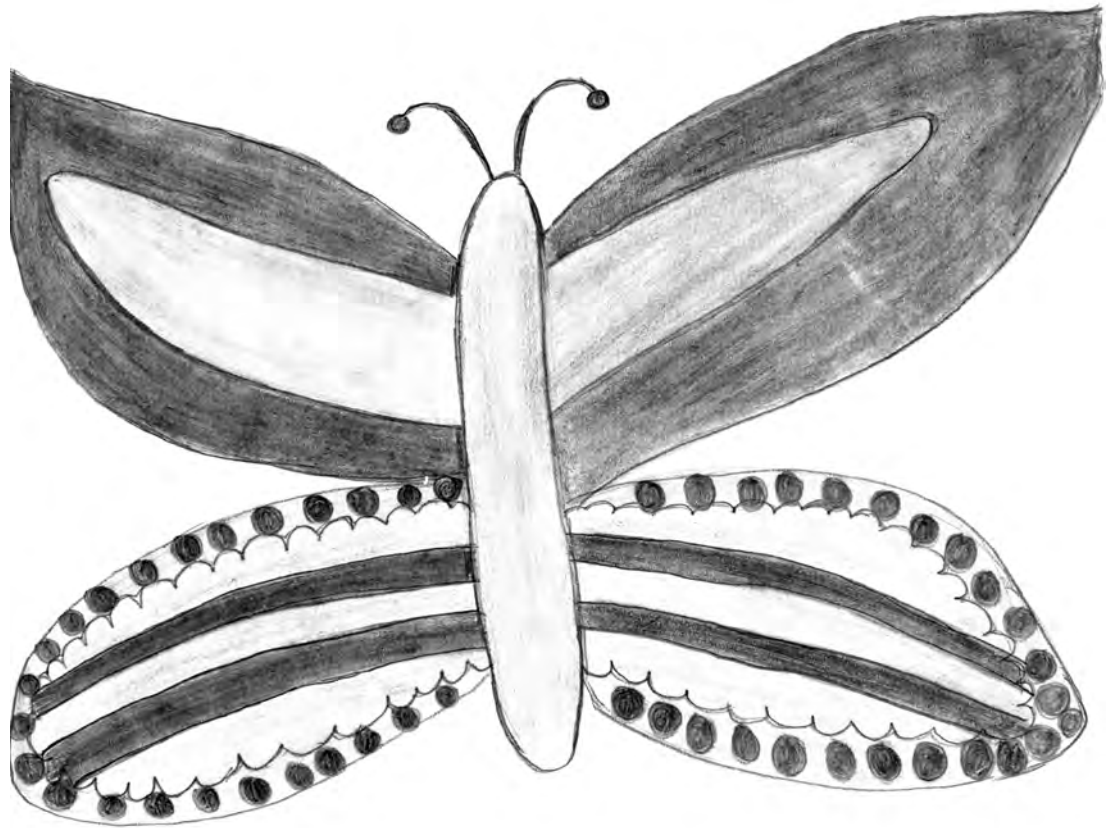
The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 12, 2019.

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Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: September 1, 2019
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For further information, please call: (512) 689-9855





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 State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy files this notice of intent to review Chapter 291, Subchapter A (§§291.1 - 291.3, 291.5 - 291.11, 291.14 - 291.19, 291.22 - 291.24, 291.27 - 291.29), concerning Pharmacies (All Classes of Pharmacies), pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 31, 2019.

TRD-201901844

Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Filed: June 17, 2019



The Texas State Board of Pharmacy files this notice of intent to review Chapter 291, Subchapter E (§§291.91 - 291.94), concerning Pharmacies (Clinic Pharmacy (Class D)), pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 31, 2019.

TRD-201901845

Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas Board of Pharmacy
Filed: June 17, 2019



The Texas State Board of Pharmacy files this notice of intent to review Chapter 291, Subchapter F (§§291.101 - 291.106), concerning Pharmacies (Non-Resident Pharmacy (Class E)), pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist may be submitted to Megan G. Holloway, Assistant General

Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 31, 2019.

TRD-201901846

Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Filed: June 17, 2019



The Texas State Board of Pharmacy files this notice of intent to review Chapter 295, (§§295.1 - 295.9, §§295.11 - 295.16), concerning Pharmacists, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 31, 2019.

TRD-201901847

Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Filed: June 17, 2019



Adopted Rule Reviews

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission or agency) has completed its Rule Review of 30 TAC Chapter 12, Payment of Fees, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the January 4, 2019, issue of the *Texas Register* (44 TexReg 120).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 12 are required because the rules provide the commission the ability to charge penalties and interest on delinquent fees owed to the commission. The rules define the administration of charges on delinquent fees. The primary purpose of the charges is to ensure the agency receives fees owed in a timely manner. These

rules provide the timeframe, penalty percentage, and interest rate the commission charges on delinquent fees.

Public Comment

The public comment period closed on February 5, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 12 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201901788

David Timberger

Director, General Law Division

Texas Commission on Environmental Quality

Filed: June 14, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 39, Public Notice, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re adoption, re adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the January 4, 2019, issue of the *Texas Register* (44 TexReg 120).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist for the rules in Chapter 39, Subchapters G - O. These rules are required to implement various state statutes and federal regulations that prescribe the requirements for public notice of and public participation regarding applications for certain air quality; water quality; municipal, industrial and hazardous waste; and underground injection control permits, as well as applications for consolidated permits; radioactive material licenses; post-closure orders; and marine seawater desalination project permits.

The review also determined the rules in Chapter 39, Subchapters A - E are obsolete and no longer needed. These rules apply to certain air quality; water quality, industrial, hazardous and municipal solid waste; and underground injection control permit applications declared to be administratively complete before September 1, 1999, and none of these applications remain pending.

Public Comment

The public comment period closed on February 5, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 39 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039. Changes to the rules identified as part of this review process may be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-201901815

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 14, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 50, Action on Appli-

cations and Other Authorizations, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re adoption, re adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the January 4, 2019, issue of the *Texas Register* (44 TexReg 120).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist for the rules in Chapter 50, Subchapters E - G. These rules provide the procedures for action by the commission and by the executive director regarding applications for certain air quality; water quality; municipal, industrial and hazardous waste; and underground injection control permits, and water quality management plans.

The review also determined the rules in Chapter 50, Subchapters A - C are obsolete and no longer needed. These rules apply to applications declared administratively complete before September 1, 1999, that are considered by the commission or the executive director, and none of these applications remain pending.

Public Comment

The public comment period closed on February 5, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 50 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039. Repeal of obsolete rules identified as part of this review process may be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-201901816

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 14, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re adoption, re adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the January 4, 2019, issue of the *Texas Register* (44 TexReg 120).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist for the rules in Chapter 55, Subchapters D - G. These rules provide the procedures for public meetings, responding to public comment and requests for contested case hearing regarding applications for certain air quality; water quality; municipal, industrial and hazardous waste; underground injection control; and water rights permits, as well as priority groundwater management areas, and district matters.

The review also determined that the rules in Chapter 55, Subchapters A and B are obsolete and no longer needed. These rules apply to applications declared administratively complete before September 1, 1999, that are considered by the commission or the executive director, and none of these applications remain pending.

Public Comment

The public comment period closed on February 5, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 55 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039. Repeal of obsolete rules identified as part of this review process may be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-201901817

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 14, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 80, Contested Case Hearings, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the January 4, 2019, issue of the *Texas Register* (44 TexReg 121).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 80 provide the procedures for contested case hearings regarding permit applications and enforcement actions, including action by the commission on these items and requirements for challenging final actions of the commission. The review also determined Subchapter A, §80.3 and §80.5; and Subchapter F, §80.251 are obsolete.

Public Comment

The public comment period closed on February 5, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 80 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039. Repeal of obsolete rules identified as part of

this review process may be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-201901818

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 14, 2019



Texas Department of Motor Vehicles

Title 43, Part 10

The Texas Department of Motor Vehicles (department) files this notice of readoption of 43 Texas Administrative Code, Chapter 208, Employment Practices; Chapter 209, Finance; and Chapter 210, Contract Management. The review was conducted pursuant to Government Code, §2001.039. Notice of the department's intention to review was published in the March 1, 2019, issue of the *Texas Register* (44 TexReg 1166).

As a result of the review, the department has determined that the reasons for initially adopting the rules continue to exist. The department readopts Chapters 208, 209, and 210 without amendments.

No comments on the proposed rule review were received.

As a result of the 43 TAC Chapter 210 review, the department may propose amendments to Subchapter A of Chapter 210 in future rulemaking under the Texas Administrative Procedure Act.

This concludes the review of Chapters 208, 209, and 210.

TRD-201901831

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Filed: June 17, 2019





TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 30 TAC §309.4

Table 1
Effluent Limitations for Domestic Wastewater Treatment Plants

Set	Direct Discharge	30-Day Average			7-Day Average			Daily Maximum			Single Grab		
		BOD ₅	TSS		BOD ₅	TSS		BOD ₅	TSS		BOD ₅	TSS	DO MIN
1	Secondary treatment	20	20	30	30	30	45	45	65	65	65	2.0	
2	Enhanced secondary treatment	10	15	25	25	25	40	40	35	60	60	4.0	
3	Stabilization ponds	30	90	45	--	--	70	--	100	--	--	4.0	
Land Treatment/Application													
4	Irrigation (public exposure*) Subsurface area drip dispersal system (public contact**)	20	20	30	30	30	45	45	65	65	65	--	
	Using stabilization ponds Subsurface area drip dispersal system using stabilization ponds (public contact**)	30	90	45	--	--	70	--	100	--	--	--	
5	Irrigation (no public exposure) Subsurface area drip dispersal system (no public contact)	--	--	--	--	--	--	--	100	--	--	--	
6	Overland flow (applied effluent)	--	--	--	--	--	--	--	100	--	--	--	
7	Evapotranspiration beds and low pressure dosing	--	--	--	--	--	--	--	100	--	--	--	

	30-Day Average			7-Day Average			Daily Maximum			Single Grab			
	CBOD ₅	TSS	NH ₄ -N	CBOD ₅	TSS	NH ₄ -N	CBOD ₅	TSS	NH ₄ -N	CBOD ₅	TSS	NH ₄ -N	DO MIN
Enhanced													
2N Secondary with Nitrification	10	15	3	15	25	6	25	40	10	35	60	15	4.0
2N1 Secondary with Nitrification	10	15	2	15	25	5	25	40	10	35	60	15	4.0

Note: * - Public Exposure: The potential for the public to come into direct contact with treated effluent.
 ** - Public Contact: The potential for the public to come into contact with the soil over a dispersal zone, as defined in §222.5 of this title (relating to Definitions).

Figure: 30 TAC §309.20(b)(3)(B)

TABLE 1
 WATER BALANCE EXAMPLE
 (All Units are Inches of Water per Acre of Irrigated Area)

Month (1)	a Avg. Precip. (2)	b Average Runoff (3)	Ri Average Infiltrated Rainfall (4)	c Evapotrans- piration (5)	d Required Leaching (6)	Total Water Needs (5)+(6) (7)	Effluent Needed in Root Zone (7)-(4) (8)	e Evaporation from Reservoir surface (9)	f Effluent to be applied to Land (8)/K (10)	g Consumption from Reservoir (9)+(10) (11)
Jan.	2.11	0.40	1.71	0.80	0.00	0.80	0.00	0.02	0.00	0.02
Feb.	2.43	0.57	1.86	1.20	0.00	1.20	0.00	0.01	0.00	0.01
Mar.	2.02	0.36	1.66	2.80	0.20	3.00	1.34	0.09	1.58	1.67
April	3.19	1.03	2.16	3.40	0.22	3.63	1.46	0.05	1.72	1.77
May	4.19	1.74	2.45	6.10	0.64	6.74	4.29	0.10	5.05	5.15
June	3.30	1.10	2.20	6.50	0.76	7.26	5.06	0.20	5.95	6.15
July	2.20	0.45	1.75	6.70	0.87	7.57	5.82	0.34	6.85	7.19
Aug.	2.12	0.41	1.71	4.60	0.51	5.11	3.40	0.34	4.00	4.34
Sept.	3.58	1.30	2.28	5.10	0.50	5.60	3.32	0.19	3.91	4.10
Oct.	3.09	0.96	2.13	4.10	0.35	4.45	2.32	0.14	2.73	2.87
Nov.	2.23	0.46	1.77	2.10	0.06	2.16	0.39	0.07	0.46	0.53
Dec.	2.34	0.52	1.82	1.00	0.00	1.00	0.00	0.03	0.00	0.03
	32.80	9.30	23.50	44.40	4.11	48.51	27.40	1.58	32.25	33.83

- a. Up-to-date rainfall and evaporation data sets are available from the Texas Natural Resource Information System.
- b. Runoff should be determined by an acceptable method such as the Soil Conservation Service method found in SCS Technical Release No. 55. For example, purposes only, a CN value of 74 was assumed for good pasture with Class "C" soils.
- c. Suggested source of values is the "Bulletin 6019, Consumptive Use of Water by Major Crops in Texas," Texas Board of Water Engineers.
- d. In low rainfall areas, this is the required leaching to avoid salinity build-up in the soil is calculated using the following equation:

$$L = \frac{Ce (I-Ri)}{CI-Ce}$$

Where:

Ce = Electrical Conductivity of Effluent

E = Evapotranspiration

Ri = Infiltrated Rainfall

CI= Maximum Allowable Conductivity of Soil Solution (Table 3)

For example purposes only, a Ce value of 1.5 millimhos/cm at 25°C and a CI value of 10.0 (Bermuda Grass) were used.

- e. Net Average Evaporation from Reservoir Surface. For example purposes only, irrigation area = 100 acres and reservoir surface area = 5 acres. Therefore, values are 5% of Evaporation figures of Austin, Texas.
- f. K is the irrigation efficiency. K value is 0.85 unless specific information is provided to support a different value.
- g. The total of this column is the maximum allowable application rate in acre-inch per acre per year.

TABLE 2
EXAMPLE CALCULATION OF STORAGE VOLUME REQUIREMENTS
 (All Units are Inches of Water per Acre of Irrigated Area)

Month	a Effluent Received for Application or Storage	b Rainfall Highest Year in Past 25 Year	c Runoff Highest Year in Past 25 Year	d Net 25 Year Low Evaporation from Regul. Surf.	e Storage	f Accumulated Storage
(12)	(13)	(14)	(15)	(18)	(19)	(20)
Jan.	2.70	3.28	1.09	0.00	2.69	8.49
Feb.	2.70	3.80	1.45	0.01	2.69	11.18
Mar.	2.70	3.18	1.02	0.04	1.67	12.85
April	2.70	4.98	2.35	0.02	1.51	14.36
May	2.70	6.57	3.67	0.04	-1.86	12.50
June	2.70	5.13	2.47	0.09	-2.80	9.70
July	2.70	3.44	1.20	0.16	-3.73	5.97
Aug.	2.70	3.33	1.12	0.16	-0.87	5.10
Sept.	2.70	5.59	2.84	0.08	-0.74	4.36
Oct.	2.70	4.82	2.22	0.07	0.45	0.45
Nov.	2.70	3.49	1.23	0.03	2.67	3.12
Dec.	2.70	3.64	1.34	0.02	2.68	5.80
	32.40	51.25	22.00	0.73	61.65	

- a. For example purposes only, disposal rate is for a 240,000 gpd facility (2.7 acre-feet per acre per year) irrigating 100 acres. Maximum values for Column 13 are the value (total) of Column 11 divided by 12. Note that the values in Column 13 could be adjusted to allow for seasonal variation in effluent output.
- b. Annual rainfall amount from the highest year in past 25 years of data. Total rainfall is then distributed proportional to monthly averages.
- c. Using rainfall figures in Column 14, calculate runoff with the same method used in Column 3.

- d. Lowest annual evaporation in past 25 years from reservoir surface. Distribute annual value proportionally to monthly average evaporation expressed in inches per irrigated acre. For example purposes only, irrigation area = 100 acres and reservoir surface area = 5 acres. Therefore, values in Column 18 are 5% of evaporation figures for Austin, Texas.
- e. Storage = $[(13) - (18)] - \frac{[(7) - (16)]}{k}$. If the term $\frac{[(7) - (16)]}{k}$ is negative, then the value for storage = $[(13) - (18)]$. Irrigation efficiency is 0.85 unless specific information is provided to support a different value.
- f. To allow for the worst condition, the summation was started in October which gives a maximum storage requirement of 14.36 inches per irrigated acre or 120 acre-feet.

TABLE 3
Salt Tolerance of Various Crop Plants

Best growth yields of each crop would occur at a salinity level below the salinity range given.

Relatively Nontolerant	Moderately Salt Tolerant	Relatively Salt Tolerant	Highly Salt Tolerant
2.0 - 4.0	4.0 - 6.0	6.0 - 8.0	8.0 - 12.0
Field Crops			
Field bean Cowpeas Corn (field)	Sorghum (grain) Rye (grain) Castorbean Soybean	Cotton Sugar beet Wheat (grain) Oats (grain) Rice	Barley (grain) Rape
Forage Crops			
White clover Alsike clover Red clover Ladino clover Crimson clover Rose clover Burnet clover	Tall fescue Meadow fescue Orchard-grass Millet Sour clover Birdsfoot trefoil	Wheat-grasses Sudan grass Sweetclover Alfalfa Ryegrass Rye (hay) Wheat (hay) Oats (hay)	Alkali sacaton Bermuda grass Barley (hay) Rhodesgrass Blue grama Panicgrass

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.

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - May 2019

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period May 2019 is \$42.91 per barrel for the three-month period beginning on February 1, 2019, and ending April 30, 2019. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of May 2019, from a qualified low-producing oil lease, is not eligible for a credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period May 2019 is \$1.82 per mcf for the three-month period beginning on February 1, 2019, and ending April 30, 2019. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of May 2019, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of May 2019 is \$60.77 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of May 2019, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of May 2019 is \$2.59 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of May 2019, from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This agency hereby certifies that legal counsel has reviewed this notice and found it to be within the agency's authority to publish.

Issued in Austin, Texas, on June 17, 2019.

TRD-201901829

James D. Arbogast

Chief Counsel for Hearings and Tax Litigation

Comptroller of Public Accounts

Filed: June 17, 2019



Local Sales Tax Rate Changes Effective July 1, 2019

The 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair will be abolished June 30, 2019 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Primera (Cameron Co)	2031129	.017500	.080000

An additional 1/2 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective July 1, 2019 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Cresson (Hood Co)	2111042	.020000	.082500
Cresson (Johnson Co)	2111042	.015000	.077500
Cresson (Parker Co)	2111042	.020000	.082500

An additional 1 1/2 percent city sales and use tax will become effective July 1, 2019 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Charlotte (Atascosa Co)	2007058	.020000	.082500
Mount Enterprise (Rusk Co)	2201043	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be reduced to 3/8 percent effective June 30, 2019 and an additional 1/8 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will become effective July 1, 2019 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Terrell (Kaufman Co)	2129042	.020000	.082500

A 1 percent special purpose district sales and use tax will become effective July 1, 2019 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	LOCAL RATE	DESCRIPTION
Parker County Emergency Services District No. 8	5184543	.010000	SEE NOTE 1

NOTE 1: The Parker County Emergency Services District No. 8 is located in the northwestern and north-central portions of Parker County, which has a county sales and use tax. The unincorporated areas of Parker County in ZIP Codes 78067, 76082, 76085, 76088, 76486, 76487 and 76490 are partially located in the Parker County Emergency Services District No. 8. Contact the district representative at 817-781-5100 for additional boundary information.

TRD-201901830
 James D. Arbogast
 Chief Counsel for Hearings and Tax Litigation
 Comptroller of Public Accounts
 Filed: June 17, 2019

Notice of Request for Proposals: Pursuant to Chapter 403 and Chapter 2254, Subchapter A, of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 223d ("RFP") for the purpose of soliciting proposals from qualified, independent certified public accountants or accounting firms to provide Auditing Services to develop Comptroller's Centralized Accounting and Payroll/Personnel System ("CAPPS") Hub Agency Program Auditing Methodology. The Successful Respondent



Notice of Request for Proposals

will be expected to begin performance of the contract on or about August 5, 2019, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Vicki L. Rees, Contracts Attorney, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673. The RFP will be available electronically on the *Electronic State Business Daily* ("ESBD") at: <http://www.txsmart-buy.com/sp> after 10:00 a.m. Central Time ("CT") on Friday, June 28, 2019.

Questions: All questions regarding the RFP must be received in the Issuing Office no later than 2:00 p.m. CT on Monday, July 8, 2019. Prospective proposers are encouraged to fax or e-mail Questions to (512) 463-3669 or contracts@cpa.texas.gov to ensure timely receipt. On or about Friday, July 12, 2019, the Comptroller expects to post responses to questions on the ESBD. *Questions received after the deadline will not be considered. Respondents shall be solely responsible for verifying timely receipt of Questions in the Issuing Office.*

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Contracts Attorney no later than 2:00 p.m. CT, on Friday, July 26, 2019. *Late Proposals will not be considered under any circumstances. Respondents shall be solely responsible for ensuring timely receipt of Proposals in the Issuing Office.*

Evaluation criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - June 28, 2019, after 10:00 a.m. CT; Questions Due - July 8, 2019, 2:00 p.m. CT; Official Responses to Questions posted - July 12, 2019; Proposals Due - July 26, 2019, 2:00 p.m. CT; Contract Execution - August 1, 2019, or as soon thereafter as practical; Commencement of Work - August 5, 2019. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any amendment to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a proposal.

TRD-201901866
Vicki L. Rees
Contracts Attorney
Comptroller of Public Accounts
Filed: June 19, 2019

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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, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/24/19 - 06/30/19 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/24/19 - 06/30/19 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/19 - 07/31/19 is 5.50% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/19 - 07/31/19 is 5.50% for commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201901854
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 18, 2019

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Credit Union Department

Application to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration.

An application was received from Texell Credit Union, Temple, Texas to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in McLennan County, Texas to be eligible for membership in the credit union.

An application was received from Mobility Credit Union, Irving, Texas to expand its field of membership. The proposal would permit persons who live, worship, attend school or work in Parker County, Texas to be eligible for membership in the credit union.

An application was received from Mobility Credit Union, Irving, Texas to expand its field of membership. The proposal would permit persons who live, worship, attend school or work in Johnson County, Texas to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201901865
John J. Kolhoff
Commissioner
Credit Union Department
Filed: June 19, 2019

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications.

Application to Expand Field of Membership - Approved

Texas Bay CU, Houston, Texas - See *Texas Register* issue dated March 29, 2019.

EECU, Fort Worth, Texas - See *Texas Register* issue dated March 29, 2019.

City CU #1 (Dallas) - See *Texas Register* issue dated April 26, 2019.

City CU #2 (Dallas) - See *Texas Register* issue dated April 26, 2019.

City CU #3 (Dallas) - See *Texas Register* issue dated April 26, 2019.

City CU #4 (Dallas) - See *Texas Register* issue dated April 26, 2019.

TRD-201901864

John J. Kolhoff

Commissioner

Credit Union Department

Filed: June 19, 2019

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State Board for Educator Certification

Correction of Error

The Texas Education Agency filed on behalf of the State Board for Educator Certification proposed amendments to 19 TAC Chapter 230, Subchapter A, §230.1; Subchapter C, §230.21; Subchapter D, §230.36 and §230.37; and Subchapter G, §230.101; on May 20, 2019, for publication in the May 31, 2019 issue of the *Texas Register* (44 TexReg 2672).

Due to error by the TEA, Figure: 19 TAC §230.21(e) was published with reference to a national version of the edTPA exams listed as a pedagogical requirement for receiving the Core Subjects: Grades 4-8; English Language Arts and Reading/Social Studies: Grades 4-8; Mathematics/Science: Grades 4-8; and Physics/Mathematics: Grades 7-12 certificates. The six proposed edTPA exams published with the *national* reference were: 2016 edTPA: Middle Childhood Mathematics (National), 2017 edTPA: Middle Childhood Science (National), 2018 edTPA: Middle Childhood English-Language Arts (National), 2018 edTPA: Middle Childhood English-Language Arts (National), 2016 edTPA: Middle Childhood Mathematics (National), edTPA: Secondary Mathematics (National).

A correction of error is needed to strike the word *national* from the six above-mentioned exams. The correct references to the proposed edTPA exams listed in the Pedagogical Requirements column of Figure: 19 TAC §230.21(e) are: 2016 edTPA: Middle Childhood Mathematics; 2017 edTPA: Middle Childhood Science; 2018 edTPA: Middle Childhood English-Language Arts; 2018 edTPA: Middle Childhood English-Language Arts; 2016 edTPA: Middle Childhood Mathematics; and 2005 edTPA: Secondary Mathematics.

Figure: 19 TAC §230.21(e)

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s) [Pedagogy and Professional Responsibilities (PPR) Requirements]
Art			
§233.10	Art: Early Childhood-Grade 12	178 Art EC-12 Texas Examinations of Educator Standards (TExES)	160 <u>Pedagogy and Professional Responsibilities (PPR)</u> EC-12 TExES or 2015 edTPA: Visual Arts
Bilingual Education			
§233.6	Bilingual Education Supplemental: Spanish	164 Bilingual Education Supplemental TExES and 190 <u>Bilingual Target Language Proficiency (BTLPT)</u> – Spanish TExES	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: American Sign Language	164 Bilingual Education Supplemental TExES and 184 American Sign Language (ASL) EC-12 TExES and 073 Texas Assessment of Sign Communications- American Sign Language (TASC-ASL)	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: Arabic	164 Bilingual Education Supplemental TExES and American Council for the Teaching of Foreign Languages (ACTFL) 614 Oral Proficiency Interview (OPI) – Arabic and 615 Writing Proficiency Test (WPT) – Arabic	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: Chinese	164 Bilingual Education Supplemental TExES and ACTFL 618 OPI – Chinese (Mandarin) and 619 WPT – Chinese (Mandarin)	Not Applicable: Not a Stand-alone Certificate

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s) [Pedagogy and Professional Responsibilities (PPR) Requirements]
Bilingual Education (continued)			
§233.6	Bilingual Education Supplemental: Japanese	164 Bilingual Education Supplemental TExES and ACTFL 616 OPI – Japanese and 617 WPT – Japanese	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: Vietnamese	164 Bilingual Education Supplemental TExES and ACTFL 620 OPI – Vietnamese and 621 WPT – Vietnamese	Not Applicable: Not a Stand-alone Certificate
Career and Technical Education			
§233.13	Technology Education: Grades 6-12	171 Technology Education 6-12 TExES	160 PPR EC-12 TExES or <u>2143 edTPA: Technology and Engineering Education</u>
§233.13	Family and Consumer Sciences, Composite: Grades 6-12	American Association of Family and Consumer Sciences (AAFCS) 200 Family and Consumer Sciences – Composite Examination	160 PPR EC-12 TExES or <u>2117 edTPA: Family and Consumer Sciences</u>
§233.13	Human Development and Family Studies: Grades 8-12	AAFCS 202 Human Development and Family Studies Concentration Examination	160 PPR EC-12 TExES or <u>2117 edTPA: Family and Consumer Sciences</u>
§233.13	Hospitality, Nutrition, and Food Sciences: Grades 8-12	AAFCS 201 Hospitality, Nutrition, and Food Science Concentration Examination	160 PPR EC-12 TExES or <u>2117 edTPA: Family and Consumer Sciences</u>
§233.13	Agriculture, Food, and Natural Resources: Grades 6-12	272 Agriculture, Food, and Natural Resources 6-12 TExES	160 PPR EC-12 TExES or <u>2100 edTPA: Agricultural Education</u>
§233.13	Business and Finance: Grades 6-12	276 Business and Finance 6-12 TExES	160 PPR EC-12 TExES or <u>2102 edTPA: Business Education</u>
§233.14	Marketing: Grades 6-12	275 Marketing 6-12 TExES	160 PPR EC-12 TExES or <u>2102 edTPA: Business Education</u>

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s) [Pedagogy and Professional Responsibilities (PPR) Requirements]
§233.14	Health Science: Grades 6-12	273 Health Science 6-12 TExES	160 PPR EC-12 TExES
§233.14	Trade and Industrial Education: Grades 6-12	Not Applicable	270 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES
Computer Science and Technology Applications			
§233.5	Computer Science: Grades 8-12	[141 Computer Science 8-12 TExES or] 241 Computer Science 8-12 TExES	160 PPR EC-12 TExES or 2143 edTPA: <u>Technology and Engineering Education</u>
§233.5	Technology Applications: Early Childhood-Grade 12	[142 Technology Applications EC-12 TExES or] 242 Technology Applications EC-12 TExES	160 PPR EC-12 TExES or 2108 edTPA: <u>Educational Technology Specialist</u>
[§233.5]	[Technology Applications: Grades 8-12]	[139 Technology Applications 8-12 TExES]	[160 PPR EC 12 TExES]
Core Subjects			
§233.2	Core Subjects: Early Childhood-Grade 6	291 Core Subjects EC-6 TExES	160 PPR EC-12 TExES or 2110 edTPA: <u>Elementary Education: Literacy with Mathematics Task 4</u>
§233.2	Core Subjects: Grades 4-8	211 Core Subjects 4-8 TExES	160 PPR EC-12 TExES or 2016 edTPA: <u>Middle Childhood Mathematics</u> or 2017 edTPA: <u>Middle Childhood Science</u> or 2018 edTPA: <u>Middle Childhood English-Language Arts</u> or 2019 edTPA: <u>Middle Childhood History/Social Studies</u>
Counselor			

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s) [Pedagogy and Professional Responsibilities (PPR) Requirements]
§239.20	School Counselor: Early Childhood-Grade 12	152 School Counselor EC-12 TExES	Not Applicable: Not an Initial Certificate
Dance			
§233.10	[Dance: Grades 8-12]	[179 Dance 8-12 TExES]	[160 PPR EC-12 TExES]
§233.10	Dance: Grades 6-12	279 Dance 6-12 TExES	160 PPR EC-12 TExES or 2021 edTPA: K-12 Performing Arts
Educational Diagnostician			
§239.84	Educational Diagnostician: Early Childhood-Grade 12	153 Educational Diagnostician EC-12 TExES	Not Applicable: Not an Initial Certificate

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	<u>[Pedagogy and Professional Responsibilities (PPR) Requirements]</u> <u>Pedagogical Requirement(s)</u>
English Language Arts and Reading			
§233.3	English Language Arts and Reading: Grades 4-8	117 English Language Arts and Reading 4-8 TExES	160 PPR EC-12 TExES or 2018 edTPA: <u>Middle Childhood English-Language Arts</u>
§233.3	English Language Arts and Reading: Grades 7-12	231 English Language Arts and Reading 7-12 TExES	160 PPR EC-12 TExES or 2003 edTPA: <u>Secondary English-Language Arts</u>
§233.3	English Language Arts and Reading/Social Studies: Grades 4-8	113 English Language Arts and Reading/ Social Studies 4-8 TExES	160 PPR EC-12 TExES or 2018 edTPA: <u>Middle Childhood English-Language Arts</u> or 2019 edTPA: <u>Middle Childhood History/Social Studies</u>
§239.93	Reading Specialist: Early Childhood-Grade 12	151 Reading Specialist EC-12 TExES	Not Applicable: Not an Initial Certificate
English as a Second Language			
§233.7	English as a Second Language Supplemental	154 English as a Second Language Supplemental TExES	Not Applicable: Not a Stand-alone Certificate
Gifted and Talented			
§233.9	Gifted and Talented Supplemental	162 Gifted and Talented TExES	Not Applicable: Not a Stand-alone Certificate
Health			
§233.11	Health: Early Childhood-Grade 12	157 Health Education EC-12 TExES	160 PPR EC-12 TExES or 2119 edTPA: <u>Health Education</u>
Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	<u>[Pedagogy and Professional Responsibilities (PPR) Requirements]</u> <u>Pedagogical Requirement(s)</u>
Journalism			

§233.3	Journalism: Grades 7-12	256 Journalism 7-12 TExES	160 PPR EC-12 TExES or 2003 edTPA: <u>Secondary English-Language Arts</u>
Junior Reserve Officer Training			
§233.17	Junior Reserve Officer Training Corps: Grades 6-12	Not Applicable	160 PPR EC-12 TExES
Languages Other Than English			
§233.15	American Sign Language: Early Childhood-Grade 12	184 ASL EC-12 TExES and 073 TASC-ASL	160 PPR EC-12 TExES or 2020 edTPA: <u>World Language</u>
§233.15	Arabic: Early Childhood-Grade 12	ACTFL 605 OPI – Arabic and 600 WPT – Arabic	160 PPR EC-12 TExES or 2020 edTPA: <u>World Language</u>
§233.15	Chinese: Early Childhood-Grade 12	ACTFL 606 OPI – Chinese (Mandarin) and 601 WPT – Chinese (Mandarin)	160 PPR EC-12 TExES or 2020 edTPA: <u>World Language</u>
§233.15	French: Early Childhood-Grade 12	610 Languages Other Than English (LOTE) French EC-12 TExES	160 PPR EC-12 TExES or 2020 edTPA: <u>World Language</u>

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	<u>Pedagogical Requirement(s)</u> <u>[Pedagogy and Professional Responsibilities (PPR) Requirements]</u>
Languages Other Than English (continued)			
§233.15	German: Early Childhood-Grade 12	611 LOTE German EC-12 TExES	160 PPR EC-12 TExES or 2020 edTPA: <u>World Language</u>
§233.15	Hindi: Early Childhood-Grade 12	ACTFL 622 OPI – Hindi and 623 WPT – Hindi	160 PPR EC-12 TExES or 2020 edTPA: <u>World Language</u>
§233.15	Italian: Early Childhood-Grade 12	ACTFL 624 OPI – Italian and 625 WPT – Italian	160 PPR EC-12 TExES or 2020 edTPA: <u>World Language</u>
§233.15	Japanese: Early Childhood-Grade 12	ACTFL 607 OPI – Japanese and 602 WPT – Japanese	160 PPR EC-12 TExES or 2020 edTPA: <u>World Language</u>
§233.15	Korean: Early Childhood-Grade 12	ACTFL 630 OPI – Korean and 631 WPT – Korean	160 PPR EC-12 TExES or 2020 edTPA: <u>World Language</u>
§233.15	Latin: Early Childhood-Grade 12	612 LOTE Latin EC-12 TExES	160 PPR EC-12 TExES or 2104 edTPA: <u>Classical Languages</u>
§233.15	Portuguese: Early Childhood-Grade 12	ACTFL 632 OPI – Portuguese and 633 WPT – Portuguese	160 PPR EC-12 TExES or 2020 edTPA: <u>World Language</u>
§233.15	Russian: Early Childhood-Grade 12	ACTFL 608 OPI – Russian and 603 WPT – Russian	160 PPR EC-12 TExES or 2020 edTPA: <u>World Language</u>
§233.15	Spanish: Early Childhood-Grade 12	613 LOTE Spanish EC-12 TExES	160 PPR EC-12 TExES or 2020 edTPA: <u>World Language</u>
§233.15	Turkish: Early Childhood-Grade 12	ACTFL 626 OPI – Turkish and 627 WPT – Turkish	160 PPR EC-12 TExES or 2020 edTPA: <u>World Language</u>
§233.15	Vietnamese: Early Childhood-Grade 12	ACTFL 609 OPI – Vietnamese and 604 WPT – Vietnamese	160 PPR EC-12 TExES or 2020 edTPA: <u>World Language</u>
Librarian			
§239.60	School Librarian: Early Childhood-Grade 12	150 School Librarian Early Childhood-12 TExES	Not Applicable: Not an Initial Certificate

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	<u>Pedagogical Requirement(s)</u> <u>[Pedagogy and Professional Responsibilities (PPR) Requirements]</u>
Master Teacher			
§239.102	Master Mathematics Teacher: Early Childhood-Grade 4	087 Master Mathematics Teacher EC-4 Texas Examinations for Master Teachers (TExMaT)	Not Applicable: Not an Initial Certificate
§239.102	Master Mathematics Teacher: Grades 4-8	088 Master Mathematics Teacher 4-8 TExMaT	Not Applicable: Not an Initial Certificate
§239.102	Master Mathematics Teacher: Grades 8-12	089 Master Mathematics Teacher 8-12 TExMaT	Not Applicable: Not an Initial Certificate
§239.101	Master Reading Teacher: Early Childhood-Grade 12	085 Master Reading Teacher EC-12 TExMaT	Not Applicable: Not an Initial Certificate
§239.103	Master Technology Teacher: Early Childhood-Grade 12	086 Master Technology Teacher EC-12 TExMaT	Not Applicable: Not an Initial Certificate
§239.104	Master Science Teacher: Early Childhood-Grade 4	090 Master Science Teacher EC-4 TExMaT	Not Applicable: Not an Initial Certificate
§239.104	Master Science Teacher: Grades 4-8	091 Master Science Teacher 4-8 TExMaT	Not Applicable: Not an Initial Certificate
§239.104	Master Science Teacher: Grades 8-12	092 Master Science Teacher 8-12 TExMaT	Not Applicable: Not an Initial Certificate

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s) [<u>Pedagogy and Professional Responsibilities (PPR) Requirements</u>]
Mathematics and Science			
§233.4	Mathematics: Grades 4-8	115 Mathematics 4-8 TExES	160 PPR EC-12 TExES <u>or</u> 2016 edTPA: <u>Middle Childhood Mathematics</u>
§233.4	Science: Grades 4-8	116 Science 4-8 TExES	160 PPR EC-12 TExES <u>or</u> 2017 edTPA: <u>Middle Childhood Science</u>
§233.4	Mathematics/Science: Grades 4-8	114 Mathematics/ Science 4-8 TExES	160 PPR EC-12 TExES <u>or</u> 2016 edTPA: <u>Middle Childhood Mathematics or 2017 edTPA: Middle Childhood Science</u>
§233.4	Mathematics: Grades 7-12	235 Mathematics 7-12 TExES	160 PPR EC-12 TExES <u>or</u> 2005 edTPA: <u>Secondary Mathematics</u>
§233.4	Science: Grades 7-12	236 Science 7-12 TExES	160 PPR EC-12 TExES <u>or</u> 2006 edTPA: <u>Secondary Science</u>
§233.4	Life Science: Grades 7-12	238 Life Science 7-12 TExES	160 PPR EC-12 TExES <u>or</u> 2006 edTPA: <u>Secondary Science</u>

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s) [Pedagogy and Professional Responsibilities (PPR) Requirements]
Mathematics and Science (continued)			
§233.4	Physical Science: Grades 6-12	237 Physical Science 6-12 TExES	160 PPR EC-12 TExES or 2006 edTPA: Secondary Science
§233.4	Physics/Mathematics: Grades 7-12	243 Physics/Mathematics 7-12 TExES	160 PPR EC-12 TExES or 2005 edTPA: Secondary Mathematics or 2006 edTPA: Secondary Science
§233.4	Mathematics/Physical Science/Engineering: Grades 6-12	274 Mathematics/Physical Science/Engineering 6-12 TExES	160 PPR EC-12 TExES or 2005 edTPA: Secondary Mathematics or 2006 edTPA: Secondary Science or 2143 edTPA: Technology and Engineering Education
§233.4	Chemistry: Grades 7-12	240 Chemistry 7-12 TExES	160 PPR EC-12 TExES or 2006 edTPA: Secondary Science
Music			
§233.10	Music: Early Childhood-Grade 12	177 Music EC-12 TExES	160 PPR EC-12 TExES or 2021 edTPA: K-12 Performing Arts
Physical Education			
§233.12	Physical Education: Early Childhood-Grade 12	158 Physical Education EC-12 TExES	160 PPR EC-12 TExES or 2011 edTPA: Physical Education

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s) [Pedagogy and Professional Responsibilities (PPR) Requirements]
Principal and Superintendent			
§241.20	Principal as Instructional Leader: Early Childhood-Grade 12	268 Principal as Instructional Leader TExES [and Performance Assessment for School Leaders (PASL)]	[Not Applicable: Not an Initial Certificate] Educational Testing Service (ETS) 368 Performance Assessment for School Leaders (PASL)
§241.35	Principal as Instructional Leader Endorsement	[Performance Assessment for School Leaders (PASL)] Not Applicable: Not an Initial Certificate (Individuals must already hold a valid certificate to serve in the role of principal to be eligible for this endorsement.)	Educational Testing Service (ETS) 368 Performance Assessment for School Leaders (PASL) [Not Applicable: Not an Initial Certificate; however, individuals must already hold a valid certificate to serve in the role of principal to be eligible for this endorsement.]
§241.60	Principal: Early Childhood-Grade 12	068 Principal TExES	Not Applicable: Not an Initial Certificate.
§242.20	Superintendent: Early Childhood-Grade 12	195 Superintendent TExES	Not Applicable: Not an Initial Certificate
Social Studies			
§233.3	Social Studies: Grades 4-8	118 Social Studies 4-8 TExES	160 PPR EC-12 TExES or 2019 edTPA: Middle Childhood History/Social Studies
§233.3	Social Studies: Grades 7-12	232 Social Studies 7-12 TExES	160 PPR EC-12 TExES or 2004 edTPA: Secondary History/Social Studies
§233.3	History: Grades 7-12	233 History 7-12 TExES	160 PPR EC-12 TExES or 2004 edTPA: Secondary History/Social Studies

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s) [Pedagogy and Professional Responsibilities (PPR) Requirements]
Speech Communications			
§233.3	Speech: Grades 7-12	129 Speech 7-12 TExES	160 PPR EC-12 TExES or <u>2003 edTPA: Secondary English-Language Arts</u>
Special Education			
§233.8	Special Education: Early Childhood-Grade 12	161 Special Education EC-12 TExES	160 PPR EC-12 TExES or <u>2012 edTPA: Special Education</u>
§233.8	Special Education Supplemental	163 Special Education Supplemental TExES	Not Applicable: Not a Stand-alone Certificate
§233.8	Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12	181 Deaf and Hard of Hearing EC-12 TExES and 072 TASC or 073 TASC-ASL (required for assignment but not for certification)	160 PPR EC-12 TExES or <u>2012 edTPA: Special Education</u>
§233.8	Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12	182 Visually Impaired TExES and 183 Braille TExES or 283 Braille TExES	Not Applicable: Not a Stand-alone Certificate
Theatre			
§233.10	Theatre: Early Childhood-Grade 12	180 Theatre EC-12 TExES	160 PPR EC-12 TExES or <u>2021 edTPA: K-12 Performing Arts</u>

TRD-201901832
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: June 17, 2019

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes,

which in this case is **July 30, 2019**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **July 30, 2019**. 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: Alvin Chemical, Incorporated; DOCKET NUMBER: 2019-0449-AIR-E; IDENTIFIER: RN100914613; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: blending, storage, and repackaging site of various chemicals; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$9,187; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Braman Ranches LLC dba Mellon Creek Ranch; DOCKET NUMBER: 2018-1537-PST-E; IDENTIFIER: RN102852878; LOCATION: Refugio, Refugio County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; 30 TAC §334.72, by failing to report suspected releases to the TCEQ within 24 hours of discovery; and 30 TAC §334.74(3), by failing to file a release determination report with the commission within 45 days after a suspected release has occurred; PENALTY: \$7,950; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: City of Cotulla; DOCKET NUMBER: 2019-0492-MSW-E; IDENTIFIER: RN105851513; LOCATION: Cotulla, La Salle County; TYPE OF FACILITY: transfer station; RULES VIOLATED: 30 TAC §30.213(a) and Municipal Solid Waste (MSW) Permit Number 40251 Part IV Site Operating Plan (SOP) - Section 2 -Transfer Station Personnel, by failing to have at least one individual with a MSW Class B Operator License to supervise or manage the MSW facility; 30 TAC §37.8021, by failing to provide financial responsibility with registration to assure the facility has sufficient assets to provide for closure, post closure, or corrective action; and 30 TAC §330.219(b) and MSW Permit Number 40251 Part IV SOP - Section 20 - Recordkeeping and Reporting Requirements, by failing to record and retain a comprehensive personnel training program and inspection records, manifests, and any other documents as specified by the executive director; PENALTY: \$3,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,500; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(4) COMPANY: City of Oakwood; DOCKET NUMBER: 2019-0354-MLM-E; IDENTIFIER: RN101386993; LOCATION: Oakwood, Leon County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §288.20(a) and §288.30(5)(B) and TWC, §11.1272, by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.42(e)(4)(C), by failing to provide forced air ventilation, which includes both high level and floor level screened and louvered vents, a fan which is located at and draws air in through the top vent and discharges to the outside atmosphere through the floor level vent, and a fan switch located outside, for enclosures containing more than one operating 150-pound cylinder of chlorine; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(f)(2) and (3)(B)(iv) and (v) and (D)(ii), by failing to maintain water works operation and maintenance records and make them readily available

for review by the executive director upon request; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an adequate 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: \$487; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: EPP-Texas Acquisition, LLC dba Quik-Way Retail Associates 3563; DOCKET NUMBER: 2019-0572-PST-E; IDENTIFIER: RN102373685; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 AC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect overspill containers or catchment basins associated with an underground storage tank system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight and remove any liquid or debris found in them within 96 hours of discovery; PENALTY: \$1,394; ENFORCEMENT COORDINATOR: Tyler Gerhardt, (512) 239-2506; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(6) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2019-0180-AIR-E; IDENTIFIER: RN102212925; LOCATION: Baytown, Harris County; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 115.722(c)(1), 116.715(a), and 122.143(4), Federal Operating Permit Number O1553, General Terms and Conditions and Special Terms and Conditions Number 24, Flexible Permit Numbers 3452, PSDTX302M2, and PAL6, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions and failing to limit highly reactive volatile organic compounds emissions to 1,200 pounds or less per one-hour block period; PENALTY: \$40,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$16,200; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: JUSTIN HENDON; DOCKET NUMBER: 2019-0777-WOC-E; IDENTIFIER: RN110488962; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(8) COMPANY: Huntsman Petrochemical LLC; DOCKET NUMBER: 2019-0365-IWD-E; IDENTIFIER: RN100219740; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: industrial petrochemical plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0000584000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Number 001, by failing to comply with permitted effluent limitations; PENALTY: \$18,150; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$7,260; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: IJKM Incorporated dba Hi Mart Beverage Store; DOCKET NUMBER: 2019-0336-PST-E; IDENTIFIER: RN106447774; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank in a manner which will detect a release at a frequency of at least once every 30 days; 30 TAC §334.72, by failing to report suspected releases to TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate suspected releases of regulated substances within 30 days of discovery; PENALTY: \$27,050; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2544; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Jarvis Christian College; DOCKET NUMBER: 2019-0199-PWS-E; IDENTIFIER: RN101217032; LOCATION: Hawkins, Wood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director (ED) by the tenth day of the month following the end of each quarter for the third quarter of 2017 through the third quarter of 2018; 30 TAC §290.117(c)(2)(B), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2018 - December 31, 2018, monitoring period; and 30 TAC §290.117(c)(2)(C), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to timely collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED, and failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to timely collect lead and copper tap samples for the January 1, 2015 - December 31, 2017, monitoring period; PENALTY: \$674; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: Laredo Petroleum, Incorporated; DOCKET NUMBER: 2019-0420-AIR-E; IDENTIFIER: RN106662620; LOCATION: Big Lake, Reagan County; TYPE OF FACILITY: tank battery; RULES VIOLATED: 30 TAC §106.4(a)(1)(B) and §106.6(b), Permit by Rule (PBR) Registration Number 109425, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with all representations with regard to construction plans, operating procedures, and maximum registered emission rates; and 30 TAC §106.4(c), PBR Registration Number 109425, and THSC, §382.085(b), by failing to maintain emissions control equipment in good condition and operated properly during operation of the plant; PENALTY: \$60,000; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(12) COMPANY: Laredo Petroleum, Incorporated; DOCKET NUMBER: 2019-0421-AIR-E; IDENTIFIER: RN106863830; LOCATION: Garden City, Reagan County; TYPE OF FACILITY: tank battery; RULES VIOLATED: 30 TAC §106.4(a)(1)(B) and §106.6(b), Permit by Rule (PBR) Registration Number 112321, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with all representations with regard to construction plans, operating procedures, and maximum registered emission rates; 30 TAC §106.4(c), PBR Registration Number 112321, and THSC, §382.085(b), by failing to maintain emissions control equipment in good condition and operated properly during operation of the plant; and 30 TAC §122.121 and THSC, §382.054 and §382.085(b), by failing to obtain a federal operating permit prior to operating emission units at a major source; PENALTY: \$165,750; ENFORCEMENT COORDINATOR:

Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(13) COMPANY: Proline Energy Resources Incorporated; DOCKET NUMBER: 2019-0408-AIR-E; IDENTIFIER: RN104860358; LOCATION: Gregory, San Patricio County; TYPE OF FACILITY: natural gas production site; RULES VIOLATED: 30 TAC §101.10(b)(2) and (e) and Texas Health and Safety Code, §382.085(b), by failing to submit an annual emissions inventory update for the previous calendar year by March 31st of each year or as directed by the commission; PENALTY: \$1,312; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(14) COMPANY: Proline Energy Resources Incorporated; DOCKET NUMBER: 2019-0409-AIR-E; IDENTIFIER: RN101960896; LOCATION: Bluntzer, Nueces County; TYPE OF FACILITY: natural gas production site; RULES VIOLATED: 30 TAC §101.10(b)(2) and (e) and Texas Health and Safety Code, §382.085(b), by failing to submit an annual emissions inventory update for the previous calendar year by March 31st of each year or as directed by the commission; PENALTY: \$1,312; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(15) COMPANY: Proline Energy Resources Incorporated; DOCKET NUMBER: 2019-0410-AIR-E; IDENTIFIER: RN105929673; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: natural gas production site; RULES VIOLATED: 30 TAC §101.10(b)(2) and (e) and Texas Health and Safety Code, §382.085(b), by failing to submit an annual emissions inventory update for the previous calendar year by March 31st of each year or as directed by the commission; PENALTY: \$1,312; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(16) COMPANY: Pure Utilities, L.C.; DOCKET NUMBER: 2019-0240-PWS-E; IDENTIFIER: RN101259885; LOCATION: Livingston, Polk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(l)(5), by failing to meet the conditions for an issued exception to provide innovative/alternative treatment, dated September 26, 2014; and 30 TAC §290.118(b), by failing to comply with the maximum secondary constituent level for manganese of 0.05 milligrams per liter; PENALTY: \$102; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(17) COMPANY: SI Group, Incorporated; DOCKET NUMBER: 2019-0237-AIR-E; IDENTIFIER: RN100218999; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Federal Operating Permit Number O1431, General Terms and Conditions and Special Terms and Conditions Number 14, and Texas Health and Safety Code, §382.085(b), by failing to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance, and failing to submit a permit compliance certification no later than 30 days after the end of the certification period; PENALTY: \$4,612; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$1,845; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Taft Independent School District; DOCKET NUMBER: 2019-0615-PST-E; IDENTIFIER: RN101767804; LOCATION: Taft, San Patricio County; TYPE OF FACILITY: fleet refueling

facility; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$3,563; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(19) COMPANY: TERRA SOUTHWEST, INCORPORATED; DOCKET NUMBER: 2019-0083-PWS-E; IDENTIFIER: RN101242915; LOCATION: Little Elm, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(d)(4)(B), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive sample on September 21, 2017, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each of the six active groundwater sources in use at the time the distribution coliform-positive sample was collected; 30 TAC §290.117(i)(6) and (j), by failing to provide consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director (ED) along with certification that the consumer notification has been distributed for the January 1, 2014 - December 31, 2014, January 1, 2015 - December 31, 2015, and January 1, 2017 - December 31, 2017, monitoring periods; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit Disinfectant Level Quarterly Operating Reports for the second quarter of 2015 and the first quarter of 2016, and failing to collect lead and copper tap samples for the January 1, 2016 - December 31, 2016, monitoring period; PENALTY: \$594; ENFORCEMENT COORDINATOR: Julianne Dewar, (512) 239-1001; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: THE BITTER CREEK WATER SUPPLY CORPORATION; DOCKET NUMBER: 2019-0424-PWS-E; IDENTIFIER: RN101243871; LOCATION: Sweetwater, Nolan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(d) and §290.46(r), by failing to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and a minimum of 20 psi during emergencies such as firefighting; and 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to the customers of the facility within 24 hours of a water outage using the prescribed notification format as specified in 30 TAC §290.47(c); PENALTY: \$291; ENFORCEMENT COORDINATOR: Julianne Dewar, (512) 239-1001; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(21) COMPANY: The Construction Management Company; DOCKET NUMBER: 2019-0793-WQ-E; IDENTIFIER: RN110675170; LOCATION: Longview, Gregg County; TYPE OF FACILITY: commercial construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201901852

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 18, 2019



Notice of Opportunity to Comment on Agreed 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 Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 30, 2019**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 30, 2019**. 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: 3AR INC dba Handy Stop; DOCKET NUMBER: 2018-0258-PST-E; TCEQ ID NUMBER: RN102859600; LOCATION: 701 MacArthur Boulevard, Grand Prairie, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.7(d)(3), by failing to file notice of any change or additional information with the agency within 30 days from the date of the occurrence of the change or addition; Texas Health and Safety Code, §382.085(b) and 30 TAC §115.246(a), by failing to maintain copies of all notifications and records sufficient to demonstrate compliance with the applicable decommissioning steps; 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; and 30 TAC §334.606, by failing to maintain required operator training certification documentation; PENALTY: \$7,087; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Dario Jaime Gonzalez dba Darios Tire Shop; DOCKET NUMBER: 2017-0137-MSW-E; TCEQ ID NUMBER: RN109537613; LOCATION: 1724 East Business Highway 83, Weslaco, Hidalgo County; TYPE OF FACILITY: tire shop; RULES VIOLATED: 30 TAC §328.56(a)(1) and (d)(2) and §328.60(a), by failing to register as a used or scrap tire generator and storage site while storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed or lockable containers; PENALTY: \$10,125; STAFF ATTORNEY: Ian Groetsch, Litigation Division,

MC 175, (512) 239-2225; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: East Newton Water Supply Corporation; DOCKET NUMBER: 2018-0271-PWS-E; TCEQ ID NUMBER: RN101270130; LOCATION: State Highway #87 North about five miles north of United States Highway 190 near Newton, Newton County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director (ED) each quarter by the tenth day of the month following the end of the quarter for the second and third quarters of 2017; 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 by July 1st for each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility, and that the information in the CCR is correct and consistent with compliance monitoring data for calendar year 2016; 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2015 - December 31, 2017, monitoring period; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees and any associated late fees for TCEQ Financial Administration Account Number 91760004 for Fiscal Year 2017; and TWC, §5.702 and 30 TAC §291.76, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 11338 for calendar year 2017; PENALTY: \$393; STAFF ATTORNEY: John S. Mercurief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: GALLOP PETROLEUM LLC; DOCKET NUMBER: 2018-0325-PST-E; TCEQ ID NUMBER: RN104068655; LOCATION: 50 South Interstate Highway 35, Cotulla, La Salle County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), 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; PENALTY: \$7,624; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(5) COMPANY: MUFIQ Enterprises, Inc. dba Prince Food Mart; DOCKET NUMBER: 2018-0969-PST-E; TCEQ ID NUMBER: RN102346384; LOCATION: 1101 North Main Street, Taylor, Williamson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once per 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 assure that all UST recordkeeping requirements were met; PENALTY: \$4,124; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(6) COMPANY: NAAP INVESTMENT INC dba One Stop; DOCKET NUMBER: 2018-1194-PST-E; TCEQ ID NUMBER: RN102454816; LOCATION: 14701 North Mopac Expressway, Austin, Travis County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner which would detect a release at a frequency of at least once every 30 days; PENALTY: \$3,750; STAFF ATTORNEY: Ben Warms, Litigation Division, MC 175 (512) 239-5144; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

TRD-201901850
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 18, 2019

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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 **July 30, 2019**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 30, 2019**. 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: 82L, LLC dba Tega Kid's Superplex; DOCKET NUMBER: 2017-1637-PWS-E; TCEQ ID NUMBER: RN108052325; LOCATION: 7621 82nd Street, Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.46(d)(2)(A)

and §290.110(b)(4), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's well; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's public drinking water well into service; 30 TAC §290.41(c)(3)(J), by failing to provide the well with a concrete sealing block that extends a minimum of three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away from the wellhead at not less than 0.25 inch per foot; 30 TAC §290.41(c)(3)(K), by failing to provide the wellhead with a gasket or sealing compound; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of the well prior to any treatment; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(d)(2), by failing to provide the facility's pressure tank with a pressure release device; 30 TAC §290.46(f)(2) and (3)(A)(i)(III) and (ii)(III), (B)(iii), and (D)(ii), by failing to properly maintain water works operation and maintenance records and make them available for review to the executive director (ED) during the investigation; 30 TAC §290.46(m)(1)(B), by failing to conduct annual inspections of the facility's one pressure tank; 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; 30 TAC §290.121(a) and (b), by failing to maintain an accurate and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; THSC, §341.035(a), 30 TAC §290.39(e)(1) and (h)(1), and TCEQ Agreed Order (AO) Docket Number 2015-1596-PWS-E, Ordering Provision Number 2.f.iii., by failing to submit plans and specifications to the ED for review and approval prior to the construction of a new public water supply; 30 TAC §290.41(c)(3)(O) and TCEQ AO Docket Number 2015-1596-PWS-E, Ordering Provision Number 2.d., by failing to protect the well with an intruder-resistant fence with a lockable gate or enclose the well in a locked and ventilated well house; and THSC, §341.0315(c), 30 TAC §290.45(d)(2)(B)(v), and TCEQ AO Docket Number 2015-1596-PWS-E, Ordering Provision Number 2.f.i., 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 ED for systems serving 300 or more persons per day; PENALTY: \$10,912; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: Javier Maldonado dba Auto Correct Paint and Body Shop; DOCKET NUMBER: 2018-0883-AIR-E; TCEQ ID NUMBER: RN110053725; LOCATION: 1392 Westward Ho, Navasota, Brazos County; TYPE OF FACILITY: auto body refinishing facility; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$1,312; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Theophilus Goins; DOCKET NUMBER: 2018-0726-PST-E; TCEQ ID NUMBER: RN102353976; LOCATION: 6622 Homestead Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and (B) and (d)(3), by failing to file

notice of any change or additional information with the agency within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.54(b)(2) and (c)(2), by failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: \$5,512; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201901851

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 18, 2019

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 222 and 309

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to §§222.1, 222.3, 222.5, 222.31, 222.33, 222.73, 222.75, 222.81, 222.83, 222.85, 222.87, 222.115, 222.119, 222.127, 222.157, 222.159, and 222.163 of 30 TAC Chapter 222, Subsurface Area Drip Dispersal Systems; and proposed revisions to §§309.1 - 309.4, 309.10 - 309.14, and 309.20; and new §§309.21 - 309.25 of Chapter 309, Domestic Wastewater Effluent Limitation and Plant Siting under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would allow an applicant for a Texas Land Application Permit the option to reduce the acreage required for land application of treated domestic wastewater by obtaining a "beneficial reuse credit" that accounts for offsite beneficial reuse. The proposed rulemaking would also include administrative changes to ensure current and accurate cross-references, improve readability, improve rule structure, and use consistent and industry accepted terminology.

The commission will hold a public hearing on this proposal in Austin on July 25, 2019, at 10:00 a.m. in Building E, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-042-309-OW. The comment period closes on July 30, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Rebecca Moore, Wastewater Permitting Section, at (512) 239-0058.

TRD-201901828
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 14, 2019



Update to the Water Quality Management Plan (WQMP)

The Texas Commission on Environmental Quality (TCEQ or commission) requests comments from the public on the draft update to the WQMP for the State of Texas containing projected effluent limits for the Terra Verde Utility Company, L.L.C. domestic wastewater discharge permit.

Download the draft Terra Verde Utility Company, L.L.C. WQMP Update at https://www.tceq.texas.gov/permitting/wqmp/WQmanagement_updates.html or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

The WQMP is developed and promulgated in accordance with the requirements of Federal Clean Water Act, §208. The draft update includes projected effluent limits of specific domestic dischargers which may be useful for planning in future permit actions. The draft update may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) revisions.

Once the commission certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

Deadline

All comments must be received at the TCEQ no later than **5:00 p.m. July 29, 2019**.

How to Submit Comments

Comments must be submitted in writing to:

Nancy Vignali Texas Commission on Environmental Quality Water Quality Division, MC 150 P.O. Box 13087 Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420, but must be followed up with written comments by mail within three working days of the fax date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at Nancy.Vignali@tceq.texas.gov.

TRD-201901856
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 18, 2019



Texas Facilities Commission

Request for Proposals #303-0-20657

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-0-20657. TFC seeks a five (5) or ten (10) year lease of approximately 2,458 square feet of office space in Irving, Grand Prairie or Dallas, Texas.

The deadline for questions is July 10, 2019 and the deadline for proposals is July 17, 2019 at 3:00 p.m. The award date is August 15, 2019. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at <http://www.txsmartbuy.com/sp/303-0-20657>.

TRD-201901782
Naomi Gonzalez
Acting General Counsel
Texas Facilities Commission
Filed: June 13, 2019

Request for Proposals #303-1-20662

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety-Highway Patrol (DPS), announces the issuance of Request for Proposals (RFP) #303-1-20662. TFC seeks a five (5) or ten (10) year lease of approximately 3,182 square feet of office space in Crystal City, Texas.

The deadline for questions is July 9, 2019, and the deadline for proposals is July 19, 2019, at 3:00 p.m. The award date is August 15, 2019. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at <http://www.txsmartbuy.com/sp/303-1-20662>.

TRD-201901860
Naomi Gonzalez
Acting General Counsel
Texas Facilities Commission
Filed: June 19, 2019



Request for Proposals #303-1-20663

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC) and the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-1-20663. TFC seeks a five (5) or ten (10) year lease of approximately 9,387 square feet of office space in McKinney, Texas.

The deadline for questions is July 12, 2019, and the deadline for proposals is July 26, 2019, at 3:00 p.m. The award date is October 17, 2019. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at <http://www.txsmartbuy.com/sp/303-1-20663>.

TRD-201901861
Naomi Gonzalez
Acting General Counsel
Texas Facilities Commission
Filed: June 19, 2019



Request for Proposals #303-1-20664

The Texas Facilities Commission (TFC), on behalf of the Texas Commission on Environmental Quality (TCEQ), announces the issuance of Request for Proposals (RFP) #303-1-20664. TFC seeks a five (5) or ten (10) year lease of approximately 14,229 square feet of office space in Corpus Christi, Texas.

The deadline for questions is July 8, 2019, and the deadline for proposals is July 15, 2019, at 3:00 p.m. The award date is August 15, 2019. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at <http://www.txsmartbuy.com/sp/303-1-20664>.

TRD-201901862
Naomi Gonzalez
Acting General Counsel
Texas Facilities Commission
Filed: June 19, 2019



Request for Proposals #303-1-20665

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC) and the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-1-20665. TFC seeks a five (5) or ten (10) year lease of approximately 9,387 square feet of office space in McKinney, Texas.

The deadline for questions is July 12, 2019, and the deadline for proposals is July 26, 2019, at 3:00 p.m. The award date is October 17, 2019. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at <http://www.txsmartbuy.com/sp/303-1-20665>.

TRD-201901863
Naomi Gonzalez
Acting General Counsel
Texas Facilities Commission
Filed: June 19, 2019



General Land Office

Damage Assessment Restoration Plan/Environmental Assessment

1999 Trinity Bay Oil Spill in Chambers County, Texas and 2004 Highland Bayou Oil Spill in Galveston County, Texas.

AGENCIES: The Texas Commission on Environmental Quality; the Texas Parks and Wildlife Department; and the Texas General Land Office (GLO) (collectively, the Trustees).

ACTION: Notice of finalization of a Damage Assessment and Restoration Plan/Environmental Assessment (DARP/EA) for natural resource damages resulting from the 1999 Trinity Bay Oil Spill in Chambers County, Texas and the 2004 Highland Bayou Oil Spill in Galveston County, Texas (the Incidents).

SUMMARY: This notice serves to inform the public that the Trustees have finalized a DARP/EA to address natural resource damages associated with the release of crude oil from the two incidents. These two Incidents are grouped together in this DARP/EA because they were two of a group of fourteen oil spill incidents investigated by the Trustees for which the Responsible Party was either unwilling to participate in the Natural Resource Damage Assessment (NRDA) process or for which the Responsible Party could not be identified. Pursuant to the Oil Pollution Act (OPA), the Trustees presented a claim to the National Pollution Funds Center (NPFC), and approved funding for conducting a NRDA for three oil spill incidents and the Trustees determined that the natural resource injuries from the two incidents warranted restoration planning. The funds for the implementation of restoration will either come from the Responsible Parties or from the NPFC if no Responsible Party accepts responsibility for the Incidents.

The DARP/EA presents the restoration alternatives considered and identifies the preferred restoration alternative to compensate for injuries to natural resources resulting from the Incidents.

The opportunity for public notice and opportunity to be heard on the Draft DARP/EA was announced in the January 4, 2019, edition of the *Texas Register*; pursuant to Section 1006 of the Oil Pollution Act, 33 U.S.C. §2706. The public comment period ended on February 3, 2019. The Trustees received no requests for copies of the Draft DARP/EA, and no comments from the public.

ADDRESSES: Interested members of the public may request a copy of the DARP/EA by contacting Allison Fischer at the GLO, 1700 Congress Avenue, Austin, Texas 78711-3087; by phone at (512) 463-5271; or by email at allison.fischer@glo.texas.gov.

SUPPLEMENTARY INFORMATION: A group of fourteen oil spill incidents were identified between 1999 and 2004. Grouping fourteen identified oil spill incidents for assessment was done to economize the assessment and transaction costs and maximize and economize restoration options. The Trustees presented a claim to the National Pollution Funds Center (NPFC), and the NPFC approved funding for conducting a NRDA for three oil spill incidents. After performing an injury assessment, the Trustees determined that the natural resource injuries from the two Incidents identified above warranted restoration planning.

On October 11, 1999, a fisherman reported a leaking pipeline in Trinity Bay, Chambers County, Texas. The broken pipeline released approximately 3,150 gallons of crude oil, forming a one- by two-mile slick in open water. The GLO investigation found that the pipeline was an abandoned two-inch pipeline coming from shore and was not connected to any wells in the bay. Although the abandoned pipeline was secured, cut, and sealed, none of the product was contained or recovered and wind and wave conditions dispersed the crude oil. No Responsible Party was identified for the Trinity Bay Oil Spill. On December 18, 2004, an abandoned, corroded tank battery released approximately 9,460 gallons of crude oil into the Highland Bayou and the surround-

ing marsh in Hitchcock, Galveston County, Texas. Wildlife, shoreline and marsh habitat was injured. Oil was recovered from Highland Bayou's shorelines and surrounding marsh. The identified Responsible Parties declined to accept responsibility for the Highland Bayou Oil Spill or any of the fourteen oil spill incidents originally assessed by the Trustees.

The Trustees are designated under Section 1006 of the Oil Pollution Act, 33 U.S.C. §2706; Section 311 of the Federal Water Pollution and Control Act (Clean Water Act), 33 U.S.C. §1321; Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. §300.605; and other applicable federal and state laws. Under these authorities, the Trustees are authorized to act on behalf of the public to protect and restore natural resources injured or lost as a result of releases of hazardous substances

In accordance with OPA regulations, 15 C.F.R. part 990, the Trustees evaluated a reasonable range of restoration alternatives to compensate the public for injuries to natural resources and associated lost services. After examining restoration alternatives and potential restoration sites, the Trustees propose to use the recovered natural resource damages to construct salt marsh in Swan Lake, in Galveston Bay, near Texas City. The preferred restoration alternative will expand existing restoration efforts in the Swan Lake by adding 8.13 acres of salt marsh.

The DARP/EA identifies the information and methods used to define the natural resource injuries and losses; provides information on the restoration alternatives considered; and describes the methods used to select the preferred restoration action that will be implemented to restore, replace, or acquire the resources or services equivalent to those lost. The DARP/EA identifies the preferred restoration alternative that was chosen by the Trustees to compensate for injuries to natural resources resulting from the incidents.

TRD-201901849

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: June 17, 2019



Notice of Violation - Unauthorized Structures in Copano Bay

ATTENTION - OWNER AND/OR ANY PERSON RESPONSIBLE FOR THESE STRUCTURES:

You are hereby given notice, pursuant to the provisions of §51.3021 of the Texas Natural Resources Code (TNRC), that you are in violation of TNRC §51.302 because you do not possess a proper easement, lease, permit, or other required instrument for the placard-noticed facilities or structures described below:

UNAUTHORIZED FACILITIES OR STRUCTURES: Derelict oil and gas platform and all associated structures, equipment, tanks, process flow-lines, gathering lines, transmission lines, fixtures, and furnishings appurtenant thereto.

LOCATION: State Tract 97, Latitude 28.081787°, Longitude -97.155709°, in Copano Bay, Aransas County.

You are required to remove the placard-noticed facilities or structures described above. Violation of TNRC §51.302 and failure to remove the facility or structure within thirty (30) days after the date on which this notice is served will subject you to: the imposition of penalties of not less than \$50 or more than \$1,000 per day for each day that each violation occurs; removal of the facility or structure by the Land

Commissioner and liability for the costs of removal; attachment of a lien to adjacent littoral property to secure payment of the penalty and costs of removal; or any combination of the foregoing.

You are further notified that you may submit, not later than thirty (30) days after the date on which this notice is served, a written request for a hearing. The request for hearing should be sent to the Administrative Hearings Clerk, General Land Office, 1700 North Congress Avenue, 9th Floor, Austin, Texas 78701. **Failure to timely request a hearing waives all rights to judicial review of the Land Commissioner's findings and orders and requires you to immediately remove the facility or structure and pay any penalties, removal costs, and other assessed fees and expenses.**

TRD-201901857

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: June 18, 2019



Texas Lottery Commission

Scratch Ticket Game Number 2154 "Blackjack"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2154 is "BLACKJACK". The play style is "cards - blackjack".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2154 shall be \$1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2154.

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:

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: 16, 17, 18, 19, 20, 2 CARD SYMBOL, 3 CARD SYMBOL, 4 CARD SYMBOL, 5 CARD SYMBOL, 6 CARD SYMBOL, 7 CARD SYMBOL, 8 CARD SYMBOL, 9 CARD SYMBOL, 10 CARD SYMBOL, J CARD SYMBOL, Q CARD SYMBOL, K CARD SYMBOL, A CARD SYMBOL, BELL SYMBOL, CROWN SYMBOL, JOKER SYMBOL, RING SYMBOL, STAR SYMBOL, CHIP SYMBOL, BAR SYMBOL, LEMON SYMBOL, \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100, \$400 and \$2,100.

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. 2154 - 1.2D

PLAY SYMBOL	CAPTION
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
2 CARD SYMBOL	TWO
3 CARD SYMBOL	THR
4 CARD SYMBOL	FOR
5 CARD SYMBOL	FIV
6 CARD SYMBOL	SIX
7 CARD SYMBOL	SVN
8 CARD SYMBOL	EGT
9 CARD SYMBOL	NIN
10 CARD SYMBOL	TEN
J CARD SYMBOL	JCK
Q CARD SYMBOL	QUE
K CARD SYMBOL	KNG
A CARD SYMBOL	ACE
BELL SYMBOL	BELL
CROWN SYMBOL	CROWN
JOKER SYMBOL	JOKER
RING SYMBOL	RING
STAR SYMBOL	STAR
CHIP SYMBOL	CHIP
BAR SYMBOL	BAR
LEMON SYMBOL	LEMON
\$1.00	ONE\$
\$2.00	TWO\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$40.00	FRTY\$
\$100	ONHN
\$400	FRHN
\$2,100	21HN

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 Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2154), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2154-000001-001.

H. Pack - A Pack of the "BLACKJACK" Scratch Ticket Game contains 150 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the op page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "BLACKJACK" Scratch Ticket Game No. 2154.

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 "BLACKJACK" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 11 (eleven) Play Symbols. If the total of the 2 cards in any HAND beats the DEALER'S TOTAL, the player wins the prize for that HAND. If any HAND equals 21, the player WINS ALL 4 PRIZES! J, Q, K = 10, A = 11. LUCKY BONUS: If a player reveals 2 matching Play Symbols, the player wins \$25! 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 11 (eleven) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 (eleven) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to five (5) 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. The total of any HAND will never be the same as the DEALER'S TOTAL.

E. The total of any HAND will not be less than twelve (12) and will not be greater than twenty-one (21).

F. A non-winning HAND on a Ticket will not have the same Play Symbols regardless of order.

G. A HAND that wins with 21 (WINALL) will only appear as dictated by the prize structure.

H. On Tickets containing a HAND that equals 21 (WINALL), the remaining HANDS will be non-winners.

I. Non-winning Prize Symbols will never appear more than one (1) time.

J. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

K. A DEALER'S TOTAL will never equal twenty-one (21).

L. LUCKY BONUS: Tickets winning in the LUCKY BONUS will only appear as dictated by the prize structure and will always win \$25.

M. LUCKY BONUS: Tickets not winning in the LUCKY BONUS will have different Play Symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "BLACKJACK" Scratch Ticket Game prize of \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$25.00, \$40.00, \$100 or \$400, 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, \$40.00, \$100 or \$400 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 "BLACKJACK" Scratch Ticket Game prize of \$2,100, 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 "BLACKJACK" 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 "BLACKJACK" 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 "BLACKJACK" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is

placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,120,000 Scratch Tickets in Scratch Ticket Game No. 2154. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2154 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1	1,094,400	8.33
\$2	668,800	13.64
\$5	121,600	75.00
\$10	60,800	150.00
\$20	30,400	300.00
\$25	15,200	600.00
\$40	13,528	674.16
\$100	2,280	4,000.00
\$400	114	80,000.00
\$2,100	10	912,000.00

*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 4.54. 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. 2154 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. 2154, 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-201901855

Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: June 18, 2019

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Sam Houston State University

Notice of Intent to Award Consulting Services

Sam Houston State University is publishing its intent to award services for a consultant for the College of Education's Computational Thinking Intensive (CTI) and STEM+C Camp as a part of the 4+1 grant awarded to the College of Education thru the U.S. Department of Education. The President of Sam Houston State University has provided a finding of fact letter confirming that the consulting services are necessary, and Sam Houston State University does not have the in-house expertise to develop the CTI and STEM+C Camp. Pursuant to Texas Government Code Chapter 2254, notice is given that SHSU intends to award the contract for the solicited consulting services to Tom Lynch, 431 W121

Street, #3A, New York, NY 10027 who is named within the 4+1 grant application. The consultant will consult both on-campus and from the consultant's offices. The consultant will work with College of Education faculty and staff to develop the CTI to be offered to area teachers and to plan the STEM+C camp for area K-12 students.

The consultant will be responsible for the following:

- 1) Provide ongoing advice and counsel to the Dean of the College of Education and the 4+1 TEACH leadership team.
- 2) Work closely with the 4+1 TEACH leadership team to design a 5-day intensive workshop series that culminates in classroom-based projects ready for implementation.
- 3) Develop a comprehensive plan for engaging K-12 teachers in project-based learning regarding computational thinking strategies across the curriculum.
- 4) Design a camp that provides K-12 students who intend to become educators, experiences in STEM+C in order to recruit them into STEM+C teaching fields.

5) Use Understanding by Design (UBD) as a shared framework for instructing adults and students.

6) Collaborate with SHSU graduate students in research regarding the efficacy of K-12 teachers in STEM+C fields.

SHSU contact for inquires: William H. Tidwell, Assistant Director Procurement and Business Services, (936) 294-1904 or pur_wht@shsu.edu.

The date of award for these consulting services are to be on or after July 29, 2019, and conclude on September 30, 2022.

TRD-201901792

Rhonda Beassie

Associate General Counsel

Sam Houston State University

Filed: June 14, 2019





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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