
TEXAS REGISTER

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

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

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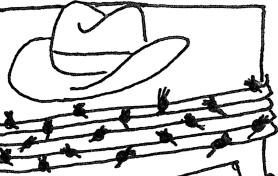
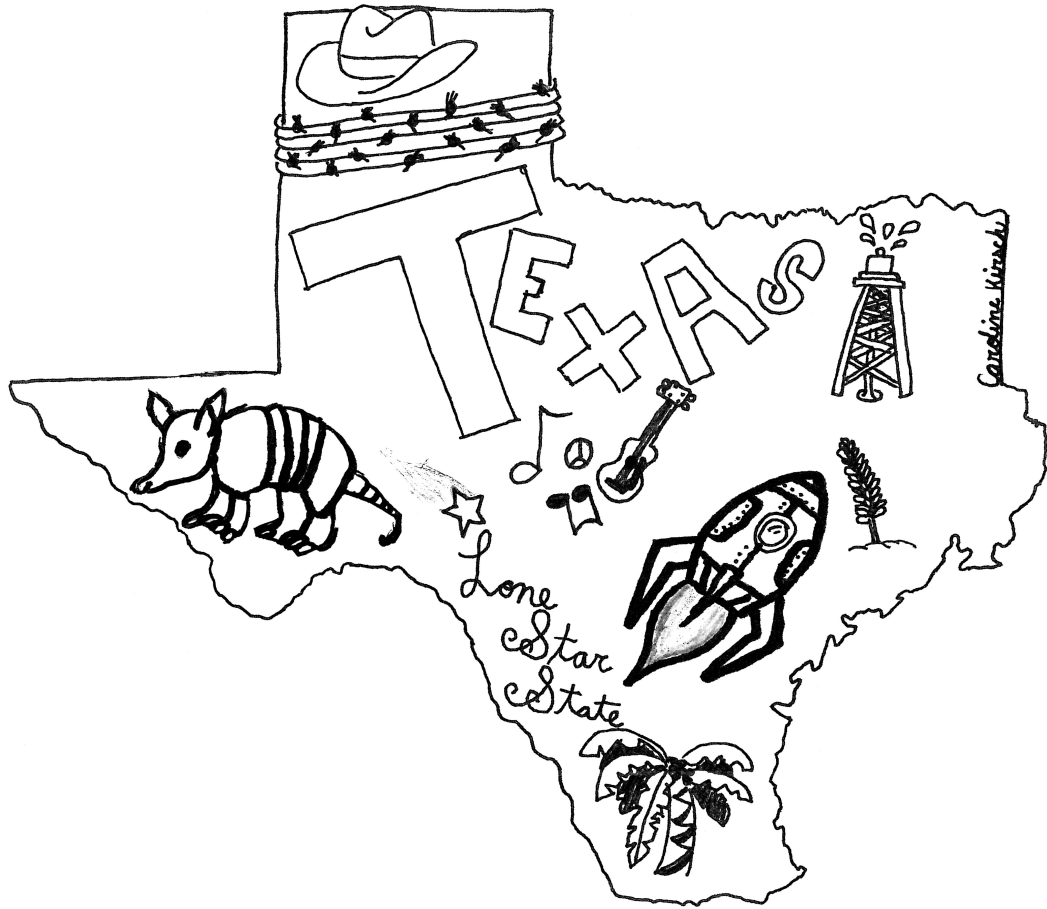
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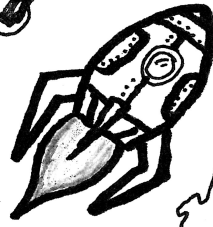
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TEXAS



Caroline Kirsch



Lone Star State



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.

Proclamation 41-3682

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

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

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 3rd day of July, 2019.

Greg Abbott, Governor
TRD-201902356



Proclamation 41-3683

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the Honorable Eric Johnson, in taking the Oath of Office as Mayor of the City of Dallas on June 17, 2019, has caused a vacancy to exist in Texas House of Representatives District No. 100, which is wholly contained within Dallas County; and

WHEREAS, Article III, Section 13 of the Texas Constitution and Section 203.002 of the Texas Election Code require that a special election be ordered upon such a vacancy, and Section 3.003 of the Texas Election Code requires the special election to be ordered by proclamation of the Governor; and

WHEREAS, pursuant to Section 203.004(a) of the Texas Election Code, the special election must be held on the first uniform date occurring on or after the 36th day after the date the election is ordered; and

WHEREAS, Tuesday, November 5, 2019, is the first uniform election date, occurring on or after the 36th day after the date the election is ordered;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held in Texas State House of Representatives District No. 100 on Tuesday, November 5, 2019, for the purpose of electing a state representative to serve out the unexpired term of the Honorable Eric Johnson.

Candidates who wish to have their names placed on the special election ballot must file their applications with the Secretary of State no later than 5:00 p.m. on Wednesday, September 4, 2019, in accordance with Section 201.054(a)(1) of the Texas Election Code.

Early voting by personal appearance shall begin on Monday, October 21, 2019, in accordance with Sections 85.001(a) and (c) of the Texas Election Code.

A copy of this order shall be mailed immediately to the Dallas County Judge which is the county within which Texas State House of Representatives District No. 100 is wholly contained, and all appropriate writs shall be issued and all proper proceedings shall be followed to the end that said election may be held to fill the vacancy in Texas State House of Representatives District No. 100 and its result proclaimed in accordance with law.

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 3rd day of July, 2019.

Greg Abbott, Governor
TRD-201902357



Proclamation 41-3684

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Hurricane Harvey devastated parts of Texas in 2017, and many affected jurisdictions are still recovering; and

WHEREAS, other hurricanes have produced significant damage and have caused or threatened loss of life in Texas and nearby states; and

WHEREAS, as these past storms demonstrated, hurricanes pose a serious threat to Texans, producing heavy winds, storm surges, torrential rains, inland flooding, and tornadoes; and

WHEREAS, all Texans, particularly Gulf Coast residents, must be aware of the dangers that hurricanes present and remain vigilant, especially between June 1 and November 30 when hurricanes are most likely to occur; and

WHEREAS, Senate Bill 285, which was passed by the 86th Legislature and signed into law on June 10, 2019, and which becomes effective September 1, 2019, will require a gubernatorial proclamation to be issued each year about hurricane preparedness; and

WHEREAS, the 2019 hurricane season is already underway and the most dangerous time in Texas for hurricanes is late summer, making it appropriate to issue a proclamation consistent with the spirit of Senate Bill 285 at this time;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the authority vested in me by the Constitution and laws of the State of Texas, do hereby proclaim the need for heightened hurricane preparedness during the 2019 hurricane season. I urge all Texans, including residential and commercial property owners, to ensure that their property and communities are prepared for the 2019 hurricane season. It is important to remain mindful of the dangers presented by hurricanes, to

stay informed about current threats, and to take steps toward preparedness.

State agencies should review and update their hurricane preparedness plans. All Texas municipalities and counties, the Texas Division of Emergency Management, the Texas Education Agency, the Office of the Comptroller, the Texas Department of Insurance, and the Department of State Health Services should, to the extent practicable, conduct community outreach and education activities on hurricane preparedness to help Texas residents prepare for hurricane season.

Planning and preparation by all potentially affected residents can greatly reduce loss of life and property. Families should designate a safe place to meet in case of evacuation, develop an emergency plan for communicating with relatives and friends in other areas, and assemble a "readiness kit" of important supplies. Everyone should heed all warnings, information, and instructions provided by local officials as well as emergency management personnel.

Together, we can continue to make a difference.

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 July, 2019.

Greg Abbott, Governor

TRD-201902358



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-0295-KP

Requestor:

The Honorable Garnet Coleman
Chair, Committee on County Affairs
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Distribution of county transportation grant funds appropriated under Senate Bill 500 (RQ-0295-KP)

Briefs requested by August 19, 2019

RQ-0296-KP

Requestor:

The Honorable Laurie K. English
District Attorney

112th Judicial District

Post Office Box 1187

Ozona, Texas 76943

Re: Whether a municipality may use tax revenue for a visitor information center owned and operated by a Chamber of Commerce (RQ-0296-KP)

Briefs requested by August 20, 2019

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

TRD-201902337

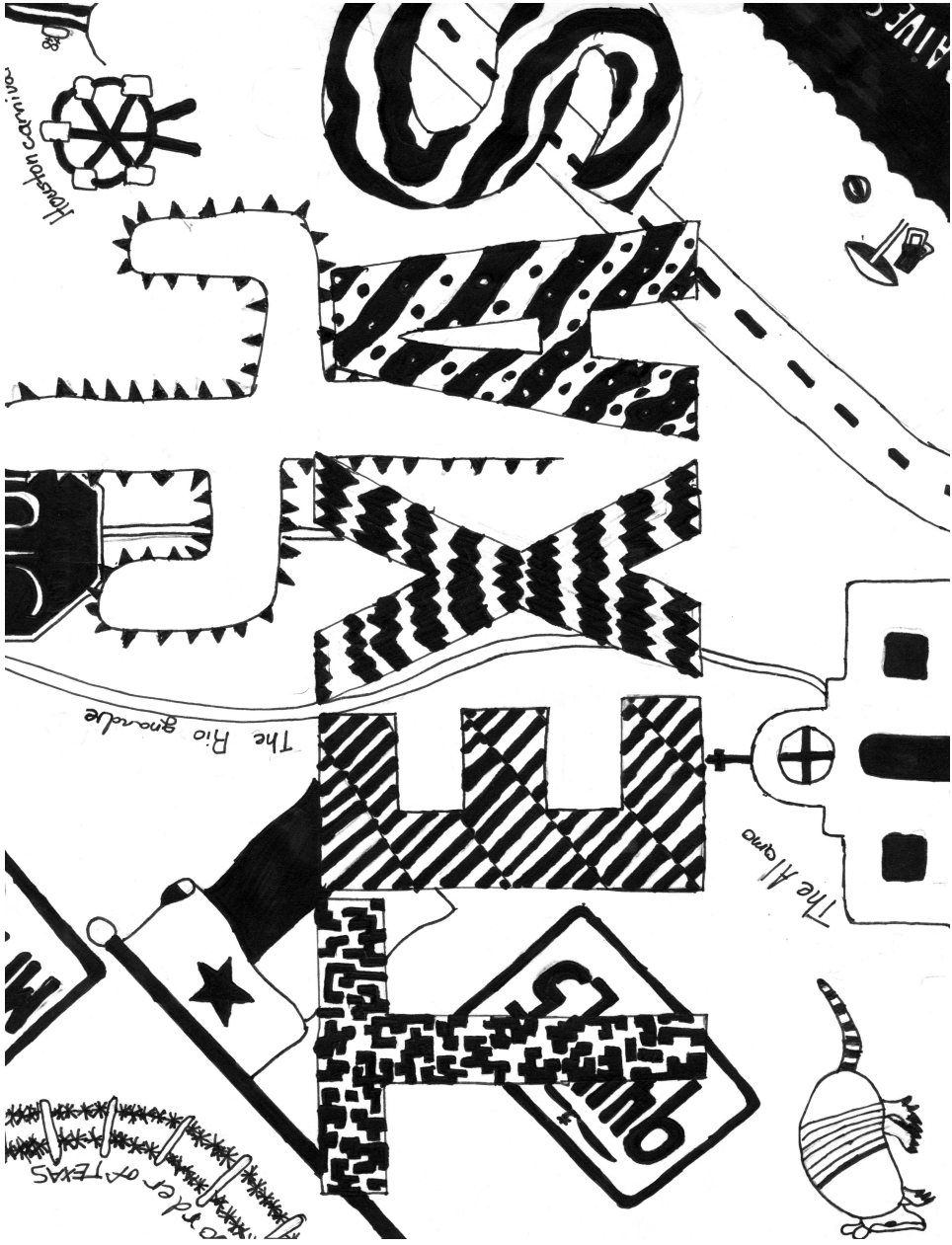
Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: July 23, 2019





Houston carnival

The Rio Grande

The Alamo

order of TEXAS

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 4. TEXAS MILITARY

PREPAREDNESS COMMISSION

SUBCHAPTER B. DEFENSE ECONOMIC

ADJUSTMENT ASSISTANCE GRANT

PROGRAM

1 TAC §§4.32, 4.35, 4.36

The Texas Military Preparedness Commission (Commission) proposes amendments to 1 TAC §§4.32, 4.35, and 4.36, concerning the Defense Economic Adjustment Assistance Grant program under Subchapter E, Chapter 436 of the Texas Government Code.

EXPLANATION OF PROPOSED AMENDMENTS

The Defense Economic Adjustment Assistance Grant (DEAAG) program offers grants to eligible local governmental entities that the Commission determines may be adversely or positively affected by an anticipated, planned, announced, or implemented action of the United States Department of Defense to close, reduce, increase, or otherwise realign defense worker jobs or facilities. The primary purpose of the proposed amendments to the rules is to update the criteria used to award such grants based on latest practices and in response to statutory revisions to the Texas Government Code enacted by the 86th Legislature, Regular Session, in Senate Bill 1443, effective September 1, 2019 (SB 1443).

The Commission's current rules at 1 TAC §4.32 establish a numeric threshold at which the loss of defense worker jobs is considered significant for purposes of determining the eligibility of a local government entity to receive a grant under the DEAAG program. The Commission proposes to amend the rule to remove this unnecessary numeric threshold in order to allow the Commission to determine when the loss of defense worker jobs is considered significant.

Effective as of September 1, 2019, SB 1443 will remove from statute certain factors required to be considered in evaluating DEAAG applications and will instead allow the Commission to establish any additional criteria used in such evaluations. The proposed amendments to §4.36 will generally remove such factors from the evaluation of DEAAG applications, as well as remove other criteria, such as the extent to which displaced defense workers will be retrained, that are difficult to measure and assess or are otherwise outdated or duplicative. In place of such criteria, the proposed amendments will enable the Commission to determine additional criteria set out in the grant solicitation.

Finally, the Commission proposes to amend §4.35 to eliminate the requirement that applicants provide certain information in their DEAAG applications, as that information will no longer be needed as a result of the updated evaluation criteria or is otherwise no longer helpful.

FISCAL NOTE

Keith Graf, Executive Director of the Texas Military Preparedness Commission, has determined that for each year of the first five years in which the proposed amendments are in effect, there are no expected fiscal implications for the state or local governments as a result of enforcing or administering the proposed amendments. Mr. Graf has further determined that the proposed amendments may affect certain local economies and geographic areas differently than other local economies and geographic areas depending on which local governmental entities receive a grant under the DEAAG program as a result of the proposed amendments. But the effect on any particular local economy or geographic area is unknown. There is no anticipated effect on local employment or local economies as a whole because the aggregate amount of grants issued under the DEAAG program will remain unchanged as a result of the proposed amendments.

PUBLIC BENEFIT AND COSTS

Mr. Graf has also determined that for each year of the first five years in which the proposed amendments are in effect, the public benefit anticipated as a result of enforcing or administering the proposed amendments will be to implement the statutory provisions of SB 1443 and to allow the Commission flexibility to adjust the grant criteria in response to the needs of communities with military installations and the changing priorities and actions of the Department of Defense. There are no anticipated economic costs to persons required to comply with the proposed amendments. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

Finally, Mr. Graf has determined that for each year of the first five years the proposed amendments are in effect, the amendments will have the following effect on government growth. The proposed amendments will not create or eliminate any government programs and will not create or eliminate any employee positions. Additionally, the proposed amendments will not have an effect on appropriations to the Commission and will not change any fees paid to the Commission. The proposed amendments do not create a new regulation. The proposed amendments limit existing regulations in that they reduce the number of DEAAG application requirements and evaluation criteria in the rules, but the proposed amendments also expand existing regulations by allowing the Commission to establish additional DEAAG evalu-

ation criteria not set out in rule and to determine the significance of job loss for purposes of eligibility for a grant. While no rules are repealed in their entirety, the proposed amendments do remove certain DEAG application requirements, evaluation criteria, and the threshold for significant job loss. Furthermore, the proposed amendments neither increase nor decrease the number of individuals subject to the applicability of the rules, though additional local governmental entities may be eligible to receive a grant under the DEAG program after the proposed amendments take effect. The proposed amendments are not anticipated to affect this state's economy.

SUBMITTAL OF COMMENTS

Written comments regarding the proposed rule amendments may be submitted to Alexandra Taylor, Office of the Governor, Texas Military Preparedness Commission, P.O. Box 12428, Austin, Texas 78711 or to Alexandra.Taylor@gov.texas.gov with the subject line "TMPC Rules." The deadline for receipt of comments is 5:00 p.m. CST on September 2, 2019. All requests for a public hearing on the proposed rule amendments, submitted under the Administrative Procedure Act, must be received by the Commission no more than fifteen (15) days after the notice of proposed changes in the sections that have been published in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are proposed under Government Code, §436.101(f), which provides that the Commission can adopt rules necessary to implement its duties.

CROSS REFERENCE TO STATUTE:

Subchapter E, Chapter 436, Government Code, as amended by Senate Bill 1443, 86th Legislature, Regular Session.

§4.32. Eligibility for Funds.

(a) A local governmental entity is eligible for a grant under this program if the governing board determines that it represents an adversely affected defense community that requires assistance because of a significant loss of defense worker jobs attributed to the following event(s):

- (1) The proposed or actual establishment, realignment, or closure of a defense facility;
- (2) The cancellation or termination of a United States Department of Defense contract or the failure of the Department of Defense to proceed with an approved major weapons system program;
- (3) A publicly announced planned major reduction in Department of Defense spending that would directly and adversely affect the community;
- (4) The closure or a significant reduction of the operations of a defense facility as the result of a merger, acquisition, or consolidation of a defense contractor operating the facility.

(b) A local governmental entity is eligible for a grant under this program if the governing board determines that it represents a positively affected community as a result of the gain of new or expanded military missions and defense workers, including military and civilian personnel, as a result of the Base Realignment and Closure process.

~~(c) The loss of defense worker jobs is considered significant if, within the jurisdiction of the local governmental entity applying for the grant, a direct loss of defense worker jobs meets or exceeds the following:~~

~~[(1) 2,500 defense worker jobs in any area of the municipality or county that is located in an urbanized area of a metropolitan statistical area as defined by the United States Census Bureau;]~~

~~[(2) 1,000 defense worker jobs in any area of the municipality or county that is not located in an urbanized area of a metropolitan statistical area as defined by the United States Census Bureau; or]~~

~~[(3) A defense worker job loss of one percent of the jobs in the municipality or county. The percentage of job loss is arrived at by dividing the number of defense worker jobs lost or projected to be lost by the total civilian employment number in the municipality or county.]~~

~~(c) [(d)] The local governmental entity making application for the grant must provide adequate documentation of defense worker job loss during the period between the beginning of the federal fiscal year during which the event described in subsection (a) of this section is finally approved and the date that the event is substantially completed. In order to establish eligibility, this documentation must include:~~

~~(1) Defense worker baseline data representing the number of defense workers employed during the fiscal year of the event described in subsection (a) of this section;~~

~~(2) Number of defense worker jobs lost during the period between the fiscal year that the event was announced and the date the event is substantially complete;~~

~~(3) Total number of people currently employed within the jurisdiction making application; and~~

~~(4) Average defense worker salaries.~~

§4.35. Application for Funds.

(a) The Commission shall develop a formal application form to be included in the formal application process to assist in the evaluation of the grant submission. The application may require certain attachments and certifications.

(b) At a minimum the application for funds will include:

(1) A detailed overview of the project and the use of the funds;

(2) An overview of the event(s) that qualify the local government, under the eligibility criteria described in §4.32 of this title (relating to Eligibility for Funds), to apply for the grant program;

(3) An impact statement detailing the adverse, positive, or proposed effect caused by the event(s) described in §4.32 [§4.32(a)] of this title on the local governmental entity;

(4) Information on the community's efforts to secure other funding sources; and

(5) A detailed financial plan for the project. [;]

~~[(6) A summary of the extent to which the local governmental entity has used its existing resources to promote local economic development and to promote private investment to create or retain jobs in the area;]~~

~~[(7) Efforts made by the government entity to retain or recruit qualified businesses;]~~

~~[(8) The amount of any previously awarded funds under this program and the number of jobs created from this award; and]~~

~~[(9) The anticipated number of new direct permanent jobs to be created or retained and the economic benefit to the community if the application is successful and the project is funded.]~~

§4.36. Processing and Review of Application.

(a) The local governing body will submit applications for the program to the Texas Military Preparedness Commission.

(b) Applications or additional information received after the application deadline will not be considered.

(c) The Texas Military Preparedness Commission will:

(1) Publicize the program to potential applicants and provide grant solicitation information; and

(2) Evaluate each application for completeness.

(d) The Commission may assist a local government entity in applying for a grant.

(e) The Director will:

(1) Appoint a review panel consisting of himself and two to four full-time employees from the Office of the Governor evaluate applications; and

(2) Appoint a review panel chairman.

(f) The Review Panel will:

(1) Review applications, score, and make recommendations to the governing board;

(2) Provide evaluations and recommendations for grant awards for all grant applications received based on but not limited to the following criteria:

(A) If the effect on the local governmental entity is adverse or positive;

~~[(B) If the effect on the local governmental entity is positive and if that affect was a result of the United States DoD base realignment and closure process;]~~

~~[(C)]~~ The significance of the number of jobs lost, gained or retained in relation to the workforce in the local governmental entity's jurisdiction [and the effect on the area's current and/or projected economy and tax revenue];

~~[(D) The extent to which dislocated defense workers will be retrained and/or retained as qualified employees within the defense community;]~~

~~[(E) The extent to which the local governmental entity has used its existing resources to promote local economic development;]~~

~~[(F) The amount of any grant(s) that the local governmental entity has previously received under this subchapter;]~~

~~[(G) The anticipated number of jobs to be created or retained in relation to the amount of the grant sought;]~~

~~[(H) The extent to which the grant will affect the region in which the local governmental entity is located; and]~~

~~[(I) If the project will have a negative effect on the encroachment of a defense base within the governmental entity's defense community.]~~

~~[(J)]~~ The added military value of the project; and [in accordance with the guidelines established by the Department of Defense.]

~~[(K) The installation's most recent BRAC score, with preference given to those scoring below the national average.]~~

~~[(L) any other criteria established by the Commission as set forth in a grant solicitation.~~

(g) The Governing Board will:

(1) Review and score applications using the same criteria as the Review Panel;

(2) Ensure that one defense community is not favored over another in approving or disapproving funding;

(3) Review and take into consideration those recommendations of the Review Panel and the governing board's own score;

(4) Review and approve or disapprove the award of the grant by a roll call majority vote; and

(5) Provide a statement of explanation for each application approved or disapproved that is not in agreement with the Review Panel recommendations.

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

Filed with the Office of the Secretary of State on July 17, 2019.

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Kate Miller

Assistant General Counsel

Office of the Governor

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For further information, please call: (512) 475-1475



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER D. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §354.1707, concerning Performer Valuations. HHSC also proposes new Division 8, concerning DSRIP Program Demonstration Years 9-10, and within the new division: new §354.1729, concerning Definitions; new §354.1731, concerning Medicaid and Low-income or Uninsured Patient Population by Provider; new §354.1733, concerning Regional Healthcare Partnerships (RHPs); new §354.1735, concerning Participants; new §354.1737, concerning RHP Plan Update for DY9-10; new §354.1739, concerning RHP Plan Update Review; new §354.1741, concerning RHP Plan Update Modifications; new §354.1743, concerning Independent Assessor; new §354.1745, concerning Categories; new §354.1747, concerning Performer Valuations; new §354.1749, concerning Category A Requirements for Performers; new §354.1751, concerning Category B Requirements for Performers; new §354.1753, concerning Category C Requirements for Performers; new §354.1755, concerning Category D Requirements for Performers; and new §354.1757, concerning Disbursement of Funds.

BACKGROUND AND PURPOSE

On December 12, 2011, the Centers for Medicare & Medicaid Services (CMS) approved Texas' request for a new Medicaid

demonstration waiver entitled "Texas Healthcare Transformation and Quality Improvement Program" in accordance with section 1115 of the Social Security Act. This waiver authorized the establishment of the Delivery System Reform Incentive Payment (DSRIP) program. The DSRIP program provides incentive payments to hospitals, physician practices, community mental health centers, and local health departments to support their efforts to enhance access to health care, the quality of care, and the health of patients and families served.

The initial waiver was approved through September 30, 2016, and an initial extension was granted through December 31, 2017. On December 21, 2017, CMS granted a five-year extension of the waiver through September 30, 2022.

The Program Funding and Mechanics (PFM) protocol and Measure Bundle Protocol govern DSRIP for Demonstration Years (DYs) 9-10 (October 1, 2019 through September 30, 2021). HHSC posted the draft PFM protocol proposal for DYs 9-10, along with a survey to solicit stakeholder feedback on the proposal, to the Transformation Waiver website on January 3, 2019. HHSC revised the PFM protocol proposal based on these survey responses and submitted it to CMS on March 29, 2019. The proposed new rules closely align with the PFM protocol proposal submitted to CMS. HHSC will update these rules, as necessary, in accordance with CMS guidance.

The purpose of the new rules is to specify the DSRIP program requirements for DYs 9-10 consistent with the PFM protocol HHSC has proposed to CMS. The purpose of the amendment to §354.1707, relating to Performer Valuations, is to reflect the reduction to the Regional Healthcare Partnership (RHP) 9 private hospital valuation and minimum private hospital valuation per demonstration year (DY) for DYs 7-8 due to the closure of a private hospital in that RHP.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §354.1707, Performer Valuations, revises the RHP 9 private hospital valuation and minimum private hospital valuation per DY for DYs 7-8.

Proposed new §354.1729, Definitions, defines terms for the new division.

Proposed new §354.1731, Medicaid and Low-income or Uninsured Patient Population by Provider, describes the methodology for classifying individuals as Medicaid or low-income or uninsured for the purposes of determining the Medicaid and Low-income or Uninsured Patient Population by Provider.

Proposed new §354.1733, Regional Healthcare Partnerships (RHPs), describes the organization of RHPs.

Proposed new §354.1735, Participants, describes requirements for the RHP participants, including anchors, intergovernmental transfer (IGT) entities, and performers. Anchor requirements include coordinating the RHP plan update. IGT entity requirements include providing the non-federal share of DSRIP pool payments for the entities with which they collaborate. Performer requirements include submitting to the anchor the information required for the RHP plan update and semi-annual reporting.

Proposed new §354.1737, RHP Plan Update for DYs 9-10, describes the requirements for the RHP plan update for DYs 9-10. It specifies that the following information must be included in the RHP plan update for each performer in the RHP: 1) an updated definition of the performer's system, if needed; 2) any updates to the performer's DYs 7-8 Category A core activities for DYs 9-10;

3) updates to the performer's Category B total Patient Population by Provider (PPP) or MLIU PPP for DYs 5-8; 4) the forecasted number of Medicaid individuals served in DYs 9-10 and the forecasted number of LIU individuals served in DYs 9-10 based on the number of MLIU individuals served in DYs 7-8; 5) if the performer is a hospital or physician practice, the performer's selected Category C Measure Bundles and measures, requests for allowable changes to the Category C Measure Bundles and measures as described in the Program Funding and Mechanics Protocol, related strategies associated with each of the performer's Category C Measure Bundles for DYs 7-8 that the performer implemented in DYs 7-8, and the related strategies associated with each of the performer's Category C Measure Bundles for DYs 9-10 that the performer plans to implement in DY 9; 6) if the performer is a community mental health center or local health department, the performer's selected Category C measures, requests for allowable changes to the Category C measures as described in the Program Funding and Mechanics Protocol, the related strategies associated with each of the performer's Category C measures for DYs 7-8 that the performer implemented in DYs 7-8, and the related strategies associated with each of the performer's Category C measures for DYs 9-10 that the performer plans to implement in DY 9; 7) a description of the transition of the performer's DYs 2-6 projects to its selected Category C Measure Bundles or measures; 8) the performer's Category D Statewide Reporting Measure Bundle; 9) the performer's DSRIP valuation amounts; and 10) the performer's sources of non-federal funds by category and demonstration year.

Proposed new §354.1739, RHP Plan Update Review, describes the DYs 9-10 RHP Plan Update review process. HHSC will review each RHP plan update, verify it meets the RHP plan update requirements, and do one of the following: 1) approve it; 2) request additional information; or 3) request that the anchor modify it.

Proposed new §354.1741, RHP Plan Update Modifications, describes the modifications that can be made to the HHSC-approved RHP plan update for DYs 9-10. A performer may modify: 1) its system definition; 2) its Category B MLIU PPP; and 3) various elements of its Category C Measure Bundles and measures.

Proposed new §354.1743, Independent Assessor, describes the roles and responsibilities of the independent assessor for DYs 9-10.

Proposed new §354.1745, Categories, describes the four categories of DSRIP for DYs 9-10, which are as follows: 1) Category A - Required Reporting; 2) Category B MLIU PPP; 3) Category C - Measure Bundles and Measures; and 4) Category D - Statewide Reporting Measure Bundle.

Proposed new §354.1747, Performer Valuations, describes the methodology for determining a performer's valuation per DY for DYs 9-10. If a performer has a DY 8 total valuation less than or equal to \$1 million, its total valuation for each demonstration year of DY 9 and DY 10 is equal to its total valuation for DY 8. These valuations are subtracted from the DY 9 and DY 10 DSRIP pool amounts. If a performer has a DY 8 total valuation that is greater than \$1 million, its total valuation for each demonstration year of DY 9 and DY 10 is calculated as follows: 1) The remaining DY 9 and DY 10 DSRIP pool amounts are divided by the DY 8 valuation for all performers with a DY 8 total valuation greater than \$1 million to determine the percentage reductions for DY 9 and DY 10; and 2) the performer's DY 8 valuation is multiplied by the percentage reduction in valuation from DY 8 for the applicable DY to determine the total valuation for each demonstration year of DY

9 and DY 10. However, no performer's total valuation for each demonstration year of DY 9 and DY 10 will be reduced to less than \$1 million. In addition, this section describes the performer valuation funding distribution among the DSRIP categories.

Proposed new §354.1749, Category A Requirements for Performers, describes the Category A requirements for performers, which include: reporting the following information during the second reporting period of each DY: 1) progress on, and updates to, core activities; 2) progress toward, or implementation of, Alternative Payment Models (APMs); 3) costs and savings of a core activity (for performers with a total valuation greater than or equal to \$1 million per DY); and 4) participation in a learning collaborative, stakeholder forum, or other stakeholder meeting.

Proposed new §354.1751, Category B Requirements for Performers, describes the Category B requirements for performers. It describes the information that performers must include in the RHP plan update for DYS 9-10. It also describes how the total PPP baseline, MLIU PPP baseline, MLIU PPP goal, MLIU PPP to total PPP ratio baseline, and allowable MLIU PPP goal variation will be updated as necessary. In addition, it describes what a performer must report to be eligible for payment of its MLIU PPP milestone for a DY.

Proposed new §354.1753, Category C Requirements for Performers, describes the Category C requirements for performers. It describes the following for hospitals and physician practices: 1) Measure Bundle and measure selection; 2) Measure Bundle valuations; 3) measure valuations; and 4) minimum point thresholds (MPTs). It describes the following for community mental health centers and local health departments: 1) measure selection; 2) measure valuations; and 3) MPTs. This proposed rule also describes the following for measures: 1) measurement periods; 2) milestones; 3) eligible denominator populations; 4) goal setting for P4P measures; and 5) the carry forward policy.

Proposed new §354.1755, Category D Requirements for Performers, describes the Category D requirements for performers. It describes the Statewide Reporting Measure Bundles, performer requirements for Category D payment, and Category D valuation.

Proposed new §354.1757, Disbursement of Funds, describes how performers earn DSRIP funds. It describes the Category A requirements to be eligible for payment of Categories B-D, and the basis for payment for Categories B-D.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state government.

There may be fiscal implications to local governments as a result of enforcing and administering the new sections as proposed. The proposed rules continue to allow HHSC to recoup DSRIP payments from performers in the event of an overpayment or disallowance by CMS, although HHSC cannot predict if such recoupments will be necessary. In addition, reduced pool allocations for DYS 9-10 will result in a 5.9 percent reduction for DY 9 and a 19.5 percent reduction for DY 10 as compared to DYS 7-8. The proposed rules implement the necessary pool reductions for DYS 9-10 through a proportional provider valuation reduction. However, participation in DSRIP and DSRIP DYS 9-10 is voluntary. Therefore, HHSC lacks sufficient data to provide an

estimate of the possible local government fiscal impact for recoupments and changes to provider valuations for DYS 9-10.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT AND COSTS

Stephanie Muth, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be improved quality of care for individuals served by DSRIP performers.

Trey Wood has determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because participation in DSRIP is voluntary.

TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create a new rule;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) HHSC has insufficient information to determine the proposed rules' effect on the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as there is no requirement for hospitals to alter current business practices. Furthermore, participation in DSRIP and DSRIP DYS 9-10 is voluntary.

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC, Mail Code W-201, P.O. Box 13247, Austin, Texas 78711-3247, or by email to TXHealthcareTransformation@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 19R041" in the subject line.

DIVISION 7. DSRIP PROGRAM DEMONSTRATION YEARS 7-8

1 TAC §354.1707

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid payments.

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

§354.1707. *Performer Valuations.*

(a) If a performer participated in DSRIP during the initial demonstration period or DY6, its total valuation per demonstration year (DY) for DY7 and DY8 is equal to its total valuation for DY6 with the following exceptions:

(1) If HHSC determined that a DSRIP project was ineligible to continue in DY6, the performer affected by such a determination may use the funds associated with the DSRIP project beginning in DY7.

(2) If a performer withdrew a DSRIP project between June 30, 2014, and June 30, 2016, the performer may use the funds associated with the DSRIP project beginning in DY7.

(3) If a performer participated in DSRIP during the initial demonstration period but not during DY6 and has a total valuation per DY for DY7-8 less than \$250,000, the performer may request in the RHP plan update to increase its total valuation to up to \$250,000 per DY for DY7-8.

(b) If a performer did not participate in DSRIP during the initial demonstration period or DY6, but begins participating in DSRIP in DY7 in accordance with §354.1721 of this division (relating to Remaining Funds for Demonstration Years (DYs) 7-8), its RHP determines its valuation in accordance with §354.1721.

(c) A performer's valuation must comport with the following funding distribution for DY7 and DY8:

Figure: 1 TAC §354.1707(c) (No change.)

(d) If a performer's RHP meets its minimum private hospital valuation per DY for DY7-8 as described in Figure: 1 TAC §354.1707(d)(2), the performer may allocate its DY7 and DY8 valuations as follows:

(1) 55 percent of its DY7 valuation and 75 percent of its DY8 valuation to Category C - Measure Bundles and Measures; and

(2) 15 percent of its DY7 valuation and 15 percent of its DY8 valuation to Category D - Statewide Reporting Measure Bundle.

Figure: 1 TAC §354.1707(d)(2)

[Figure: 1 TAC §354.1707(d)(2)]

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

Filed with the Office of the Secretary of State on July 18, 2019.

TRD-201902287

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 1, 2019

For further information, please call: (512) 923-0644



DIVISION 8. DSRIP PROGRAM DEMONSTRATION YEARS 9-10

1 TAC §§354.1729, 354.1731, 354.1733, 354.1735, 354.1737, 354.1739, 354.1741, 354.1743, 354.1745, 354.1747, 354.1749, 354.1751, 354.1753, 354.1755, 354.1757

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid payments.

The new rules affect Chapter 531 of the Texas Government Code and Chapter 32 of the Texas Human Resources Code. No other statutes, articles, or codes are affected by this proposal.

§354.1729. *Definitions.*

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

(1) Core activity--An activity implemented by a performer to improve patient health or quality of care. It may be implemented by a performer to achieve the performer's Category C measure goals or it may be connected to the mission of the performer's organization.

(2) Delivery System Reform Incentive Payment (DSRIP) pool--Funds available to DSRIP performers under the waiver for their efforts to enhance access to health care, the quality of care, and the health of patients and families they serve.

(3) Demonstration Year (DY) 6--Federal fiscal year 2017 (October 1, 2016 - September 30, 2017).

(4) Demonstration Year (DY) 7--Federal fiscal year 2018 (October 1, 2017 - September 30, 2018).

(5) Demonstration Year (DY) 8--Federal fiscal year 2019 (October 1, 2018 - September 30, 2019).

(6) Demonstration Year (DY) 9--Federal fiscal year 2020 (October 1, 2019 - September 30, 2020).

(7) Demonstration Year (DY) 10--Federal fiscal year 2021 (October 1, 2020 - September 30, 2021).

(8) Demonstration Year (DY) 11--Federal fiscal year 2022 (October 1, 2021 - September 30, 2022).

(9) Denominator--As it relates to a Category C measure's volume:

(A) the number of Medicaid and low-income or uninsured (MLIU) cases; or

(B) one of the following, which the performer receives approval from HHSC to use for the measure:

(i) the number of all-payer cases;

(ii) the number of Medicaid cases; or

(iii) the number of low-income or uninsured (LIU) cases.

(10) Encounter--An encounter, for the purposes of Patient Population by Provider, is any physical or virtual contact between a performer and a patient during which an assessment or clinical activity is performed, with exceptions including those in subparagraph (B) of this definition.

(A) An encounter must be documented by the performer.

(B) A phone call or text message is not considered an encounter.

(11) Federal poverty level (FPL)--The household income guidelines issued annually and published in the *Federal Register* by the United States Department of Health and Human Services.

(12) Initial demonstration period--The first five demonstration years (DYs) of the waiver, or December 12, 2011 through September 30, 2016.

(13) Innovative measure--A new measure developed for use in Category C.

(14) Insignificant volume--For most Category C measures, the denominator is considered to have insignificant volume if its volume is greater than zero but less than 30.

(15) Low-income or Uninsured (LIU)--An individual who is not enrolled in Medicaid or the Children's Health Insurance Program who meets one of the following criteria:

(A) is at or below 200 percent of the FPL; or

(B) does not have health insurance.

(16) Measure--A mechanism to assign a quantity to an attribute by comparison to a criterion. As it relates to Category C, a measure is a standardized tool to measure or quantify healthcare processes, outcomes, patient perceptions, organizational structure, or systems that are associated with the ability to provide high-quality health care.

(17) Measure Bundle--A grouping of measures under Category C that share a unified theme, apply to a similar population, and are impacted by similar activities. Measure Bundles are selected by hospitals and physician practices. All Measure Bundles include required measures, and some Measure Bundles also include optional measures.

(18) Measure Bundle Protocol--A master list of potential Category C Measure Bundles and measures, as well as Category D Statewide Reporting Measure Bundles and measures.

(19) Medicaid and low-income or uninsured (MLIU)--An individual who:

(A) is enrolled in Medicaid;

(B) is enrolled in the Children's Health Insurance Program;

(C) is at or below 200 percent of the FPL; or

(D) does not have health insurance.

(20) Milestone--An objective of DSRIP performance on which DSRIP payments are based.

(21) Minimum point threshold (MPT)--The minimum number of points that a performer must meet in selecting its Category C Measure Bundles or measures, as described in §354.1753 of this division (relating to Category C Requirements for Performers).

(22) No volume--For Category C measures, the denominator is considered to have no volume if its volume is equal to zero. For a Category C population-based clinical outcome measure, the numerator is considered to have no volume if the volume is equal to zero.

(23) Quality improvement collaborative activity--An activity related to participating in a learning collaborative to improve targeted health outcomes. As included in Category C, a quality improvement collaborative activity is pay-for-reporting (P4R) in DY7-8.

(24) Patient Population by Provider (PPP)--The number of individuals in a performer's system for which there was an encounter during the applicable DY.

(25) Patient Population by Provider Goal (PPP Goal)--The target number of individuals in a performer's system for which there will be an encounter during the applicable DY.

(26) Performer--A provider enrolled in Texas Medicaid that participates in DSRIP and receives DSRIP payments.

(27) Population-based clinical outcome measure--A Category C clinical outcome measure that measures emergency department utilization or admissions for select conditions for all individuals in the Measure Bundle's target population. It may be required as pay-for-performance (P4P) or pay-for-reporting (P4R) based on the Measure Bundle and the hospital's or physician practice's MPT as specified in the Measure Bundle Protocol.

(28) Regional Healthcare Partnership (RHP) plan update--An RHP plan update for DY7-8 that is further updated for DY9-10, as further described in §354.1737 of this division (relating to RHP Plan Update).

(29) Related strategy--A strategy employed by a performer to improve performance on a measure.

(30) Significant volume--For most Category C measures, the denominator is considered to have significant volume if its volume is greater than or equal to 30.

(31) Statewide hospital factor (SHF)--A factor used to determine the MPT that takes into account a hospital's MLIU inpatient days and MLIU outpatient costs compared to all hospitals, as described in §354.1753 of this division.

(32) Statewide hospital ratio (SHR)--A factor used to determine the MPT that takes into account whether a hospital's DY7 DSRIP valuation is higher or lower than would be expected based on the hospital's MLIU inpatient days and MLIU outpatient costs compared to other hospitals, as described in §354.1753 of this division.

(33) System--A performer's patient care landscape, as defined by the performer, in accordance with the Program Funding and Mechanics Protocol and Measure Bundle Protocol. Essential functions or departments of a performer's provider type are required components that must be included in a performer's system definition.

(34) Target population--For a Category C Measure Bundle, the pool of individuals to be included in a measure denominator for which a hospital or physician practice is accountable for improvement.

(35) Volume--For Category C measure denominators, the total number of measured units in the denominator. Volume is used to determine the size of the population for which improvement is being measured.

§354.1731. Medicaid and Low-income or Uninsured Patient Population by Provider.

(a) For the purposes of determining the Medicaid and Low-income or Uninsured Patient Population by Provider (PPP):

(1) An individual is classified a Medicaid individual served if the individual was enrolled in Medicaid or the Children's Health Insurance Program at the time of at least one encounter during the applicable DY.

(2) An individual is classified a low-income or uninsured individual (LIU) served if the individual was either at or below 200 percent of the FPL or did not have health insurance at the time of at least one encounter during the applicable DY.

(3) If an individual was enrolled in Medicaid or the Children's Health Insurance Program at the time of one encounter during the applicable DY and was LIU at the time of a separate encounter during the applicable DY, that individual is classified as a Medicaid individual served.

§354.1733. Regional Healthcare Partnerships (RHPs).

(a) An RHP has geographic boundaries as prescribed by the Health and Human Services Commission (HHSC).

(b) An RHP is composed of one anchor and other participants, which may include intergovernmental transfer (IGT) entities, performers, and other regional stakeholders. A single entity may act in multiple roles.

(c) An IGT entity may participate in more than one RHP contingent upon HHSC approval.

(d) A performer may only participate in the RHP plan update for the RHP in which it is physically located. If a performer has physical locations in more than one RHP, the performer may be assigned to a single "home" RHP of its choosing and participate only in the RHP plan update for its "home" RHP.

§354.1735. Participants.

(a) Anchors.

(1) An anchor must:

(A) serve as the RHP's single point of contact with HHSC, except as specified in rule;

(B) facilitate transparent and inclusive meetings among participants to discuss RHP activities;

(C) coordinate RHP activities to help ensure that participants properly address both the needs of the region and the requirements placed upon the RHP;

(D) coordinate the update of the community needs assessment included in the RHP plan and submit the updated community needs assessment to HHSC, as prescribed by HHSC;

(E) coordinate with the RHP participants to update the RHP plan in accordance with §354.1737 of this division (relating to RHP Plan Update for DY9-10), the Program Funding and Mechanics Protocol, the Measure Bundle Protocol, and all other state or waiver requirements;

(F) submit the RHP plan update to HHSC, as prescribed by HHSC;

(G) post the approved RHP plan update to the RHP website;

(H) develop and submit an annual progress report on behalf of the RHP, in accordance with the Program Funding and Mechanics Protocol and HHSC requirements;

(I) develop and submit a learning collaborative plan, in accordance with the Program Funding and Mechanics Protocol and HHSC requirements;

(J) ensure that all confidential information obtained through its role as an anchor remains confidential as required by state and federal laws and regulations;

(K) ensure that all waiver information provided to it in its capacity as anchor is distributed to the RHP participants; and

(L) meet all other requirements as specified in the Program Funding and Mechanics Protocol.

(2) An anchor must not:

(A) request reimbursement from a Medicaid provider for the discharge of the anchor's responsibilities, although an anchor and other governmental entities within the RHP may agree to share such costs;

(B) delegate decision-making responsibilities concerning the interpretation of the waiver, HHSC policy, or actions or decisions that involve the exercise of discretion or judgment;

(C) require any IGT entity to provide DSRIP funds to any performers;

(D) require any participant to act as a DSRIP performer;

(E) prevent or in any way prohibit the collaboration between an IGT entity and a performer.

(3) An anchor may delegate ministerial functions such as data collection and reporting. Any entity to which ministerial functions are delegated under this division must comply with the roles, responsibilities, and limitations of an anchor.

(4) In addition to any funds received under §354.1747 of this division (relating to Performer Valuations), an anchor may be reimbursed for the cost of its administrative duties conducted on behalf of the RHP. The anchor must provide an IGT to HHSC for the purpose of obtaining federal matching funds in accordance with the Administrative Cost Claiming Protocol so that it can be reimbursed for such costs. An anchor may not recover more than the anchor's actual costs.

(b) IGT entities. An IGT entity:

(1) determines the allocation of its IGT funding consistent with state and federal requirements;

(2) participates in RHP planning;

(3) acting as a performer, selects Category C Measure Bundles or measures in accordance with §354.1753 of this division (relating to Category C Requirements for Performers);

(4) not acting as a performer, cooperates with a performer to select Category C Measure Bundles or measures in accordance with §354.1753 of this division;

(5) provides the non-federal share of DSRIP pool payments for the entities with which it collaborates; and

(6) may review DSRIP data submitted by associated performers.

(c) Performers. A performer:

(1) is one of the following provider types:

(A) hospital;

(B) physician practice;

(C) community mental health center; or

(D) local health department;

(2) submits to the anchor the information required for the RHP plan update, including the performer's selected Category C Measure Bundles or measures and other required information as described in §354.1737 of this division, the Program Funding and Mechanics Protocol, and the Measure Bundle Protocol;

(3) implements core activities to achieve the Category C measure goals in the RHP plan update;

(4) prepares and submits DSRIP data on a semi-annual basis;

(5) prepares and submits reports as required by HHSC and the Centers for Medicare & Medicaid Services;

(6) participates in RHP planning; and

(7) receives DSRIP.

§354.1737. RHP Plan Update for DY9-10.

(a) A performer may receive DSRIP only if HHSC has approved the RHP plan update for DY9-10 for the performer's RHP.

(b) An RHP plan update for DY9-10 must:

(1) meet the requirements listed in the Program Funding and Mechanics Protocol and the Measure Bundle Protocol;

(2) update the RHP's community needs assessment, if needed;

(3) include a list of IGT entities, performers, and other stakeholders involved in the development of the RHP plan update;

(4) include signed certifications from the performer's leadership and the performer's affiliated IGT entities that all the information contained within the RHP plan update for DY9-10 is true and accurate;

(5) describe the processes used to engage stakeholders including the public meetings held;

(6) include the total amount of estimated DSRIP funding to be used by demonstration year (DY);

(7) include for each performer:

(A) an updated definition of the performer's system, if needed;

(B) any updates to the performer's DY7-8 Category A core activities for DY9-10;

(C) updates to the performer's Category B total Patient Population by Provider (PPP) or MLIU PPP for DYs 5-8, if needed;

(D) the forecasted number of Medicaid individuals served in DY9-10 and the forecasted number of LIU individuals served in DY9-10 based on the number of MLIU individuals served in DY7-8;

(E) if the performer is a hospital or physician practice:

(i) the performer's selected Category C Measure Bundles and measures for DY9-10;

(ii) the performer's requests for allowable changes to its selected Category C Measure Bundles and measures, as described in the Program Funding and Mechanics Protocol and Measure Bundle Protocol;

(iii) the related strategies associated with each of the performer's Category C Measure Bundles for DY7-8 that the performer implemented in DY7-8; and

(iv) the related strategies associated with each of the performer's Category C Measure Bundles for DY9-10 that the performer plans to implement in DY9.

(F) if the performer is a community mental health center or local health department:

(i) the performer's selected Category C measures for DY9-10;

(ii) the performer's requests for allowable changes to its selected Category C measures, as described in the Program Funding and Mechanics Protocol and Measure Bundle Protocol;

(iii) the related strategies associated with each of the performer's Category C measures for DY7-8 that the performer implemented in DY7-8; and

(iv) the related strategies associated with each of the performer's Category C measures for DY9-10 that the performer plans to implement in DY9.

(G) the performer's Category D Statewide Reporting Measure Bundle;

(H) the performer's DSRIP valuation amounts; and

(I) the performer's sources of non-federal funds by category and DY; and

(8) include a narrative explaining the performer's rationale for its Category C Measure Bundle and measure selections for DY9-10.

§354.1739. RHP Plan Update Review.

(a) HHSC reviews and assesses each submitted RHP plan update to determine whether it meets the following criteria:

(1) It is in the prescribed format.

(2) It contains all required elements described in the Program Funding and Mechanics Protocol and the Measure Bundle Protocol and is consistent with the waiver Special Terms and Conditions.

(3) It meets the requirements for Category A - Required Reporting, Category B - MLIU Patient Population by Provider (PPP), Category C - Measure Bundles and Measures, and Category D - Statewide Reporting Measure Bundles, as described in the Program Funding and Mechanics Protocol and the Measure Bundle Protocol.

(4) The funding amount and distribution is in accordance with the Program Funding and Mechanics Protocol.

(5) It is consistent with the goals of the DSRIP program and the objectives of the Medicaid program.

(b) Upon completion of HHSC's review, HHSC notifies the anchor that HHSC:

- (1) has approved the RHP plan update;
- (2) requires additional information to complete its review;

or

(3) requires modification of the RHP plan update, including the specific deficiencies in the RHP plan update that HHSC has identified.

(c) The anchor must respond to a notification as described in subsection (b) of this section in accordance with the directions in the notification. Failure to respond in a timely manner may result in denial of the RHP plan update.

(1) If HHSC requires additional information to complete its review, the anchor must provide the additional information within the time frame specified in the notice.

(2) If HHSC requires a change in the RHP plan update, the anchor must submit a corrected RHP plan update that addresses the specific deficiencies within the time frame specified in the notice.

(d) If after responding to the notice as described in subsection (c) of this section an RHP plan update is not approved, the affected entities may request a review.

(1) If an RHP plan update is not approved, the anchor may request a review by HHSC in accordance with paragraph (3) of this subsection.

(2) The anchor must submit a request for review in writing to HHSC within 12 calendar days of the date HHSC sent the notification under subsection (b) of this section.

(3) The review is:

(A) limited to the RHP's allegations of factual or calculation errors;

(B) supported by documentation submitted by the RHP or used by HHSC in making its original determination; and

(C) not an adversarial hearing.

(4) HHSC notifies the RHP of the results of the review in a timely manner.

§354.1741. RHP Plan Update Modifications.

A performer may submit a request to HHSC to modify elements of the RHP plan update for the performer's RHP prospectively, as described in the Program Funding and Mechanics Protocol, including the performer's:

(1) System definition;

(2) Category B Medicaid and Low-income Uninsured (MLIU) Patient Population by Provider (PPP);

(3) Category C measure payer types for reporting milestones;

(4) Category C measure payer type for goal achievement milestones;

(5) Category C optional measures if the performer is a hospital or physician practice; or

(6) Category C measures if the performer is a:

(A) community mental health center;

(B) local health department; or

(C) hospital or physician practice that has received approval from HHSC to select measures, rather than Measure Bundles, from the Measure Bundle Protocol as described in §354.1753 of this division (relating to Category C Requirements for Performers).

§354.1743. Independent Assessor.

The independent assessor monitors DSRIP performers for compliance with DSRIP program requirements and objectives.

(1) All RHP plan updates are subject to potential audits, including review by the independent assessor, during ongoing compliance monitoring.

(2) Upon request, performers must have available for review by the independent assessor, HHSC, the Centers for Medicare & Medicaid Services, and any other federal entity, all supporting data and back-up documentation demonstrating performance for a milestone as described under an RHP plan update for DSRIP payments.

(3) Failure of a performer to provide supporting documentation demonstrating performance for a milestone in a timely manner may result in recoupment of DSRIP payments or withholding of future DSRIP payments.

§354.1745. Categories.

There are four categories for demonstration years (DYs) 9-10:

(1) Category A - Required Reporting, which requires performers to report their progress on core activities, alternative payment model arrangements, costs and savings, and collaborative activities, as described in §354.1749 of this division (relating to Category A Requirements for Performers);

(2) Category B - Medicaid and Low-income or Uninsured (MLIU) Patient Population by Provider (PPP), which requires performers to maintain or increase the number of MLIU individuals served, as described in §354.1751 of this division (relating to Category B Requirements for Performers);

(3) Category C - Measure Bundles and Measures, which requires performers to improve their performance on clinical outcome and process measures, as described in §354.1753 of this division (relating to Category C Requirements for Performers); and

(4) Category D - Statewide Reporting Measure Bundles, which requires performers to report on certain measures based on their provider type, as described in §354.1755 of this division (relating to Category D Requirements for Performers).

§354.1747. Performer Valuations.

(a) A performer's total valuation per demonstration year (DY) for DY9 and DY10 is calculated as follows:

(1) If a performer has a DY8 total valuation that is less than or equal to \$1 million, its total valuation for each demonstration year of DY9 and DY10 is equal to its total valuation for DY8. These valuations are subtracted from the DY9 and DY10 DSRIP pool amounts.

(2) If a performer has a DY8 total valuation that is greater than \$1 million, its total valuation for each demonstration year of DY9 and DY10 is calculated as follows:

(A) The remaining DY9 and DY10 DSRIP pool amounts are divided by the DY8 valuation for all performers with a DY8 total valuation greater than \$1 million to determine the percentage reductions for DY9 and DY10;

(B) The performer's DY8 valuation is multiplied by the percentage reduction in valuation from DY8 for the applicable DY to determine the total valuation for each demonstration year of DY9 and DY10; and

(C) The performer's total valuation for each demonstration year of DY9 and DY10 is not reduced to less than \$1 million.

(3) If a performer withdrew from participating in DSRIP during DY8 or withdraws during the RHP Plan Update for DY9-10, the performer's valuation is proportionately distributed among the remaining performers in its RHP based on each performer's percent share of DY8 valuation in the RHP.

(c) A performer's valuation must comport with the following funding distribution for DY9 and DY10:
Figure: 1 TAC §354.1747(c)

§354.1749. Category A Requirements for Performers.

A performer must fulfill the following Category A - Required Reporting requirements for each demonstration year (DY).

(1) Core activities. A performer must select at least one core activity in the RHP plan update for its RHP that supports the achievement of its Category C measure goals, as described in the Measure Bundle Protocol. The performer must report progress on, and updates to, its selected core activities during the second reporting period of each DY.

(2) Alternative Payment Models (APMs). A performer must report progress toward, or implementation of, APM arrangements with Medicaid managed care organizations or other payers during the second reporting period of each DY.

(3) Costs and savings. A performer with a total valuation greater than or equal to \$1 million per DY must report the costs of at least one core activity, as well as the forecasted or generated savings from that core activity.

(A) For DY9-10, a performer must report costs and savings for a different core activity than the performer reported for DY7-8 or a different aspect of the same core activity the performer reported for DY7-8.

(B) The performer must report the costs and savings associated with its selected core activity at the level of the performer's system, to the extent possible.

(C) The performer must submit a progress update on the costs and savings associated with its selected core activity during the second reporting period of DY9.

(D) The performer must submit a final report on the costs and savings associated with its selected core activity during the second reporting period of DY10.

(4) Collaborative activities. A performer must attend at least one learning collaborative, stakeholder forum, or other stakeholder meeting during each DY and report on its participation during the second reporting period of each DY.

§354.1751. Category B Requirements for Performers.

(a) A performer must provide the following information in the RHP plan update for DY9-10 for its RHP:

(1) its updated total PPP for DY5, DY6, DY7, or DY8, if needed;

(2) its updated MLIU PPP for DY5, DY6, DY7, or DY8, if needed;

(3) its Medicaid PPP for DY7 and DY8; and

(4) its LIU PPP for DY7 and DY8.

(b) HHSC will use the information provided by a performer in accordance with subsection (a)(1) - (a)(2) of this section to update as necessary the performer's:

(1) total PPP baseline;

(2) MLIU PPP baseline;

(3) MLIU PPP to total PPP ratio baseline;

(4) MLIU PPP goal for a DY; and

(5) allowable MLIU PPP goal variation.

(c) A performer's total PPP baseline is equal to the average of its total PPP for DY5 and its total PPP for DY6 with the exception described in subsection (e) of this section.

(d) A performer's MLIU PPP baseline is equal to the average of its MLIU PPP for DY5 and its MLIU PPP for DY6 with the exception described in subsection (e) of this section.

(e) If HHSC approved a performer's request for an exception to its total PPP baseline or MLIU PPP baseline being calculated as described in subsection (c) or (d):

(1) the performer's total PPP baseline is equal to its total PPP for DY5 only and its MLIU PPP baseline is equal to its MLIU PPP for DY5 only; or

(2) the performer's total PPP baseline is equal to its total PPP for DY6 only and its MLIU PPP baseline is equal to its MLIU PPP for DY6 only.

(f) A performer's MLIU PPP to total PPP ratio baseline is equal to the performer's MLIU PPP baseline, as calculated in subsection (d) or (e) of this section, divided by the total PPP baseline, as calculated in subsection (c) or (e) of this section.

(g) A performer's MLIU PPP goal per DY for DY9 and DY10 is equal to its MLIU PPP baseline, as calculated in subsection (d) or (e) of this section, except as follows:

(1) If a performer submits a RHP plan modification request to change its MLIU PPP for DY9 or DY10, and HHSC approves the request, the performer's MLIU PPP goal for the applicable DY is determined by HHSC.

(2) If a performer updates its MLIU PPP for DY9 or DY10 in the RHP Plan Update for DY9-10, the performer's MLIU PPP goal for the applicable DY is determined by HHSC.

(h) A performer's allowable MLIU PPP goal variation per DY for DY9 and DY10 is calculated with consideration of the performer's:

(1) size;

(2) provider type; and

(3) MLIU PPP to total PPP ratio baseline, as calculated in subsection (f) of this section.

(i) A performer will have a MLIU PPP milestone for each DY of DY9 and DY10. The valuation of the MLIU PPP milestone for a DY is 100 percent of the performer's Category B valuation for the DY.

(j) A performer must report the following to be eligible for payment of its MLIU PPP milestone for each DY of DY9 and DY10:

(1) its MLIU PPP for the DY;

(2) its total PPP for the DY;

(3) an explanation for any decrease in the performer's MLIU PPP to total PPP ratio for the DY from the calculation in subsection (f) of this section.

(4) its Medicaid PPP for the DY; and

(5) its LIU PPP for the DY.

(k) A performer must report the information in subsection (j) of this section during the second reporting period of the DY it is reporting to be eligible for payment of the MLIU PPP milestone for the DY, with the exception that a performer may request to carry forward reporting of its MLIU PPP milestone to the first reporting period of the DY immediately following the DY it is reporting; however, if approved, the measurement period would not change.

§354.1753. Category C Requirements for Performers.

(a) Requirements for hospitals and physician practices.

(1) Measure Bundle and measure selection.

(A) A hospital or physician practice, with the exception of those described in subparagraph (J) of this paragraph, must select Measure Bundles from the Hospital and Physician Practice Measure Bundle Menu of the Measure Bundle Protocol in accordance with the requirements in subparagraphs (B) - (I) of this paragraph in the RHP plan update for DY9-10 for its RHP.

(B) Each Measure Bundle is assigned a point value as described in the Measure Bundle Protocol.

(C) A hospital or physician practice is assigned a minimum point threshold (MPT) for Measure Bundle selection as described in paragraphs (6) and (7) of this subsection.

(D) A hospital or physician practice must select Measure Bundles worth enough points to meet its MPT in order to maintain its total valuation for DY9 and DY10. If a hospital or physician practice does not select Measure Bundles worth enough points to meet its MPT, its total DY9 valuation will be reduced proportionately across its Categories B-D funds for DY9, and its total DY10 valuation will be reduced proportionately across its Categories B-D funds for DY10, based on the point values of the Measure Bundles it selects.

(E) A hospital or physician practice may only select a Measure Bundle for which its denominators for the baseline measurement period for at least half of the required measures in the Measure Bundle have significant volume.

(F) A hospital or physician practice with a valuation greater than \$2,500,000 per demonstration year (DY) for DY7-8 or with a valuation greater than \$2 million in DY10 must:

(i) select at least one Measure Bundle with at least one required three-point measure for which its denominator for the baseline measurement period has significant volume; or

(ii) select at least one Measure Bundle with at least one optional three-point measure for which its denominator for the baseline measurement period has significant volume and select at least one optional three-point measure in that Measure Bundle for which its denominator for the baseline measurement period has significant volume.

(G) A hospital or physician practice with an MPT of 75 must report at least two population-based clinical outcome measures as P4P as specified in the Measure Bundle Protocol.

(H) A hospital or physician practice may only select an optional measure in a selected Measure Bundle for which its denominator for the baseline measurement period has significant volume.

(I) Only a hospital with a valuation less than or equal to \$2,500,000 per DY may select a Measure Bundle identified as a rural Measure Bundle in accordance with the requirements in the Measure Bundle Protocol.

(J) If a hospital or physician practice has a limited scope of practice, cannot reasonably report on at least half of the required

measures in the Measure Bundle(s) appropriate for it based on its scope of practice and community partnerships, and consequently cannot meet its MPT for Measure Bundle selection, the hospital or physician practice may request HHSC approval to select measures, rather than Measure Bundles, from the Measure Bundle Protocol. The hospital or physician practice must submit a request for such approval to HHSC prior to the RHP plan update for DY9-10 submission, by a date determined by HHSC. Such a request may be subject to review by the Centers for Medicare & Medicaid Services (CMS). If HHSC and CMS, as appropriate, approve such a request, the following requirements apply:

(i) the hospital's or physician practice's total valuation for DY9 and DY10 may be reduced;

(ii) the hospital or physician practice must select measures from the following menus of the Measure Bundle Protocol in accordance with the requirements in clauses (iii) - (v) of this subparagraph in the RHP plan update for its RHP:

(I) the Measure Bundles on the Hospital and Physician Practice Measure Bundle Menu;

(II) the Community Mental Health Center Measure Menu; or

(III) the Local Health Department Measure Menu;

(iii) each measure in a Measure Bundle on the Hospital and Physician Practice Measure Bundle Menu, and each measure on the Community Mental Health Center Measure Menu and the Local Health Department Measure Menu, is assigned a point value as described in the Measure Bundle Protocol;

(iv) the hospital or physician practice is assigned an MPT for measure selection as described in paragraphs (5) and (6) of this subsection; and

(v) the hospital or physician practice must select measures worth enough points to meet its MPT in order to maintain its total valuation for DY9 and DY10. If the hospital or physician practice does not select measures worth enough points to meet its MPT, its total DY9 valuation will be reduced proportionately across its Categories B-D funds for DY9, and its total DY10 valuation will be reduced proportionately across its Categories B-D funds for DY10, based on the point values of the measures it selects.

(2) DSRIP-attributed population. A hospital or physician practice must determine its DSRIP-attributed population to be applied to its selected Measure Bundles and measures as specified in the Measure Bundle Protocol.

(3) Measure Bundle valuation. Each Measure Bundle selected by a hospital or physician practice for DY9-10 is allocated a percentage of the hospital's or physician practice's Category C valuation that is equal to the Measure Bundle's point value as a percentage of all of the hospital's or physician practice's selected Measure Bundles' point values.

(4) Measure valuation. The valuation for each measure in a selected Measure Bundle is equal to the Measure Bundle valuation divided by the number of measures in the selected Measure Bundle, so that the valuations of the measures in the selected Measure Bundle are equal, with the following exceptions:

(A) If a Measure Bundle includes an innovative measure:

(i) the valuation for each innovative measure in the Measure Bundle is equal to the Measure Bundle valuation divided by

the number of the measures in the Measure Bundle subtracted by 0.5 for each innovative measure and divided by 2; and

(ii) the valuation for each measure in the Measure Bundle that is not an innovative measure is equal to the Measure Bundle valuation divided by the number of measures in the Measure Bundle subtracted by 0.5 for each innovative measure.

(B) If a hospital's or physician practice's denominator for a required measure or numerator for a population-based clinical outcome measure in a selected Measure Bundle for the baseline measurement period or a performance year has no volume, the measure is removed from the Measure Bundle, and its valuation for the applicable DY is redistributed among the remaining measures in the Measure Bundle for which the hospital's or physician practice's denominator for the baseline measurement period or performance year has significant volume for the applicable DY. The valuation for the applicable DY for each of the remaining measures in the Measure Bundle for which the hospital's or physician practice's denominator for the baseline measurement period or performance year has significant volume is equal to the valuation for the Measure Bundle for the applicable DY divided by the number of measures for which the hospital's or physician practice's denominator for the baseline measurement period or performance year has significant volume, so that the valuations for the applicable DY for the measures in the Measure Bundle for which the hospital's or physician practice's denominator for the baseline measurement period or performance year has significant volume are equal.

(C) If a hospital's or physician practice's denominator for a required measure or numerator for a P4R population-based clinical outcome measure in a selected Measure Bundle for the baseline measurement period or a performance year has insignificant volume, the measure's milestone valuations are adjusted in accordance with subsection (e)(2) of this section.

(5) Milestone valuation. The measure milestones and corresponding valuations for DY7-8 are as described in subsection (e) of this section.

(6) MPTs for hospitals.

(A) The MPT for hospitals, with the exception of those described in subparagraphs (B) and (C) of this paragraph, is calculated as follows:

(i) First, the hospital's statewide hospital factor (SHF) is equal to (.64 multiplied by (the hospital's Medicaid and uninsured inpatient days divided by the sum of all hospitals' Medicaid and uninsured inpatient days)) plus (.36 multiplied by (the hospital's Medicaid and uninsured outpatient costs divided by the sum of all hospitals' Medicaid and uninsured outpatient costs)).

(ii) Second, the hospital's statewide hospital ratio (SHR) is equal to (the hospital's DY10 valuation divided by the sum of all hospitals' DY10 valuations) divided by the SHF.

(iii) Third, the hospital's MPT is determined as follows:

(I) If the SHR is less than or equal to 3, the MPT is the lesser of:

(-a-) the DY10 valuation divided by \$500,000; or

(-b-) 75.

(II) If the SHR is greater than 3 but less than or equal to 10, the MPT is the lesser of:

(-a-) the DY10 valuation divided by \$500,000 multiplied by (the SHR divided by 3); or

(-b-) 75.

(III) If the SHR is greater than 10 and the DY10 valuation is less than or equal to \$15 million, the MPT is the lesser of:

(-a-) the DY10 valuation divided by \$500,000 multiplied by (the SHR divided by 3); or

(-b-) 40.

(IV) If the SHR is greater than 10 and the DY10 valuation is greater than \$15 million, the MPT is the lesser of:

(-a-) the DY10 valuation divided by \$500,000 multiplied by (the SHR divided by 3); or

(-b-) 75.

(B) If a hospital does not have the data needed for the SHF calculation in paragraph (5)(A)(i) of this subsection, or if a hospital did not participate in DSRIP during the initial demonstration period or DY6, its MPT is the lesser of:

(i) the hospital's DY10 valuation divided by \$500,000; or

(ii) 75.

(C) The MPT for a hospital for DY9-10 must not be reduced by more than 10 points from the hospital's MPT for DY7-8.

(D) If a hospital has a limited scope of practice, cannot reasonably report on at least half of the required measures in the Measure Bundle(s) appropriate for it based on its scope of practice and community partnerships, and consequently cannot meet its MPT for Measure Bundle selection, the hospital may request HHSC approval for a reduced MPT equal to the sum of the points for all the Measure Bundles for which the hospital could reasonably report on at least half of the required measures in the Measure Bundle. The hospital must submit a request for such approval to HHSC prior to the RHP plan update submission, by a date determined by HHSC. Such a request may be subject to review by the Centers for Medicare & Medicaid Services (CMS). If HHSC and CMS, as appropriate, approve such a request, the hospital's total valuation for DY9 and DY10 may be reduced.

(7) MPTs for physician practices.

(A) The MPT for a physician practice for DY9-10, with the exception of a physician practice described in subparagraph (C) of this paragraph, is the lesser of:

(i) the physician practice's DY10 valuation divided by \$500,000; or

(ii) 75.

(B) The MPT for a physician practice for DY9-10 must not be reduced by more than 10 points from the physician practice's MPT for DY7-8.

(C) If a physician practice has a limited scope of practice, cannot reasonably report on at least half of the required measures in the Measure Bundles appropriate for it based on its scope of practice and community partnerships, and consequently cannot meet its MPT for Measure Bundle selection, the physician practice may request HHSC approval for a reduced MPT equal to the sum of the points for all the Measure Bundles for which the physician practice could reasonably report on at least half of the required measures in the Measure Bundle. The physician practice must submit a request for such approval to HHSC prior to the RHP plan update submission, by a date determined by HHSC. Such a request may be subject to review by CMS. If HHSC and CMS, as appropriate, approve such a request, the physician practice's total valuation for DY9 and DY10 may be reduced.

(b) Requirements for community mental health centers (CMHCs).

(1) Measure selection.

(A) A CMHC must select measures from the Community Mental Health Center Measure Menu of the Measure Bundle Protocol.

(B) Each measure is assigned a point value as described in the Measure Bundle Protocol.

(C) A CMHC is assigned an MPT for measure selection as described in paragraph (3) of this subsection.

(D) A CMHC must select measures worth enough points to meet its MPT in order to maintain its total valuation for DY9 and DY10. If a CMHC does not select measures worth enough points to meet its MPT, its total DY9 valuation will be reduced proportionately across its Categories B-D funds for DY9, and its total DY10 valuation will be reduced proportionately across its Categories B-D funds for DY10, based on the point values of the measures it selects.

(E) A CMHC may only select a measure for which its denominator for the baseline measurement period has significant volume.

(F) A CMHC must select at least two measures.

(G) A CMHC with a valuation greater than \$2,500,000 per DY for DY7-8 and a valuation of more than \$2,000,000 for DY10 must select at least one three-point measure.

(2) DSRIP-attributed population. A CMHC must determine its DSRIP-attributed population to be applied to its selected measures as specified in the Measure Bundle Protocol.

(3) Measure valuation. All measures selected by a CMHC for DY9-10 are valued equally.

(4) Milestone valuation. The measure milestones and corresponding valuations for DY9-10 are as described in subsection (e) of this section.

(5) MPTs.

(A) A CMHC's MPT is the lesser of:

(i) the CMHC's DY10 valuation divided by the standard point valuation (\$500,000); or

(ii) 40.

(B) A CMHC's MPT for DY9-10 must not be reduced by more than 10 points from the CMHC's MPT for DY7-8.

(c) Requirements for local health departments (LHDs).

(1) Measure selection.

(A) An LHD must select measures from:

(i) the Local Health Department Measure Menu of the Measure Bundle Protocol; or

(ii) its DY6 Category 3 pay-for-performance (P4P) measures.

(B) An LHD may not select the same measure from both the Local Health Department Measure Menu of the Measure Bundle Protocol and its DY6 Category 3 P4P measures.

(C) If an LHD's DY6 Category 3 P4P measures include multiple versions of the same measure, the LHD may select multiple versions of that measure, but the points associated with that measure will only count once toward the LHD's MPT.

(D) Each measure on the Local Health Department Measure Menu is assigned a point value as described in the Measure Bundle Protocol.

(E) Each LHD DY6 Category 3 P4P measure is assigned a point value as described in the Measure Bundle Protocol.

(F) An LHD is assigned an MPT for measure selection as described in paragraph (4) of this subsection.

(G) An LHD must select measures worth enough points to meet its MPT in order to maintain its total valuation for DY9 and DY10. If an LHD does not select measures worth enough points to meet its MPT, its total DY9 valuation will be reduced proportionately across its Categories B-D funds for DY9, and its total DY10 valuation will be reduced proportionately across its Categories B-D funds for DY10, based on the point values of the measures it selects.

(H) An LHD may only select a measure for which its denominator for the baseline measurement period has significant volume.

(I) An LHD must select at least two measures.

(J) An LHD with a valuation of more than \$2,500,000 per DY for DY7-8 and a valuation of more than \$2,000,000 for DY10 must select at least one three-point measure.

(2) DSRIP-attributed population. An LHD must determine its DSRIP-attributed population to be applied to its selected measures as specified in the Measure Bundle Protocol.

(3) Measure valuation. All measures selected by a LHD for DY9-10 are valued equally.

(4) Milestone valuation. The measure milestones and corresponding valuations for DY9-10 are as described in subsection (e) of this section.

(5) MPTs.

(A) An LHD's MPT is the lesser of:

(i) the LHD's DY10 valuation divided by the standard point valuation (\$500,000); or

(ii) 20.

(B) An LHD's MPT for DY9-10 must not be reduced by more than 10 points from the LHD's MPT for DY7-8.

(d) Measurement periods.

(1) Baseline measurement periods.

(A) The baseline measurement period for a measure selected for DY7-10 is calendar year 2017 with the following exceptions:

(i) the baseline measurement period for a DY6 Category 3 P4P measure selected by a LHD is DY6;

(ii) HHSC approved the measure to have a shorter baseline measurement period consisting of no fewer than six months as specified in the Program Funding and Mechanics Protocol and HHSC guidance;

(iii) HHSC approved the measure to have a delayed baseline measurement period that ended no later than September 30, 2018, as specified in the Program Funding and Mechanics Protocol and HHSC guidance; and

(iv) any other exception specified in the Measure Bundle Protocol or one of its appendices.

(B) The baseline measurement period for a measure newly selected for DY9-10 is calendar year 2019 with the following exceptions:

(i) a performer that demonstrates good cause may request for a measure to have a shorter baseline measurement period consisting of no fewer than six months as specified in the Program Funding and Mechanics Protocol and HHSC guidance;

(ii) a performer that demonstrates good cause may request for a measure to have a delayed baseline measurement period that ends no later than September 30, 2020, as specified in the Program Funding and Mechanics Protocol and HHSC guidance; and

(iii) any other exception specified in the Measure Bundle Protocol or one of its appendices.

(2) Performance measurement periods. The performance measurement periods for a P4P measure are as follows:

(A) Performance Year (PY) 1 for a measure is calendar year 2018 unless otherwise specified in the Measure Bundle Protocol or one of its appendices;

(B) PY2 for a measure is calendar year 2019 unless otherwise specified in the Measure Bundle Protocol or one of its appendices;

(C) PY3 for a measure is calendar year 2020 unless otherwise specified in the Measure Bundle Protocol or one of its appendices;

(D) PY4 for a measure is calendar year 2021 unless otherwise specified in the Measure Bundle Protocol or one of its appendices; and

(E) PY5 for a measure is calendar year 2022 otherwise specified in the Measure Bundle Protocol or one of its appendices.

(3) Reporting measurement periods. The reporting measurement periods for a pay-for-reporting (P4R) measure are as follows unless otherwise specified in the Measure Bundle Protocol:

(A) Reporting Year (RY) 1 for a measure is DY7;

(B) RY2 for a measure is DY8;

(C) RY3 for a measure is DY9; and

(D) RY4 for a measure is DY10.

(e) Measure milestones.

(1) The milestones and corresponding valuations for DY9-10 are as follows, with the exceptions specified in paragraphs (2) and (3) of this subsection:

Figure: 1 TAC §354.1753(e)(1)

(2) If a hospital's or physician practice's denominator for a required measure in a selected Measure Bundle for the baseline measurement period or a performance measurement period has insignificant volume, the valuation for the measure's goal achievement milestone for the DY is redistributed among the goal achievement milestones for the measures in the Measure Bundle for which the hospital's or physician practice's denominator for the baseline measurement period or performance measurement period has significant volume for the applicable DY. The valuations for the goal achievement milestones for the measures in the Measure Bundle for which the hospital's or physician practice's denominator has significant volume for the DY are calculated as follows:

(A) the valuation for the DY9 goal achievement milestone is equal to 67 percent of the valuation for the Measure Bundle di-

vided by the number of measures in the Measure Bundle for which the hospital's or physician practice's denominator has significant volume, so that the valuations for the DY9 goal achievement milestones for the measures in the Measure Bundle for which the hospital's or physician practice's denominator has significant volume are equal; and

(B) the valuation for the DY10 goal achievement milestone is equal to 67 percent of the valuation for the Measure Bundle divided by the number of measures in the Measure Bundle for which the hospital's or physician practice's denominator has significant volume, so that the valuations for the DY10 goal achievement milestones for the measures in the Measure Bundle for which the hospital's or physician practice's denominator has significant volume are equal.

(3) Measures with multiple parts. Some P4P measures have multiple parts, as described in the Program Funding and Mechanics Protocol and Measure Bundle Protocol.

(A) A measure with multiple parts has one baseline reporting milestone per DY, one PY reporting milestone per DY, and multiple goal achievement milestones per DY.

(B) The valuation for each measure part's goal achievement milestone is equal to the measure's total goal achievement milestone valuation divided by the number of measure parts so that the measure parts' goal achievement milestone valuations are equal.

(C) All measure parts' baseline reporting milestones must be reported during the same reporting period.

(D) All measure parts' PY reporting milestones must be reported during the same reporting period.

(E) Each measure part's goal achievement milestone will have its own goal. Therefore, the percent of goal achieved, as described in §354.1757 of this division (relating to Disbursement of Funds) will be determined for a measure part's goal achievement milestone independently of the percent of goal achieved for the other measure parts' goal achievement milestones.

(4) For measures newly selected for DY9-10, a performer must report a baseline for a measure, and HHSC must approve the reported baseline for reporting purposes, before a performer can report PY3 (or PY4 if HHSC approved the use of a delayed baseline measurement period for the measure).

(A) A performer must adhere to measure specifications and maintain a record of any variances approved by HHSC prior to reporting a baseline for a measure.

(B) HHSC's approval of a reported baseline for reporting purposes does not constitute approval for a performer to report a measure outside measure specifications. If at any point HHSC or the independent assessor finds that a performer is reporting a measure outside measure specifications, reporting milestone payment and goal achievement milestone payment may be withheld or recouped while the performer works to bring reporting into compliance with measure specifications.

(5) A performer must report a P4P measure's reporting milestone and goal achievement milestone for a given PY during the same reporting period, with exceptions for P4P measures with a delayed baseline measurement period.

(f) Measure eligible denominator population.

(1) Each Measure Bundle for hospitals and physician practices has a target population as specified in the Measure Bundle Protocol.

(2) A measure's eligible denominator population must include all individuals served by the performer's system during a given measurement period that are included in the performer's DSRIP-attributed population and the target population for a measure for hospitals and physician practices, and that meet the measure's specifications as specified in the Measure Bundle Protocol.

(3) A performer may not use a performer-specific facility, co-morbid condition, age, gender, race, or ethnicity subset not otherwise specified in the Measure Bundle Protocol.

(4) Reporting milestones.

(A) A hospital or physician practice must do the following to be eligible for payment of a measure's reporting milestones for each DY, with the exceptions described in subparagraphs (C) and (D) of this paragraph:

(i) report its performance on the measure for the all-payer, Medicaid-only, and Low-income Uninsured-only (LIU-only) payer types; and

(ii) report on related strategies associated with each Measure Bundle.

(B) A CMHC or LHD must do the following to be eligible for payment of a measure's reporting milestones for each DY, with the exceptions described in subparagraphs (C) and (D) of this paragraph:

(i) report its performance on the measure for the all-payer, Medicaid-only, and Low-income Uninsured-only (LIU-only) payer types; and

(ii) report on related strategies associated with each measure or group of measures.

(C) A performer that demonstrates good cause may request in the RHP plan update submission to be exempted from reporting its performance on a measure for the Medicaid-only payer type or the LIU-only payer type as specified in the Program Funding and Mechanics Protocol.

(D) A performer that demonstrates good cause may submit a RHP plan update modification request to HHSC to be exempted from reporting its performance on a measure for the Medicaid-only payer type or the LIU-only payer type as specified in the Program Funding and Mechanics Protocol.

(5) Goal achievement milestones. Payment for a P4P measure's goal achievement milestone is based on the performer's performance on the measure for the MLIU payer type.

(A) A performer that demonstrates good cause may request in the RHP plan update submission that payment for a P4P measure's goal achievement milestone be based on the performer's performance on the measure for the all-payer, Medicaid-only, or LIU-only payer type as specified in the Program Funding and Mechanics Protocol.

(B) A performer that demonstrates good cause may submit a RHP plan update modification request to HHSC to change the payer type on which payment for a P4P measure's goal achievement milestone is based as specified in the Program Funding and Mechanics Protocol.

(g) Methodology for P4P measure goal setting.

(1) A P4P measure's goals are set as an improvement over the baseline.

(2) A P4P measure is designated as either Quality Improvement System for Managed Care (QISMC) or Improvement over Self (IOS) as specified in the Measure Bundle Protocol. A P4P measure designated as QISMC has a defined High Performance Level (HPL) and Minimum Performance Level (MPL) based on national or state benchmarks.

(3) If a P4P measure is selected for DY7-10, the goals for its goal achievement milestones for DY9-10 are set as follows: Figure: 1 TAC §354.1753(g)(3)

(4) If a P4P measure is newly selected for DY9-10, the goals for its goal achievement milestones for DY9-10 are set as follows: Figure: 1 TAC §354.1753(g)(4)

(5) A performer may request HHSC approval to use a numerator of zero for the baseline measurement period for certain P4P measures, as described in the Program Funding and Mechanics Protocol and Measure Bundle Protocol.

(A) If a performer receives HHSC approval to use a numerator of zero for the baseline measurement period for a DY7-8 P4P measure that is continuing into DY9-10, the goal for the DY9 goal achievement milestone will be equal to a 12.5% gap closure between the 75th percentile and the HPL, and the goal for the DY10 goal achievement milestone will be equal to a 15% gap closure between the 75th percentile and the HPL, as described in the Program Funding and Mechanics Protocol and Measure Bundle Protocol.

(B) If a performer receives HHSC approval to use a numerator of zero for the baseline measurement period for a P4P measure that is newly selected for DY9-10, the goal for the DY9 goal achievement milestone will be equal to the 75th percentile, and the goal for the DY10 goal achievement milestone will be equal to a 10% gap closure between the 75th percentile and the HPL, as described in the Program Funding and Mechanics Protocol and Measure Bundle Protocol.

(6) Certain QISMC measures with baselines below the MPL have alternate QISMC goals, as described in the Program Funding and Mechanics Protocol and Measure Bundle Protocol. For a measure that is continuing into DY9-10, the DY9 goal will be a 22.5% gap closure towards HPL, and the DY10 goal will be a 25% gap closure towards HPL. For a measure that is newly selected for DY9-10, the DY9 goal will be a 10% gap closure towards HPL, and the DY10 goal will be a 20% gap closure towards HPL.

(h) Carry forward policy.

(1) Carry forward of reporting. If a performer does not report a measure's baseline reporting milestone or performance year reporting milestone during the first reporting period after the end of the milestone's measurement period, the performer may request to carry forward reporting of the milestone to the next reporting period.

(2) Carry forward of achievement.

(A) A performer may request to carry forward achievement of a measure's goal achievement milestone so that the DY9 goal achievement milestone may be achieved in PY3 or PY4, and the DY10 goal achievement milestone may be achieved in PY4 or PY5, with the exception described in subparagraph (B) of this paragraph.

(B) If a measure newly selected for DY9-10 has a delayed baseline measurement period, a performer will carry forward achievement of its goal achievement milestone so that the DY9 goal achievement milestone may be achieved in PY4.

(C) The performer must report the carried forward achievement of a measure's goal achievement milestone during the

first reporting period after the end of the milestone's carried forward measurement period.

§354.1755. Category D Requirements for Performers.

(a) There is a Category D - Statewide Reporting Measure Bundle for each provider type, as described in the Measure Bundle Protocol.

(b) Each Category D - Statewide Reporting Measure Bundle consists of one or more measures, as described in the Measure Bundle Protocol.

(c) The valuation for each measure in a performer's Category D - Statewide Reporting Measure Bundle for each DY is equal to the valuation of the performer's Category D - Statewide Reporting Measure Bundle for the DY divided by the number of measures in the Category D - Statewide Reporting Measure Bundle, so that the valuations of the measures are equal.

(d) A performer must report on a measure in the Category D - Statewide Reporting Measure Bundle for its provider type as described in the Measure Bundle Protocol for a DY no later than the second reporting period of the DY to be eligible for payment of the measure for the DY.

§354.1757. Disbursement of Funds.

(a) Category A and DSRIP payments. If a performer fails to fulfill all of the Category A requirements described in §354.1749 of this division (relating to Category A Requirements for Performers) for a demonstration year (DY), any DSRIP payments the performer received for the DY will be recouped, and prospective DSRIP payments to the performer will be withheld.

(1) DSRIP payments for DY9 include payments for DY9 Category B, Category C, or Category D milestones.

(2) DSRIP payments for DY10 include payments for DY10 Category B, Category C, or Category D milestones.

(b) Basis for payment of Category B. A performer's payment for its MLIU PPP milestone for a DY is calculated as follows.

(1) If the performer's MLIU PPP goal achievement is greater than or equal to 100 percent minus its allowable MLIU PPP goal variation, the performer's MLIU PPP milestone payment is equal to 100 percent of its MLIU PPP milestone valuation.

(2) If the performer's MLIU PPP goal achievement is greater than or equal to 90 percent, and less than 100 percent minus its allowable MLIU PPP goal variation, the performer's MLIU PPP milestone payment is equal to 90 percent of its MLIU PPP milestone valuation.

(3) If the performer's MLIU PPP goal achievement is greater than or equal to 75 percent, and less than 90 percent, the performer's MLIU PPP milestone payment is equal to 75 percent of its MLIU PPP milestone valuation.

(4) If the performer's MLIU PPP goal achievement is greater than or equal to 50 percent, and less than 75 percent, the performer's MLIU PPP milestone payment is equal to 50 percent of its MLIU PPP milestone valuation.

(5) If the performer's MLIU PPP goal achievement is less than 50 percent, the performer does not receive a MLIU PPP milestone payment.

(c) Basis for payment of Category C.

(1) Reporting milestones. A performer must fully achieve a reporting milestone to be eligible for payment related to the milestone.

(2) P4P measure goal achievement milestones. A P4P measure has a goal achievement milestone for each DY. With the exception of P4P measure goal achievement milestones described in subparagraph (B) of this paragraph, partial payment for P4P measure goal achievement milestones is available in quartiles for partial achievement measured over baseline in Performance Year (PY) 1, PY2, PY3, PY4, and PY5.

(A) To calculate the payment for a P4P measure goal achievement milestone, multiply the milestone valuation by the achievement value calculated in clause (ii) of this subparagraph.

(i) The percent of the milestone's goal achieved by the performer is determined as follows.

(I) Measures with a positive directionality where higher scores indicate improvement:

(-a) DY7 achievement = (PY1 Achieved - Baseline) / (DY7 Goal - Baseline).

(-b) Carryforward of DY7 achievement = (PY2 Achieved - Baseline) / (DY7 Goal - Baseline).

(-c) DY8 achievement = (PY2 Achieved - Baseline) / (DY8 Goal - Baseline).

(-d) Carryforward of DY8 achievement = (PY3 Achieved - Baseline) / (DY8 Goal - Baseline).

(-e) DY9 achievement = (PY3 Achieved - Baseline) / (DY9 Goal - Baseline).

(-f) Carryforward of DY9 achievement = (PY4 Achieved - Baseline) / (DY9 Goal - Baseline).

(-g) DY10 achievement = (PY4 Achieved - Baseline) / (DY10 Goal - Baseline).

(-h) Carryforward of DY10 achievement = (PY5 Achieved - Baseline) / (DY10 Goal - Baseline).

(II) Measures with a negative directionality where lower scores indicate improvement:

(-a) DY7 achievement = (Baseline - PY1 Achieved) / (Baseline - DY7 Goal).

(-b) Carryforward of DY7 achievement = (Baseline - PY2 Achieved) / (Baseline - DY7 Goal).

(-c) DY8 achievement = (Baseline - PY2 Achieved) / (Baseline - DY8 Goal).

(-d) Carryforward of DY8 achievement = (Baseline - PY3 Achieved) / (Baseline - DY8 Goal).

(-e) DY9 achievement = (Baseline - PY3 Achieved) / (Baseline - DY9 Goal).

(-f) Carryforward of DY9 achievement = (Baseline - PY4 Achieved) / (Baseline - DY9 Goal).

(-g) DY10 achievement = (Baseline - PY4 Achieved) / (Baseline - DY10 Goal).

(-h) Carryforward of DY10 achievement = (Baseline - PY5 Achieved) / (Baseline - DY10 Goal).

(ii) The achievement value is determined as follows.

(I) If 100 percent of the goal is achieved, the achievement value is 1.0.

(II) If less than 100 percent but at least 75 percent of the goal is achieved, the achievement value is 0.75.

(III) If less than 75 percent but at least 50 percent of the goal is achieved, the achievement value is 0.5.

(IV) If less than 50 percent but at least 25 percent of the goal is achieved, the achievement value is 0.25.

(V) If less than 25 percent of the goal is achieved, the achievement value is 0.

(B) If a P4P measure designated as Quality Improvement System for Managed Care has a baseline above the High Performance Level, the performer must achieve 100 percent of the goal achievement milestone to be eligible for payment of the milestone; there is no payment for partial achievement.

(d) Basis for payment of Category D. A performer must report on a measure in the Category D - Statewide Reporting Measure Bundle for its provider type for a DY in accordance with §354.1755(d) of this division (relating to Category D Requirements for Performers) to be eligible for payment of the measure for that DY.

(e) At no point may a performer receive a DSRIP payment for a milestone more than two years after the end of the DY in which the milestone is to be completed.

(f) If a performer does not complete the remaining milestones as described in §354.1751 of this division (relating to Category B Requirements for Performers) or §354.1753 of this division (relating to Category C Requirements for Performers), or the Category D - Statewide Reporting Measure Bundle measures as described in subsection (d) of this section, the associated DSRIP funding is forfeited by the performer.

(g) Once the action associated with a milestone is reported by the performer as complete, that milestone may not be counted again toward DSRIP payment calculations.

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

Filed with the Office of the Secretary of State on July 18, 2019.

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 1, 2019

For further information, please call: (512) 923-0644



CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8068

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §355.8068, concerning Local Provider Participation Fund Reporting.

BACKGROUND AND PURPOSE

The purpose of the proposed rule is to require mandatory payments to Local Provider Participation Funds (LPPFs) be reported to HHSC, no later than ten calendar days after the end of the federal fiscal quarter. The proposal is necessary to comply with House Bill (H.B.) 4289, 86th Legislature, Regular Session, 2019, and Title 42 of the Code of Federal Regulations (CFR), §433.74. Federal regulations require the state Medicaid agency to submit this information to the Centers for Medicare & Medicaid Services no later than 30 days after the end of each quarter. In addition, HHSC must maintain supporting documentation for these pay-

ments. Failure to comply with 42 CFR §433.74 can result in deferral of federal funds.

In 2013, Texas began to provide certain localities the authorization to require mandatory payments from private hospitals. Those mandatory payments are to be paid into an LPPF. The governmental entity operating the LPPF uses the funds according to statute, including transferring funds to HHSC as the source of the non-federal share of Medicaid payments. Currently, LPPFs provide funding for several supplemental and directed payment programs, like Uncompensated Care supplemental payments and the Uniform Hospital Rate Increase Program. H.B. 4289 provides statewide authorization for certain local jurisdictions to establish an LPPF, requires reporting by the LPPF to HHSC, and requires the HHSC Executive Commissioner to adopt rules for administration of the reporting requirement.

To meet federal and state obligations and to ensure transparency in LPPF funding and functions, HHSC proposes to create reporting requirements. Quarterly reports will be required from every jurisdiction in the state that operates an LPPF. Such jurisdictions must provide HHSC with all required information, including the rate set by the jurisdiction, the amount of the mandatory payment by an institutional health care provider, and the amount of funds used for all purposes.

SECTION-BY-SECTION SUMMARY

Proposed new §355.8068(a) describes the purpose of the new section.

Proposed new §355.8068(b) adds definitions for the section.

Proposed new §355.8068(c) requires that a local jurisdiction operating an LPPF must report required information to HHSC in a form and format to be specified by HHSC.

Proposed new §355.8068(d) describes the reporting frequency.

Proposed new §355.8068(e) specifies the information to be reported so that HHSC may comply with federal and state requirements and improve transparency of LPPFs.

Proposed new §355.8068(f) identifies the consequence of not submitting a timely report; HHSC will not accept a transfer of funds.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will create a new rule;
- (6) the proposed rule will not expand, limit, or repeal existing rule;

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

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

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

Trey Wood has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities.

The proposed rule requires local jurisdictions that operate an LPPF to report mandatory payments to HHSC and provides a consequence for failure to submit required information. HHSC does not have sufficient data to estimate the number of entities impacted by the proposed rule.

HHSC has also determined that no regulatory flexibility is available, as this rule is mandated by Title 42 of the Code of Federal Regulations, §433.74 and H.B. 4289, 86th Legislature, Regular Session, 2019.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to new §355.8068 concerning LPPF reporting because this rule is necessary to receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT AND COSTS

Charles Greenberg, Director of Hospital Finance and Waiver Programs, has determined that for each year of the first five years the rule is in effect, the public will benefit from the continuation of the receipt of federal funds to support state Medicaid supplemental and directed payment programs. The public will also benefit from the disclosure of this information by knowing the amount of the mandatory payments and the various purposes for those payments.

Trey Wood has determined that for the first five years the rule is in effect, persons who are required to comply with the proposed rule may incur economic costs. The proposed rule adds reporting requirements for local jurisdictions that operate LPPFs and provides a consequence for failure to submit required information. HHSC assumes there may be additional costs to those jurisdictions required to compile required data, submit required additional reports, and for failing to submit the required information. HHSC lacks sufficient information to estimate those costs. For these reasons, the costs to persons required to comply cannot be determined at this time.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing for the Hospital Payment Advisory Committee is scheduled for August 8, 2019, at 1:30 p.m. (central time) in the Brown-Healy Public Hearing Room. Persons requiring further information, special assistance, or accommodations should contact Camille Weizenbaum at Camille.Weizenbaum@hhsc.state.tx.us.

PUBLIC COMMENT

Written comments on the proposal may be submitted to April Ferrino, Project Manager, 4900 N. Lamar, Mail Code 1000, Austin, Texas 78751; or by email to: RAD_1115_Waiver_Finance@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Local Provider Participation Fund Reporting" in the subject line.

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021(a), which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and H.B. 4289, 86th Legislature, Regular Session, 2019 (to be codified as new Chapters 300 and 300A in Texas Health and Safety Code, Subtitle D, Title 4), which requires the Executive Commissioner of HHSC to adopt rules for administration of the bill's reporting requirement.

The new section affects Texas Government Code §531.0055, Texas Government Code §531.021(a) and H.B. 4289, 86th Legislature, Regular Session, 2019 (to be codified as new Chapters 300 and 300A in Texas Health and Safety Code, Subtitle D, Title 4).

§355.8068. Local Provider Participation Fund Reporting.

(a) Purpose. As required by federal and state law, the Health and Human Services Commission (HHSC) requires a local jurisdiction that operates a local provider participation fund (LPPF) to report mandatory payments.

(b) Definitions.

(1) Institutional health care provider--A non-public hospital that provides inpatient hospital services.

(2) Local jurisdiction--A non-state governmental entity that operates an LPPF.

(3) Mandatory payment--A payment required to be made to an LPPF based on the net patient revenue of a paying hospital.

(4) Paying hospital--An institutional health care provider required to make a mandatory payment.

(5) Rate--The amount calculated for each paying hospital to submit to the LPPF.

(c) A local jurisdiction that operates an LPPF must report information to HHSC in a form and format to be determined by HHSC as described in subsection (e) of this section.

(d) The information must be reported for each federal fiscal quarter, no later than ten calendar days after the end of the federal fiscal quarter.

(e) The report for each federal fiscal quarter must include:

- (1) the rate used to determine the mandatory payment;
- (2) a list of all paying hospitals;
- (3) the amount of the mandatory payment required of each paying hospital;
- (4) the amount of the mandatory payment received by the LPPF from each paying hospital;
- (5) the sum of the mandatory payments received by the LPPF; and
- (6) the purpose for which the LPPF funds were expended or transferred and the amount and date for each transfer or expenditure.
- (f) If a local jurisdiction that created an LPPF fails to submit the required information, HHSC will not accept a transfer of funds from the LPPF.

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

Filed with the Office of the Secretary of State on July 18, 2019.

TRD-201902286

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 1, 2019

For further information, please call: (512) 428-1988



DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8216, §355.8218

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §355.8216, concerning Delivery System Reform Incentive Payments for Demonstration Years 9-10; and new §355.8218, concerning Funding for DSRIP Monitoring Program for Demonstration Years 9-10.

Background and Justification

On December 12, 2011, the Centers for Medicare & Medicaid Services (CMS) approved Texas' request for a new Medicaid demonstration waiver entitled "Texas Healthcare Transformation and Quality Improvement Program" in accordance with section 1115 of the Social Security Act. This waiver authorized the establishment of the Delivery System Reform Incentive Payment (DSRIP) program. The DSRIP program provides incentive payments to hospitals, physician practices, community mental health centers, and local health departments to support their efforts to enhance access to health care, the quality of care, and the health of patients and families served.

The initial waiver was approved through September 30, 2016, and an initial extension was granted through December 31, 2017. On December 21, 2017, CMS granted a five-year extension of the waiver through September 30, 2022.

The Program Funding and Mechanics (PFM) protocol and Measure Bundle Protocol govern DSRIP for Demonstration Years (DYs) 9-10 (October 1, 2019 through September 30, 2021). HHSC posted the draft PFM protocol proposal for DYs

9-10, along with a survey to solicit stakeholder feedback on the proposal, to the Transformation Waiver website on January 3, 2019. HHSC revised the PFM protocol proposal based on these survey responses and submitted it to CMS on March 29, 2019. The proposed new rules closely align with the PFM protocol proposal submitted to CMS. HHSC will update these rules, as necessary, in accordance with CMS guidance.

The purpose of the new rules is to specify the DSRIP program requirements for DYs 9-10 consistent with the PFM protocol HHSC has proposed to CMS.

Section-by-Section Summary

Proposed new §355.8216 describes performer eligibility for payments, the payment methodology, and recoupment.

Proposed new §355.8218 describes how the DSRIP monitoring program is funded.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years the new rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state government.

There may be fiscal implications to local governments as a result of enforcing and administering the new sections as proposed. The proposed rules continue to allow HHSC to recoup DSRIP payments from performers in the event of an overpayment or disallowance by CMS, although HHSC cannot predict if such recoupments will be necessary. In addition, reduced pool allocations for DYs 9-10 will result in a 5.9 percent reduction for DY 9 and a 19.5 percent reduction for DY 10 as compared to DYs 7-8. The proposed rules implement the necessary pool reductions for DYs 9-10 through a proportional provider valuation reduction. However, Participation in DSRIP and DSRIP DYs 9-10 is voluntary. Therefore, HHSC lacks sufficient data to provide an estimate of the possible local government fiscal impact for recoupments and changes to provider valuations for DYs 9-10.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create a new rule;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) HHSC has insufficient information to determine the proposed rules' effect on the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as there is no requirement for hospitals to alter

current business practices. Furthermore, Participation in DSRIP and DSRIP DYs 9-10 is voluntary.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT AND COSTS

Stephanie Muth, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be improved quality of care for individuals served by DSRIP performers.

Trey Wood has determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because participation in DSRIP is voluntary.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC, Mail Code W-201, P.O. Box 13247, Austin, Texas 78711-3247, or by email to TXHealthcareTransformation@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When e-mailing comments, please indicate "Comments on Proposed Rule 19R041" in the subject line.

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid payments.

The new rules affect Chapter 531 of the Texas Government Code and Chapter 32 of the Texas Human Resources Code. No other statutes, articles, or codes are affected by this proposal.

§355.8216. Delivery System Reform Incentive Payments for Demonstration Years 9-10.

(a) Introduction. Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver Delivery System Reform Incentive Payment (DSRIP) program pay-

ments for demonstration year (DY) 9-10 are available under this section for eligible performers described in subsection (c) of this section. DSRIP payments to performers must be in compliance with the Centers for Medicare & Medicaid Services (CMS) approved Program Funding and Mechanics Protocol, Health and Human Services Commission (HHSC) instructions, and this section.

(b) Definitions.

(1) Demonstration Year (DY) 7--Federal fiscal year 2018 (October 1, 2017 - September 30, 2018).

(2) Demonstration Year (DY) 8--Federal fiscal year 2019 (October 1, 2018 - September 30, 2019).

(3) Demonstration Year (DY) 9--Federal fiscal year 2020 (October 1, 2019 - September 30, 2020).

(4) Demonstration Year (DY) 10--Federal fiscal year 2021 (October 1, 2020 - September 30, 2021).

(5) Performer--A provider enrolled in Texas Medicaid that participates in DSRIP and receives DSRIP payments.

(6) Regional Healthcare Partnership (RHP) Plan Update--An RHP plan for DY7-8 that is updated for DY9-10, as further described in §354.1737 of this title (relating to RHP Plan Update for DY9-10).

(c) Eligibility for DSRIP. For a performer to be eligible to receive DSRIP, the performer must:

(1) be a provider enrolled in Texas Medicaid;

(2) submit documentation of completion of a milestone identified in the approved RHP plan update to HHSC; and

(3) for a private performer only, comply with the eligibility requirements in §355.8201(c)(1)(B) of this division (relating to Waiver Payments to Hospitals for Uncompensated Care) or §355.8202(c)(3) of this division (relating to Waiver Payments to Physician Group Practices for Uncompensated Care), as applicable.

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

(e) Payment frequency. DSRIP payments will be distributed at least annually, not to exceed two payments per performer per year, upon achievement of RHP plan update milestones as reviewed and approved by HHSC. The payment schedule or frequency may be modified as specified by CMS or HHSC.

(f) Funding limitations. Payments made under this section are limited by the maximum aggregate amount of funds approved by CMS for DSRIP for each year that the waiver is in effect.

(g) DSRIP maximum payment amounts. The approved RHP plan update establishes the payment amount associated with a particular milestone. DSRIP payments cannot exceed the amount in the RHP plan update.

(h) Payment methodology.

(1) Notice. Prior to making any DSRIP payments, HHSC will give notice of the following information:

(A) the maximum payment amount for the payment period;

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

(C) the deadline for completing the IGT.

(2) Payment amount. The approved RHP plan update establishes the payment amount associated with a milestone. DSRIP payments cannot exceed the amount established in the approved RHP plan update. The amount of the payment to a performer will be determined based on the amount of funds transferred by a governmental entity as follows.

(A) If a governmental entity transfers the maximum amount referenced in paragraph (1) of this subsection on behalf of each performer owned by or affiliated with that governmental entity, each performer owned by or affiliated with that governmental entity will receive the full payment amount calculated for that payment period.

(B) If a governmental entity does not transfer the maximum amount referenced in paragraph (1) of this subsection on behalf of each performer owned by or affiliated with that governmental entity, each performer owned by or affiliated with that governmental entity will receive a portion of the value associated with that milestone (as specified in the RHP plan update) that is proportionate to the total value of all milestones that are completed and eligible for payment for that period by all performers owned by or affiliated with that governmental entity.

(3) Final payment opportunity. If a performer does not receive a full DSRIP payment as a result of paragraph (2)(B) of this subsection, a governmental entity may provide the necessary IGT to make up the non-federal share of that shortfall until the last reporting period of the DY following the DY in which the applicable milestone is listed in the RHP plan update. Any shortfall remains the obligation of the original governmental entity until that governmental entity informs HHSC that it will no longer agree to fund that obligation.

(A) If the governmental entity will no longer fund the obligation or a proportion of the obligation, that governmental entity must inform HHSC no later than the last date of the reporting period for the applicable payment period.

(B) A performer may utilize any affiliated governmental entity to fund the shortfall but must inform HHSC of the identity of this governmental entity no later than the last date of a reporting period in order for that affiliated entity to fund the shortfall during the associated payment period.

(i) Recoupment.

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

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

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

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

(B) If, within 30 days of the performer's receipt of HHSC's written notice of recoupment, the performer has not paid the

full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all future Medicaid payments from the performer until HHSC has recovered an amount equal to the amount overpaid or disallowed.

§355.8218. Funding for DSRIP Monitoring Program for Demonstration Years 9-10.

(a) Introduction. The Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver provides for Delivery System Reform Incentive Payment (DSRIP) program payments to eligible performers. In order to ensure that such payments are made properly, the Health and Human Services Commission (HHSC) will contract with one or more independent entities to monitor the DSRIP program. This section describes the method by which HHSC will gain the source of the non-federal share of payments to reimburse the independent entity for its administrative expenses. For purposes of this section, the definitions in §354.1729 of this title (relating to Definitions) apply, except where otherwise indicated.

(b) Funding for DSRIP program monitoring. HHSC will allocate an intergovernmental transfer (IGT) amount to each DSRIP IGT entity to fund DSRIP monitoring activities.

(1) HHSC will determine the amount of the IGT allocation in each demonstration year (DY) for each IGT entity. The amount of the IGT allocation for each IGT entity will be calculated using the following formula: $IGT\ Allocation = (AffiliatedValue\ divided\ by\ DY\ Value) \times TotalIGT$, where:

(A) "AffiliatedValue" is the portion of the value for which the IGT entity agreed to fund the non-federal share for all DSRIP performers that the IGT entity is affiliated with for a particular DY;

(B) "DYValue" is the value for all DSRIP performers in the state for the same DY as used in subparagraph (A) of this paragraph; and

(C) "TotalIGT" is the total amount of IGT necessary for monitoring activities in a DY, as determined by HHSC, which may not be greater than \$5 million.

(2) The values utilized in paragraph (1) of this subsection are the official values as of January 1 of the calendar year in which the calculation occurs.

(3) The full IGT allocation for monitoring will be requested the first time an IGT entity provides an IGT for a DY.

(4) An IGT entity may choose to either provide the IGT allocation from an IGT intended to fund a DSRIP payment or in addition to an IGT to fund a DSRIP payment.

(c) Return of unused IGTs. The balance of any allocation not used to fund monitoring activities will be returned to the IGT entities. The amount returned is calculated on a pro rata basis in accordance with the amount of such entities' IGTs intended to fund the DSRIP monitoring program for the DY for which the refund is made.

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

Filed with the Office of the Secretary of State on July 18, 2019.
TRD-201902289



TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 34. SCHEDULE OF SANCTIONS AND PENALTIES

16 TAC §34.2

The Texas Alcoholic Beverage Commission proposes amendments to Rule §34.2, Schedule of Sanctions and Penalties for Health, Safety, and Welfare Violations. This rule provides penalty guidelines for conduct constituting a threat to the general welfare.

Alcoholic Beverage Code §11.61(b)(7) authorizes the Commission to suspend or cancel a permit if it is found that "the place or manner in which the permittee conducts his business warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency." Similarly, Code §61.71 authorizes the Commission to suspend or cancel a license if it is found that the licensee "conducted the licensee's business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people."

In 2019, the 86th Texas Legislature passed House Bill 1545, which added Alcoholic Beverage Code §1.08:

Sec.1.08. PREVENTION OF HUMAN TRAFFICKING. It is the intent of the legislature to prevent human trafficking at all permitted and licensed premises, and all provisions of this code shall be liberally construed to carry out this intent, and it shall be a duty and priority of the commission to adhere to a zero tolerance policy of preventing human trafficking and related practices.

The Code prohibits engaging in conduct constituting or relating to human trafficking. For example, Code §11.44 makes a person ineligible for a permit or license for a period of three years if the person voluntarily surrendered the person's permit or license prior to a hearing for an offense involving human trafficking. Code §11.46(c) makes any premises ineligible for a period of one year if a permit or license has been canceled at the premises as a result of human trafficking. Code §11.64(a) requires suspension of a permit or license without the option of paying a civil penalty if the basis for the suspension is an offense of human trafficking.

Rule §35.31 identifies the types of conduct that constitute an offense against the general welfare in violation of Code §11.67(b)(7) and provisions of the Code. These offenses include, for example, sexual offenses described in Chapter 21 of the Penal Code, weapon offenses described in Chapter 46 of the Penal Code, and gambling offenses described in Chapter 47 of the Penal Code. The proposed amendments to Rule §34.2 would assess a penalty of cancellation for an offense of human trafficking.

Clark Smith, General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there would be no additional costs to state or local government as a result of enforcing or administering the amendments to the rule. There would be no reductions in costs to local governments because local governments would not enforce or administer the rule amendments. There would be no loss or increase in revenue to state or local governments as a result of enforcing or administering the rule amendments.

The proposed amendments will not have an adverse economic impact on rural communities. The proposed amendments will not have an adverse economic impact on micro-businesses, small businesses, and persons regulated by the Commission because the proposed amendments will not affect businesses that comply with the law.

This paragraph constitutes the Commission's government growth impact statement for the first five years the proposed amendments would be in effect. The proposed amendments neither create nor eliminate a government program. The proposed amendments do not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed amendments requires neither an increase nor a decrease in future legislative appropriations to the Commission. The proposed amendments do not increase or decrease fees paid to the agency. The proposed amendments do not create a new regulation. The proposed amendments neither increase nor decrease the number of individuals subject to regulation. The proposed amendments are not expected to have a direct effect on the state's economy, either positively or adversely.

Mr. Smith has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because violations of Chapter 20A of the Penal Code regarding human trafficking will result in automatic cancellation of the permit or license at issue.

Comments on the proposed amendments may be submitted in writing to Clark Smith, General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3280, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which authorizes the agency to prescribe rules necessary to carry out the provisions of the Alcoholic Beverage Code.

This rule relates to §§11.46(a)(8), 11.61(b)(7), 61.42(a)(3) and 61.71(a)(17) of the Alcoholic Beverage Code.

§34.2. Schedule of Sanctions and Penalties for Health, Safety and Welfare Violations.

An act or failure to act which results in a violation of the code or rules that represents a threat to the public health, safety, or welfare will be assessed sanctions and penalties as follows:

Figure: 16 TAC §34.2

[~~Figure: 16 TAC §34.2~~]

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

Filed with the Office of the Secretary of State on July 19, 2019.

TRD-201902295



CHAPTER 35. ENFORCEMENT SUBCHAPTER D. PLACE OR MANNER

16 TAC §35.31

The Texas Alcoholic Beverage Commission proposes amendments to §35.31, Offenses Against the General Welfare. This rule provides a non-exclusive list of offenses which constitute a threat to the general welfare in violation of Alcoholic Beverage Code §§11.46(a)(8), 11.61(b)(7), 61.42(a)(3), and 61.71(a)(17).

Alcoholic Beverage Code §11.61(b)(7) authorizes the Commission to suspend or cancel a permit if it is found that "the place or manner in which the permittee conducts his business warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency." Similarly, Code §61.71 authorizes the Commission to suspend or cancel a license if it is found that the licensee "conducted the licensee's business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people."

In 2019, the 86th Texas Legislature passed House Bill 1545, which added Alcoholic Beverage Code §1.08:

Sec.1.08. PREVENTION OF HUMAN TRAFFICKING. It is the intent of the legislature to prevent human trafficking at all permitted and licensed premises, and all provisions of this code shall be liberally construed to carry out this intent, and it shall be a duty and priority of the commission to adhere to a zero tolerance policy of preventing human trafficking and related practices.

The Code prohibits engaging in conduct constituting or relating to human trafficking. For example, Code §11.44 makes a person ineligible for a permit or license for a period of three years if the person voluntarily surrendered the person's permit or license prior to a hearing for an offense involving human trafficking. Code §11.46(c) makes any premises ineligible for a period of one year if a permit or license has been canceled at the premises as a result of human trafficking. And Code §11.64(a) requires suspension of a permit or license without the option of paying a civil penalty if the basis for the suspension is an offense of human trafficking.

Section 35.31 identifies the types of conduct that constitute an offense against the general welfare in violation of certain provisions of the Code. These offenses include, for example, sexual offenses described in Chapter 21 of the Penal Code, weapon offenses described in Chapter 46 of the Penal Code, and gambling offenses described in Chapter 47 of the Penal Code. The proposed amendments add offenses under Chapter 20A of the Penal Code, relating to trafficking of persons.

Clark Smith, General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there would be no additional costs to state or local government as a result of enforcing or administering the amendments to the rule. There would be no reductions in costs to local governments because local governments would not enforce or admin-

ister the rule amendments. There would be no loss or increase in revenue to state or local governments as a result of enforcing or administering the rule amendments.

The proposed amendments will not have an adverse economic impact on rural communities. The proposed amendments will not have an adverse economic impact on micro-businesses, small businesses, and persons regulated by the Commission because the proposed amendments will not affect businesses that comply with the law.

This paragraph constitutes the Commission's government growth impact statement for the first five years the proposed amendments would be in effect. The proposed amendments neither create nor eliminate a government program. The proposed amendments do not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed amendments requires neither an increase nor a decrease in future legislative appropriations to the Commission. The proposed amendments do not increase or decrease fees paid to the agency. The proposed amendments do not create a new regulation. The proposed amendments neither increase nor decrease the number of individuals subject to regulation. The proposed amendments are not expected to have a direct effect on the state's economy, either positively or adversely.

Mr. Smith has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because violations of Chapter 20A of the Penal Code regarding human trafficking will result in the offense being considered a ground for a place or manner violation, which could lead to suspension or cancellation of a permit or license.

Comments on the proposed amendments may be submitted in writing to Clark Smith, General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3280, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which authorizes the agency to prescribe rules necessary to carry out the provisions of the Alcoholic Beverage Code.

This rule relates to §§11.46(a)(8), 11.61(b)(7), 61.42(a)(3) and 61.71(a)(17) of the Alcoholic Beverage Code.

§35.31. *Offenses Against the General Welfare.*

(a) This rule relates to §§11.46(a)(8), 11.61(b)(7), 61.42(a)(3) and 61.71(a)(17) of the Alcoholic Beverage Code.

(b) A licensee or permittee violates the provisions of the Alcoholic Beverage Code cited in subsection [paragraph] (a) of this section [rule] if any of the offenses listed in subsection [paragraph] (c) of this section [rule] are committed:

(1) by the licensee or permittee in the course of conducting his/her alcoholic beverage business; or

(2) by any person on the licensee or permittee's licensed premises; and

(3) the licensee or permittee knew or, in the exercise of reasonable care, should have known of the offense or the likelihood of its occurrence and failed to take reasonable steps to prevent the offense.

(c) The offenses that are the subject of this rule are as follows:

(1) any preparatory offense described in Chapter 15 of the Texas Penal Code;

(2) any homicide offense described in Chapter 19 of the Texas Penal Code;

(3) any trafficking or smuggling of a person or receipt of benefit from participating in a human trafficking offense described in Chapter 20A of the Texas Penal Code or 18 U.S.C. §1581-1592;

(4) [~~3~~] any sexual offense described in Chapter 21 of the Texas Penal Code;

(5) [~~4~~] any assaultive offense described in Chapter 22 of the Texas Penal Code;

(6) [~~5~~] any arson, criminal mischief or property damage or destruction offense described in Chapter 28 of the Texas Penal Code;

(7) [~~6~~] any theft offense described in Chapter 31 of the Texas Penal Code;

(8) [~~7~~] any fraud offense described in Chapter 32 of the Texas Penal Code;

(9) [~~8~~] any money laundering offense described in Chapter 34 of the Texas Penal Code;

(10) [~~9~~] any bribery offense described in Chapter 36 of the Texas Penal Code;

(11) [~~10~~] any obstruction offense described in Chapter 38 of the Texas Penal Code;

(12) [~~11~~] any disorderly conduct or related offenses described in Chapter 42 of the Texas Penal Code;

(13) [~~12~~] any public indecency offense described in Chapter 43 of the Texas Penal Code;

(14) [~~13~~] any weapons offense described in Chapter 46 of the Texas Penal Code;

(15) [~~14~~] any gambling offense described in Chapter 47 of the Texas Penal Code;

(16) [~~15~~] any narcotics related offense described in Chapters 481 and 483 of the Texas Health and Safety Code; and

(17) [~~16~~] any law, regulation or ordinance of the federal government or of the county or municipality in which the licensed premises is located, violation of which is detrimental to the general welfare, health, peace and safety of the people.

(d) This rule does not constitute the exclusive means by which §§11.46(a)(8), 11.61(b)(7), 61.42(a)(3) and 61.71(a)(17) may be violated.

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

Filed with the Office of the Secretary of State on July 19, 2019.

TRD-201902296

Clark Smith

General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: September 1, 2019

For further information, please call: (512) 206-3280



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER C. OTHER PROVISIONS

19 TAC §74.28

The State Board of Education (SBOE) proposes an amendment to §74.28, concerning students with dyslexia and related disorders. The proposed amendment would require each school district and open-enrollment charter school to report to the Texas Education Agency (TEA) the results of the required screening for dyslexia and related disorders for students in Kindergarten and Grade 1 in accordance with Texas Education Code (TEC), §38.003(a).

BACKGROUND INFORMATION AND JUSTIFICATION: Section 74.28 provides guidance to school districts and open-enrollment charter schools for identifying students with dyslexia or related disorders and providing appropriate services to those students.

The 85th Texas Legislature, Regular Session, 2017, passed House Bill (HB) 1886 amending TEC, §38.003, to specify that a student enrolled in public school must be screened or tested, as appropriate, for dyslexia and related disorders at appropriate times in accordance with a program approved by the SBOE. The legislation required that the program include screening at the end of the school year for all students in Kindergarten and Grade 1. An amendment to 19 TAC §74.28 to align the rule with HB 1886 was approved for second reading and final adoption at the June 2018 SBOE meeting with an effective date of August 27, 2018.

TEC, §38.003(c), requires the SBOE to adopt any rules and standards necessary to administer requirements for screening and services for dyslexia and related disorders under TEC, §38.003. The proposed amendment to §74.28 would require school districts and open-enrollment charter schools to report to the TEA through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) the results of screening for dyslexia and related disorders required at the end of the school year for each student in Kindergarten and each student in Grade 1 in accordance with TEC, §38.003(a).

The SBOE approved the proposed amendment for first reading and filing authorization at its June 14, 2019 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government 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. The proposed rulemaking would expand an existing regulation by requiring school districts and open-enrollment charter schools to report the results of dyslexia screenings for each student in Kindergarten and Grade 1 through the TSDS PEIMS.

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 create a new regulation; would not 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: Ms. Martinez 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 improvement of documentation of results of screenings for dyslexia and other disorders and the ability to more effectively transmit that information between school districts. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would require school districts and open-enrollment charter schools to report to TEA in the TSDS PEIMS results of the required screening for dyslexia and related disorders for students in Kindergarten and Grade 1 in accordance with TEC, §38.003(a).

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: 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 August 2, 2019, and ends September 6, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_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. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in September 2019 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 2, 2019.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.102(c)(28), which requires the State Board of Education (SBOE) to approve a program for testing students for dyslexia and related disorders; TEC, §38.003(a), which requires that students enrolling in public schools be screened or tested, as appropriate, for dyslexia and related disorders at appropriate times in accordance with a program approved by the SBOE. The program must

include screening at the end of the school year of each student in Kindergarten and each student in Grade 1; and TEC, §38.003(c), which requires the SBOE to adopt any rules and standards necessary to administer TEC, §38.003, Screening and Treatment for Dyslexia and Related Disorders.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §7.102(c)(28) and §38.003(a) and (c).

§74.28. *Students with Dyslexia and Related Disorders.*

(a) - (j) (No change.)

(k) Each school district and open-enrollment charter school shall report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) the results of the screening for dyslexia and related disorders required for each student in Kindergarten and each student in Grade 1 in accordance with TEC, §38.003(a).

(l) [(k)] Each school district and open-enrollment charter school shall provide a parent education program for parents/guardians of students with dyslexia and related disorders. This program must include:

- (1) awareness and characteristics of dyslexia and related disorders;
- (2) information on testing and diagnosis of dyslexia and related disorders;
- (3) information on effective strategies for teaching students with dyslexia and related disorders;
- (4) information on qualifications of those delivering services to students with dyslexia and related disorders;
- (5) awareness of information on accommodations and modifications, especially those allowed for standardized testing;
- (6) information on eligibility, evaluation requests, and services available under IDEA and the Rehabilitation Act, §504, and information on the response to intervention process; and
- (7) contact information for the relevant regional and/or school district or open-enrollment charter school specialists.

(m) [(4)] School districts and open-enrollment charter schools shall provide to parents of children suspected to have dyslexia or a related disorder a copy or a link to the electronic version of the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders."

(n) [(m)] School districts and open-enrollment charter schools will be subject to monitoring for compliance with federal law and regulations in connection with this section.

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

Filed with the Office of the Secretary of State on July 22, 2019.

TRD-201902320

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: September 1, 2019

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



19 TAC §74.30

The State Board of Education (SBOE) proposes an amendment to §74.30, concerning identification of honors courses. The proposed amendment would update the list of languages other than English (LOTE) courses designated as honors courses to align with recent changes to the LOTE Texas Essential Knowledge and Skills (TEKS).

BACKGROUND INFORMATION AND JUSTIFICATION: The 80th Texas Legislature passed Senate Bill 1517, amending Texas Education Code (TEC), §33.081, to define and restrict the courses that are exempt from the passing grade requirement for students to be eligible to participate in extracurricular activities. TEC, §33.081(d-1), specifies that the courses that are exempt include all Advanced Placement and International Baccalaureate courses. Additional courses that are exempt include honors and dual credit courses in the subjects of English language arts, mathematics, science, social studies, economics, and LOTE.

The proposed amendment would update the LOTE courses that are designated as honors courses. These changes are a result of revisions to the LOTE TEKS. Additionally, the amendment would remove the reference to economics courses, which will be combined with the TEKS for social studies effective with the 2019-2020 school year.

The SBOE approved the proposed amendment for first reading and filing authorization at its June 14, 2019 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government 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. The proposed rulemaking would expand an existing regulation by adding LOTE courses that are designated as honors courses for the purpose of TEC, §33.081.

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 create a new regulation; would not 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: Ms. Martinez 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 include clarification regarding the courses that are exempt from the passing grade requirement for students to be eligible to participate in extracurricular activities. 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 new data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: 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 August 2, 2019, and ends September 6, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_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. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in September 2019 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 2, 2019.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §33.081, which requires the State Board of Education to establish rules limiting participation in and practice for extracurricular activities during the school day and school week. TEC, §33.081(d-1), defines and restricts the courses that are exempt from the passing grade requirement for students to be eligible to participate in extracurricular activities.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §33.081.

§74.30. Identification of Honors Courses.

(a) The following are identified as honors classes as referred to in the Texas Education Code, §33.081(d)(1), concerning extracurricular activities:

(1) all College Board Advanced Placement [~~advanced placement~~] courses and International Baccalaureate courses in all disciplines;

(2) English language arts: high school/college concurrent enrollment classes that are included in the "Lower-Division Academic Course Guide Manual (Approved Courses)" ["Community College General Academic Course Guide Manual (Part One)"];]

(3) Languages other than English: high school/college concurrent enrollment classes that are included in the "Lower-Division Academic Course Guide Manual (Approved Courses)"; American Sign Language, Level IV; American Sign Language, Advanced Independent Study; Level IV, Intermediate Mid to Intermediate High Proficiency; Level V, Intermediate High to Advanced Mid Proficiency; Level VI, Advanced Mid to Advanced High Proficiency; Level VII, Advanced High to Superior Proficiency; Seminar in Languages Other Than English, Advanced; Classical Languages, Level IV, Novice Mid to Advanced Mid Proficiency; Classical Languages, Levels V-VII,

Novice High to Superior Low Proficiency; and Seminar in Classical Languages, Advanced ["Community College General Academic Course Guide Manual (Part One)," and languages other than English courses Levels IV-VII] ;

(4) Mathematics: high school/college concurrent enrollment classes that are included in the "Lower-Division Academic Course Guide Manual (Approved Courses)" ["Community College General Academic Course Guide Manual (Part One)"] and Precalculus;

(5) Science: high school/college concurrent enrollment classes that are included in the "Lower-Division Academic Course Guide Manual (Approved Courses)" ["Community College General Academic Course Guide Manual (Part One)"]; and

(6) Social studies: Social Studies Advanced Studies, Economics Advanced Studies, and high school/college concurrent enrollment classes that are included in the "Lower-Division Academic Course Guide Manual (Approved Courses)." ["Community College General Academic Course Guide Manual (Part One)."]

(b) Districts may identify additional honors courses in the subject areas of English language arts, mathematics, science, social studies, [economics,] or a language other than English for the purpose of this section, but must identify such courses prior to the semester in which any exemptions related to extracurricular activities occur.

(c) Districts are neither required to nor restricted from considering courses as honors for the purpose of grade point average calculation.

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-201902321

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: September 1, 2019

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



CHAPTER 157. HEARINGS AND APPEALS

SUBCHAPTER D. INDEPENDENT HEARING EXAMINERS

19 TAC §157.41

The State Board of Education (SBOE) proposes an amendment to §157.41, concerning certification criteria for independent hearing examiners. The proposed amendment would allow the commissioner of education to take action against the certificate of an independent hearing examiner if it is determined that the law firm with which the independent hearing examiner is associated, during the time the independent hearing examiner has been certified, meets specified criteria.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), §21.252(a), requires the SBOE to establish certification criteria for independent hearing examiners. Section 157.41 specifies certification criteria such as license required, experience, continuing education, and annual recertification for independent hearing examiners. The examiners preside

over due process hearings involving terminations, suspensions without pay, and nonrenewal of term employment contracts. The examiners also develop findings of fact and conclusions of law, which are referred to the school district board of trustees.

Currently, §157.41 specifies that the commissioner may take action against the certificate of an independent hearing examiner if it is determined that the independent hearing examiner, during the time the independent hearing examiner has been certified, has: (1) served as an agent or representative of a school district; (2) served as an agent or representative of a teacher in any dispute with a school district; (3) served as an agent or representative of an organization of school employees, school administrators, or school boards; or (4) failed to timely issue a recommendation. The proposed amendment would specify in subsection (l) that the commissioner may also take action against the certificate of an independent hearing examiner if it is determined that the law firm with which the independent hearing examiner is associated meets any of the same criteria. This change would align the rule with TEC, §21.252.

The SBOE approved the proposed amendment for first reading and filing authorization at its June 14, 2019 meeting.

FISCAL IMPACT: Von Byer, general counsel, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government 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. The proposed rulemaking would expand an existing regulation and increase the number of individuals subject to its applicability. Currently, §157.41 specifies that the commissioner may take action against the certificate of an independent hearing examiner if it is determined that the independent hearing examiner, during the time the independent hearing examiner has been certified, meets certain criteria. The proposed amendment would specify that the commissioner may also take action against the certificate of an independent hearing examiner if it is determined that the law firm with which the independent hearing examiner is associated meets any of the same criteria. This change would align the rule with TEC, §21.252.

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 create a new

regulation; would not limit or repeal an existing regulation; would not 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. Byer 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 alignment of the rule with statutory provisions in TEC, §21.252. 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 new data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: 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 August 2, 2019, and ends September 6, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_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. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in September 2019 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 2, 2019.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.252, which requires the State Board of Education, in consultation with the State Office of Administrative Hearings, by rule to establish criteria for certifying independent hearing examiners who conduct hearings under the TEC, Chapter 21, Subchapter F.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.252.

§157.41. *Certification Criteria for Independent Hearing Examiners.*

(a) License required. An individual who is certified as an independent hearing examiner must be licensed to practice law in the State of Texas.

(b) Representations prohibited. An independent hearing examiner, and the law firm with which the independent hearing examiner is associated, must not serve as an agent or representative of:

- (1) a school district;
- (2) a teacher in any dispute with a school district; or
- (3) an organization of school employees, school administrators, or school boards.

(c) Moral character and criminal history. An independent hearing examiner must:

- (1) possess good moral character; and
- (2) as demonstrated by a criminal history report process required by the commissioner of education, not have been convicted, given probation (whether through deferred adjudication or otherwise), or fined for:

(A) a felony;

(B) a crime of moral turpitude; or

(C) a crime that directly relates to the duties of an independent hearing examiner in a public school setting.

(d) Status as a licensed attorney. An independent hearing examiner must:

(1) currently be a member in good standing of the State Bar of Texas;

(2) within the last five years, not have had the independent hearing examiner's bar license:

(A) reprimanded, either privately or publicly;

(B) suspended, either probated or otherwise; or

(C) revoked;

(3) have been licensed to practice law in the State of Texas or any other state for at least five years prior to application; and

(4) have engaged in the actual practice of law on a full-time basis, as defined by the Texas Board of Legal Specialization, for at least five years.

(e) Experience. During the three years immediately preceding certification, an independent hearing examiner must have devoted a minimum of 50% of the examiner's time practicing law in some combination of the following areas, with a total of at least one-tenth or 10% of the independent hearing examiner's practice involving substantial responsibility for taking part in a contested evidentiary proceeding convened pursuant to law in which the independent hearing examiner personally propounded and/or defended against questions put to a witness under oath while serving as an advocate, a hearing officer, or a presiding judicial officer:

(1) civil litigation;

(2) administrative law;

(3) school law; or

(4) labor law.

(f) Continuing education. During each year of certification, an independent hearing examiner must receive credit for ten hours of continuing legal education, with three hours in the area of school law and seven hours in the area of civil trial advocacy and legal writing skills, which must include any combination of course work in evidence, civil procedure, and legal writing skills, during the period January 1 to December 31 of each year of certification.

(g) Sworn application. In order to be certified as an independent hearing examiner, an applicant must submit a sworn application to the commissioner of education. The application shall contain the following acknowledgments, waivers, and releases.

(1) The applicant agrees to authorize appropriate institutions to furnish relevant documents and information necessary in the investigation of the application, including information regarding grievances maintained by the State Bar of Texas.

(2) If selected as an independent hearing examiner, the applicant has the continuing duty to disclose grievance matters under subsection (d)(2) of this section at any time during the certification period. Failure to report these matters constitutes grounds for rejecting an application or removal as an independent hearing examiner.

(3) If selected as an independent hearing examiner, the applicant has the continuing duty to disclose criminal matters under sub-

section (d)(2) of this section at any time during the certification period. Failure to report these matters constitutes grounds for rejecting an application or removal as an independent hearing examiner.

(h) Assurances as to position requirements. In the sworn application, the applicant must:

(1) demonstrate that the applicant currently maintains an office or offices within the State of Texas;

(2) designate the office locations from which the applicant will accept appointments;

(3) demonstrate that the applicant provides telephone messaging and facsimile services during regular business hours;

(4) agree to attend meetings of independent hearing examiners in Austin, Texas, at the examiner's expense; and

(5) agree to comply with all reporting and procedural requirements established by the commissioner.

(i) Voluntary evaluations. The commissioner may solicit voluntary evaluations from parties to a case regarding their observations of the independent hearings process.

(j) Insufficient examiners in a region. In the event that insufficient numbers of independent hearing examiners are certified for any geographic region of the state, the commissioner may assign an independent hearing examiner whose office is within reasonable proximity to the school district.

(k) Annual recertification.

(1) Certification expires on December 31 of each calendar year. All independent hearing examiners seeking recertification shall reapply on a date specified by the commissioner. Certification as a hearing examiner is effective on a yearly basis only and does not confer any expectation of recertification in subsequent years.

(2) The commissioner, in his discretion, after providing notice and an opportunity to respond, may decline to recertify an independent hearing examiner, if the commissioner determines that the independent hearing examiner has failed to perform the duties of an independent hearing examiner in a competent manner. The commissioner may consider, but is not limited to, the following factors:

(A) timeliness;

(B) accuracy and appropriateness of procedural and evidentiary rulings;

(C) decorum or control; or

(D) application of appropriate legal standards.

(3) The commissioner's decision in regard to recertification is final and not appealable.

(l) Action against certification. The commissioner, after providing notice and an opportunity to respond, may take action against the certificate of an independent hearing examiner if it is determined that the independent hearing examiner or the law firm with which the independent hearing examiner is associated, during the time the independent hearing examiner has been certified, has:

(1) served as an agent or representative of a school district;

(2) served as an agent or representative of a teacher in any dispute with a school district;

(3) served as an agent or representative of an organization of school employees, school administrators, or school boards; or

(4) failed to timely issue a recommendation.

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

Filed with the Office of the Secretary of State on July 22, 2019.

TRD-201902322

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: September 1, 2019

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

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY

SUBCHAPTER B. CERTIFICATION BY EXAMINATION

22 TAC §511.21

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.21, concerning Examination Application.

Background, Justification and Summary

The amendment to §511.21 makes it clear that the fingerprinting of licensees must be from a vendor approved by the Department of Public Safety.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be to clarify that the vendor used for fingerprinting services must be approved by the Department of Public Safety.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be only a nominal economic cost to persons required to comply with the amendment, which will be a one-time expense of about \$40.00, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment imposes only a nominal one-time cost of \$40.00 per licensee and therefore does not impose any significant duties or obligations upon small businesses, rural communi-

ties or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 3, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule; describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Legal Review

The Board's legal counsel has reviewed the rule and certified that the rule is within the state agency's authority to adopt. (§2001.024)

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.21. Examination Application.

(a) An application to take the UCPAE shall be made on forms prescribed by the board and shall also be in compliance with board rules and with all applicable laws.

(b) Each applicant shall submit to the Department of Public Safety a complete and legible set of fingerprints from a vendor approved by the Department of Public Safety in conjunction with the application for the purpose of obtaining criminal history record information.

(c) ~~[(b)]~~ Each applicant shall submit their social security number on the application form. Such information shall be considered confidential and can only be disclosed under the provisions of the Act.

(d) ~~[(e)]~~ An applicant must sign a statement on the application that states that if the applicant's examination is lost, the limit of liability for which the board may be held responsible will be the amount of the exam fee collected by NASBA.

(e) ~~[(d)]~~ Each applicant for the UCPAE must pay an eligibility fee for each section for which the applicant requests to take in accordance with §521.14 of this title (relating to Eligibility Fee). Application forms not accompanied by the proper fee or required documents shall not be considered complete. The withholding of information, a misrepresentation, or any untrue statement on the application or supplemental documents will be cause for rejection of the application.

(f) ~~[(e)]~~ Each application must be verified to show that the applicant remains qualified in all respects to take the examination.

(g) ~~[(f)]~~ The board shall evaluate each examination application and establish dates of eligibility for each approved application, which will be used by the testing vendor or other organization to schedule and test an applicant.

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

Filed with the Office of the Secretary of State on July 19, 2019.

TRD-201902301

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 1, 2019

For further information, please call: (512) 305-7842



SUBCHAPTER F. EXPERIENCE REQUIREMENTS

22 TAC §511.122

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.122, concerning Acceptable Work Experience.

Background, Justification and Summary

The amendment to §511.122 establishes the type of work experience needed to qualify to be certified.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be to clarify the parameters for acceptable work experience to become a Certified Public Accountant.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 3, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.122. Acceptable Work Experience.

(a) Work experience shall be under the supervision of a CPA who is currently licensed and in good standing with this board or with another state board of accountancy as defined in §511.124 of this chapter (relating to Acceptable Supervision), and who is experienced in the non-routine accounting area assigned to the applicant [and who holds a current license issued by this board or by another state board of accountancy as defined in §511.124 of this chapter (relating to Acceptable Supervision)].

(b) Non-routine accounting involves attest services as defined in §501.52(4) of this title (relating to Definitions), or professional accounting services or professional accounting work as defined in §501.52(22) of this title, and the use of independent judgment, applying [entry level or higher] professional accounting knowledge and skills to select, correct, organize, interpret, and present real-world data as accounting entries, reports, statements, and analyses extending over a diverse range of tax, accounting, assurance, and control situations.

(c) Acceptable [AII] work experience[; to be acceptable;] shall be gained in the following categories or in any combination of these:

(1) Client practice of public accountancy. All client practice of public accountancy experience shall be obtained from a supervisor in a properly licensed CPA firm in good standing with the firm's licensing board and be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters.

(2) Unlicensed business entity. Work experience gained in an unlicensed business entity shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters. Unlicensed business entity experience may include, but is not limited to:

(A) providing management or financial advisory or consulting services;

(B) preparing tax returns;

(C) providing advice in tax matters;

(D) providing forensic accounting services;

(E) providing internal auditing services; and

(F) business valuation services.

{(2) Industry. All work experience gained in industry shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters. Acceptable industry work experience includes:}

{(A) internal auditor;}

{(B) staff, fund or tax accountant;}

{(C) accounting, financial or accounting systems analyst; and}

{(D) controller.}

(3) Industry practice. All work experience gained in industry shall be internal to the organization and of a non-routine accounting nature which continually requires independent thought and judgment

on important accounting matters and may include: providing management or financial advisory internal services; preparing tax returns; providing advice in tax matters; providing forensic accounting services; and providing internal auditing services.

(A) Examples of industries may include, but are not limited to:

- (i) commercial business enterprise;
- (ii) non-profit/charitable organization;
- (iii) financial institution; and
- (iv) health care entity.

(B) Acceptable industry work experience positions may include, but are not limited to:

- (i) internal auditor;
- (ii) staff, senior, fund or tax accountant;
- (iii) accounting, financial or accounting systems analyst; and
- (iv) controller.

(4) [(3)] Government practice. All work experience gained in government shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters and which meets the criteria in subparagraphs (A) - (E) of this paragraph. The board will review on a case-by-case basis experience which does not clearly meet the criteria identified in subparagraphs (A) - (E) of this paragraph. Acceptable government work experience includes, but is not limited to:

- (A) employment in state government as an accountant or auditor at Salary Classification B14 or above, or a comparable rating;
- (B) employment in federal government as an accountant, auditor or IRS revenue agent;
- (C) employment as a special agent accountant with the Federal Bureau of Investigation or equivalent position at a governmental entity;
- (D) military service, as an accountant or auditor as a Second Lieutenant or above; and
- (E) employment with other governmental entities as an accountant or auditor.

(5) [(4)] Law firm practice. All work experience gained in a law firm shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters comparable to the experience ordinarily found in a CPA firm, shall be under the supervision of a CPA or an attorney, and shall be in one or more of the following areas:

- (A) tax-planning, compliance and litigation; and
- (B) estate planning.

(6) [(5)] Education. [Work experience gained as an instructor at a college or university may qualify if evidence is presented showing independent thought and judgment was used on non-routine accounting matters. Only the teaching of upper division courses on a full time basis may be considered. All experience shall be supervised by the department chair or a faculty member who is a CPA.]

(A) Internal work experience gained at an educational institution shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters and may include: providing management or financial ad-

visory internal services; preparing tax returns; providing advice in tax matters; providing forensic accounting services; and providing internal auditing services without an opinion.

(B) Work experience gained as an instructor at an educational institution may qualify if evidence is presented showing independent thought and judgment was used on non-routine accounting matters. Only the teaching of upper division courses on a full-time basis may be considered. All experience shall be supervised by the department chair or a faculty member who is a CPA.

(7) [(6)] Internship. The board will consider, on a case-by-case basis, experience acquired through an approved accounting internship program, provided that the experience was non-routine accounting as defined by subsection (b) of this section. If an accounting internship course is counted toward fulfilling the education requirement, the internship may not be used to fulfill the work experience requirement.

(8) [(7)] Other. Work experience gained in other positions may be approved by the board as experience comparable to that gained in the practice of public accountancy under the supervision of a CPA upon certification by the person or persons supervising the applicant that the experience was of a non-routine accounting nature which continually required independent thought and judgment on important accounting matters.

(9) [(8)] Self-employment [Self employment] may not be used to satisfy the work experience requirement unless approved 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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J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §511.123

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.123, concerning Reporting Work Experience.

Background, Justification and Summary

The amendment to §511.123 cites the professional standard, (Statement on Standards for Review Services) as the applicable professional standard for work experience review.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will add clarity to the applicable work experience standard.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement are not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 3, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.123. Reporting Work Experience.

(a) The board requires a minimum of one year of work experience as described in §511.122 of this chapter (relating to Acceptable Work Experience) which shall be obtained in one of the following ways:

(1) ~~full-time~~ [full time] employment consisting of 40 or more hours per week completed in no less than 12 months; or

(2) ~~part-time~~ [part time] employment consisting of a minimum of 20 hours per week until 2000 hours of accounting work experience have been completed. Part-time work experience must be completed in no more than 24 months from the date the work begins.

(b) All work experience presented to the board for consideration shall be accompanied by the following items:

(1) a statement from the supervising CPA describing the non-routine work performed by the applicant and a description of the important accounting matters requiring the applicant's independent thought and judgment;

(2) a statement from the supervising CPA describing the type of experience that the CPA possesses which qualifies the CPA to supervise the applicant; and

(3) an affidavit from the supervising CPA stating that he has supervised the applicant's work; and offers his opinion that the applicant is qualified to perform all the accounting related work assigned to the applicant in accordance with the professional standards required by the board as defined in §501.62(1)(B) of this title (relating to Other Professional Standards).

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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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



CHAPTER 512. CERTIFICATION BY RECIPROCITY

22 TAC §512.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to 22 TAC §512.1, concerning Certification as a Certified Public Accountant by Reciprocity.

Background, Justification and Summary

The amendment to §512.1 makes it clear that the fingerprinting of licensees must be from a vendor approved by the Department of Public Safety.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no

estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be to clarify that the vendor used for fingerprinting services must be approved by the Department of Public Safety.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be only a nominal economic cost to persons required to comply with the amendment, which will be a one-time expense of about \$40.00, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment imposes only a nominal one-time cost of \$40.00 per licensee and therefore does not impose any significant duties or obligations upon small businesses, rural communities or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 3, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the

Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Legal Review

The Board's legal counsel has reviewed the rule and certified that the rule is within the state agency's authority to adopt. (§2001.024)

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§512.1. Certification as a Certified Public Accountant by Reciprocity.

(a) The certificate of a "certified public accountant" shall be granted by reciprocity to an applicant who is qualified under §901.259 of the Act (relating to Certification Based on Reciprocity) or §901.260 of the Act (relating to Certificate Based on Foreign Credentials) and is of good moral character as described in §901.253 of the Act (relating to Character Investigation). The applicant must provide in the application for reciprocity the names of all the jurisdictions in which the applicant is or has been certified and/or licensed and all disciplinary actions taken or pending in those jurisdictions.

(b) Each applicant shall submit to the Department of Public Safety a complete and legible set of fingerprints from a vendor approved by the Department of Public Safety in conjunction with the application for the purpose of obtaining criminal history record information.

(c) ~~(b)~~ An applicant from a domestic jurisdiction demonstrates that he meets the requirements for certification by reciprocity by:

(1) satisfying one of the following conditions:

(A) the applicant holds a certificate or license to practice public accountancy from a domestic jurisdiction that has been determined by the board pursuant to §512.2 of this chapter (relating to NASBA Verified Substantially Equivalent Jurisdictions) as having substantially equivalent requirements for certification; or

(B) the applicant holds a certificate or license to practice public accountancy from a domestic jurisdiction that has not been determined by NASBA and the board to have substantially equivalent certification requirements but has had his education, examination and experience verified as substantially equivalent to those required by the UAA by NASBA; or

(C) the applicant meets all requirements for issuance of a certificate set forth in the Act; or

(D) the applicant met the requirements in effect for issuance of a certificate in this state on the date the applicant was issued a certificate or license by another domestic jurisdiction; or

(E) after passing the UCPAE, the applicant has completed at least four years of experience practicing public accountancy within the ten year period immediately preceding the date of application in this state; and

(2) meeting CPE requirements applicable to certificate holders contained in Chapter 523 of this title (relating to Continuing Professional Education).

(d) [(e)] An applicant from a foreign jurisdiction demonstrates that he meets the requirements for certification by reciprocity by:

(1) holding a credential that has not expired or been revoked, suspended, limited or probated, and that entitles the holder to issue reports on financial statements issued by a licensing authority or professional accountancy body of another country that:

(A) regulates the practice of public accountancy and whose requirements to obtain the credential have been determined by the board to be substantially equivalent to the requirements of education, examination and experience contained in the Act; and

(B) grants credentials by reciprocity to applicants certified to practice public accountancy by this state;

(2) receiving that credential based on education and examination requirements that were comparable to or exceeded those required by the Act at the time the credential was granted;

(3) completing an experience requirement in the foreign jurisdiction that issued the credential that is comparable to or exceeds the experience requirement of the Act or has at least four years of professional accounting experience in this state;

(4) passing an international qualifying examination (IQEX) covering national standards that has been approved by the board; and

(5) passing an examination that has been approved by the board covering the rules of professional conduct in effect in this state.

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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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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CHAPTER 513. REGISTRATION SUBCHAPTER B. REGISTRATION OF CPA FIRMS

22 TAC §513.11

The Texas State Board of Public Accountancy (Board) proposes an amendment to §513.11, concerning Qualifications for Non-CPA Owners of Firm License Holders.

Background, Justification and Summary

The amendment to §513.11 removes the term "good moral character" which has been removed from the *Act* as a basis for not issuing a license and adds language regarding fingerprinting requirements.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment clarifies that a bar to licensure is the commission of dishonest or felonious acts and puts licensees on notice of the requirement that they be fingerprinted as a part of licensure.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be only a nominal economic cost to persons required to comply with the amendment, which will be a one-time expense of about \$40.00, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment imposes only a nominal one-time cost of \$40.00 per licensee and therefore does not impose any significant duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 3, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small busi-

nesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§513.11. Qualifications for Non-CPA Owners of Firm License Holders.

(a) A firm which includes non-CPA owners may not qualify for a firm license unless every non-CPA individual who is an owner of the firm:

(1) is actively providing personal services in the nature of management of some portion of the firm's business interests or performing services for clients of the firm or an affiliated entity;

(2) ~~lacks a [is of good moral character as demonstrated by a lack of]~~ history of dishonest or felonious acts; and

(3) is not a suspended or revoked licensee or certificate holder excluding those licensees that have been administratively suspended or revoked. (Administratively suspended or revoked are those actions against a licensee for Continuing Professional Education reporting deficiencies or failure to renew a license.)

(b) Each of the non-CPA individual owners who are residents of the State of Texas must also:

(1) pass an examination on the rules of professional conduct as determined by board rule;

(2) comply with the rules of professional conduct;

~~[(3) maintain professional continuing education applicable to license holders including the Board approved ethics course as required by board rule;]~~

~~[(4) hold a baccalaureate or graduate degree conferred by a college or university within the meaning of §511.52 of this title (relating to Recognized Institutions of Higher Education) or equivalent education as determined by the board; and]~~

(3) ~~[(5)]~~ maintain any professional designation held by the individual in good standing with the appropriate organization or regulatory body that is identified or used in an advertisement, letterhead, business card, or other firm-related communication; and ~~[-]~~

(4) provide to the board fingerprinting required in §515.1(d) of this title (relating to License) unless previously submitted to the board.

(c) A "Non-CPA Owner" includes any individual or qualified corporation who has any financial interest in the firm or any voting rights in the firm.

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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J. Randel (Jerry) Hill

General Counsel

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22 TAC §513.15

The Texas State Board of Public Accountancy (Board) proposes an amendment to §513.15, concerning Firm Offices.

Background, Justification and Summary

The amendment to §513.15 clarifies that a resident manager must be designated.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be a better understanding of who may serve as resident manager in a firm.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 3, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§513.15. Firm Offices.

(a) A certified public accountancy firm must hold a license for each office located in Texas.

(b) Each office of a firm must designate [~~be under the direct supervision of~~] a resident manager who is a resident of Texas. Exempted from the requirement of Texas residency is a resident manager who spends a majority of the work week in Texas as the firm's resident manager. A resident manager may be an owner, member, partner, shareholder, or employee of the firm and must be licensed under the Act.

(c) A resident manager may supervise more than one office provided that the firm's application for issuance or renewal of the firm license or registration identifies each of the offices the resident manager will supervise.

(d) A resident manager is responsible for the supervision of professional services and may be held responsible for the violations of the Act or Rules for the activities of each office under his supervision.

(e) Interpretive comment: The exemption provided for in subsection (b) of this section is intended to address licensees residing outside of Texas but are able to commute to the Texas office for which the licensee is the firm resident manager on a routine and regular basis.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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CHAPTER 515. LICENSES

22 TAC §515.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.1, concerning License.

Background, Justification and Summary

The amendment to §515.1 reflects the new requirement for the fingerprinting of licensees.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be to put licensees on notice of the requirement for fingerprinting.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be only a nominal economic cost to persons required to comply with the amendment, which will be a one-time expense of about \$40.00, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment imposes only a nominal one-time cost of \$40.00 per licensee and, therefore, does not impose any significant duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 3, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.1. License.

(a) An individual or firm license holder is responsible for renewing the license before the expiration date of the license.

(b) An individual certified or registered by this board must obtain a license for a 12-month interval and the license shall not be issued or renewed unless the board has received all required fees, satisfactory documentation of compliance with CPE requirements and a completed application which includes fingerprints unless fingerprints have been previously submitted to the board.

(c) Subject to §515.3 of this chapter (relating to License Renewals for Individuals and Firm Offices), a firm registered with the board must obtain a license for each office associated with the firm.

(d) An individual license holder shall submit to the Department of Public Safety a complete and legible set of fingerprints from a vendor approved by the Department of Public Safety for the purpose of obtaining the applicant's criminal history record information. The fingerprinting can be waived by the executive director with evidence of extenuating circumstances. An extenuating circumstance would exist when doing so is not possible or would likely harm or cause irreparable damage to the license holder. Examples of extenuating circumstances include, but are not limited to, persons lacking fingers, the ability to produce fingerprints, or persons with no fingerprints. Evidence of an extenuating circumstance shall be required by the executive director where appropriate and may include medical documentation.

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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J. Randel (Jerry) Hill

General Counsel

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22 TAC §515.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.2, concerning Initial License.

Background, Justification and Summary

The amendment to §515.2 reflects the new requirement for the fingerprinting of licensees.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be to put licensees and the public on notice of the requirement for the fingerprinting of licensees.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be only a nominal economic cost to persons required to comply with the amendment, which will be a one-time expense of about \$40.00, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment imposes only a nominal one-time cost of \$40.00 per licensee and therefore does not impose any significant duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals

subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 3, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.2. Initial License.

(a) An initial license is the first license issued to an individual or firm certified or registered under the Act. The board will prorate the initial license fee for an individual or firm for those months during which the license is valid.

(b) The firm's initial and subsequent office license shall not be issued until such time as the sole proprietor, all partners, officers, directors, members, or shareholders of the firm, including non-CPA firm owners, who reside in Texas and who are certified or registered under the Act have obtained a license and have been fingerprinted unless they have been previously fingerprinted 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.

Filed with the Office of the Secretary of State on July 19, 2019.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 1, 2019

For further information, please call: (512) 305-7842



22 TAC §515.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.3, concerning License Renewals for Individuals and Firm Offices.

Background, Justification and Summary

The amendment to §515.3 reflects the new requirement for the fingerprinting of licensees.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be to put licensees and the public on notice of the requirement for the fingerprinting of licensees.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be only a nominal economic cost to persons required to comply with the amendment, which will be a one-time expense of about \$40.00, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment imposes only a nominal one-time cost of \$40.00 per licensee and therefore does not impose any significant duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 3, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.3. License Renewals for Individuals and Firm Offices.

(a) License renewals for individuals shall be as follows:

(1) Licenses for individuals have staggered expiration dates based on the last day of the individual's birth month. The license will be issued for a 12-month period following the initial licensing period.

(2) An individual's license will not be renewed if the individual has not earned the required CPE credit hours, has not completed all required parts of the renewal, ~~or~~ has not completed the affidavit affirming the renewal submitted is correct or has not provided the required fingerprinting unless it has been previously submitted to the board.

(3) At least 30 days before the expiration of an individual's license, the board shall send notice of the impending license expiration to the individual at the last known address according to board records. Failure to receive notice does not relieve the licensee from the responsibility to timely renew nor excuse, or otherwise affect the renewal deadlines imposed on the licensee.

(b) A licensee is exempt from any penalty or increased fee imposed by the board for failing to renew the license in a timely manner if the individual establishes to the satisfaction of board staff that the individual failed to renew the license because the individual was serving as a military service member. In addition, the military service member

has an additional two years to complete any other requirement related to the renewal of the military service member's license.

(c) License renewal requirements for firm offices shall be as follows:

(1) Licenses for offices of firms have staggered expiration dates for payment of fees, which are due the last day of a board assigned renewal month. All offices of a firm will have the same renewal month. All offices of a firm will be issued a license for a 12-month period following the initial licensing period.

(2) At least 30 days before the expiration of a firm's office license, the board shall send notice of the impending license expiration to the main office of the firm at the last known address according to the records of the board. Failure to receive notice does not relieve the firm from the responsibility to timely renew nor excuse, or otherwise affect the renewal deadlines imposed on the firm.

(3) A firm's office license shall not be renewed unless the sole proprietor, each partner, officer, director, or shareholder of the firm who is listed as a member of the firm and who is certified or registered under the Act has a current individual license. This does not apply to firms providing work pursuant to the practice privilege provisions of this title.

(4) If a firm is subject to peer review, then a firm's office license shall not be renewed unless the office has met the peer review requirements as defined in Chapter 527 of this title (relating to Peer Review).

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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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §515.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.5, concerning Reinstatement of a Certificate or License in the Absence of a Violation of the Board's Rules of Professional Conduct.

Background, Justification and Summary

The amendment to §515.5 reflects the new requirement for the fingerprinting of licensees.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be to put licensees and the public on notice of the requirement for the fingerprinting of licensees.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be only a nominal economic cost to persons required to comply with the amendment, which will be a one-time expense of about \$40.00, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment imposes only a nominal one-time cost of \$40.00 per licensee and therefore does not impose any significant duties or obligations upon small businesses, rural communities or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 3, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Legal Review

The Board's legal counsel has reviewed the rule and certified that the rule is within the state agency's authority to adopt. (§2001.024)

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.5. Reinstatement of a Certificate or License in the Absence of a Violation of the Board's Rules of Professional Conduct.

(a) An individual whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1 1/2 times the normally required renewal fee.

(b) An individual whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(c) An individual whose license has been expired for at least one year but less than two years may renew the license by paying to the board a renewal fee that is equal to three times the normally required renewal fee.

(d) An individual whose license has been expired for two years or more may obtain a license by paying all renewal fees including late fees.

(e) An individual whose license has been suspended or certificate revoked for the voluntary non-payment of the annual license fees, the voluntary non-completion of the annual license renewal, or the voluntary non-completion of the board required CPE may be administratively reinstated by complying with the board's CPE requirements pursuant to Chapter 523 of this title (relating to Continuing Professional Education) and providing the board the individual's required fingerprints if not previously submitted; and

(1) by paying all renewal fees including late fees; or

(2) upon showing of good cause, entering into an Agreed Consent Order that reinstates the certificate and permits the issuance of a conditional license with the agreement to pay all required fees by a certain date.

(f) An individual who was revoked under §901.502(3) or (4) of the Act (relating to Grounds for Disciplinary Action), has moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of submitting a complete application may obtain a new license without reexamination by:

(1) providing the board with a complete application including evidence of the required licensure;

(2) demonstrating that the out of state license is no more than 90 days beyond the normal expiration date of the license;

(3) paying the board a fee that is equal to two times the normally required renewal fee for the license; and

(4) meeting the other requirements for licensing.

(g) If the certificate, license, or registration was suspended, or revoked for non-payment of annual license fees, failure to complete the annual license renewal, or failure to comply with §501.94 of this title (relating to Mandatory Continuing Professional Education), upon written application the executive director will decide on an individual

basis whether the renewal fees including late fees must be paid for those years and whether any fee exemption is applicable.

(h) A military service member, military veteran or military spouse may obtain a license in accordance with the provisions of §515.11 of this chapter (relating to Licensing for Military Service Members, Military Veterans, and Military Spouses).

(i) Interpretive Comment: Effective September 1, 2015, when calculating the renewal fee provided for in subsections (a) - (d) of this section, the professional fee that was required by §901.406 and §901.407 of the Act (relating to Fee Increase and Additional Fee) will no longer be included in the renewal fee. However, when calculating any renewal fees accrued prior to September 1, 2015, the professional fee that was required by §901.406 and §901.407 of the Act will be included in the renewal fee.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §515.8

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.8, concerning Retired or Disability Status.

Background, Justification and Summary

The amendment to §515.8 reflects the new requirement for the fingerprinting of licensees.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be to put licensees and the public on notice of the requirement for the fingerprinting of licensees.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be only a nominal economic cost to persons required to comply with the amendment, which will be a one-time expense of about \$40.00, and a Local Employment Impact Statement are not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on

small businesses, rural communities or micro-businesses because the amendment imposes only a nominal one-time cost of \$40.00 per licensee and therefore does not impose any significant duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 3, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, and offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.8. Retired or Disability Status.

(a) Retired status. A licensee who is at least 60 years old and has filed a request on a form prescribed by the board stating that he has no association with accounting may be granted retired status at the time of license renewal. A licensee in retired status is exempt from the fingerprinting required in §515.1(d) of this chapter (relating to License).

A licensee who has been granted retired status and who reenters the workforce in a position that has an association with accounting automatically loses the retired status except as provided in subsection (a)(1) of this section, and must provide the fingerprinting required in §515.1(d) of this chapter unless previously submitted to the board.

(1) A licensee who serves without compensation on a Board of Directors, or Board of Trustees, or provides volunteer tax preparation services, participates in a government sponsored business mentoring program such as the Internal Revenue Service's Volunteer Income Tax Assistance (VITA) program or the Small Business Administration's SCORE program or participates in an advisory role for a similar charitable, civic or other non-profit organization continues to be eligible for retired status.

(2) Licensees providing such uncompensated volunteer services have the responsibility to maintain professional competence relative to the volunteer services they provide even though exempted from CPE requirements.

(3) The board shall require licensees to affirm in writing their understanding of the limited types of activities in which they may engage while in retired status and their understanding that they have a professional duty to ensure that they hold the professional competencies necessary to offer these limited volunteer services.

(4) Licensees may only convert to retired status if they hold a license in good standing and not be subject to any sanction or disciplinary action.

(5) Compensated services do not include routine reimbursement for travel costs and meals associated with the volunteer services or de minimis per diem amounts paid to cover such expenses.

(6) A retired licensee shall place the word "retired" adjacent to his CPA or Public Accountant title on any business card, letterhead or any other document. A licensee may be held responsible for a third party incorrectly repeating the CPA's title and shall make reasonable efforts to assure that the word "retired" is used in conjunction with CPA. Any of these terms must not be applied in such a manner that could likely confuse the public as to the current status of the licensee. The licensee will not be required to have a certificate issued with the word "retired" on the certificate.

(7) A licensee in "retired" status is not required: ~~[to maintain CPE.]~~

(A) to maintain CPE; and

(B) provide fingerprinting in accordance with §515.1(d) of this chapter unless the retired status is removed.

(8) A retired licensee shall not offer or render professional services that requires his signature and use of the CPA title either with or without "retired" attached, except a retired licensee providing supervision of an applicant to take the UCPAE may sign the work experience form.

(9) Upon reentry into the workforce, the licensee must notify the board and request a new license renewal notice and:

(A) pay the license fee established by the board for the period since he became employed;

(B) complete a new license renewal notice; and

(C) meet the CPE requirements for the period since he was granted the retired status as required by §523.113(3) of this title (relating to Exemptions from CPE).

(b) Disability status. Disability status may be granted to an individual who submits to the board a statement and a notarized affidavit from the licensee's physician which identifies the disability and states that the individual is unable to work because of a severe ongoing physical or mental impairment or medical condition that is not likely to improve within the next 12 consecutive months. This status may be granted only at the time of license renewal.

(1) Disability status is immediately revoked upon:

(A) the CPA reentering the workforce in a position that has an association with accounting work for which he receives compensation; or

(B) the CPA serving on a Board of Directors, Board of Trustees, or in a similar governance position unless the service is for a charity, civic, or similar non-profit organization.

(2) Upon reentry into the workforce under such conditions, the individual must notify the board and request a new license renewal notice and:

(A) pay the license fee established by the board for the period since he became employed;

(B) complete a new license renewal notice; ~~[and]~~

(C) meet the CPE requirements for the period pursuant to §523.113(3) of this title; ~~and [-]~~

(D) provide the fingerprinting required in §515.1(d) of this chapter unless previously submitted.

(c) For purposes of this section the term "association with accounting" shall include the following:

(1) working or providing oversight of accounting or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; accounting information systems; treasury, finance, or audit; or

(2) representing to the public, including an employer, that the individual is a CPA or public accountant in connection with the sale of any services or products involving accounting services or work, as provided for in §501.52(22) of this title (relating to Definitions) including such designation on a business card, letterhead, proxy statement, promotional brochure, advertisement, or office; or

(3) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management services; or

(4) providing instruction in accounting courses; or

(5) for purposes of making a determination as to whether the individual fits one of the categories listed in this section the questions shall be resolved in favor of including the work as an "association with accounting."

(d) Nothing herein shall be construed to limit the board's disciplinary authority with regard to a license in retired or disabled status. All board rules and all provisions of the Act apply to an individual in retired or disability status.

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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Texas State Board of Public Accountancy
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22 TAC §515.10

The Texas State Board of Public Accountancy (Board) proposes the repeal of §515.10, concerning Licenses for Individuals with Defaulted Student Loans.

Background, Justification and Summary

The repeal of §515.10 is proposed because SB 37 of the 86th legislative session repeals, effective May 31, 2019, the requirement for occupational agencies to revoke a license holder's license for a defaulted student loan.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the repeal.

Public Benefit

The adoption of the proposed repeal notifies the public of the elimination of the requirement to revoke the certificates of licensees in default of their student loans.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the repeal and a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed repeal will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the repeal does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the repeal is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed repeal.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the repeal is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 3, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses; if the proposed repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the repeal, describe and estimate the economic impact of the repeal on small businesses, offer alternative methods of achieving the purpose of the repeal; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed repeal is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§515.10. Licenses for Individuals with Defaulted Student Loans.

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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J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 1, 2019

For further information, please call: (512) 305-7842



CHAPTER 519. PRACTICE AND PROCEDURE SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §519.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.2, concerning Definitions.

Background, Justification and Summary

The amendment to §519.2 adds and defines the term "deferred adjudication."

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be to clarify deferred adjudication.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 3, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic

impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§519.2. Definitions.

In this chapter:

(1) "Address of record" means the last address provided to the board by a certificate or registration holder pursuant to §501.93 of this title (relating to Responses);

(2) "ALJ" means SOAH administrative law judge;

(3) "APA" means the Texas Administrative Procedure Act, Chapter 2001 of the Texas Government Code;

(4) "Board staff" means the agency's employees;

(5) "Committee" means an enforcement committee of the board;

(6) "Complainant" means the person or entity who initiates a complaint with the board against a certificate or registration holder;

(7) "Complaint" means information available to or provided to the board indicating that a certificate or registration holder may have violated the Act, board rules, or order of the board;

(8) "Contested case" means a proceeding, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing;

(9) "Deferred Adjudication" means a person entered a plea of guilty or nolo contendere, the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court and at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.

(10) [(9)] "Direct Administrative Costs" means those costs actually incurred by the board through payment to outside vendors and the resources expended by the board in the investigation and prosecution of a matter within the board's jurisdiction, including, but not limited to, staff salary, payroll taxes and benefits and other non-salary related expenses, expert fees and expenses, witness fees and expenses, filing fees and expenses of the support staff of the Office of the Attorney General, filing fees, SOAH utilization fees, court reporting fees, copying fees, delivery fees, case management fees, costs of exhibit creation, technical fees, travel costs and any other cost or fee that can reasonably be attributed to the matter;

(11) [(10)] "Petitioner" means the Texas State Board of Public Accountancy;

(12) [(11)] "PFD" means the proposal for decision prepared by an ALJ;

(13) [(12)] "Respondent" means a licensee or certificate holder, individual or entity against whom a complaint has been filed; and

(14) [(13)] "SOAH" means the State Office of Administrative Hearings.

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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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §519.13

The Texas State Board of Public Accountancy (Board) proposes new rule §519.13, concerning Direct Administrative Costs.

Background, Justification and Summary

New rule §519.13 is the development of rules on how the board assesses administrative costs. It articulates types of costs (which are currently included in the definition of administrative costs), the formula by which the agency arrives at its costs (this is based upon the hourly wage of the individual's time attributed to the complaint investigation, prosecution, and witness fees), when it is appropriate to include its costs (because the agency is an SDSI agency administrative costs should be assessed in every instance in the absence of a good cause waiver) and the maximum rate (which shall not exceed the actual costs).

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the new rule.

Public Benefit

The adoption of the new rule more clearly articulates the standards for calculating administrative costs in an enforcement action.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the new rule and a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed new rule will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the new rule does not impose any duties or obligations upon small businesses, rural communities or micro-businesses,

therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the new rule is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed new rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed new rule.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the new rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 3, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the proposed new rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§519.13. Direct Administrative Costs.

(a) The Texas Legislature does not appropriate funds to finance the operations of the board. Instead, the board is funded by licensing fees and other sources and is responsible for all direct and indirect costs of operations. It is the policy of the board to impose all direct administrative costs against the persons responsible for the costs of enforcement as opposed to being assessed against the licensing fees collected from license holders in compliance with the Act in the absence of a waiver of these costs for good cause.

(b) Direct administrative costs are defined in §519.2(10) of this chapter (relating to Definitions) and the board will use this definition in determining the direct administrative costs of an enforcement action. The direct administrative costs will not exceed the actual costs of the criteria established in §519.2(10) of this chapter.

(c) The board staff is responsible for proving the amount and method of assessing the direct administrative costs being presented in a proceeding before an ALJ at SOAH and when presented to the board for the board's final decision. The costs will be documented by the staff recording the time they devote to each enforcement action.

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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J. Randel (Jerry) Hill

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SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

22 TAC §519.20

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.20, concerning Complaints.

Background, Justification and Summary

The amendment to §519.20 clarifies that status reports are required only when there is a substantive change in the complaint status and identifies what a status change is.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will eliminate meaningless and unnecessary reporting.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement are not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-busi-

nesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 3, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§519.20. Complaints.

(a) Written complaints should contain information necessary for the proper processing of the complaint by the board, including:

- (1) complainant's name, address and phone number;
- (2) name, address and phone number of the licensee or certificate holder against whom the complaint is filed;
- (3) description of the alleged violation;
- (4) supporting information and factual evidence;

- (5) names and addresses of witnesses; and
- (6) sources of other pertinent information.

(b) The board has discretion whether or not to open an investigative file. A complaint that does not contain all of the information requested in subsection (a) of this section may be pursued if the missing information can be obtained from another source. For the board to proceed it must have jurisdiction over the person and the subject matter. Once the board has received a complaint, board staff shall conduct an initial screening of the complaint within 30 days. The board staff shall notify the complainant whether or not the board will proceed with an investigation.

(c) The board may accept anonymous complaints. Anonymous complaints may not be investigated if insufficient information is provided, the allegations are vague, appear to lack factual foundation, or cannot be proved for lack of a witness or other evidence.

(d) The board will periodically provide an update on the status of the complaint investigation to the complainant when there has been a substantive change of status. A substantive change would include the scheduling of the complaint investigation before an enforcement committee, the execution of an agreed consent order, a decision to refer the matter to litigation for prosecution at SOAH, any subsequent settlement agreement and the issuance of a proposal for decision.

(e) The board may open a complaint investigation on:

(1) an individual licensee and the individual's firm when it has evidence that the individual licensee participated in a possible violation of the Act or board rule; and

(2) a firm when there is evidence that the firm, in the practice of public accountancy, may have caused harm to a Texas resident or entity.

(f) Interpretive comment: The CPA firm may contact the board to determine if there is a nexus to Texas regarding the issue in subsections (e)(1) and (e)(2) of this section. The board will not open a complaint investigation on a firm unless the firm, in the practice of public accountancy, has caused harm to a person or entity located in Texas.

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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CHAPTER 527. PEER REVIEW

22 TAC §527.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.1, concerning Establishment of Peer Review Program.

Background, Justification and Summary

The amendment to §527.1 establishes the same peer review fee for all firms that are required to be peer reviewed and addresses the risk factor posed by different firms by recognizing non-attest

preparation engagements under SSARS which do not require peer review.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be a clearer understanding of the peer review program.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 3, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small busi-

nesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§527.1. Establishment of Peer Review Program.

(a) Pursuant to §901.159 of the Act (relating to Peer Review), the board establishes a peer review program to monitor CPAs' compliance with applicable accounting, auditing and other attestation standards adopted by generally recognized standard-setting bodies. The program may include education, remediation, disciplinary sanctions or other corrective action where reporting does not comply with professional or regulatory standards.

(b) This chapter shall not require any firm to become a member of any sponsoring organization and all sponsoring organization(s) shall charge the same administrative fee to all firms participating in peer review regardless of their membership or affiliation with a sponsoring organization.

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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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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22 TAC §527.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.2, concerning Definitions.

Background, Justification and Summary

The amendment to §527.2 establishes the distinction between systems review and engagement reviews for purposes of peer review.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be a clearer understanding of the peer review program.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 3, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§527.2. Definitions.

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

(1) "Engagement Review" means a peer review evaluating engagements performed and reported on in conformity with applicable professional standards in all material respects and unless agreed to otherwise is performed off-site from the reviewed firm's office and does not provide a basis for expressing any assurance regarding the firm's system of quality control for its accounting practice. ["Review" or "review program" means the review conducted under the peer review program.]

(2) "Systems Review" means an on-site peer review designed to provide a peer reviewer with a reasonable basis for expressing an opinion on whether, during the year under review: ["Review year" means the one-year (twelve-month) period covered by the review. Engagements selected for review normally would have periods ending during the year under review.]

(A) the reviewed firm's system of quality control for its accounting and auditing practice has been designed in accordance with quality control standards; and

(B) the reviewed firm's quality control policies and procedures were being complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects.

(3) "Review Year" means the one-year (12-month) period covered by the peer review. Financial statement engagements selected for review normally would have periods ending during the year under review. Engagements related to financial forecasts or projections, or agreed upon procedures engagements, with report dates during the year under review would also be subject to selection for review.

(4) [~~(3)~~] "Sponsoring organization" means an entity that meets the standards specified by the board for administering the review. The board shall periodically publish a list of sponsoring organizations, which have been approved by the board.

(5) [(4)] "Firm inspection program" means the process of firm inspection administered by the PCAOB.

(6) [(5)] "Rating" of a peer review refers to the type of report issued. The three types of reports are pass, pass with deficiencies, or fail. The peer review rating is clearly indicated in the peer review report. A peer review report with a rating of pass with deficiencies or fail is considered a deficient review.

(7) [(6)] "Assigned review date" is the reporting due date to the board of an accepted peer review report.

(8) [(7)] "Acceptance date" of a peer review is the date that the sponsoring organization's peer review report committee (PRRC), referred to in §527.9(a)(1) of this chapter (relating to Procedures for a Sponsoring Organization), is presented the peer review report on a review with the rating of pass and the PRRC approves the review. The acceptance date and in this case the completion date of the peer review are the same date and is noted in a letter from the administering entity to the reviewed firm. The PRRC will be presented with the peer

review report and the firm's letter of response on reviews with a rating of pass with deficiencies or fail. Ordinarily, the PRRC will require the reviewed firm to take corrective action(s) and those actions will be communicated in a letter to the firm from the administering entity. In this circumstance, the "acceptance date" is defined as the date that the reviewed firm signs the letter from the administering entity agreeing to perform the required corrective action(s).

(9) [(8)] "Completion date" of a peer review is the date that the sponsoring organization's PRRC, referred to in §527.9(a)(1) of this chapter, is presented the corrective action and the committee decides that the reviewed firm has performed the agreed-to corrective action(s) to the committee's satisfaction and the committee requires no additional corrective action(s) by the firm. The date is noted in a final letter from the administering entity to the reviewed firm.

(10) [(9)] "AICPA Public File" is the file for firms that are members of AICPA's Employee Benefit Plan Audit Quality Center, Governmental Audit Quality Center, Private Companies Practice Section, or other firms that voluntarily post their review information to this public file on AICPA's web site as a membership requirement. Information in the public file includes the firm's most recently accepted peer review report and the firm's response thereto, if any.

(11) [(10)] "Facilitated State Board Access (FSBA)" is a secure website accessible only to the state board that provides the most recently accepted peer review report, the firm's letter of response (LOR), the corrective action letter (CAL), and the final letter of acceptance (FLOA).

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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J. Randel (Jerry) Hill

General Counsel

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22 TAC §527.12

The Texas State Board of Public Accountancy (Board) proposes new rule §527.12, concerning Engagement Reviews and System Reviews.

Background, Justification and Summary

New rule §527.12 defines engagement reviews and system reviews for the peer review program.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the new rule.

Public Benefit

The adoption of the new rule will be a clearer understanding of the peer review program.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the new rule and a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed new rule will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the new rule does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the new rule is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed new rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed new rule.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the new rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on September 3, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the proposed new rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§527.12. Engagement Reviews and System Reviews.

(a) In order to balance the public's risk with the public's protection, the board is requiring peer review of firms providing financial reporting services. In implementing the peer review program, the board will consider the level of risk to the public of various attest services and require different levels of peer review based on those risks. Those firms that provide limited financial statement services can elect to perform non-attest preparation engagements under SSARS which do not require peer review.

(b) A firm whose only level of financial reporting is preparation engagements under SSARS must request on its annual license renewal an exemption from peer review.

(c) A firm that performs the following is subject to Engagement Peer Review.

(1) Compilations with disclosures or omitting substantially all disclosures and/or reviews of financial statements performed in accordance with SSARS. If the firm performs both an attest service and a preparation engagement(s), then the preparation engagement(s) is also subject to review and could be selected for peer review.

(2) Reviews and/or agreed-upon procedures engagements performed in accordance with SSAEs, or alternate wording engagements performed under the SSAEs, other than examinations.

(d) A firm that performs the following is subject to a System Peer Review.

(1) Engagements performed in accordance with SAS;

(2) Engagements performed in accordance with Government Auditing Standards (GAS);

(3) Examination engagements performed in accordance with SSAEs;

(4) Audits of non-SEC issuers performed in accordance with PCAOB standards; or

(5) Attestation of non-SEC issuers performed in accordance with PCAOB standards.

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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J. Randel (Jerry) Hill

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For further information, please call: (512) 305-7842

◆ ◆ ◆ TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department

of State Health Services (DSHS), proposes amendments to §229.249 concerning Licensure Fees; and §229.427 concerning Licensure Fees.

BACKGROUND AND PURPOSE

DSHS adopted rules under the authority of Texas Health and Safety Code, Chapter 431, Subchapters I and N, relating to the licensing and regulation of wholesale distribution of nonprescription drugs and prescription drugs. Title 25, Texas Administrative Code, Chapter 229, Subchapters O and W relate to the licensing and regulation of manufacturers and distributors of nonprescription and prescription drugs. DSHS has legal authority to set fees in amounts that are reasonable and necessary and allow DSHS to recover biennial expenditures under Texas Health and Safety Code, §431.409(b). Currently, the fees for prescription drug manufacturers and nonprescription drug distributors who are manufacturers are divided into three levels. DSHS is proposing a new fee structure which expands the fee structure into five levels. This change aligns the nonprescription manufacturer fees with prescription drug manufacturer fees assessed by DSHS. Adding additional levels will result in a reduction of fees for some businesses with gross annual sales ranging from \$200,000 to \$19,999,999.99.

Under the authority of Texas Health and Safety Code, Chapter 431, the Food and Drug Safety program protects Texans from unnecessary morbidity and mortality through its regulation of people and entities that provide products and services that may pose a health threat if manufactured or used in an unapproved manner. The Drug Manufacturing program ensures that drugs are safe to consume and use, are properly labeled, and are not fraudulently presented. The Drug Manufacturing program issues two specific license types: nonprescription and prescription drug manufacturing. The objective of the proposed rules is to create parity between small and large businesses and ensure smaller businesses are not paying a fee that is disproportionate to the amount of their sales.

SECTION-BY-SECTION

Section 229.249 sets out the licensing for in-state wholesale manufacturers of nonprescription drugs. Currently, the fee schedule is divided into three levels.

The amendment to §229.249(a)(3)(B) divides Level two, the gross annual nonprescription drug sales of \$200,000 - \$19,999,999.99, into Levels two, three, and four.

The proposed fee schedule for a two-year license or change of ownership fees for

Levels two, three, and four are updated as follows:

Level two - \$1,235 for \$200,000 - \$1,999,999.99

Level three - \$1,560 for \$2 million - \$9,999,999.99

Level four - \$1,885 for \$10 million - \$19,999,999.99

The proposed fee schedule for amended license fees during a current licensure period for Levels two, three, and four are updated as follows:

Level two - \$620 for \$200,000 - \$1,999,999.99

Level three - \$780 for \$2 million - \$9,999,999.99

Level four - \$940 for \$10 million - \$19,999,999.99

The amendment to §229.249(a)(4)(A) corrects the fee of "\$19,999,999" to "\$19,999,999.99" to be consistent with the fees in this rule.

Section 229.427 sets out the licensing fees for each category of license for prescription drug manufacturers. Currently, the fee schedule is divided into three levels.

The amendment to §229.427(a)(4)(B) divides Level two, the gross annual manufacturer of prescription drug sales of \$200,000 - \$19,999,999.99, into Levels two, three, and four.

The proposed fee schedule for a two-year license or change of ownership fees for

Levels two, three, and four are updated as follows:

Level two - \$1,350 for sales of \$200,000 - \$1,999,999.99.

Level three - \$1,620 for sales of \$2 million - \$9,999,999.99.

Level four - \$1,890 for sales of \$10 million to 19,999,999.99.

The proposed fee schedule for amended license fees during a current licensure period for Levels two, three, and four are updated as follows:

Level two - \$697 for sales of \$200,000 - \$1,999,999.99.

Level three - \$847 for sales of \$2 million - \$9,999,999.99.

Level four - \$997 for sales of \$10 million to \$19,999,999.99.

FISCAL NOTE

Donna Sheppard, Chief Financial Officer, has determined that for each year of the first five years that the sections are in effect, there will not be any fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rules will be in effect:

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

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

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

(4) the proposed rules will result in an estimated decrease of \$17,265 in fees paid to DSHS for each year after the rules become effective, but current license fees exceed program expenses;

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

(6) the proposed rules will not expand, limit, or repeal existing rules;

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

(8) the proposed rules will not affect the state's economy because current license fees collected exceed current program expenses. The reduction in fee collection will have a minimal impact to the excess revenue, but will not impact DSHS since the collections exceed the program costs.

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

Donna Sheppard, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. For small drug manufacturers, the proposed rules reduce their fee cost.

The proposed rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose additional costs on regulated persons; and are amended to decrease a person's cost for compliance with the rules.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rules are in effect, the public benefit will be to create parity between small and large businesses and ensure smaller businesses are not paying a fee that is disproportionate to the amount of their sales. The small drug manufacturers will benefit from reduced initial, renewal, and amended license fees.

Donna Sheppard has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the license fees for small drug manufacturers are reduced.

REGULATORY ANALYSIS

DSHS has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean "a rule the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state." This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rod Moline, Section Director, Policy, Standards, and Quality Assurance Section, Consumer Protection Division, Texas Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347; phone (512) 231-5712 or by email to CPDRuleComments@dshs.texas.gov. Please indicate "Comments on Chapter 229 Proposed Drug Manufacturing Restructure Fee" in the subject line.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the

comment period; (2) hand-delivered at 8407 Wall Street, Austin, Texas 78754 before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted.

SUBCHAPTER O. LICENSING OF WHOLESALE DISTRIBUTORS OF NONPRESCRIPTION DRUGS--INCLUDING GOOD MANUFACTURING PRACTICES

25 TAC §229.249

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code, §431.241, which authorizes the Executive Commissioner of HHSC to adopt rules necessary for the implementation and enforcement of Chapter 431 by DSHS; Texas Health and Safety Code, §431.409(b) authorizes DSHS to collect fees for licenses; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The amendment implements Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 431 and 1001.

§229.249. *Licensure Fees.*

(a) License fee. Except as provided by §229.245 of this title (relating to Exemption), no person may operate or conduct business as a wholesale distributor of nonprescription drugs without first obtaining a license from the department. All applicants for an initial wholesale distributor of nonprescription drugs license or a renewal license shall pay a licensing fee unless otherwise exempt as provided by subsection (c) of this section. All fees are nonrefundable. Licenses are issued for two-year terms. A license shall only be issued when all past due license fees and delinquency fees are paid.

(1) In-state wholesale distributors of nonprescription drugs who are not manufacturers shall pay a two-year license fee based on the gross annual sales of all nonprescription drugs.

(A) For a wholesale distributor with gross annual non-prescription drug sales of \$0 - \$199,999.99, the fees are:

(i) \$1,040 for a two-year license;

(ii) \$1,040 for a two-year license that is amended due to a change of ownership; and

(iii) \$520 for a license that is amended during the current licensure period due to minor changes.

(B) For a wholesale distributor with gross annual non-prescription drug sales of \$200,000 - \$19,999,999.99, the fees are:

(i) \$1,690 for a two-year license;

(ii) \$1,690 for a two-year license that is amended due to a change of ownership; and

(iii) \$845 for a license that is amended during the current licensure period due to minor changes.

(C) For a wholesale distributor with gross annual non-prescription drug sales greater than or equal to \$20 million, the fees are:

- (i) \$2,210 for a two-year license;
- (ii) \$2,210 for a two-year license that is amended due to a change of ownership; and
- (iii) \$1,105 for a license that is amended during the current licensure period due to minor changes.

(2) In-state wholesale distributors of nonprescription drugs who are not manufacturers and who also are required to be licensed as a device distributor under §229.439(a) of this title (relating to Licensure Fees) or as a wholesale food distributor under §229.182(a)(3) of this title (relating to Licensing/Registration Fee and Procedures) shall pay a combined two-year license fee for each place of business. License fees are based on the combined gross annual sales of these regulated products (foods, drugs, and/or devices).

(A) For each place of business having combined gross annual sales of \$0 - \$199,999.99, the fees are:

- (i) \$520 for a two-year license;
- (ii) \$520 for a two-year license that is amended due to a change of ownership; and
- (iii) \$260 for a license that is amended during the current licensure period due to minor changes.

(B) For each place of business having combined gross annual sales of \$200,000 - \$499,999.99, the fees are:

- (i) \$780 for a two-year license;
- (ii) \$780 for a two-year license that is amended due to a change of ownership; and
- (iii) \$390 for a license that is amended during the current licensure period due to minor changes.

(C) For each place of business having combined gross annual sales of \$500,000 - \$999,999.99, the fees are:

- (i) \$1,040 for a two-year license;
- (ii) \$1,040 for a two-year license that is amended due to a change of ownership; and
- (iii) \$520 for a license that is amended during the current licensure period due to minor changes.

(D) For each place of business having combined gross annual sales of \$1 million - \$9,999,999.99, the fees are:

- (i) \$1,300 for a two-year license;
- (ii) \$1,300 for a two-year license that is amended due to a change of ownership; and
- (iii) \$650 for a license that is amended during the current licensure period due to minor changes.

(E) For each place of business having combined gross annual sales greater than or equal to \$10 million, the fees are:

- (i) \$1,950 for a two-year license;
- (ii) \$1,950 for a two-year license that is amended due to a change of ownership; and
- (iii) \$975 for a license that is amended during the current licensure period due to minor changes.

(3) In-state wholesale distributors of nonprescription drugs who are manufacturers shall pay a two-year license fee based on the gross annual sales of all nonprescription drugs.

(A) For a wholesale distributor with gross annual non-prescription drug sales of \$0 - \$199,999.99, the fees are:

- (i) \$1,040 for a two-year license;
- (ii) \$1,040 for a two-year license that is amended due to a change of ownership; and
- (iii) \$520 for a license that is amended during the current licensure period due to minor changes.

(B) For a wholesale distributor with gross annual non-prescription drug sales of \$200,000 - ~~\$1,999,999.99~~ [~~\$19,999,999.99~~], the fees are:

- (i) ~~\$1,235~~ [~~\$1,690~~] for a two-year license;
- (ii) ~~\$1,235~~ [~~\$1,690~~] for a two-year license that is amended due to a change of ownership; and
- (iii) ~~\$620~~ [~~\$845~~] for a license that is amended during the current licensure period due to minor changes.

(C) For a wholesale distributor with gross annual non-prescription drug sales of \$2 million to \$9,999,999.99, the fees are:

- (i) \$1,560 for a two-year license;
- (ii) ~~\$1,560~~ for a two-year license that is amended due to a change of ownership; and
- (iii) \$780 for a license that is amended during the current licensure period due to minor changes.

(D) For a wholesale distributor with gross annual non-prescription drug sales of \$10 million to \$19,999,999.99, the fees are:

- (i) \$1,885 for a two-year license;
- (ii) ~~\$1,885~~ for a two-year license that is amended due to a change of ownership; and
- (iii) \$940 for a license that is amended during the current licensure period due to minor changes.

(E) ~~[(C)]~~ For a wholesale distributor with gross annual nonprescription drug sales greater than or equal to \$20 million, the fees are:

- (i) \$2,210 for a two-year license;
- (ii) \$2,210 for a two-year license that is amended due to a change of ownership; and
- (iii) \$1,105 for a license that is amended during the current licensure period due to minor changes.

(4) Out-of-state wholesale distributors of nonprescription drugs shall pay a two-year license fee based on all gross annual sales of nonprescription drugs delivered into Texas.

(A) For each wholesale distributor with gross annual nonprescription drug sales of \$0 - ~~\$19,999,999.99~~ [~~\$19,999,999~~], the fees are:

- (i) \$1,300 for a two-year license;
- (ii) \$1,300 for a two-year license that is amended due to a change of ownership; and
- (iii) \$650 for a license that is amended during the current licensure period due to minor changes.

(B) For each wholesale distributor with gross annual nonprescription drug sales of greater than or equal to \$20 million, the fees are:

(i) \$1,950 for a two-year license;

(ii) \$1,950 for a two-year license that is amended due to a change of ownership; and

(iii) \$975 for a license that is amended during the current licensure period due to minor changes.

(b) Proration of license fees. A person that has more than one place of business may request a one-time proration of the license fees when applying for a license for each new place of business. Upon approval by the department, the license for the new place of business will have a renewal date that is the same as the firm's other licensed places of business.

(c) Exemption from license fees. A person is exempt from the license fees required by this section if the person is a charitable organization, as described in the Internal Revenue Code of 1986, §501(c)(3), or a nonprofit affiliate of the organization, to the extent otherwise permitted by law.

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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Barbara L. Klein

General Counsel

Department of State Health Services

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For further information, please call: (512) 231-5712



SUBCHAPTER W. LICENSING OF WHOLESALE DISTRIBUTORS OF PRESCRIPTION DRUGS--INCLUDING GOOD MANUFACTURING PRACTICES

25 TAC §229.427

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code, §431.241, which authorizes the Executive Commissioner of HHSC to adopt rules necessary for the implementation and enforcement of Chapter 431 by DSHS; Texas Health and Safety Code, §431.409(b) authorizes DSHS to collect fees for licenses; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The amendment implements Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 431 and 1001.

§229.427. *Licensure Fees.*

(a) License fee. Except as provided by §229.423 of this title (relating to Exemptions), no person may operate or conduct business as a wholesale distributor of prescription drugs without first obtaining a license from the department. All applicants for an initial wholesale distributor of prescription drugs license or a renewal license shall pay a licensing fee unless otherwise exempt as provided by subsection (c) of this section. All fees are nonrefundable. Licenses are issued for

two-year terms. A license shall only be issued when all past due license fees and delinquency fees are paid.

(1) In-state and out-of-state wholesale distributors of prescription drugs who are not manufacturers shall pay a two-year license fee based on the gross annual sales of all drugs.

(A) For a wholesale distributor of only medical gases, the fees are:

(i) \$675 for a two-year license;

(ii) \$675 for a two-year license that is due to a change of ownership; and

(iii) \$337 for a license that is amended during the current licensure period due to minor changes.

(B) For a wholesale distributor with gross annual drug sales of \$0 - \$199,999.99, the fees are:

(i) \$1,080 [~~\$1080~~] for a two-year license;

(ii) \$1,080 [~~\$1080~~] for a two-year license that is due to a change of ownership; and

(iii) \$540 for a license that is amended during the current licensure period due to minor changes.

(C) For a wholesale distributor with gross annual drug sales of \$200,000 - \$19,999,999.99, the fees are:

(i) \$1,755 [~~\$1755~~] for a two-year license;

(ii) \$1,755 [~~\$1755~~] for a two-year license that is due to a change of ownership; and

(iii) \$877 for a license that is amended during the current licensure period due to minor changes.

(D) For a wholesale distributor with gross annual drug sales greater than or equal to \$20 million, the fees are:

(i) \$2,295 [~~\$2295~~] for a two-year license;

(ii) \$2,295 [~~\$2295~~] for a two-year license that is due to a change of ownership; and

(iii) \$1,147 [~~\$1147~~] for a license that is amended during the current licensure period due to minor changes.

(2) In-state and out-of-state wholesale distributors of medical gases who are not manufacturers and who also are required to be licensed as a device distributor under §229.439(a) of this title (relating to Licensure Fees) or as a wholesale food distributor under §229.182(a)(3) of this title (relating to Licensing/Registration Fee and Procedures) shall pay a combined two-year license fee for each place of business. License fees are based on the combined gross annual sales of these regulated products (medical gases, foods, drugs, and/or devices) as follows:

(A) For combined gross annual sales of \$0 - \$199,999.99, the fees are:

(i) \$540 for a two-year license;

(ii) \$540 for a two-year license that is due to a change of ownership; and

(iii) \$270 for a license that is amended during the current licensure period due to minor changes.

(B) For combined gross annual sales of \$200,000 - \$499,999.99, the fees are:

(i) \$810 for a two-year license;

(ii) \$810 for a two-year license that is due to a change of ownership; and

(iii) \$405 for a license that is amended during the current licensure period due to minor changes.

(C) For combined gross annual sales of \$500,000 - \$999,999.99, the fees are:

(i) \$1,080 [~~\$1080~~] for a two-year license;

(ii) \$1,080 [~~\$1080~~] for a two-year license that is due to a change of ownership; and

(iii) \$540 for a license that is amended during the current licensure period due to minor changes.

(D) For combined gross annual sales of \$1 million - \$9,999,999.99, the fees are:

(i) \$1,350 [~~\$1350~~] for a two-year license;

(ii) \$1,350 [~~\$1350~~] for a two-year license that is due to a change of ownership; and

(iii) \$675 for a license that is amended during the current licensure period due to minor changes.

(E) For combined gross annual sales greater than or equal to \$10 million, the fees are:

(i) \$2,025 [~~\$2025~~] for a two-year license;

(ii) \$2,025 [~~\$2025~~] for a two-year license that is due to a change of ownership; and

(iii) \$1,012 [~~\$1012~~] for a license that is amended during the current licensure period due to minor changes.

(3) In-state and out-of-state manufacturers of only medical gases shall pay a two-year license fee based on the gross annual sales of all prescription drugs as follows.

(A) For gross annual drug sales of \$0 - \$199,999.99, the fees are:

(i) \$1,080 [~~\$1080~~] for a two-year license;

(ii) \$1,080 [~~\$1080~~] for a two-year license that is due to a change of ownership; and

(iii) \$540 for a license that is amended during the current licensure period due to minor changes.

(B) For gross annual drug sales of \$200,000 - \$19,999,999.99, the fees are:

(i) \$1,755 [~~\$1755~~] for a two-year license;

(ii) \$1,755 [~~\$1755~~] for a two-year license that is due to a change of ownership; and

(iii) \$877 for a license that is amended during the current licensure period due to minor changes.

(C) For gross annual drug sales greater than or equal to \$20 million, the fees are:

(i) \$2,295 [~~\$2295~~] for a two-year license;

(ii) \$2,295 [~~\$2295~~] for a two-year license that is due to a change of ownership; and

(iii) \$1,147 [~~\$1147~~] for a license that is amended during the current licensure period due to minor changes.

(4) In-state and out-of-state manufacturers of prescription drugs shall pay a two-year license fee based on the gross annual sales of all drugs as follows.

(A) For gross annual drug sales of \$0 - \$199,999.99, the fees are:

(i) \$1,080 [~~\$1080~~] for a two-year license;

(ii) \$1,080 [~~\$1080~~] for a two-year license that is due to a change of ownership; and

(iii) \$540 for a license that is amended during the current licensure period due to minor changes.

(B) For gross annual drug sales of \$200,000 - \$1,999,999.99 [~~\$19,999,999.99~~], the fees are:

(i) \$1,350 [~~\$1755~~] for a two-year license;

(ii) \$1,350 [~~\$1755~~] for a two-year license that is due to a change of ownership; and

(iii) \$697 [~~\$877~~] for a license that is amended during the current licensure period due to minor changes.

(C) For gross annual drug sales of \$2 million - \$9,999,999.99, the fees are:

(i) \$1,620 for a two-year license;

(ii) \$1,620 for a two-year license that is due to a change of ownership; and

(iii) \$847 for a license that is amended during the current licensure period due to minor changes.

(D) For gross annual drug sales of \$10 million to \$19,999,999.99, the fees are:

(i) \$1,890 for a two-year license;

(ii) \$1,890 for a two-year license that is due to a change of ownership; and

(iii) \$997 for a license that is amended during the current licensure period due to minor changes.

(E) [~~(C)~~] For gross annual drug sales greater than or equal to \$20 million, the fees are:

(i) \$2,295 [~~\$2295~~] for a two-year license;

(ii) \$2,295 [~~\$2295~~] for a two-year license that is due to a change of ownership; and

(iii) \$1,147 [~~\$1147~~] for a license that is amended during the current licensure period due to minor changes.

(b) Replacement license fee. The replacement license fee is \$100.

(c) Proration of license fees. A person that has more than one place of business may request a one-time proration of the license fees when applying for a license for each new place of business. Upon approval by the department, the license for the new place of business will have a renewal date that is the same as the firm's other licensed places of business.

(d) Exemption from license fees. A person is exempt from the license fees required by this section if the person is a charitable organization, as described in the Internal Revenue Code of 1986, §501(c)(3), or a nonprofit affiliate of the organization, to the extent otherwise permitted by law.

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-201902283

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: September 1, 2019

For further information, please call: (512) 231-5712



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.13

The Texas Department of Public Safety (the department) proposes amendments to §4.13, concerning Authority to Enforce, Training and Certificate Requirements. The proposed amendments are necessary to ensure this section is consistent with Texas Transportation Code, §644.101, which establishes which peace officers are eligible to enforce Chapter 644 of the Texas Transportation Code.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does expand an existing regulation by expanding the number of law enforcement agencies that can enforce regulations under Texas Transportation Code, §644.101. The proposed rulemaking also does increase the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should positively affect the state's economy.

The Texas Department of Public Safety, in accordance with the Administrative Procedures Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Monday, August 12, 2019, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.13 regarding Authority to Enforce, Training and Certificate Requirements, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.13. Authority to Enforce, Training and Certificate Requirements.

- (a) Authority to Enforce.

(1) An officer of the department may stop, enter or detain on a highway or at a port of entry a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(2) A non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may stop, enter or detain at a commercial motor vehicle inspection site, or at a port of entry, a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(3) An officer of the department or a non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may prohibit the further operation of a vehicle on a highway or at a port of entry if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

(4) Municipal police officers from cities listed in Texas Transportation Code, §644.10, who meet the training and certification requirements contained in subsection (b) of this section and are certified by the department may stop, enter or detain on a highway or at a port of entry within the municipality a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

~~[(4) Municipal police officers from any of the Texas cities meeting the training and certification requirements contained in subsection (b) of this section and certified by the department may stop, enter or detain on a highway or at a port of entry within the municipality a motor vehicle subject to Texas Transportation Code, Chapter 644:]~~

~~[(A) a municipality with a population of 50,000 or more:]~~

~~[(B) a municipality with a population of 25,000 or more, any part of which is located in a county with a population of 500,000 or more:]~~

~~[(C) a municipality with a population of less than 25,000, any part of which is located in a county with a population of 3.3 million and that contains or is adjacent to an international port:]~~

~~[(D) a municipality with a population of at least 34,000 that is located in a county that borders two or more states:]~~

~~[(E) a municipality any part of which is located in a county bordering the United Mexican States:]~~

~~[(F) a municipality with a population of less than 5,000 that is located adjacent to a bay connected to the Gulf of Mexico and in a county adjacent to a county with a population greater than 3.3 million:]~~

~~[(G) a municipality that is located within 25 miles of an international port and in a county that does not contain a highway that is part of the national system of interstate and defense highways and is adjacent to a county with a population greater than 3.3 million:]~~

~~[(H) a municipality with a population of less than 8,500 that is the county seat and contains a highway that is part of the national system of interstate and defense highways:]~~

~~[(I) a municipality located in a county with a population between 60,000 and 66,000 adjacent to a bay connected to the Gulf of Mexico:]~~

~~[(J) a municipality with a population of more than 40,000 and less than 50,000 that is located in a county with a popula-~~

~~tion of more than 285,000 and less than 300,000 that borders the Gulf of Mexico:]~~

~~[(K) a municipality with a population between 18,000 and 18,500 that is located entirely in a county that:]~~

~~[(i) has a population of less than 200,000:]~~

~~[(ii) is adjacent to two counties that each have a population of more than 1.2 million; and]~~

~~[(iii) contains two highways that are part of the national system of interstate and defense highways.]~~

~~[(L) a municipality with a population of more than 3,000 and less than 10,000 that:]~~

~~[(i) contains a highway that is part of the national system of interstate and defense highways; and]~~

~~[(ii) is located in a county with a population between 150,000 and 155,000.]~~

(5) Sheriffs or deputy sheriffs from counties listed in Texas Transportation Code, §644.101, who meet the training and certification requirements contained in subsection (b) of this section and are certified by the department may stop, enter or detain on a highway or at a port of entry within the county a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

~~[(5) A sheriff, or deputy sheriff from any of the Texas counties meeting the training and certification requirements contained in subsection (b) of this section and certified by the department, may stop, enter or detain on a highway or at a port of entry within the county a motor vehicle subject to Texas Transportation Code, Chapter 644:]~~

~~[(A) a county bordering the United Mexican States; or]~~

~~[(B) a county with a population of 700,000 or more.]~~

(6) A certified peace officer from an authorized municipality or county may prohibit the further operation of a vehicle on a highway or at a port of entry within the municipality or county if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

(b) Training and Certification Requirements.

(1) ~~[Minimum standards:]~~ Certain peace officers from the municipalities and counties specified in subsection (a) of this section before being certified to enforce this article must ~~[meet the standards detailed in this paragraph]:~~

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Texas Intrastate Roadside Inspection Course (Part C), if initial certification occurs on or after January 1, 2006, or if recertification is required under subsection (c)(4) of this section; and

(C) participate in an on-the-job training program following the North American Standard Roadside Inspection Course with a certified officer and perform a minimum of 32 level I inspections. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(2) ~~[Hazardous materials:]~~ Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Hazardous Materials Regulations must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course; and

(C) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 16 level I inspections on vehicles containing non-bulk quantities of hazardous materials. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(3) [~~Cargo Tank Specification.~~] Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Cargo Tank Specification requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course;

(C) successfully complete the Cargo Tank Inspection Course; and

(D) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 16 level I inspections on vehicles transporting hazardous materials in cargo tanks. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(4) [~~Other Bulk Packaging.~~] Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Other Bulk Packaging requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course;

(C) successfully complete the Cargo Tank Inspection Course; and

(D) successfully complete the Other Bulk Packaging Course.

(5) [~~Passenger Vehicle.~~] Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the passenger vehicle requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Passenger Vehicle Inspection Course; and

(C) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 8 level I or V inspections on passenger vehicles such as motor coaches/buses. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(6) [Training provided by the department.] When the training is provided by the Texas Department of Public Safety, the department shall collect fees in an amount sufficient to recover from municipalities and counties the cost of certifying its peace officers. The fees shall include:

(A) the per diem costs of the instructors established in accordance with the Appropriations Act regarding in-state travel;

(B) the travel costs of the instructors to and from the training site;

(C) all course fees charged to the department;

(D) all costs of supplies; and

(E) the cost of the training facility, if applicable.

(7) [Training provided by other training entities.] A public or private entity desiring to train police officers in the enforcement of the Federal Motor Carrier Safety Regulations must:

(A) submit a schedule of the courses to be instructed;

(B) submit an outline of the subject matter in each course;

(C) submit a list of the instructors and their qualifications to be used in the training course;

(D) submit a copy of the examination;

(E) submit an estimate of the cost of the course;

(F) receive approval from the director prior to providing the training course;

(G) provide a list of all peace officers attending the training course, including the peace officer's name, rank, agency, social security number, dates of the course, and the examination score; and

(H) receive from each peace officer, municipality, or county the cost of providing the training course(s).

(c) Maintaining Certification.

(1) To maintain certification to conduct inspections and enforce the federal safety regulations, a peace officer must:

(A) Successfully complete the required annual certification training; and

(B) Perform a minimum of 32 Level I inspections per calendar year.

(C) If the officer is certified to perform hazardous materials inspections, at least eight inspections (Levels I, II or V) shall be conducted on vehicles containing non-bulk quantities of hazardous materials per calendar year. Level I inspections on vehicles containing non-bulk quantities of hazardous materials may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(D) If the officer is certified to perform cargo tank inspections, at least eight inspections (Levels I, II or V) shall be conducted on vehicles transporting hazardous materials in cargo tanks per calendar year. Level I inspections on cargo tank vehicles transporting hazardous materials may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(E) If the officer is certified to perform other bulk packaging inspections, the officer can use Level I inspections performed on vehicles transporting hazardous materials in other bulk packaging to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph. Level I, II or V inspections on vehicles transporting hazardous materials in other bulk packaging may also be used to satisfy the eight inspections required by subparagraph (D) of this paragraph.

(F) If the officer is certified to perform passenger vehicle inspections, at least eight inspections (Levels I or V) shall be conducted on passenger vehicles such as motor coaches/buses per calendar year. Level I inspections on passenger vehicles may also be used to

satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(2) In the event an officer does not meet the requirements of this subsection [~~subsection (e) of this section~~], his or her certification shall be suspended by the department. Such suspension action will be initiated by the director or the director's designee.

(3) To be recertified, after suspension, an officer shall pass the applicable examinations which may include the North American Standard Roadside Inspection, the Hazardous Materials Inspection Course, the Cargo Tank Inspection Course, the Other Bulk Packaging Inspection Course, and/or the Passenger Vehicle Inspection Course and repeat the specified number of inspections with a certified officer.

(4) Any officer failing any examination, or failing to successfully demonstrate proficiency in conducting inspections after allowing any certification to lapse will be required to repeat the entire training process as outlined in subsection (b) of this section.

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

Filed with the Office of the Secretary of State on July 17, 2019.

TRD-201902267

D. Phillip Adkins

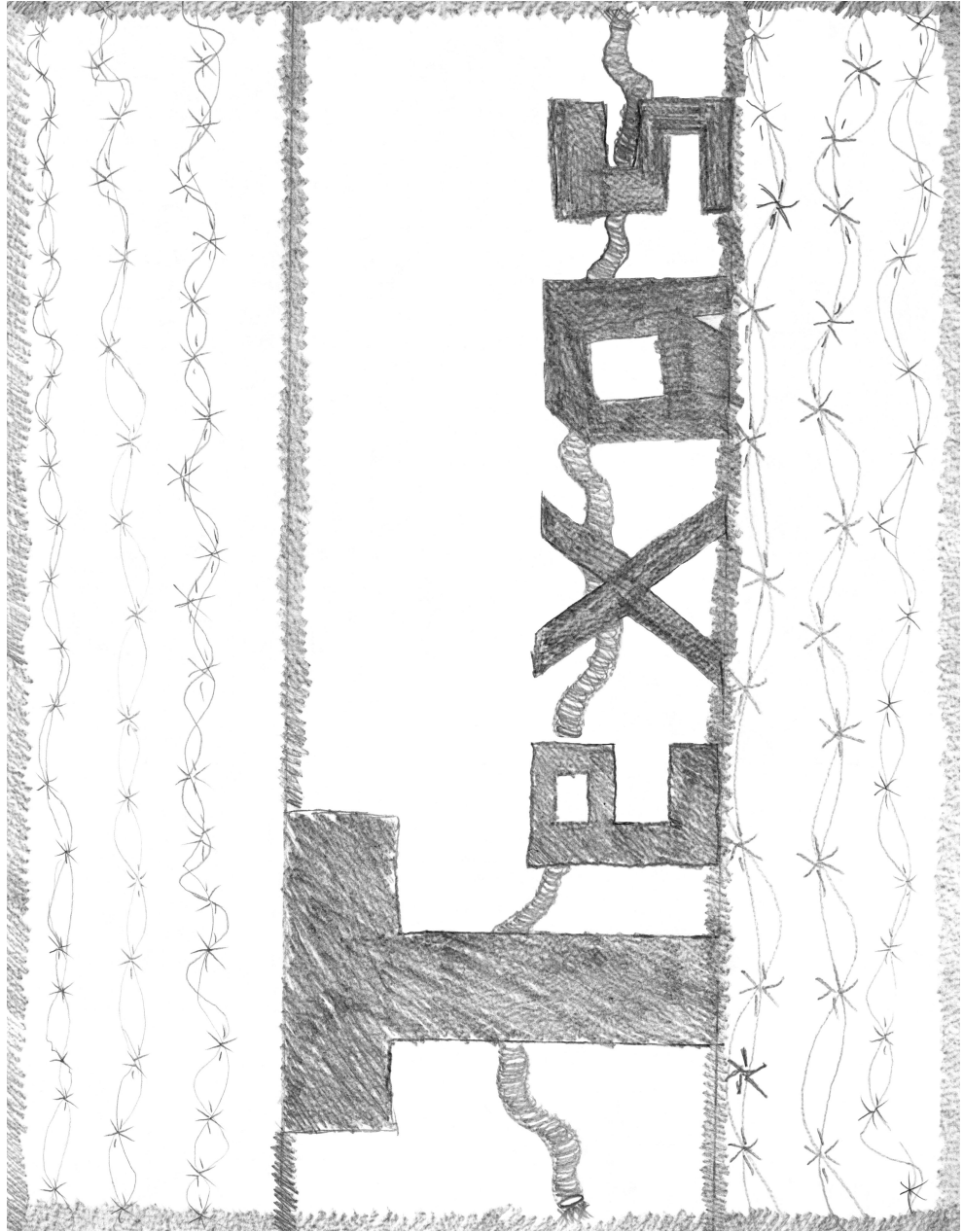
General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: September 1, 2019

For further information, please call: (512) 424-5848





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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

(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 19 TAC §97.1001 is not included in the print version of the Texas Register. The figure is available in the on-line version of the August 2, 2019, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §97.1001, concerning the accountability rating system. The amendment is adopted with changes to the proposed text as published in the May 3, 2019 issue of the *Texas Register* (44 TexReg 2211). The amendment adopts in rule applicable excerpts of the *2019 Accountability Manual*, with changes since published as proposed. The rule will be republished.

REASONED JUSTIFICATION: The TEA has adopted its academic accountability manual into rule since 2000. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree from those applied in the prior year. The intention is to update 19 TAC §97.1001 annually to refer to the most recently published accountability manual.

The amendment to 19 TAC §97.1001 adopts excerpts of the *2019 Accountability Manual* into rule as a figure. The excerpts, Chapters 1-11 of the *2019 Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction designations on additional indicators for Texas public school campuses and districts. The TEA will issue accountability ratings and distinction designations under the procedures specified in the *2019 Accountability Manual* by August 15, 2019. Ratings and distinction designations may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.056 and §39.057.

The following is a chapter-by-chapter summary of the changes for this year's manual. In every chapter, dates and years for which data are considered are updated to align with 2019 accountability, present tense is applied throughout, "fall snapshot" is replaced with "October snapshot" to provide clarity, references

to the Texas English Language Proficiency Assessment System (TELPAS) waiver is removed as it was denied by the U.S. Department of Education (USDE) in 2018, and campus rating labels are changed from *Met Standard/Improvement Required* to *A-F* to align with TEC, §39.054(a).

Chapter 1 gives an overview of the entire accountability system. An additional retest inclusion provision is added; successful On-Ramps dual-enrollment course completion, graduates who receive an advanced degree plan and receive special education services, and graduates who earn a Level I or Level II certificate in any workforce education area are added as College, Career, and Military Readiness (CCMR) indicators. The OnRamps indicator is added to align with TEC, §39.053(c)(B)(x), whereas the graduates who receive an advanced degree plan and receive special education services as well as graduates who earn a Level I or Level II certificate in any workforce education area are policy choices. Performance-Based Monitoring Analysis System (PBMAS) is corrected to read PBM, and the Local Accountability Systems section is moved to Chapter 11.

Chapter 2 describes the Student Achievement domain. The English learner (EL) performance measure is added, which is a policy choice; clarifying language regarding the definition of annual graduates is added; OnRamps dual-enrollment course completion, graduates who receive an advanced degree plan and receive special education services, and graduates who earn a Level I or Level II certificate in any workforce education area are added as CCMR indicators; CCMR small numbers analysis methodology is updated; and the career and technical education (CTE) transition timeline and aligned course list are updated to include 19 additional courses. Additional language is added stating that for designated dropout recovery schools, when a longitudinal graduation rate is unavailable, the annual dropout rate is only applied as a safeguard.

Chapter 3 describes the School Progress domain. The term *proficiency* is updated to *performance*; Academic Growth and CCMR small numbers analysis methodology is updated; clarifying language is added to the Academic Growth methodology; Relative Performance small numbers analysis methodology is updated; and clarifying language that the Relative Performance score is rounded to the nearest whole number is added.

Chapter 4 describes the Closing the Gaps domain. The construction of this domain is based on the need to align to the language of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) state plan and in response to comments from USDE. Clarifying language is added to the minimum size requirements for evaluation in the Closing the Gaps domain; language regarding the proxy used for ELs in years 3 and 4 of monitoring is removed, as this information is now available through the Texas Student Data System Public Education Information Manage-

ment System (TSDS PEIMS); the EL performance measure is added to the Academic Achievement and Student Achievement Domain Score: STAAR Only component methodology descriptions, which is a policy choice. Language is added to clarify that the EL performance measure is not used in the Academic Growth component; Academic Growth small numbers analysis methodology is updated; language regarding the long-term graduation rate is removed for brevity; clarifying language is added to the four-year graduation rate target; a definition for Ever EL is added for clarity; clarifying language is added to the assessments evaluated in the English Language Proficiency section; successful OnRamps dual-enrollment course completion, graduates who receive an advanced degree plan and receive special education services, and graduates who earn a Level I or Level II certificate in any workforce education area are added as CCMR indicators; language is added to exclude Grade 12 students who are identified as individualized education program (IEP) continuers; CCMR small numbers analysis methodology is updated; language is added regarding the limits on the use of alternative assessments to align with federal requirements; clarifying language is added to the chart showing the middle school example of a Closing the Gaps score calculation; and the section describing the identification of schools for improvement is removed, as it is now in Chapter 10.

Chapter 5 describes how the overall ratings are calculated. How to combine the ratings and the weight of each domain are required by TEC, §39.054(a-1). Campus methodology is removed, and rating labels are updated to align with the district methodology and labels to align with TEC, §39.054(a); page number references are updated; and labels are added to tables and references to the labels are added throughout the methodology for easier use. Overall rating methodology is updated to align with statute regarding the implementation of letter grades for campuses. Language stipulating that a district cannot receive an overall or domain rating of *A* if the district includes any campus with a corresponding overall or domain rating of *D* or *F* is added. In this case, the highest scaled score a district can receive for the overall or in the corresponding domain is an 89. The provision that stipulates if an *F* rating is received in three of the four areas of Student Achievement; School Progress, Part A: Academic Growth; School Progress, Part B: Relative Performance; or Closing the Gaps, the highest scaled score a district, open-enrollment charter school, or campus can receive for the overall rating is a 59 is updated. For 2019 accountability, if the Student Achievement domain rating is a *D* or higher, this provision is not applied. The graduation rate component conversion table is updated to include a 100 scaled score, and methodology and tables are added for alternative education accountability (AEA) bonus points, which are policy choices.

Chapter 6 describes distinction designations. The eligibility of districts for distinction designations is established in TEC, §39.054(a) and §39.201(b). Clarifying language is added for campuses with scores that tie in the top 25%; the Student Growth indicator is updated to Student Progress; and a correction from mathematics to science is made for the AP/IB indicator evaluated in the Academic Achievement in Science distinction designation.

Chapter 7 describes the pairing process and the alternative education accountability provisions. There are no substantial changes from the 2018 manual.

Chapter 8 describes the process for appealing ratings. Language regarding the compensatory nature of the system is re-

moved as it no longer applies; language stipulating that scaled scores and federal identifications will not be changed as a result of appeal is added; student course completion is added to the list of TSDS PEIMS data submissions; the EL performance measure calculation is added to the list of unfavorable reasons for appeal; clarifying language is added throughout the section regarding special circumstance appeals; additional language is added for what is needed for appeals processing; PBMAS is corrected to read PBM and Texas Accountability Intervention System (TAIS) is replaced with the Effective Schools Framework; and TEA Secure Environment (TEASE) is changed to TEA Login (TEAL).

Chapter 9 describes the responsibilities of TEA, the responsibilities of school districts and open-enrollment charter schools, and the consequences to school districts and open-enrollment charter schools related to accountability and interventions. There are no substantial changes from the 2018 manual.

Chapter 10 provides information on the federally required identification of schools for improvement. This chapter includes revised and expanded information on minimum size and exiting requirements that was included in the 2018 manual at the end of Chapter 4. In the 2018 manual, Chapter 10 described the Hurricane Harvey Provision, which is no longer applicable.

Chapter 11 is new for 2019. This chapter describes local accountability systems and includes expanded information that was included in the 2018 manual at the end of Chapter 1.

Changes were made to the manual since published as proposed. The adopted manual includes the following changes either to provide clarification or in response to public comment.

Chapter 2 was revised to clarify that ELs who are in their second year in U.S. schools who have a parental denial for EL services do not receive an EL performance measure and are included in the same manner as non-ELs. Language was revised to clarify that in order to receive credit in the CCMR component for OnRamps, a graduate must qualify for university or college credit. A conflicting sentence about the use of small numbers analysis in the dropout rate methodology was removed.

Chapter 3 was updated to remove a sentence that explained the methodology shown in the chart for Academic Growth points. A statement was added to the Relative Performance section clarifying that the economically disadvantaged percentage is rounded to one decimal place.

Chapter 4 was updated to reflect multiple changes. Language was added to clarify that the continuously enrolled, non-continuously enrolled, and former special education student groups are not evaluated for the 4-year federal graduation rate component. The word "rate" was removed from the Inclusions to the Four-Year Federal Dropout Definition heading for clarity. A formula was added to the English Language Proficiency (ELP) section for clarity. Language was revised to clarify that in order to receive credit in the CCMR component for OnRamps, a graduate or non-graduating 12th grader must qualify for university or college credit. The 2019 ELP target was updated to 36%.

Chapter 5 was updated to finalize and align chart and page number references throughout.

Chapter 10 was updated to change an "and" to an "or" in the additional targeted support example for clarity.

In addition, the page numbers were updated to reflect the changes made throughout the manual.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began May 3, 2019, and ended June 3, 2019. A public hearing on the proposal was held at 8:30 a.m. on May 22, 2019, in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Following is a summary of public comments received and corresponding agency responses.

Comment. The Texas School Alliance (TSA), United Independent School District (ISD), and five district staff members commented on the inclusion of dual credit course completion in the College, Career, and Military Readiness (CCMR) components, suggesting that for consistency and fairness, completion of three hours in any subject area should be considered college ready.

Agency Response. The agency disagrees. Research shows a correlation between first year persistence in higher education for students who complete three hours of credit in English language arts/mathematics. Including nine hours in any subject is a response to stakeholder feedback and is already a relaxation from the initially proposed threshold of 12 hours of dual credit. Furthermore, these comments suggest that the completion of a college elective would be treated as an equivalent to that of an English language arts/mathematics course in terms of determining college readiness. Research does not support the notion that an elective course is equivalent to an English language arts or mathematics course when establishing college readiness.

Comment. TSA, United ISD, and six district staff members suggested that students who meet the Career and Technical Education (CTE) Coherent Sequence Coursework Aligned with Industry-Based Certifications indicator count for a full point and that the indicator remain in the accountability system beyond 2020.

Agency Response. The agency disagrees. Giving partial credit to districts and campuses for CTE coherent sequence students who complete and earn credit for coursework aligned with the approved list of industry-based certifications is in response to stakeholder feedback. Also, phasing out CTE coherent sequence allows districts and campuses to receive credit for efforts already in progress. The phasing out allows for a transition for local education agencies to adjust to this more aligned expectation of college readiness.

Comment. One university staff member suggested the following language update to the description of the OnRamps dual-enrollment indicator, "Complete an OnRamps Dual Enrollment Course. A graduate completing an OnRamps dual enrollment course and qualifying for at least three hours of university or college credit in any subject area. See Appendix H for additional information." TSA and three district staff members requested clarification on if a student must accept the OnRamps dual credit in order to be considered CCMR.

Agency Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to clarify that in order to receive credit in the CCMR components for OnRamps, a graduate or non-graduating 12th grader must qualify for at least three hours of university or college credit in any subject area.

Comment. TSA proposed adding reserve forces and National Guard to the list of U.S. Armed Forces branches eligible to credit CCMR.

Agency Response. The agency disagrees. While respecting the service provided by these branches, reserve forces and the National Guard are part-time service commitments. Therefore,

the agency will not award CCMR credit for students who enroll in the reserve forces or National Guard.

Comment. Five district staff members support the evaluation of four years of SAT and ACT data. Two staff members requested clarification on the inclusion of four years of SAT and ACT data, asking if the agency will use the best result for each student from those four years.

Agency Response. The agency provides the following clarification. Agency staff evaluates four years of data for Advanced Placement, International Baccalaureate, SAT, and ACT data. Students are credited for the best result, by subject area, for each assessment contained within those four years of data. Students are credited for the best Texas Success Initiative Assessment, by subject area, between October 31, 2011, and October 31, 2018.

Comment. One district staff member commented on the fairness of the graduation rate conversion methodology, noting that their district had a 92% graduation rate, which converts to a 70. The staff member commented that the state average is 90%; therefore, they would expect a 92% to be closer to a 90 scaled score.

Agency Response. The agency disagrees. The Class of 2018 median graduation rate for all Texas districts is 99.2%, and 75% of districts have a graduation rate that is greater than 96%. Furthermore, only 10% of Texas districts have a graduation rate below 93.2%.

Comment. TSA and one district member commented on the small numbers analysis (SNA) methodology for CCMR and graduation rate. TSA and one district member proposed the calculation remain as an average, rather than a sum. A district member proposed not applying small numbers analysis to CCMR or graduation rate components.

Agency Response. The agency disagrees and provides the following clarification. The SNA methodology is unchanged from previous years; language was clarified in the proposed 2019 manual. The denominator is based on the sum of three years of data. The resulting outcome is based on the average of those three years of numerators and denominators. SNA provides small districts and campuses opportunities to earn additional points by providing an opportunity for evaluation on indicators for which these districts and campuses may not meet minimum size based solely on a single year of data.

Comment. One individual proposed the agency reevaluate and refine the proposed dropout rate conversion methodology.

Agency Response. The agency disagrees. The annual dropout rate conversion provides a proxy for the districts and campuses that lack a graduation rate by converting the annual dropout rate into a positive measure.

Comment. TSA and four district staff members proposed including the results of substitute assessments at the Masters Grade Level standard.

Agency Response. The agency disagrees. The agency will continue the methodology established in 2018 accountability and include substitute assessments at the Meets Grade Level standard in 2019 accountability. As explained in the June 20, 2019 To the Administrator Addressed correspondence, the agency must cease the inclusion of substitute assessment results in future accountability cycles.

Comment. United ISD commented that State of Texas Assessment of Academic Readiness (STAAR®) end-of-course (EOC)

retesters should only be included in accountability for one accountability cycle or up to the third administration of the EOC as this would limit the impact of EOC retesters on accountability to a maximum of two accountability cycles.

Agency Response. The agency disagrees. Texas Education Code (TEC), §39.053(c)(1)(A)(i), requires the accountability system to include an indicator that accounts for STAAR® EOC results, including the results of EOCs required for graduation retaken by a student.

Comment. One education service center (ESC) staff member commented on the inconsistency between the following statement and the information provided within the referenced table, specifically noting that the statement appears to conflict with the table when a student goes from Masters Grade Level to Meets Grade Level. "An assessment result that meets the *Expected* or *Accelerated* STAAR® progress measure expectation earns a district or campus one point. Otherwise, prior-year and current-year performance are evaluated, and districts and campuses are awarded points according to the following table."

Agency Response. The agency agrees. The noted scenario is an exception to the statement. At adoption, Figure: 19 TAC §97.1001(b) was updated to remove the statement quoted in the comment.

Comment. TSA and five district staff members commented that if a student transitions from the Spanish to the English version of the reading STAAR®, the assessment should be awarded a full point in Academic Growth.

Agency Response. The agency disagrees. Students who transition from Spanish to English on STAAR® reading do not receive STAAR® progress measures due to the differences between the assessments.

Comment. TSA and three district staff members proposed accelerated students who test above grade level, whose current year assessment is at least two grade levels above the prior year, and who achieve at least the Approaches Grade Level standard should be awarded a full point in Academic Growth.

Agency Response. The agency disagrees. STAAR® progress measures are based on statistical reasoning. An accelerated tester is evaluated for, and may earn, full credit based on the progress measure outcome.

Comment. TSA proposed excluding year 2 ELs from Academic Growth calculations.

Agency Response. The agency disagrees. The Elementary and Secondary Education Act (ESEA) as reauthorized under the Every Student Succeeds Act (ESSA), §1111(b)(3), requires English learners (EL) be included in the accountability system except for the limited exception for recently arrived ELs enrolled in schools for less than 12 months.

Comment. One ESC staff member suggested adding language to Chapter 3 to clarify that the economically disadvantaged percentage used in the School Progress domain is rounded to the nearest tenth.

Agency Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to clarify that the economically disadvantaged percentage used in the School Progress domain is rounded to the nearest tenth.

Comment. TSA and eight district staff members suggested eliminating the requirement for the federal graduation rate to increase

by a tenth of a percentage point for student groups who have exceeded the 90% target.

Agency Response. The agency disagrees. This methodology was developed during ESEA state plan negotiations with the U.S. Department of Education (USDE) in order to meet federal graduation requirements.

Comment. TSA and one district staff member proposed the Closing the Gaps domain evaluate a separate graduation rate for dropout recovery schools evaluated under alternative education accountability (AEA).

Agency Response. The agency disagrees. This methodology was developed during ESEA state plan negotiations with the USDE in order to meet federal graduation requirements. The agency will continue its work with the USDE to seek options for adjustments in future accountability cycles for specialized campuses.

Comment. Three district staff members suggested adding clarifying language in Chapter 4 for current ELs, which specifies that current refers to the EL status rather than currently enrolled.

Agency Response. The agency disagrees. The term "current ELs" in the manual refers to an EL that is identified as limited English proficient (LEP) in TSDS PEIMS or on STAAR® answer documents in the current school year.

Comment. TSA, United ISD, and three district staff members suggested broadening the definition of Ever ELs to include students who were ever identified in prekindergarten-Grade 12 as an EL.

Agency Response. The comment is outside the scope of the proposed rulemaking. For further information about graduation rate methodology, please contact the Texas Education Agency (TEA) Division of Research and Analysis.

Comment. One district staff member commented that the Texas English Language Proficiency Assessment System (TELPAS) standards should be reviewed and adjusted for the English Language Proficiency (ELP) component because this is the first year of the new TELPAS. Another district staff member noted that while many of their campuses hit the ELP target last year, many of their campuses do not hit the target this year. United ISD and 27 district staff members proposed TEA amend the ESEA plan to adjust the ELP target.

Agency Response. The agency agrees. An amendment will be submitted to the USDE proposing an amended ELP target. At adoption, Figure: 19 TAC §97.1001(b) was updated to include the proposed targets.

Comment. TSA and one district staff member proposed ELP targets be set by campus type.

Agency Response. The agency disagrees. The ESEA plan does not provide targets by campus type for any federal indicator. The agency will continue its work with the USDE to seek options for adjustments in future accountability cycles.

Comment. United ISD and 98 district staff members suggested revisions to the ELP methodology. The first suggestion was to award half credit (five points) in the Closing the Gaps domain calculation if a district/campus had an outcome of 21% in the ELP component. Another suggestion by United ISD and district staff members was to award credit for students who maintain a composite rating of Advanced.

Agency Response. The agency disagrees. The ELP methodology was developed during ESEA state plan negotiations with the USDE in order to meet federal requirements to measure student progress in achieving English language proficiency.

Comment. A district staff member requested clarification on whether students with interpreted formal education (SIFE) and unschooled refugees in years one through five in U.S. schools are excluded from the ELP calculation.

Agency Response. The agency provides the following clarification. The ELP calculation does not exclude ELs who are unschooled asylees, refugees, and SIFE. Their inclusion is required under ESEA to measure student progress in achieving English language proficiency.

Comment. A district staff member requested clarification on whether students who are first year ELs who score Advanced High are excluded from the ELP calculation.

Agency Response. The agency provides the following clarification. The inclusion of first-year ELs meets federal requirements to evaluate student progress in achieving language proficiency. First-year ELs are included in the numerator and denominator of ELP calculations if their 2019 TELPAS composite rating is Advanced High.

Comment. One ESC staff member suggested including a formula in the form of a graphic for the ELP component in Chapter 4.

Agency Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to include a formula for this component.

Comment. One district staff member suggested using "required improvement" in the Closing the Gaps domain.

Agency Response. The agency disagrees. ESEA requirements do not allow for the use of incremental growth.

Comment. One ESC staff member suggested moving the "Inclusions of English Learners" section to follow the "Current and Monitored English Learners" section in Chapter 4.

Agency Response. The agency disagrees. In order to maintain consistent rule presentation across chapters, these sections will remain as proposed.

Comment. One ESC staff member suggested adding language to the section entitled "Student Groups" regarding the Graduation Rate component in Chapter 4, which specifies that former special education, continuously enrolled, and non-continuously enrolled student groups are not evaluated.

Agency Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to include this information in the referenced section.

Comment. One district staff member commented that minimum size criteria in the Closing the Gaps domain adversely affects smaller schools as small student group results are not included or reported in the component score calculation. The commenter proposed changing minimum size requirements or eliminating the evaluation of the non-continuously enrolled student group unless continuously enrolled student group scores are counted.

Agency Response. The agency disagrees. The all students group will be evaluated if there are at least 10 assessments in the subject area or at least 10 students in the CCMR or graduation components. Individual student group results are evaluated

if there are at least 25 assessments in the subject area or at least 25 students in the CCMR or graduation components. If a student group does not meet minimum size criteria, the results are reported on data tables but not evaluated.

Comment. One district staff member inquired about why the provision that limits a district's rating to a B now applies when one or more campuses receive a D or an F rating. TSA proposed implementing this provision only when the scaled score is below 60.

Agency Response. The agency provides the following clarification. This provision is required by TEC, §39.054(a), which states, "A district may not receive an overall or domain performance rating of A if the district includes any campus with a corresponding overall or domain performance rating of D or F."

Comment. TSA and four district staff members proposed eliminating AEA campuses from consideration when implementing the provision that limits a district's rating to a B that now applies when one or more campuses receive a D or an F rating.

Agency Response. The agency disagrees. While TEC, §39.054(a), does not permit the exclusion of campuses from this provision, the agency has increased opportunities for AEA campuses to earn bonus points through a system developed in conjunction with accountability advisory committees. These bonus points afford AEA campuses greater opportunities in the accountability system.

Comment. TSA and seven district staff members commented on the provision which states, "If an F rating is received in three of the four areas of Student Achievement; School Progress, Part A: Academic Growth; School Progress, Part B: Relative Performance; or Closing the Gaps, the highest scaled score a district, open-enrollment charter school, or campus can receive for the overall rating is a 59. In order for this provision to be applied, the district, open-enrollment charter school, or campus must be evaluated in all four areas. If the Student Achievement domain rating is a D or higher, this provision will not be applied." The district staff members questioned the intent and goal of the provision and suggested that the provision be eliminated.

Agency Response. The agency disagrees. The third of four steps is one of many additional steps (such as the better of School Progress, Part A or Part B) adopted under commissioner rule. This step clarifies that if a district/campus has not met standards in three of four areas, they are not meeting standards overall. The agency found this step fair and appropriate, especially given the "better of the better of" used in the first two domains and the additional provision for the Student Achievement domain outcome for 2019.

Comment. TSA and two district staff members proposed the agency revisit the cut points proposed to award AEA bonus points in Chapter 5. Commenters stated the cut points are too ambitious for AEA campuses.

Agency Response. The agency disagrees. AEA bonus points are designed to provide high performing AEA charters and campuses the opportunity to improve their accountability ratings through exceptional performance. The AEA bonus points methodology was not developed to award every AEA campus additional points.

Comment. One ESC staff member commented on the page numbers referenced throughout Chapter 5, noting that they do not correspond to the appropriate tables.

Agency Response. The agency provides the following clarification. The page numbers correspond to the correct tables in the version that shows additions and deletions published in the *Texas Register*. The adopted rule was paginated to ensure tables and page number references align.

Comment. One ESC staff member requested that information regarding *F* campuses and *D* domain/overall be included in Chapter 10 of the manual.

Agency Response. The agency disagrees. "Chapter 10-Identification of Schools for Improvement" describes the federal identification of schools for support and improvement. Overall and domain ratings of *D/F* are state ratings. For further information about interventions and sanctions for campuses rated *D/F*, please contact the TEA Division of School Improvement.

Comment. Seven district staff members commented in support of the modifications to the methodology for identifying schools for improvement.

Agency response. The agency agrees.

Comment. TSA and four district staff members proposed the agency identify campuses for targeted support and improvement on a percentage of missed indicators, not an absolute number.

Agency Response. The agency disagrees. The agency uses a percentage of missed indicators to identify campuses for additional targeted support.

Comment. One district staff member commented that additional targeted support identification should not be based on a student group meeting minimum size in only one indicator and missing the target for that single indicator.

Agency Response. The agency provides the following clarification. With the implementation of minimum size requirements in the Academic Achievement reading and mathematics indicators, each student group must meet minimum size in at least two indicators to be evaluated.

Comment. Three district staff members requested clarification on additional targeted support identification section of Chapter 10. The commenters asked if the revised minimum size criteria will impact the School Quality component.

Agency response. The agency provides the following clarification. A minimum size is not set specifically for the School Quality component. As a byproduct of applying a minimum size of either 10 or 25 to the Academic Achievement reading and mathematics components, the STAAR® Only component will always equal or exceed either 20 or 50 assessments.

Comment. TSA requested clarification on the identification of schools for additional targeted support, asking if a campus needs two student groups to miss minimum percentage of evaluated targets in order to be identified.

Agency Response. The agency provides the following clarification. A campus will be identified for additional targeted support if any one or more student groups miss the percentage of evaluated indicators for identification. At adoption, Figure: 19 TAC §97.1001(b) was updated to change the "and" to "or" in the additional targeted support example in Chapter 10.

Comment. TSA, eight district staff members, and one ESC staff member commented on the STAAR® EOC Algebra I and English I retest provision. TSA and seven district staff members suggested removing the provision. One district staff member questioned the population of students targeted by the provision and

why STAAR® EOC English II is not included. One district staff member suggested that the manual be updated to clarify that the provision is only applied to accountability calculations and does not apply to student cumulative records. One ESC staff member inquired about whether the provision would apply to 2019 spring testing and noted that by the time the manual is adopted spring testing would be complete.

Agency Response. The agency disagrees. TEA is analyzing the effects of block scheduling on students and their ability to test at multiple times during a school year. TEA will analyze the impact of differentiated pace, scheduling, and increased instruction on competency level improvements. As this is the first year of implementation, the agency has determined that these outcomes should be applied only to accountability calculations and not apply to student cumulative records. The agency may consider extending the provision to student cumulative records and/or English II in future accountability cycles should the provision be found to yield positive outcomes for students. As with all provisions found in the *2019 Accountability Manual*, this provision will apply to the 2019 accountability cycle.

Comment. United ISD requested that miscodes to STAAR® answer documents for assessments administered under the STAAR® EOC Algebra I and English I retest provision be allowed an exception to STAAR® answer document correction procedures. United ISD proposed TEA allow these records to be corrected and award credit for qualifying assessments. The district also proposed the students' cumulative records should be updated to reflect their best score. Finally, United ISD proposed that all campuses who put strategies in motion to provide this opportunity should have the results included in accountability for 2019, regardless of whether this provision is removed from the manual.

Agency Response. The agency disagrees. District and charter school responsibility for data quality is the cornerstone of a fair and uniform rating determination. Furthermore, the accountability ratings must be calculated in accordance with the methodology as annually adopted in the accountability manual.

Comment. One district staff member inquired whether ELs in their second year in U.S. schools who have a parental denial for services, and, therefore, will not receive an EL performance measure, will be excluded from calculations.

Agency Response. The agency provides the following clarification. Second year ELs who have a parental denial for services will be included in accountability calculations in the same manner as non-ELs. At adoption, Figure: 19 TAC §97.1001(b) was updated with this information.

Comment. TSA and six district staff members recommended including second year ELs who have a parental denial for services in accountability calculations using the EL performance measure.

Agency Response. The agency disagrees. As parents have indicated their desire to deny language accommodations for their children, and these students will not have a current-year TEL-PAS, the agency will not generate an EL performance measure for second year EL students with parental denials.

Comment. One district staff member commented on the inclusion of ELs in their second year in U.S. schools in the accountability system, noting that language acquisition takes much longer.

Agency Response. The agency disagrees. This methodology was developed to align with ESEA requirements. ESEA, §1111(b)(3), requires EL students be included in the accountability system except for the limited exception for recently arrived ELs enrolled in schools for less than 12 months.

Comment. One ESC staff member suggested revising language regarding the accountability subset rule from "...districts and campuses are responsible for students reported as enrolled in the fall (referred to as October snapshot) in the spring assessment results" to "...districts and campuses are responsible for students reported as enrolled in the fall (referred to as October snapshot) in the campus/district spring assessment results."

Agency Response. The agency disagrees. Districts and campuses are responsible for students reported as enrolled in the same district/campus in the fall and on the testing date.

Comment. Three district staff members suggested removing the one percent cap on the use of alternative assessments for districts and campuses.

Agency Response. The agency disagrees. A limit on the use of alternative assessments is federally required under ESEA. While this measure will be reported for regions, districts, and campuses, the monitoring only applies at the state level--the number of students assessed using STAAR® Alternate 2 must not exceed one percent of the state's total participation.

Comment. TSA and four district staff members proposed the Academic Achievement in Mathematics distinction designation indicator, Algebra I by Grade 8 Participation, include the results of substitute assessments by Grade 8.

Agency Response. The agency provides the following clarification. The Algebra I by Grade 8 Participation indicator includes students who used a substitute assessment. This was clarified in Appendix H.

Comment. An individual commented that the agency should continue to work on methodology to develop an accountability system for schools that practice selective enrollment.

Agency Response. The agency provides the following clarification. Districts, open-enrollment charter schools, and campuses are held accountable for the students enrolled. With the implementation of local accountability systems, districts and open-enrollment charter schools have the opportunity to develop accountability indicators to highlight successes within their campuses. The agency will continue its work with stakeholders, such as the introduction of a Texas Student Data System Public Education Information Management System (TSDS PEIMS) campus enrollment type indicator, to seek options for adjustments in future accountability cycles for specialized campuses.

Comment. The Texas Charter Schools Association (TCSA) proposed removing "student course completion" from the list of data corrections requests that will not be considered during the appeal process. TCSA stated that denying the ability to change coursework completion would have a negative impact on students and prevent them from graduating on time.

Agency Response. The agency provides the following clarification. This proposed rule is limited to corrections requested under the accountability appeals process; it does not affect individual student graduation requirements. TSDS PEIMS resubmission windows are not affected by accountability appeals. Districts and open-enrollment charters continue to follow established TSDS PEIMS data submission requirements and timelines.

Comment. TSA proposed eliminating the identification of schools for Public Education Grant (PEG) as schools are evaluated in several ways already.

Agency Response. The comment is outside the scope of the proposed rulemaking. Identification of schools for PEG is required under TEC, §§29.201-29.205.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §39.052(a) and (b)(1)(A), which require the commissioner to evaluate and consider the performance on achievement indicators described in TEC, §39.053(c), when determining the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which requires the commissioner to adopt a set of performance indicators related to the quality of learning and achievement in order to measure and evaluate school districts and campuses; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which allows the commissioner to adopt indicators and standards under TEC, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes open-enrollment charter schools and campuses that earn an acceptable rating eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §29.081(e), (e-1), and (e-2), which define criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; and TEC, §12.104(b)(2)(L), which subjects open-enrollment charter schools to the rules adopted under public school accountability in TEC, Chapter 39.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§39.052(a) and (b)(1)(A); 39.053; 39.054; 39.0541; 39.0548; 39.055; 39.151; 39.201; 39.2011; 39.202; 39.203; 29.081(e), (e-1), and (e-2); and 12.104(b)(2)(L).

§97.1001. *Accountability Rating System.*

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053, 39.054, 39.0541, 39.0548, 39.055, 39.151, 39.201, 39.2011, 39.202, 39.203, 29.081(e), (e-1), and (e-2), and 12.104(b)(2)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

- (1) indicators, standards, and procedures used to determine district ratings;
- (2) indicators, standards, and procedures used to determine campus ratings;

(3) indicators, standards, and procedures used to determine distinction designations; and

(4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2019 are based upon specific criteria and calculations, which are described in excerpted sections of the *2019 Accountability Manual* provided in this subsection.

Figure: 19 TAC §97.1001(b)

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.057.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

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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19 TAC §97.1003

The Texas Education Agency (TEA) adopts new §97.1003, concerning accountability and performance monitoring. The new section is adopted with changes to the proposed text as published in the May 3, 2019 issue of the *Texas Register* (44 TexReg 2213), and therefore, the rule will be republished. The new section establishes provisions related to the local accountability system and adopts in rule the *2019 Local Accountability System Manual*.

REASONED JUSTIFICATION. Texas Education Code (TEC), §39.0544, as added by House Bill 22, 85th Texas Legislature, Regular Session, 2017, establishes local accountability systems, which allow school districts and open-enrollment charter schools to develop plans to locally evaluate campuses. Local accountability systems provide an opportunity for school districts and open-enrollment charter schools to voluntarily submit local campus data, which is combined with state accountability outcomes, to determine the overall campus rating. This process is designed to encourage schools to focus on student outcome-based components shaped around local long-term goals identified by community and stakeholder feedback.

To implement TEC, §39.0544, TEA adopts new 19 TAC §97.1003, which adopts the *2019 Local Accountability System Manual* into rule as a figure. The optional local accountability system will evolve from year to year, so the criteria and standards for applying local ratings will differ to some degree each

year. The intention is to update §97.1003 annually to refer to the most recently published local accountability system manual.

The *2019 Local Accountability System Manual* specifies the domains, standards, and procedures for components used by local educational agencies to determine local accountability system ratings for campuses and open-enrollment charter schools. The TEA will issue final local accountability system ratings and overall combined state accountability ratings under the procedures specified in the *2019 Local Accountability System Manual* by August 15, 2019.

The following is a chapter-by-chapter summary of the local accountability system manual.

Chapter 1 gives an overview of the local accountability system. In addition, it identifies who is rated, the differences between school types, and phases of the local accountability system process.

Chapter 2 describes the local accountability system plan design, submission and approval process, and development process. In addition, it provides a timeline for local accountability system plan and data submissions, domains, component and component criteria, weighting, and rigor. It also includes required district postings.

In response to public comment, Chapter 2 was modified at adoption to change the cut point for an "F" rating from "0-59" to "<60."

Chapter 3 describes the local accountability system ratings, audits, and appeals. It further describes the local accountability ratings review process, appeal process, and local accountability system appeals timeline.

In response to public comment, Chapter 3 was modified at adoption as follows. The cut point for an "F" rating was changed from "0-59" to "<60." Under the heading "LAS Ratings Review Process" on page 14, information on random auditing was modified to specify that districts *or* open-enrollment charter schools will be selected for audit rather than districts *and* open-enrollment charter schools. Under the heading "LAS Ratings Appeal Process" on page 15, language was removed stating that districts and open-enrollment charter schools may appeal local accountability system ratings for any reason.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began May 3, 2019 and ended June 3, 2019. A public hearing on the proposal was held at 1:00 p.m. on May 22, 2019, in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Following is a summary of the public comments received and corresponding responses.

Comment. A district staff member commented that when reviewing the component weighting, it is not possible to have two domains with three components. The commenter stated that in one of the domains there would be a single component that must be weighted at 100%, which is not permitted by the component weight limits.

Agency Response. The agency agrees and will explore options with stakeholders for adjustments to future local accountability system policy.

Comment. A district staff member commented that the weighting of the domains and the components can be manipulated so that the net weight is heavier for less rigorous items and less heavy for more rigorous items.

Agency Response. The agency agrees and will explore options with stakeholders for adjustments to future local accountability system policy.

Comment. A district staff member commented with specific examples of components within domains, stating that there could be any number of combinations of the domain and component weights that would shift the net weight of any component, no matter how rigorous. The commenter stated that under the current local accountability system plan, the district is forced to add more components that may not be strong just to get the number needed to work with the component weights and to have more domains or remove components and domains if the rigor and number of measures do not work. The commenter suggested a better idea would be to limit the net weight, not the component weight.

Agency Response. The agency agrees and will explore options with stakeholders for adjustments to future local accountability system policy.

Comment. A district staff member disagreed with allowing an appeal for a mistake made by TEA or a testing contractor but not one by the district. The commenter stated that ratings have become high stakes and that punishing a district's academic rating for a data error could have consequences that would take years to overcome. The commenter suggested that assigning an "F" rating for the central office would be more appropriate than an "F" rating for the district.

Agency Response. The agency disagrees. Statute does not allow TEA to rate a central office at a district. TEC, §39.0544(b), states, "the commissioner shall develop a process to approve a request by a school district or open-enrollment charter school to assign campus performance ratings." Per statute, local accountability system grades cannot be applied to a district.

Comment. An individual asked for clarification on how TEA will ensure stakeholders are included in the local accountability system process and also requested a definition for "community and stakeholders."

Agency Response. The agency provides the following clarification. Per TEC, §39.0544(b), TEA is not required to ensure stakeholders are included in the local accountability system process. However, it is considered best practice, and TEA will be asking for evidence of the inclusion of stakeholder feedback and input through the district rationale of using chosen local components. Statute requires that districts and campuses evaluate the performance of each campus on locally developed domains or sets of accountability measures. TEA considers the definition for community and stakeholders as a local decision.

Comment. One district staff member asked for clarification regarding whether campuses rated as Improvement Required (IR) could be a part of the local accountability system if they are a "C" or higher the year after the IR rating.

Agency Response. The agency provides the following clarification. Campuses that receive a "C" rating or better and have participated in the local accountability system will have their local accountability system grade applied. Local accountability system grades will have no impact on a campus's monitoring or intervention process. A campus's prior year accountability grade has no impact on the current year that local accountability scores will be applied.

Comment. One district staff member asked TEA to modify the manual to eliminate the requirement to submit scaled scores for each component.

Agency Response. The agency disagrees, as scaled scores at the component level are necessary for transparency and reporting purposes.

Comment. One district staff member asked TEA to eliminate the suggested percentage weighting for components to correlate with the overall plan percentage and not the domain percentage and provided a specific example. The commenter suggested making the level of rigor weight applicable to the entire plan as opposed to just the specific domain, thereby allowing districts to assess their programs in a variety of ways to target their specific needs.

Agency Response. The agency agrees and will explore options with stakeholders for adjustments to future local accountability system policy.

Comment. Texas Charter Schools Association (TCSA) is concerned that the commissioner does not define the word "viable" under the section "Plan Development Process." The commenter quoted language from the manual stating that "If a significant local change occurs during the three-year period such that a part of the plan is no longer viable, the district or open-enrollment charter school may request a modification to the approved LAS plan." TCSA recommended the commissioner define the word "viable" in the text to prevent districts and charters from submitting changes to their local accountability system plan that will not likely be approved.

Agency Response. The agency disagrees that the term "viable" should be defined in the manual. Acceptance of plan changes are considered by TEA on a case by case basis. During that consideration, TEA views "viable" in regard to components that have either met the growth target or, in consideration of leadership changes, that eliminate the component entirely.

Comment. TCSA commented that the commissioner could unintentionally conduct local accountability system audits on the same charter schools every year because the TEA's proposed rule states that "On an annual basis, TEA randomly selects districts and open-enrollment charter schools for a LAS audit, and, for each such audit, TEA randomly selects components for review." TCSA stated that this language implies that both a district and charter school will be chosen for a local accountability system audit each year, which creates unfair odds for charter schools since there are currently 11 districts and only 1 charter school implementing a local accountability system in Texas. TCSA recommended the commissioner change the language to read, "On an annual basis, TEA randomly selects districts or open-enrollment charter schools for a LAS audit, and, for each such audit, TEA randomly selects components for review." TCSA stated that this change will ensure districts and charter schools implementing a local accountability system will have an equal chance of being selected for an audit.

Agency Response. The agency agrees and has revised the manual at adoption to specify that districts or open-enrollment charter schools will be selected for audit.

Comment. TCSA commented that the commissioner could give districts and charter schools using a local accountability system the false impression that appeals for any reason are possible. TCSA stated that, according to the *2019 Accountability Manual*, appeals not related to a local accountability system are only suc-

cessful when they are related to "a data or calculation error attributable to TEA, an ESC, or the testing contractor(s)." TCSA stated that the language is very similar to the language in the section "LAS Ratings Appeal Process" on page 15 of the *2019 Local Accountability System Manual*, which reads, "While districts and open-enrollment charter schools may appeal LAS ratings for any reason, a successful LAS appeal is usually limited to situations such as a calculation error attributable to the Texas Education Agency or testing contractor." TCSA recommended the commissioner change the language to read, "A successful LAS appeal is usually limited to situations such as a calculation error attributable to the Texas Education Agency or testing contractor." TCSA stated that this change will keep districts and charter schools from filing hopeless appeals and convey the gravity of submitting correct accountability data the first time.

Agency Response. The agency agrees and has revised the manual at adoption to remove language specifying that districts and open-enrollment charter schools may appeal local accountability system ratings for any reason.

Comment: One district staff member asked TEA to change the scaled score range for a grade of "F" from "0-59" to "<60." The commenter stated that the state accountability system has put a floor of 30 for domain scaled scores and that local accountability systems should have similar options.

Agency Response: The agency agrees and has revised the manual at adoption to specify that the scaled score range for a grade of "F" is "<60."

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code, §39.0544, which requires the commissioner to adopt rules regarding the assignment of campus performance ratings by school districts and open-enrollment charter schools.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §39.0544.

§97.1003. *Local Accountability System.*

(a) The local accountability system rating standards established by the commissioner of education under Texas Education Code (TEC), §39.0544, shall be used by school districts to locally evaluate the performance of districts, campuses, and charter schools. The procedures and criteria required to determine campus grades by the districts will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

- (1) acceptable indicators, standards, and procedures used to approve a local accountability plan, district calculations, and campus local accountability grades; and
- (2) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools can locally rate their campuses for 2018 are based upon specific criteria and standards, which are described in the *2019 Local Accountability System Manual* provided in this subsection.
Figure: 19 TAC §97.1003(b)

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.057(d) and (e).

(d) The specific criteria and standards used in the local accountability system manual are established annually by the commissioner and communicated to all school districts and charter schools.

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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CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING FISCAL PEER GROUPS

19 TAC §109.4001

The Texas Education Agency (TEA) adopts new §109.4001, concerning fiscal peer groups. The new section is adopted without changes to the proposed text as published in the May 17, 2019 issue of the *Texas Register* (44 TexReg 2444) and will not be republished. The adopted new section establishes the criteria to be used to place school districts and open-enrollment charter schools into fiscal peer groups for purposes of an online financial information tool.

REASONED JUSTIFICATION. Texas Education Code (TEC), §39.001, authorizes the commissioner of education to adopt rules as necessary to administer TEC, Chapter 39, Public School System Accountability, and TEC, §39.085, authorizes the commissioner to adopt rules to administer TEC, Chapter 39, Subchapter D, Financial Accountability. TEC, §39.082(a)(2)(A), directs the commissioner to provide additional transparency to public education finance, and TEC, §39.082(h), authorizes the commissioner to adopt rules to administer the section.

Adopted new 19 TAC §109.4001 promotes transparency by allowing users of the txschools.gov website, which is designed to provide an in-depth look into how campuses and districts are performing overall and in different areas, to compare the financial data of similar school districts and open-enrollment charter schools based upon specific criteria. The criteria include whether the school district is eligible to receive the sparsity adjustment and student enrollment levels as established in adopted new subsection (a)(2). Open-enrollment charter schools will be placed in fiscal peer groups that do not receive the sparsity adjustment. A list of fiscal peer groups categorized using the criteria in the adopted new rule is posted on the TEA website at [https://tea.texas.gov/Finance_and_Grants/State_Funding/Financial_Information_Tool_\(FIT\)](https://tea.texas.gov/Finance_and_Grants/State_Funding/Financial_Information_Tool_(FIT)).

The establishment of fiscal peer groups is for informational purposes only and has no effect upon a school district's or an open-enrollment charter school's financial accountability rating. Groupings will be reevaluated on an ongoing basis.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began May 17, 2019, and ended June 17, 2019. No public comments were received.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §39.001, which authorizes the commissioner to adopt rules as necessary to administer TEC, Chapter 39; TEC, §39.082(a)(2)(A), which directs the commissioner of education to provide additional transparency to public education finance; TEC, §39.082(h), which authorizes the commissioner to adopt rules to administer TEC, §39.082; and TEC, §39.085, which authorizes the commissioner to adopt rules to administer TEC, Chapter 39, Subchapter D.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§39.001; 39.082(a)(2)(A) and (h); and 39.085.

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

Filed with the Office of the Secretary of State on July 22, 2019.

TRD-201902323

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 11, 2019

Proposal publication date: May 17, 2019

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



CHAPTER 111. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR MATHEMATICS SUBCHAPTER D. OTHER HIGH SCHOOL MATHEMATICS COURSES

The State Board of Education (SBOE) adopts the repeal of §111.60 and new §§111.61-111.64, concerning other high school mathematics courses. The repeal and new sections are adopted without changes to the proposed text as published in the May 3, 2019 issue of the *Texas Register* (44 TexReg 2230) and will not be republished. The adoption repeals a rule that is outdated and duplicative of other SBOE rules and adds four new International Baccalaureate (IB) courses to the mathematics Texas Essential Knowledge and Skills (TEKS) for implementation in the 2019-2020 school year.

REASONED JUSTIFICATION. For students to earn state credit toward specific graduation requirements, a course must be approved by the SBOE and included in SBOE rule. In September 2019, the International Baccalaureate Organization will add four new mathematics courses to its diploma program. The adopted new sections add the four new IB courses to the mathematics TEKS for implementation in the 2019-2020 school year so that school districts and charter schools may offer the new IB courses. The current IB mathematics courses will be repealed once they are no longer necessary.

In addition, §111.60 is repealed since the section is outdated and duplicative of other SBOE rules.

The SBOE approved the revisions for first reading and filing authorization at its April 5, 2019 meeting and for second reading and final adoption at its June 14, 2019 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the revisions for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will make the new IB mathematics courses available beginning with the 2019-2020 school year and help avoid any confusion for school districts regarding other mathematics courses. The effective date is August 7, 2019.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began May 3, 2019, and ended June 7, 2019. The SBOE also provided an opportunity for registered oral and written comments at its June 2019 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and the corresponding responses.

Comment. One administrator asked if districts will accrue additional costs associated with the proposed revisions to 19 TAC Chapter 111, Subchapter D, and if so, what these cost implications will be.

Response. The SBOE offers the following clarification. The Texas Education Agency has determined that there are no additional costs to state or local government required to comply with the proposed revisions. There may be fiscal implications, which may include revised curriculum or professional development to implement revisions to the IB mathematics courses, for school districts and charter schools that participate in the International Baccalaureate Organization diploma program. Since participation in the International Baccalaureate Organization and curriculum and instruction decisions are made at the local district level, it is difficult to determine the cost implications on any given district.

Comment. One administrator asked what are the four proposed new mathematics courses. The commenter stated that districts should be aware of the courses so that full-time employee allocations and master schedule accommodations can be made for the 2019-2020 school year.

Response. The SBOE offers the following clarification. The proposed new IB mathematics courses were identified in proposed new §§111.61-111.64. Districts choosing to offer the proposed new IB mathematics courses are required to teach the content requirements that are prescribed by the International Baccalaureate Organization. Subject guides for IB courses must be obtained from International Baccalaureate of North America.

Comment. One administrator stated that districts need to know the implications to the TEKS to allow their mathematics teachers time to embed any changes into their curriculum guides; however, the SBOE's proposal does not provide this specific information.

Response. The SBOE offers the following clarification. As stated in proposed new §§111.61-111.64, districts offering the proposed new IB mathematics courses are required to teach the content requirements that are prescribed by the International Baccalaureate Organization. Subject guides for IB courses must be obtained from International Baccalaureate of North America.

Comment. One representative from the Texas International Baccalaureate Schools organization asked whether the IB mathematics courses that are currently in effect would remain in effect or if they would be removed once the International Baccalaureate Organization retires the courses and students are no longer taking them. The representative asked what the process will be

to remove the courses when they will no longer be offered after the 2019-2020 school year.

Response. This comment is outside the scope of the proposed rulemaking.

19 TAC §111.60

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and §28.025(a).

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

Filed with the Office of the Secretary of State on July 18, 2019.

TRD-201902292

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: May 3, 2019

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



19 TAC §§111.61 - 111.64

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and §28.025(a).

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

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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



TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 223. FEES

22 TAC §223.1

Introduction. The Texas Board of Nursing (Board) adopts amendments to §223.1, concerning Fees. The amendments are adopted without changes to the proposed text published in the June 14, 2019, issue of the *Texas Register* (44 TexReg 2908). The amended rules will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Texas Occupations Code §301.151 and §301.155, Texas Health and Safety Code §481.0756(e), and HB 1, enacted by the 86th Texas Legislature, effective September 1, 2019.

In its budget request for the 2020-2021 biennium, the Texas Legislature approved the Board's request for \$777,236 in exceptional items, in addition to its base budget of \$28,271,031. As such, the Board is required to raise enough revenue to cover the Board's base budget (which includes obligatory payments for employee health and retirement benefits), exceptional items (which includes temporary staffing costs, nurse salary adjustments, and the executive director salary increase), and additional costs associated with the implementation of House Bill (HB) 2174, which was passed during the legislative session, and becomes effective September 1, 2019.

HB 2174 relates, in part, to the issuance of electronic prescriptions for controlled substances. The bill requires licensing agencies to develop a waiver process for practitioners who are unable to issue electronic prescriptions for statutorily defined reasons. There are currently 25,410 advanced practice registered nurses with prescriptive authorization in Texas that may be affected by the bill's new requirements. Further, the Board experiences an approximate 6.6% to 20.7% increase in the number of new prescriptive authorizations issued each year. Based upon the potential volume of waivers the Board may receive as a result of the requirements of HB 2174, the Board anticipates that it will need to employ one additional staff member, full time, to review and respond to the waiver requests. The Board estimates the cost associated with an additional staff member to be approximately \$59,629.50 each fiscal year.

In order to meet the revenue requirements approved by the legislature, the Board has determined that it is necessary to increase its current licensure renewal fees. The Board's current renewal fee for licensed vocational nurses is \$42 each biennium; \$65 for registered nurses each biennium; and \$50 each biennium for advanced practice registered nurses. The Board has determined that it will need to raise licensed vocational nurse renewal fees by \$3, making the new renewal fee \$45 each biennium; registered nurse renewal fees by \$3, making the new renewal fee \$68 each

biennium; and advanced practice registered nurse renewal fees by \$4, making the new renewal fee \$54 each biennium.

The adopted amendments also clarify that more than one fee may apply, depending on an individual's particular situation. For example, an advanced practice registered nurse wishing to renew his/her advanced practice registered nurse license must also renew his/her Texas registered nurse license at the same time. This would result in the advanced practice registered nurse license renewal fee and the registered nurse license renewal fee applying to that individuals' biennial renewal. The adopted amendments do not alter the Board's current requirements in this regard, but instead, clarify how the Board's current fee structure functions.

The adopted amendments are necessary to effectuate the required licensure renewal fee increases by September 1, 2019.

How the Sections Will Function. Adopted §223.1(a)(3)(A) sets the fee for licensure renewal (each biennium) for registered nurses at \$68. Adopted §223.1(a)(3)(B) sets the fee for licensure renewal (each biennium) for licensed vocational nurses at \$45. Adopted §223.1(a)(11) sets the fee for licensure renewal (each biennium) for advanced practice registered nurses at \$54. Adopted §223.1(b) clarifies that more than one fee may apply to a single action.

Summary of Comments Received. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §301.151 and §301.155 and the Health and Safety Code §481.0756(e).

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

Section 301.155(a) provides that the Board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering the Occupations Code Chapter 301. Further, §301.155(a) provides that the Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

Section 481.0756(e) provides that each regulatory agency that issues a license, certification, or registration to a prescriber shall adopt rules for the granting of waivers consistent with the board rules adopted under §481.0756(d).

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

Filed with the Office of the Secretary of State on July 17, 2019.

TRD-201902263

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Effective date: August 6, 2019

Proposal publication date: June 14, 2019

For further information, please call: (512) 228-1862



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 507. EMPLOYEES OF THE BOARD

22 TAC §507.3

The Texas State Board of Public Accountancy adopts an amendment to §507.3, concerning Independent Contractors, without changes to the proposed text as published in the May 31, 2019, issue of the *Texas Register* (44 TexReg 2695). The rule will not be republished.

The amendment to §507.3 clarifies the Board's process regarding procurement of independent contractors for professional services.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on July 18, 2019.

TRD-201902290

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: August 7, 2019

Proposal publication date: May 31, 2019

For further information, please call: (512) 305-7842



PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER I. LICENSING

22 TAC §801.205

The Texas State Board of Examiners of Marriage and Family Therapists (board) adopts new §801.205, Emergency Limited Temporary License, concerning the licensing and regulation of marriage and family therapists if the governor declares a disaster and suspends certain laws and rules.

New §801.205 is adopted without changes to the proposed text as published in the May 31, 2019, issue of the *Texas Register* (44 TexReg 2696). Therefore, this rule will not be republished.

BACKGROUND AND JUSTIFICATION

The board adopts new §801.205 Emergency Limited Temporary License, which is necessary to ensure staff and the public have a clear understanding of the criteria that must be met before an emergency limited temporary license to practice marriage and family therapy may be issued. The new rule is to reduce vulnerability of people and communities of this state to injury resulting from disaster, prepare for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disaster; provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons affected by disasters; and clarify and strengthen the roles of the board, staff, and licensees in prevention of, preparation for, response to, and recovery from disasters.

COMMENTS

The 30-day comment period ended July 1, 2019.

During this period, the board received comments regarding the proposed rule from two individuals and two associations, including Texas Counseling Association (TCA), and Texas Association for Marriage and Family Therapy (TAMFT). A summary of comments relating to the rule and the board's responses follows.

Comment: Regarding proposed rule new §801.205, concerning Emergency Limited Temporary License, one individual commenter submitted, "It's great for Texas and for Texas residents."

Response: The board appreciates the supportive comment.

Comment: The second individual commenter opposed the new section, unless those granted the Emergency Limited Temporary License during a governor-declared disaster "are coming from states in which there is full reciprocity for Texas LMFTs."

Response: The Texas legislature does not hold a reciprocity agreement regarding the practice of marriage and family therapy with any state. The rule only allows for a limited temporary license in the areas where the governor has declared a disaster.

Comment: TAMFT supported the new rule but voiced "concern expressed by some TAMFT members about making sure that Texas takes full advantage of the LMFTs... in the state... hope that the {board} will consider how Texas LMFTs may be better utilized in such situations."

Response: The board appreciates the support. The board agrees and encourages all Texas licensees to support disaster relief efforts.

Comment: TCA agreed with the new section, believing it aligns with Texas Government Code, §418.117 and with similar rules in 22 Texas Administrative Code, §463.28, promulgated by the Texas State Board of Examiners of Psychologists and it "will be helpful in expediting the process for getting mental health support to Texas citizens in the aftermath of a disaster."

Response: The board appreciates the supportive comment.

STATUTORY AUTHORITY

The new rule is adopted under Title 3 of the Texas Occupations Code, §502.152, concerning Rules Regarding Board Procedures. The board also adopts this new rule pursuant to the authority in Texas Government Code, §418.117, which allows for license portability from another state to Texas subject to the limitations imposed by the licensing state agency.

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

Filed with the Office of the Secretary of State on July 18, 2019.

TRD-201902294

Jennifer Smothermon, M.A., LPC, LMFT

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: August 7, 2019

Proposal publication date: May 31, 2019

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

The Texas Parks and Wildlife Department Commission, in a duly noticed meeting on March 20, 2019, adopted amendments to §§65.10, 65.29, 65.42, and 65.44, concerning the Statewide Hunting Proclamation. The amendments to §65.29 and §65.44 are adopted without changes to the proposed text as published in the February 15, 2019, issue of the *Texas Register* (44 TexReg 676), and will not be republished. Amended §65.10 and §65.42 are adopted with changes to correct incorrect cross references in both sections, replace material omitted from the proposed rule text in §65.10(b)(2)(F)(i) - (iii), and correct a misspelled county name in §65.42(b)(2)(H). Corrected §65.10 and §65.42 are republished in this issue of the *Texas Register*.

The amendment to §65.10, concerning Possession of Wildlife Resources, rewords the content of subsection (f) to clarify provisions governing proof of sex for turkey. The department has received comments from the public indicating confusion with respect to when proof of a turkey's sex is required and how to comply with the requirements. The amendment nonsubstantively alters the current provision to clarify that proof of sex is required for turkeys taken during seasons when the bag limit is gobblers only or gobblers and bearded hens (i.e., not either sex), and that it can remain attached to the harvested bird or accompany the harvested bird (i.e., be available upon request by a game warden).

The amendment to §65.29, concerning Managed Lands Deer (MLD) Programs, authorizes the department to refuse program participation on any tract of land where harvested deer were not presented at a department check station for chronic wasting disease (CWD) testing when required to do so by department rules. The department is concerned that hunters could be advised to avoid presenting harvested deer at mandatory check stations, an action that places hunters in legal jeopardy (it is a criminal offense to fail to present harvested deer at a check station when required to do so) and confounds the department's efforts to contain and manage CWD, a disease that threatens the state's deer populations. The department reasons that participation in the MLD Program is a privilege that allows cooperators to enjoy a longer harvest period and enhanced bag limits, and that privilege should be limited to persons who support the department's statutory duty to protect a public resource. Under the new provision, denial of program participation would not be automatic, but con-

tingent on a number of factors, including whether the applicant advised hunters of any mandatory check station requirements in effect at the time a deer was harvested on property owned or managed by the applicant; whether the applicant encouraged, advised, or directed a person who killed deer on property owned or managed by the applicant not to present a harvested deer at a mandatory check station at any time that harvested deer were required by rule or statute to be presented at a mandatory check station; the number of harvested deer harvested on a property owned or managed by the applicant that were not presented at mandatory check stations; and any other aggravating or mitigating factors the department deems relevant.

The amendment also updates internal cross references to the muzzleloader and youth-only deer seasons established in §65.42.

The amendment to §65.42, concerning Deer, increases the number of "doe days" (the time period during the general open season when an MLD tag is not required to harvest antlerless deer) from four to 16 in 20 counties, and institutes four doe days in 21 counties where the harvest of antlerless deer is currently by MLD tag only.

The current harvest regulation in Bell (east of IH 35), Burleson, Delta, Ellis, Falls, Fannin, Franklin, Freestone, Hopkins, Hunt, Kaufman, Limestone, Milam, Navarro, Rains, Smith, Titus, Van Zandt, Williamson (east of IH 35), and Wood counties provides for a four-day period during the general open season during which antlerless deer may be lawfully harvested without an MLD tag. At all other times during the general open season, an MLD tag is required for the harvest of antlerless deer in these counties. The affected counties are in the Blackland Prairies and Post Oak Savannah ecoregions. Population trends in this area indicate an estimated 4.85% average annual population growth from 2005-2016. Individual Deer Management Units (DMUs) within these ecoregions also experienced similar estimated annual population growth, ranging from 3.3% to 40.1%. A DMU is an area characterized by similar soil types, vegetative communities, wildlife ecology, and land-use practices. Harvest surveys indicate the estimated antlerless deer harvest comprises only 41% of the total harvest for the ecoregion, which may contribute to a skewed sex ratio averaging 3.9 does per buck. Increased doe harvest during the general open season is needed to reduce the impact of the deer herd upon the habitat, improve the sex ratio, and relieve buck harvest pressure. Therefore, the amendment increases the number of "doe days," from four to 16 days, which would take place beginning opening day of the general open season.

The amendment also implements "doe days" in Austin, Bastrop, Caldwell, Colorado, Comal (east of IH 35), De Witt, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of IH 35), Jackson (north of U.S. Highway 59), Karnes, Lavaca, Lee, Travis (east of IH 35), Victoria (north of U.S. Highway 59), Waller, Washington, Wharton (north of U.S. Highway 59), and Wilson counties. These counties span the southern edge of the Post Oak Savannah ecoregion. Current harvest regulations in these counties prohibit the harvest of antlerless deer during the general open season unless MLD tags have been issued for the property. Data indicate that deer populations in this area have experienced a slow but steady positive growth from 2005-2017, with an estimated average annual growth rate of 3.13 percent. Deer densities were estimated to be 16.13 acres per deer in 2017, with a range of from 12 to 21 acres per deer. The population data suggest that the growing deer pop-

ulation is above desired density levels for some habitats in the region. Allowing deer densities above this level could be detrimental to habitat components and the deer population. Harvest surveys indicate that the estimated antlerless deer harvest comprises only 41% of the total harvest for the ecoregion, which may contribute to a skewed sex ratio averaging 4.23 does per buck. While participation in the MLD program within this area is high, with many properties that are part of wildlife management associations, harvest data indicate that only 50-60 percent of the recommended antlerless deer harvest has been achieved over the last several years. This trend indicates that MLD program participation alone is not sufficient to address deer population growth in this area. The amendment therefore implements four "doe days," which is expected to reduce browsing impacts on native habitats, relieve pressure on buck harvest, and provide additional hunting opportunity for those individuals choosing not to participate in the MLD Program. Although the department does not believe that the rule will result in negative population implications, due to the fact that antlerless harvest in these counties has been very restricted for many years, the department believes that harvest under a "doe day" regulation should be closely monitored to definitively characterize localized harvest pressure. Therefore, the rule also imposes a requirement that all antlerless deer harvested in the affected counties, including during the archery-only, muzzleloader-only, and youth special seasons, be reported to the department via the department's internet site or mobile application within 24 hours of harvest.

The amendment to §65.42 also implements an antler restriction for the harvest of mule deer in Lynn County. In 2017, the department selected six Panhandle counties in which to implement an experimental antler-restriction rule in response to undesirably excessive harvest of bucks. Also, in 2017 the department opened a season for mule deer in Lynn County. The population in Lynn County has not been subject to hunting; therefore, the department seeks to impose antler restrictions in Lynn County to create another experimental situation to evaluate the impacts of antler-restriction rules on age structure and sex ratios in a population being hunted for the first time.

The amendment to §65.44, concerning Javelina: Open Season and Bag Limits, opens a season for javelina in Borden, Dawson, Gaines, Hardeman, Scurry, and Terry counties. Department survey data indicate that javelina populations in the South Plains are expanding northwards and those in the southeastern Panhandle are expanding westwards, which justifies the opening of a season in the named counties. The season will run from October 1 through the last Sunday in February and the daily bag limit is two javelina.

The department received seven comments opposing adoption of the proposed amendment to §65.10, concerning proof of sex for turkey. Of the seven comments, two provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that because the rule allows proof of sex to accompany a harvested turkey it will allow unscrupulous persons to use proof of sex from previously killed birds to accompany unlawfully killed birds. The department disagrees with the comment and responds that department law enforcement personnel are confident that unlawful activity can and will be detected. No changes were made as a result of the comment.

One commenter opposed adoption and stated that proof of sex should be required to remain attached to the turkey. The depart-

ment disagrees with the comment and responds that although requiring proof of sex to be attached to a turkey is indeed a definitive measure, it is unnecessarily inconvenient and department law enforcement personnel are more than capable of making the distinctions necessary to enforce the rule as adopted. No changes were made as a result of the comment.

The department received 139 comments supporting adoption of the proposed amendment.

The department received 19 comments opposing adoption of the proposed amendment to §65.29, concerning Managed Lands Deer Programs. Of the 19 comments, four provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Three commenters opposed adoption and stated that there should be no mandatory check station requirements. The department disagrees with the comment and responds that the rule does not contemplate the designation of mandatory check stations, only the department's course of action after considering whether MLDP cooperators have directed, advised, or assisted in the compliance with or evasion of mandatory check station requirements; thus, the comment is not germane to the intent of the rule action. No changes were made as a result of the comment.

One commenter opposed adoption and stated that landowners should be fined. The department disagrees with the comment and responds that discontinuation of program participation is believed to be a significant enough deterrent. No changes were made as a result of the comment.

The department received 122 comments supporting adoption of the proposed amendment.

The department received 183 comments opposing adoption of the portion of the proposed amendment to §65.42, concerning Deer, that implements four "doe days" in 21 counties and

expands the number "doe days" in 20 counties. Of those comments, 97 offered an explanation or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow. NOTE: Because many comments did not specifically identify the counties to which the comments applied, made generic statements of opposition, or were otherwise not indicative of exactly which portion of the proposed amendment the comment was in response to, the department treats all comments as applicable to all portions of the proposed amendment and provides specific responses where appropriate.

Two commenters opposed adoption and indicated that there are not enough deer in Titus or Delta counties. The department disagrees with the comments and responds that department deer survey and harvest data indicate not only that deer population in the affected DMUs are growing, but that an insufficient number of antlerless deer are being harvested. Therefore, an additional 16 days of opportunity, given current levels of hunter effort, will not result in negative population impacts in any given DMU. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that there are very few deer in Kaufman County and the population cannot sustain additional antlerless harvest. The department disagrees with the comment and responds that because Kaufman County is characterized by highly fragmented habitat of varying quality, the deer population is unevenly distributed; however, data at metascale in DMU 19 indicate that the population is increasing and additional antlerless harvest is indicated to protect habitat

and improve sex ratios. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are not enough does in Burlison County. Similar comments were received with regard to Washington County and to an unidentified county. The department disagrees with the comment and responds that the deer population in all DMUs affected by the rules has shown a slow but steady growth over the last 20 years and that additional antlerless harvest is desirable. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the doe population in Hopkins County dropped drastically under the current four-day antlerless harvest and will further decline under a 16-day harvest. The department disagrees with the comment and responds that department harvest and population data indicate that deer populations in DMU 18 increased from 2005 to 2016 and additional antlerless harvest is justified to protect habitat and improve sex ratios. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the deer population has declined in Hunt County and that the season should be closed for several years to allow the population to recover. The department disagrees with the comment and responds that department harvest and population data indicate that deer populations in DMUs 18 and 21 North increased from 2005-2016 and additional antlerless harvest is justified to protect habitat and improve sex ratios. Closure of the season would therefore be counterproductive. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer populations will be devastated in Lavaca and Colorado counties. The department disagrees with the comment and responds that not only are the regulations desirable for population management, they will not result in devastating population impacts. Department deer population surveys also indicate the population has been increasing since 2005 in DMU 11 and MLDP harvest has not been sufficient to moderate population growth. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Fayette County has become too fragmented to support doe days. A similar comment was received regarding Lavaca County. The department disagrees with the comments and responds that while it is accurate to describe Fayette and Lavaca counties as having fragmented habitat, where good habitat exists it supports a growing deer population. In locations with poor habitat, deer densities reflect that fact. The rules as adopted will assist landowners and land managers in those places where additional flexibility is needed but will have little to no impact in areas that already struggle to support deer populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that hunting pressure in Fayette County is too heavy. The department agrees with the comment to the extent that small average land acreages and high hunter participation are characteristic of Fayette County, but disagrees that high hunting pressure by itself militates against the effectiveness of the rules as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that because there are so many small properties in Lavaca County, all the antlerless deer will be killed. The department disagrees with the comment and responds that, based on a variety of factors,

including population and harvest surveys in DMU 11, uneven distribution of hunting pressure and harvest, it is highly unlikely that all the deer in Lavaca will be harvested. No changes were made as a result of the comment.

Fourteen commenters opposed adoption and stated that implementing doe days will allow landowners with small acreages to kill excessive numbers of antlerless deer, which will harm the deer population. The department agrees with the comment, to the extent that excessive deer harvest may occur on small-acreage properties, but disagrees that the regulation will harm the deer population. The very conservative antlerless harvest strategy contemplated by the rules is expected to benefit deer populations and is not expected to result in unacceptable harvest of antlerless deer because of many factors, including an increasing deer population and uneven distribution of harvest and hunting pressure on small-acreage properties. No changes were made as a result of the comments.

Five commenters opposed adoption and stated that doe days will cause population declines. The department disagrees with the comments and responds that failure to address long-term population increases will result in habitat degradation and eventual population declines, which the rules are intended to protect against. No changes were made as a result of the comments.

One commenter opposed adoption and stated that too many does are being killed now. The department disagrees with the comment and responds that department population and survey data indicate that the harvest of antlerless deer is currently not high enough in the affected areas to slow or stabilize population growth, and prevent habitat degradation. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that there will be overharvesting of does. The department disagrees with the comments and responds that given the hunting pressure characteristics within the counties affected by the rule, overharvest of antlerless deer is not likely to occur. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the current harvest strategy has resulted in population growth and should be left in place for additional growth. The department disagrees with the comment and responds that while population trends have been generally increasing, antlerless harvest in the affected counties is not occurring at a level necessary to prevent overpopulation and resultant negative habitat impacts (which, in turn, will result in reduced carrying capacity), making it necessary to encourage additional harvest. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that antlerless harvest should be regulated on a property by property basis. The department disagrees with the comment and responds that deer populations are managed at landscape scale rather than on a property by property basis, which is necessary because wildlife resources and their habitats inhabit space at landscape scale. Additionally, the department would need significant additional personnel and budget to monitor deer populations at property level resolution. No changes were made as a result of the comments.

One commenter opposed adoption and stated that any additional doe harvest will be devastating to the deer population in Lavaca County and will affect retired people who depend on venison. The department disagrees with the comment and responds that habitat in DMU 11 is highly fragmented, but where it exists it sup-

ports close to the maximum number of deer it can support. Harvest and survey data indicate that if current population trends continue, habitat degradation will result; therefore, it is necessary to take steps to increase harvest, especially in the doe segment of the population, which is not expected to result in significant impacts to the resource. No changes were made as a result of the comment.

One commenter opposed adoption and stated that science does not support the agency's claim that increased doe harvest is needed to relieve harvest pressure on bucks because fewer does means increased rutting, which increases harvest pressure on bucks. The department disagrees with the comment and responds that reduced pressure on the buck segment is not the goal of the rule, but an anticipated beneficial side effect. Hunting pressure in this part of the state is relatively high and survey data indicate that many hunters are indifferent as to the sex of the deer they harvest, or, in some cases, prefer antlerless deer to bucks. The department also responds that an insufficient number of antlerless deer are being harvested, which will eventually result in habitat degradation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are plenty of does harvested during archery season and the current doe days structure. The department disagrees with the comment and responds that harvest and population data indicate insufficient antlerless harvest across the DMUs affected by the rule as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that implementation of doe days will encourage people to withdraw from wildlife management cooperatives and lead to overharvest of does. The department disagrees with the comment and responds that although the benefits of participation in wildlife management cooperatives are significant and the department encourages participation by landowners and land managers, the department also believes that management decisions are ultimately made by the landowner or land manager as they see fit. The department expects participation in the cooperatives to remain stable because many cooperatives participate in the MLDP program which provides a much longer season and enhanced bag limits. In any case, the department does not believe that the rule as adopted will result in negative population impacts. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit during doe days should be one antlerless deer. The department disagrees with the comment and responds that in the areas affected by the rule, the department has determined that additional antlerless harvest is desirable to protect habitat, improve sex ratios, and/or reduce buck harvest. No changes were made as a result of the comment.

Eight commenters opposed adoption and stated that if the department feels that there is an overpopulation of antlerless deer there should be more MLDP tags issued to wildlife management cooperatives. The department disagrees with the comments and responds that not all properties are in wildlife management cooperatives and the department has an affirmative statutory obligation under Parks and Wildlife Code, Chapter 61, to provide reasonable and equitable enjoyment of wildlife resources. The department also notes that on average only 57% of the recommended antlerless harvest is achieved on MLDP properties, indicating that additional MLDP tag issuance will not equate to additional antlerless harvest. No changes were made as a result of the comments.

One commenter opposed adoption and stated that urban sprawl causes increased hunting pressure, which results in population declines. The department understands the comment to reflect concern that deer populations cannot sustain additional hunting pressure because urbanization has depleted the deer population. The department disagrees with the comment and responds that urbanization eliminates habitat, not deer. When habitat disappears, deer tend to move to available habitat elsewhere. The department also responds that habitat loss due to urbanization does not correlate to more hunters or higher harvest on the remaining habitat where hunting could occur. In fact, the opposite effect could occur to the extent that fewer hunters are available to reduce deer populations leading to overabundant deer problems in urban and suburban areas. No changes were made as a result of the comment.

Four commenters opposed adoption and stated in one way or another that the reporting requirements of the rule are unreasonable or unworkable. The department disagrees with the comments and responds that the department has already launched several application-based reporting applications with no or negligible difficulties reported by users. No changes were made as a result of the comments.

One commenter opposed adoption and stated that implementing doe days would penalize landowners trying to protect the deer herd. The department disagrees with the comment and responds that the harvest regulations are not punitive, but are intended to provide landowners and land managers with more flexibility to manage populations and minimize negative habitat impacts. No changes were made as a result of the comment.

Five commenters opposed adoption and stated that the implementation of doe days in Lavaca County is unfair to wildlife management cooperatives and will negate years of conservation efforts. The department disagrees with the comments and responds that department biologists have worked for decades with wildlife management cooperatives to successfully improve wildlife habitat and manage deer populations and educate landowners and cooperative members on proper deer management, which the department believes should be convincing evidence that harvest regulations will not be counterproductive. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the bag limit during doe days should be one antlerless deer per hunter or one antlerless deer per property. The department disagrees with the comment and responds that harvest and survey data indicate that additional antlerless harvest in the affected counties is desirable to maintain habitat and reduce pressure on the buck segment of the population, and that the administrative complexity of monitoring a non-MLD harvest strategy at the property level, as well as the law enforcement commitment that such a strategy would entail, are not possible at current funding and workforce levels. No changes were made as a result of the comment.

One commenter opposed adoption and stated that new hunters and family members will shoot deer and leave them. The department disagrees with the comment and responds that there is very little data to correlate or suggest the behavior of new hunters and family members to the possibility of waste of game. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that MLDP cooperators have been working for years to improve deer populations and the rules will reverse that effort. The department disagrees with the comments and responds that department biolo-

gists have worked for decades with individual landowners, MLDP cooperators, and wildlife management cooperatives in successful efforts to improve wildlife habitat and manage deer populations, which the department believes should be convincing evidence that harvest regulations will not be counterproductive. The department also notes that on average only 57% of the recommended antlerless harvest is achieved on MLDP properties indicating while MLDP cooperators are making efforts to manage deer population, current MLDP harvest is not sufficient to moderate deer population growth. No changes were made as a result of the comments.

One commenter opposed adoption and stated that personal observation reveals a decline in doe population on their property and adjoining acreage. The department disagrees with the comment and responds that anecdotal observations lack the systematic rigor of scientific investigations and the department is much more comfortable justifying regulations on statistically valid data than on anecdote. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer populations are decreasing and the department's data is not accurate. The commenter further stated that the rules will undo the progress made by wildlife management cooperatives because membership will decline and nonparticipating landowners will "wipe out" the deer populations. The department disagrees with the comment and responds that department data indicating long-term increases in deer populations is believed to be scientifically valid and that department biologists have worked for decades with individual landowners, MLDP cooperators, and wildlife management cooperatives in successful efforts to improve wildlife habitat and manage deer populations, which the department believes should be convincing evidence that harvest regulations will not be counterproductive. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many road hunters. The department neither agrees nor disagrees with the comment and responds that persons who make a conscious decision to violate the law run the risk of being detected, cited, and prosecuted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should be more narrowly focused to those specific locations with high numbers of deer. The department disagrees with the comments and responds that the department manages deer populations at landscape scale, specifically identifying DMUs on the basis of similarity of habitat and soil types, acreage ownership sizes, and other factors. For that reason, creating differential harvest regulations within a DMU does not allow the department to evaluate the effect of harvest strategies at landscape scale across a given DMU, which frustrates the department's ability to manage deer populations effectively. No changes were made as a result of the comment.

One commenter opposed adoption and stated that more people oppose the rules than favor them and the department's harvest goals for antlerless deer could be accomplished during youth season by allowing youth to harvest antlerless deer without a permit. The department disagrees with the comment and responds that it is prudent to establish harvest regulations on the basis of science rather than an electoral process and that harvest during youth season would not be nearly sufficient to accomplish the harvest goals envisioned by the rules as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department's survey efforts occur only in the places with large deer populations and do not reflect deer populations accurately. The commenter also stated that allowing additional does in the bag limit during the archery season would accomplish the department's goals. The department disagrees with the comment and responds that the places where department surveys are conducted are chosen at random, which is necessary to achieve statistical validity, and that harvest by archery equipment is too inefficient to achieve the desirable harvest using archery equipment alone.

One commenter opposed adoption and stated that there are too many small properties in Washington County. The department neither agrees nor disagrees with the comment and responds that the department does not and does not wish to control the size of private property anywhere. No comments were made as a result of the comment.

Three commenters opposed adoption and stated that the rule would have an adverse effect on antlerless deer harvest and "the MLDP requirement" should be kept in place. The department disagrees with the comments and responds that confining the department's harvest goals to MLDP properties would conflict with the department's statutory obligation to provide equitable opportunity for public enjoyment of the resource. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the deer population on their property in Colorado and Fayette counties is 15 percent of what it was 20 years ago because of hunting pressure, high fenced adjoining properties, large numbers of small acreage properties receiving MLDP tags without meeting program participation requirements, and "inaccurate acreage allocation for doe permits." The commenter also stated that the rules would allow persons with as little as one acre to take as many deer as hunters could harvest and that deer populations should be managed through the MLDP instead of a one-size-fits-all approach. The department disagrees with the comment and responds that population and survey data indicate increasing populations in DMUs 11 and 12, that state law (Parks and Wildlife Code, §1.013) allows landowners to erect fencing of any dimension on private property, that the department will not issue MLDP tags to anyone who does not meet the requirements for program participation, that the only antlerless harvest currently allowed is by MLDP tag (which are issued by means of a scientifically valid methodology for estimating optimal harvest), that it is extremely unlikely that given the spatial distribution of deer on the landscape that harvest activities on one acre could be statistically significant, and that continuing to restrict antlerless harvest to MLDP would be contrary to the department's statutory duty to equitably distribute hunting opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that doe populations are in decline and hunters from out of town are not aware of the deer population. The department disagrees with the comment and responds that department survey and population data indicate a long-term increase in deer populations and that people are free to hunt wherever they wish, provided they have a license, follow the rules, and have landowner permission. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule will lead to the eradication of deer that wildlife cooperatives have been trying to protect. The department disagrees with the comment and responds that department data indicating long-term in-

creases in deer populations is believed to be scientifically valid and that department biologists have worked for decades with individual landowners, MLDP cooperators, and wildlife management cooperatives in successful efforts to improve wildlife habitat and manage deer populations, which the department believes should be convincing evidence that harvest regulations will not be counterproductive. No changes were made as a result of the comment.

One commenter opposed adoption and stated that eliminating does on their property would not make sense because of supplemental feeding. The department disagrees with the comment and responds that although landowners are free to provide supplemental feed, the department is committed to a natural management philosophy based on quality habitat and habitat management, and in any event the rule will not eliminate antlerless deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that adding another disruption is unnecessary, unwanted, and will result in additional roadkill and poaching. The department disagrees with the comment and responds that creating four doe days during a hunting season is not a disruption but is necessary to encourage additional antlerless harvest, and there does not appear to be any logical connection between "doe days" and either increases in vehicle mortality or unlawful hunting. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that if more does need to be killed, MLDP participants should be issued more tags. The department disagrees with the comments and responds that the department has determined that additional antlerless deer need to be harvested and that the deer population in the affected DMUs has reached a point at which a conservative or increased opportunity to harvest antlerless deer can be provided, which comports with the department's statutory obligation to provide equitable enjoyment of the resource. The department also notes that on average only 57% of the recommended antlerless harvest is achieved on MLDP properties indicating that additional MLDP tag issuance will not equate to additional antlerless harvest. No changes were made as result of the comment.

Four commenters opposed adoption and stated that antlerless harvest regulations should allow harvest proportional to acreage. The department disagrees with the comment and responds that the department has neither the fiscal nor the workforce resources to administer a harvest management regime on a property-by-property basis and that the rules as adopted take into account a range of factors and will not result in adverse impacts to the population. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should apply only to public lands. The department disagrees with the comment and responds that confining the rule's applicability to public lands would defeat the purpose of the rule. No changes were made as a result of the rule.

One commenter opposed adoption and stated that there should be more than four "doe days." The department disagrees with the comment and responds that due to the fragmented habitat and high hunting pressure that are characteristic of the DMUs affected by the rule, and the fact that until now antlerless harvest was by permit only, the department intends to pursue a cautious and conservative course. The four-day antlerless season will be monitored and evaluated to determine any additional harvest strategies that might be warranted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule will result in the elimination of the doe population in their area. The department disagrees with the comment and responds that based on long-term trends in hunting pressure and population growth, the proposed season will not result in the elimination of deer in any area. No changes were made as a result of the comment.

The department received 407 comments supporting adoption of the proposed amendment.

The department received 10 comments opposing adoption of the portion of the proposed amendment to §65.42, concerning Deer, that implements antler-restriction rules for the harvest of mule deer in Lynn County. Of the ten comments, three provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the rule favors trophy hunters. The department disagrees with the comment and responds that the intent of the rule is to protect younger age classes of bucks in order to create desirable sex ratios, with the additional benefit of producing larger numbers of buck deer desired by many hunters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antler restrictions make hunting difficult and that there are too many unnecessary rules. The department disagrees with the comment and responds that antler restrictions have been implemented in over 100 counties where the department has determined the harvest of young bucks to be unacceptably high. The rules are therefore necessary and additionally are widely popular. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antler growth has more to do with availability of resources. The department agrees that nutrition is an important component of antler development, but disagrees that nutrition can compensate for excessive harvest of younger bucks. No changes were made as a result of the comment.

The department received 93 comments supporting adoption of the proposed amendment.

The department received four comments opposing adoption of the proposed amendment to §65.44, concerning Javelina. Three of the commenters provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that a season should not be opened until the population of the southeastern Panhandle has merged with the South Plains population, which would increase genetic diversity. The department disagrees with the comment and responds that the rule as proposed will not result in a negative population impact and thus will have no effect on the ongoing range expansion or potential intermingling of regional populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the population in Borden County is not large enough to sustain hunting. The department disagrees with the comment and responds that given the annual bag limit of two javelina and the anticipated slight hunting pressure, the rule should not result in negative population impacts. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the annual bag limit is too low. The department disagrees with the comment and responds that because the counties in question have not had a season, the standard annual bag limit will be implemented and monitored in order to determine if additional harvest strategies are warranted. No changes were made as a result of the comment.

The department received 97 comments supporting adoption of the proposed amendment.

DIVISION 1. GENERAL PROVISIONS

31 TAC §65.10, §65.29

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§65.10. Possession of Wildlife Resources.

(a) For all wildlife resources taken for personal consumption and for which there is a possession limit, the possession limit shall not apply after the wildlife resource has reached the possessor's permanent residence and is finally processed.

(b) Under authority of Parks and Wildlife Code, §42.0177, the tagging requirements of Parks and Wildlife Code, §42.018, are modified as follows.

(1) At a final destination other than a cold storage or processing facility required to maintain a cold storage record book under the provisions of Parks and Wildlife Code, §62.029, tagging requirements for a carcass cease when the forequarters, hindquarters, and back straps have been completely severed from the carcass.

(2) At a cold storage or processing facility required to maintain a cold storage record book under the provisions of Parks and Wildlife Code, §62.029, tagging requirements for a carcass cease when:

(A) the forequarters, hindquarters, and back straps have been completely severed from the carcass; and

(B) the information required under Parks and Wildlife Code, §62.029, has been entered into the cold storage record book that the cold storage or processing facility is required to maintain.

(3) The provisions of this subsection do not modify or eliminate any requirement of this subchapter or the Parks and Wildlife Code applicable to a carcass before it is at a final destination.

(c) A person who lawfully takes a deer is exempt from the tagging requirements of Parks and Wildlife Code, §42.018 if the deer is taken:

(1) under the provisions of §65.29 of this title (relating to Managed Lands Deer (MLD) Programs);

(2) under an antlerless mule deer permit issued under §65.32 of this title (relating to Antlerless Mule Deer Permits);

(3) by special permit under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation);

(4) on department-leased lands under the provisions of Parks and Wildlife Code, §11.0271; or

(5) by special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program.

(d) A person who kills a bird or animal under circumstances that require the bird or animal to be tagged with a tag from the person's hunting license shall immediately attach a properly executed tag to the bird or animal.

(e) Proof of sex for deer and antelope must remain with the carcass until tagging requirements cease.

(1) Proof of sex for deer consists of:

- (A) buck: the head, with antlers still attached; and
- (B) antlerless: the head.

(2) Proof of sex for antelope consists of the unskinned head.

(f) During a season in which the bag composition for turkey is restricted to gobblers only or gobblers and bearded hens, proof of sex must remain with a harvested turkey (attached or detached from the bird) until it reaches either the possessor's permanent residence or a cold storage/processing facility and is finally processed. Proof of sex for turkey is as follows:

(1) gobbler (male turkey):

- (A) one leg, including the spur; or
- (B) a patch of skin with breast feathers and beard attached.

(2) bearded hen (female turkey): a patch of skin with breast feathers and beard attached.

(g) Proof of sex for pheasant consists of: one leg, including the spur, attached to the bird or the entire plumage attached to the bird.

(h) No additional proof of sex is required for a deer that is lawfully tagged in accordance with:

- (1) the provisions of §65.29 of this title;
- (2) the provisions of §65.32 of this title; or

(3) on department-leased lands under the provisions of Parks and Wildlife Code, §11.0271.

(i) In lieu of proof of sex, the person who killed the wildlife resource may:

(1) obtain a receipt from a taxidermist or a signed statement from the landowner, containing the following information:

- (A) the name of person who killed the wildlife resource;
- (B) the date the wildlife resource was killed;
- (C) one of the following, as applicable:
 - (i) whether the deer was antlered or antlerless;
 - (ii) the sex of the antelope;
 - (iii) the sex of the turkey and whether a beard was attached; or
 - (iv) the sex of the pheasant; or

(2) if the deer is to be tested by the department for chronic wasting disease, obtain a department-issued receipt (PWD 905).

(j) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document from the person who killed or caught the wildlife resource. A wildlife resource may be possessed without a WRD by the person who took the wildlife resource, provided the person is in compliance with all other applicable provisions of this subchapter and the Parks and Wildlife Code.

(1) For deer and antelope, a properly executed wildlife resource document shall accompany the carcass or part of a carcass until tagging requirements cease.

(2) For turkey, a properly executed wildlife resource document shall accompany the wildlife resource until it reaches the possessor's permanent residence or a cold storage/processing facility and is finally processed.

(3) For all other wildlife resources, a properly executed wildlife resource document shall accompany the wildlife resource until it reaches the possessor's permanent residence and is finally processed.

(4) The wildlife resource document must contain the following information:

(A) the name, signature, address, and hunting license number, as required, of the person who killed or caught the wildlife resource;

(B) the name of the person receiving the wildlife resource;

(C) a description of the wildlife resource (number and type of species or parts);

(D) the date the wildlife resource was killed or caught; and

(E) the location where the wildlife resource was killed or caught (name of ranch; area; county).

(5) A taxidermist who accepts a deer or turkey shall retain the wildlife resource document or tag accompanying each deer or turkey for a period of two years following the return of the resource to the owner or the sale of the resource under the provisions of Parks and Wildlife Code, §62.023.

(k) It is a defense to prosecution if the person receiving the wildlife resource does not exceed any possession limit or possesses a wildlife resource or a part of a wildlife resource that is required to be tagged if the wildlife resource or part of the wildlife resource is tagged.

(l) The identification requirements for desert bighorn sheep skulls are as follows.

(1) No person may possess the skull of a desert bighorn ram in this state unless:

(A) one horn has been marked with a department identification plug by a department representative; or

(B) the person also possesses evidence of lawful take in the state or country where the ram was killed.

(2) A person may possess the skull and horns of a desert bighorn ram found dead in the wild, provided:

(A) the person did not cause or participate in the death of the ram; and

(B) the person notifies a department biologist or game warden within 48 hours of discovering the dead ram and arranges for

marking with a department identification plug by a department representative.

(3) Individual horns may be possessed without any identification or documentation.

(4) This subsection does not apply to skulls possessed prior to July 11, 2004.

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

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For further information, please call: (512) 389-4775



DIVISION 2. OPEN SEASONS AND BAG LIMITS

31 TAC §65.42, §65.44

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§65.42. *Deer.*

(a) General.

(1) No person may exceed the applicable county bag limit or the annual bag limit of five white-tailed deer (no more than three bucks) and two mule deer (no more than one buck), except as provided by:

(A) §65.29 of this title (relating to Managed Lands Deer (MLD) Programs);

(B) use of an antlerless mule deer permit issued under §65.32 of this title (relating to Antlerless Mule Deer Permits);

(C) use of a special permit under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation); or

(D) use of special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program.

(2) During an archery-only open season, deer may be taken only by the means described in §65.11(2) and (3) of this title (relating to Lawful Means).

(3) The issuance and use of MLDP tags is prescribed by §65.29 of this title.

(4) Except as provided in Subchapter H of this chapter and subsections (b)(2)(E) and (b)(4) - (6) of this section, the take of antlerless deer is prohibited on USFS lands.

(5) In the counties or portions of counties listed in subsection (b)(2)(H) of this section, antlerless deer harvested on properties not subject to the provisions of §65.29 of this title (relating to Managed Lands Deer (MLD) Programs) must be reported via the department's internet or mobile application within 24 hours of the time of kill, including antlerless deer harvested during the special seasons established by subsection (b)(5) - (7) of this section.

(b) White-tailed deer. The open seasons and bag limits for white-tailed deer shall be as follows.

(1) South Zone. The general open season for the counties listed in this subparagraph is from the first Saturday in November through the third Sunday in January.

(A) In Aransas, Bee, Brooks, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (south of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), Webb, Willacy, Zapata, and Zavala counties, there is a general open season. The bag limit is five deer, no more than three bucks.

(B) In Atascosa County there is a general open season.

(i) The bag limit is five deer, no more than two bucks; and

(ii) the antler restrictions described in paragraph (3) of this subsection apply.

(2) North Zone. The general open season for the counties listed in this subparagraph is from the first Saturday in November through the first Sunday in January.

(A) In Bandera, Baylor, Bexar, Blanco, Burnet, Callahan, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Edwards, Gillespie, Glasscock, Haskell, Hays (west of Interstate 35), Howard, Irion, Jones, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Knox, Llano, Mason, McCulloch, Medina (north of U.S. Highway 90), Menard, Mitchell, Nolan, Pecos, Real, Reagan, Runnels, San Saba, Schleicher, Shackelford, Sterling, Sutton, Taylor, Terrell, Throckmorton, Tom Green, Travis (west of Interstate 35), Upton, Uvalde (north of U.S. Highway 90), Val Verde (north of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), and Wilbarger counties, the bag limit is five deer, no more than two bucks.

(B) In Archer, Bell (west of IH 35), Bosque, Brown, Clay, Coryell, Hamilton, Hill, Jack, Lampasas, McLennan, Mills, Palo Pinto, Somervell, Stephens, Wichita, Williamson (west of IH 35) and Young counties:

(i) the bag limit is five deer, no more than two bucks; and

(ii) the antler restrictions described in paragraph (3) of this subsection apply.

(C) In Armstrong, Borden, Briscoe, Carson, Childress, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hemphill, Hutchinson, Kent, King, Lipscomb, Motley, Ochiltree, Roberts, Scurry, Stonewall, and Wheeler counties, the bag limit is five deer, no more than one buck.

(D) In Brewster, Culberson, Jeff Davis, Presidio, and Reeves counties, the bag limit is four deer, no more than two bucks.

(E) In Comanche, Cooke, Denton, Eastland, Erath, Hood, Johnson, Montague, Parker, Tarrant, and Wise counties:

(i) the bag limit is four deer, no more than two bucks and no more than two antlerless;

(ii) the antler restrictions described in paragraph (3) of this subsection apply; and

(iii) on USFS lands in Montague and Wise counties, antlerless deer may be taken only from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(F) In Angelina, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Goliad (south of U.S. Highway 59), Hardin, Harris, Houston, Jackson (south of U.S. Highway 59), Jasper, Jefferson, Liberty, Matagorda, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, Victoria (south of U.S. Highway 59), Walker, and Wharton (south of U.S. Highway 59) counties:

(i) the bag limit is four deer, no more than two bucks and no more than two antlerless;

(ii) the antler restrictions described in paragraph (3) of this subsection apply; and

(iii) antlerless deer may be taken from opening day through the Sunday immediately following Thanksgiving Day.

(G) In Anderson, Bell (East of IH 35), Bowie, Burlison, Brazos, Camp, Cass, Delta, Ellis, Falls, Fannin, Franklin, Freestone, Gregg, Grimes, Harrison, Henderson, Hopkins, Hunt, Kauffman, Lamar, Leon, Limestone, Madison, Marion, Milam, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Robertson, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt, Williamson (east of IH 35), and Wood counties:

(i) the bag limit is four deer, no more than two bucks and no more than two antlerless;

(ii) the antler restrictions described in paragraph (3) of this subsection apply; and

(iii) antlerless deer may be taken during the first 16 days of the season.

(H) In Austin, Bastrop, Caldwell, Colorado, Comal (east of IH 35), DeWitt, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of IH 35), Jackson (north of U.S. Highway 59), Karnes, Lavaca, Lee, Travis (east of IH 35), Victoria (north of U.S. Highway 59), Waller, Washington, Wharton (north of U.S. Highway 59), and Wilson counties:

(i) the bag limit is four deer, no more than two bucks and no more than two antlerless;

(ii) the antler restrictions described in paragraph (3) of this subsection apply; and

(iii) antlerless deer may be taken from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(I) In Collin, Dallas, Grayson, and Rockwall counties there is a general open season:

(i) the bag limit is four deer, no more than two bucks and no more than two antlerless;

(ii) the antler restrictions described in paragraph (3) of this subsection apply; and

(iii) lawful means are restricted to lawful archery equipment and crossbows only, including properties for which MLDP tags have been issued.

(J) In Andrews, Bailey Castro, Cochran, Dallam, Dawson, Deaf Smith, Gaines, Hale, Hansford, Hartley, Hockley, Lamb, Lubbock, Lynn, Martin, Moore, Oldham, Parmer, Potter, Randall, Sherman, Swisher, Terry, and Yoakum counties, the bag limit is three deer, no more than one buck and no more than two antlerless.

(K) In Crane, Ector, Loving, Midland, Ward, and Winkler counties:

(i) the bag limit is three deer, no more than one buck and no more than two antlerless; and

(ii) antlerless deer may be taken by MLDP tag only.

(L) In all other counties, there is no general open season.

(3) Antler Restrictions. In each county for which antler restrictions are imposed under the provisions of this subsection:

(A) a legal buck is a buck deer with:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater;

(B) no person may take more than one buck with an inside spread of 13 inches or greater; and

(C) a person who takes a buck deer in violation of subparagraph (A)(ii) of this paragraph is prohibited from subsequently harvesting any buck deer with branched antlers on both main beams in that county.

(4) Special Late General Seasons.

(A) There is a special late general season during which harvest is restricted to antlerless and unbranched antlered deer, as follows:

(i) in the counties listed in paragraph (1)(A) and (B) of this subsection: 14 consecutive days starting the first Monday following the third Sunday in January;

(ii) in the counties listed in paragraph (2)(A) - (C) and (E) of this subsection: 14 consecutive days starting the first Monday following the first Sunday in January.

(iii) In all other counties there is no special late general season.

(B) The bag limit during a special late general season is the bag limit established for the county for the general open season and is not in addition to any other bag limit.

(5) Archery-only open seasons.

(A) There shall be an archery-only open season in all counties in which there is an open general season.

(B) The open season is from the Saturday closest to September 30 for 35 consecutive days.

(C) The bag limit in any given county is as provided for that county during the general open season.

(D) No MLDP tag is required to hunt antlerless deer unless MLDP tags have been issued for the property.

(E) Antlerless deer may be taken on USFS lands during an archery-only season.

(6) Muzzleloader-only open seasons, and bag and possession limits shall be as follows. In Anderson, Angelina, Austin, Bastrop, Bell (East of IH 35), Bowie, Brazoria, Brazos, Brewster, Burleson, Caldwell, Camp, Cass, Chambers, Cherokee, Colorado, Comal (East of IH 35), Culberson, Delta, DeWitt, Ellis, Fannin, Falls, Fayette, Fort Bend, Franklin, Freestone, Galveston, Goliad, Gonzales, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays (East of IH 35), Henderson, Hopkins, Houston, Hunt, Jackson, Jasper, Jeff Davis, Jefferson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Liberty, Limestone, Madison, Marion, Matagorda, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Presidio, Rains, Red River, Reeves, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Travis (East of IH 35), Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Washington, Wharton, Williamson (East of IH 35), Wilson and Wood counties, there is an open season during which deer may be taken only with a muzzleloader.

(A) The open season is 14 consecutive days starting the first Monday following the first Sunday in January.

(B) The bag limit for buck and antlerless deer is as specified in this section for the general season in the county or portion of a county in which take occurs.

(C) Antlerless deer may be taken on USFS lands during a muzzleloader-only season.

(7) Special Youth-Only Seasons. There shall be special youth-only general hunting seasons in all counties where there is a general open season for white-tailed deer.

(A) The early open season is the Saturday and Sunday immediately before the first Saturday in November.

(B) The late open season is 14 consecutive days starting the first Monday following the first Sunday in January.

(C) Bag limits, provisions for the take of antlerless deer, and special requirements in the individual counties listed in paragraph (2)(A) - (H) of this subsection shall be as specified for the first two days of the general open season in those counties, except as provided in subparagraph (D) of this paragraph.

(D) Provisions for the take of antlerless deer in the individual counties listed in paragraph (2)(H) of this subsection shall be as specified in those counties for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(E) Other than properties where MLDP tags have been issued under the provisions of §65.29(c)(2), only licensed hunters 16 years of age or younger may hunt deer during the seasons established by this paragraph, and any lawful means may be used.

(F) The stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I, does not apply during the seasons established by this paragraph.

(G) Antlerless deer may be taken on USFS lands during special youth-only deer seasons.

(c) Mule deer. The open seasons and bag limits for mule deer shall be as follows:

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Knox, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Sherman, Stonewall, Swisher, and Wheeler counties:

(A) the Saturday before Thanksgiving for 16 consecutive days;

(B) bag limit: one buck; and

(C) antlerless deer may be taken only by Antlerless Mule Deer permit or MLDP tag.

(D) In Briscoe, Childress, Cottle, Floyd, Hall, and Motley counties, no person may harvest a buck deer with an outside spread of the main beams of less than 20 inches.

(2) In Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Presidio, Reagan, Reeves, Upton, Val Verde, Ward, and Winkler counties:

(A) the Friday immediately following Thanksgiving for 17 consecutive days;

(B) bag limit: one buck; and

(C) antlerless deer may be taken only by antlerless mule deer permit or MLDP tag.

(3) In Brewster, Pecos, and Terrell counties:

(A) the Friday immediately following Thanksgiving for 17 consecutive days;

(B) bag limit: two deer, no more than one buck.

(4) In Andrews, Bailey, Castro, Cochran, Dawson, Gaines, Hale, Hockley, Lamb, Lubbock, Lynn, Martin, Parmer, Terry, and Yoakum counties:

(A) the Saturday before Thanksgiving for nine consecutive days;

(B) bag limit: one buck; and

(C) antlerless deer may be taken by antlerless mule deer permit or MLDP tag only.

(D) In Lynn County, no person may harvest a buck deer with an outside spread of the main beams of less than 20 inches.

(5) In all other counties, there is no general open season for mule deer.

(6) Archery-only open seasons and bag and possession limits shall be as follows.

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Knox, Lipscomb, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Sherman, Stonewall, Swisher, Upton, Val Verde, Ward, Wheeler, and Winkler counties:

(i) from the Saturday closest to September 30 for 35 consecutive days; and

(ii) bag limit: one buck.

(B) In Brewster, Pecos, and Terrell counties:

(i) from the Saturday closest to September 30 for 35 consecutive days.

(ii) bag limit: two deer, no more than one buck. Antlerless deer may be harvested without a permit unless MLDP antlerless tags have been issued for the property.

(C) In all other counties, there is no archery-only open season for mule deer.

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 B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §65.81

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 22, 2019, adopted an amendment to §65.81, concerning Containment Zones; Restrictions, without changes to the proposed text as published in the April 19, 2019, issue of the *Texas Register* (44 TexReg 1962). The amendment enlarges current Containment Zone 3 (CZ 3) in Medina, Banderita, and Uvalde counties in response to the recent detection of chronic wasting disease (CWD) in additional free-ranging white-tailed deer in Medina County.

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Although CWD remains under study, it is known to be invariably fatal to certain species of cervids and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). (There is no scientific evidence to indicate that CWD is transmissible to humans.) Moreover, a high prevalence of the disease in wild populations correlates with deer population declines and there is evidence that hunters tend to avoid areas of high CWD prevalence. If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD. In 2005, the department closed the Texas border to the entry of out-of-state captive white-tailed and mule deer and increased regulatory requirements regarding disease monitoring and record keeping. (The closing of the Texas border to entry of out-of-state captive white-tailed and mule deer was updated, effective in January 2010, to address other disease threats to white-tailed and mule deer (35 TexReg 252).)

On July 10, 2012, the department confirmed that two mule deer sampled in the Texas portion of the Hueco Mountains tested positive for CWD. In response, the department adopted new rules in 2013 (37 TexReg 10231) to implement a CWD containment strategy in far West Texas. The rules established a system of concentric zones within which the movement of live deer under department permits (Deer Breeder Permits, Triple T Permits, and Deer Management Permits) is restricted, and required deer harvested in specific geographical areas to be presented at check stations to be tested for CWD. A CZ is a geographic area in which CWD has been detected or the department has determined, using the best available science and data, that CWD detection is probable, and a surveillance zone (SZ) is a geographic area within which the department has determined, using the best available science and data, that the presence of CWD could reasonably be expected. CWD zone delineations were modified (41 TexReg 7501) in 2015 in response to additional CWD discoveries in the Texas Panhandle and Medina County, creating additional SZs and CZs, and again in 2017 in response to CWD being confirmed in a free-ranging 1.5-year-old male white-tailed deer harvested by a hunter within SZ 3 in Medina County.

On December 31, 2018, the department received CWD confirmation for an approximately 4.5-year-old free-ranging male white-tailed deer within CZ 3 in Medina County. The deer was harvested by a hunter on a low-fenced property near the perimeter of the current CZ, necessitating an extension of the CZ. In this particular geographic region of the state, because of various factors including white-tailed deer movements and barriers to deer movements (e.g., high fences), it has been determined that a CZ encompassing a radius of five miles from the approximate location of a free-range positive white-tailed deer, and two miles from the boundaries of any premise where CWD has been detected in captive herds, should be sufficient to contain the disease.

Based on the epidemiological knowledge of CWD and in consultation with TAHC, the department has determined that it is prudent to enlarge CZ 3 in response to the latest discovery.

Except as provided for certain special situations, it is unlawful within a CZ to conduct, authorize or cause any activity involving the movement of a susceptible species under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1. Such prohibited activity includes, but is not limited to transportation, introduction, removal, authorization of the transportation, introduction or removal of, or causing the transportation, introduction or removal of a live susceptible species into, out of, or within a CZ. The rules also prohibit the possession of susceptible species within new deer breeding facilities within a CZ, prohibit the recapture of escaped breeder deer unless authorized under a hold order or herd plan issued by TAHC, and limit the transfer of breeder deer from a TC 2 deer breeding facility located within a CZ to immediately adjoining acreage if the release site and the breeding facility share the same ownership; however, a TC 1 deer breeding facility located in a CZ may transfer breeder deer, to other locations within a CZ. Additionally, the CZ designation imposes specific carcass movement restrictions on deer and parts of deer harvested within a CZ.

The department received one comment opposing adoption of the proposed rule. The commenter did not offer a reason or rationale for opposing adoption.

The department received two comments supporting adoption of the proposed rule.

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

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

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SUBCHAPTER H. PUBLIC LANDS PROCLAMATION

31 TAC §§65.199, 65.201, 65.203

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 22, 2019, adopted amendments to §§65.199, 65.201, and 65.203, concerning the Public Lands Proclamation. Section 65.199 is adopted with changes to the proposed text as published in the April 19, 2019, issue of the *Texas Register* (44 TexReg 1970); therefore, the rule will be republished. Section 65.201 and §65.203 are adopted without changes and will not be republished. The amendments address the possession, display, and use of pneumatic (air-powered) weapons on public hunting lands.

The change to §65.199 is nonsubstantive, placing a semicolon at the end of subsection (d)(2)(A) to conform with convention.

In 2018, the Texas Parks and Wildlife Commission made certain pneumatic weapons (arrow guns and air guns, subject to ballistic restrictions) lawful for the take of game animals and non-migratory birds. In the process of reviewing the potential implications of that action upon other department regulations, the department determined that because the current rules governing the use of public hunting lands are silent on the subject of arrow guns and air guns, modification was necessary with respect to the possession, display, and use of such weapons. The department believes that it is prudent to include arrow guns and air guns in all regulations governing the possession, display, and use of weapons generally, which is necessary for efficient enforcement activities as well as the safety of hunters and the public.

The amendment to §65.199, concerning General Rules of Conduct, prohibits the possession of arrow guns and air guns on public hunting lands except for persons authorized by the department to hunt or conduct research and commissioned law enforcement officers or employees in the performance of their duties.

The amendment to §65.201, concerning Motor Vehicles, makes it unlawful for any person to possess a loaded arrow gun or air gun in or on a vehicle, except as may be otherwise provided (e.g., disabled hunters).

The amendment to §65.203, concerning Hunter Safety, requires hunters using an arrow gun or air gun to comply with provisions regarding the wearing of fluorescent orange material, the discharge of weapons in certain areas, and the display of weapons.

The department received one comment opposing adoption of the proposed rules. The commenter did not provide a reason or rationale for opposing adoption.

The department received one comment supporting adoption of the proposed rules.

The amendments are adopted under the authority of Parks and Wildlife Code, §81.006, which prohibits the take, attempted take, or possession of any wildlife or fish from a wildlife management area except in the manner and during the times permitted by the department under Chapter 81, Subchapter E, and under Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to establish an open season on wildlife management areas and public hunting lands, authorizes the executive director to regulate numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas and public hunting lands, and authorizes the commission to adopt rules governing recreational activities in wildlife management areas.

§65.199. *General Rules of Conduct.*

(a) This section applies to all public hunting lands unless an exception for a specific area and time period is designated by the executive director or by written permission of the department.

(b) For the purposes of this section, gear, equipment, and floating conveyances are "unattended" if the person who is responsible for the gear, equipment, or floating conveyance is not within 200 yards of the gear, equipment, or floating conveyance.

(c) It is unlawful for any person to:

(1) fail to obey regulations posted at the area or policies established by order of the executive director, fail to comply with instructions on permits or area leaflets, or refuse to follow directives given by departmental personnel in the discharge of official duties;

(2) possess a firearm, archery equipment, arrow gun, air gun, or any other device for taking wildlife resources on public hunting lands, except for persons authorized by the department to hunt or conduct research on the area, commissioned law enforcement officers, and department employees in performance of their duties;

(3) camp or construct an open fire anywhere other than in a designated campsite. On the Alabama Creek, Bannister, Caddo, Moore Plantation, and Sam Houston National Forest WMAs, this restriction applies only during the period from the day prior to the opening of the archery deer season through the day following the close of the general deer season;

(4) camp for more than 14 consecutive days on the same unit of public hunting lands, or for more than 21 days in any 30-day period;

(5) cause, create, or contribute to excessive or disturbing sounds beyond the person's immediate campsite between the hours of 10 p.m. and 6 a.m.;

(6) establish a camp and leave it unattended for a period of longer than 24 hours;

(7) disturb or remove plants, wood, rocks, gravel, sand, soil, shell, artifacts, or other objects from public hunting lands, except as authorized by the department;

(8) write on, scratch, or otherwise deface natural features, signs, buildings, or other structures;

(9) fail to deposit refuse in designated containers or fail to remove it from the area;

(10) consume or be under the influence of alcohol while engaged in hunting activities, or to publicly consume or display an alcoholic beverage while on public hunting lands;

(11) possess dogs in camp that are not confined or leashed;

(12) use or possess any type of riding stock or pack animal on public hunting lands at any time, except:

(A) as may be provided by order of the executive director; or

(B) by written authorization of the department;

(13) use an airboat within the boundaries of public hunting lands, except as provided by executive order or by written permission of the department;

(14) take an antlerless deer during the general open season on wildlife management areas jointly managed by TPW and the U.S. Forest Service (Alabama Creek, Bannister, Caddo, Moore Plantation, or Sam Houston National Forest) unless that person possesses on their person a U.S.F.S. antlerless permit;

(15) enter a unit of public hunting lands with an equine or equines, or cause the entry of an equine or equines to a unit of public hunting lands, unless that person has in their immediate possession, for each equine in the person's custody or equine that the person allowed to enter the unit of public hunting lands, a completed VS Form 10-11 (Texas Animal Health Commission) showing that the equine has tested negative to an official Equine Infectious Anemia test within the previous 12 months. The documentation required by this paragraph shall be made available for inspection upon the request of any department employee acting within the scope of official duties;

(16) park or leave a motor vehicle unattended anywhere other than in designated parking areas, if parking areas have been designated;

(17) use a motor vehicle, off-road vehicle, or ATV on a road, in an area, or at a time when such use is restricted to disabled persons, unless the person is in possession of a state-issued disabled parking placard or disabled license plate or assisting such a person;

(18) leave personal gear, equipment (including decoys), or a floating conveyance unattended for more than one hour following the close of legal shooting hours. This paragraph does not apply to personal gear, equipment, or a floating conveyance:

(A) within a designated camping area or designated campsite; or

(B) that is unattended during reserved participation in a public hunting activity that has been specifically scheduled by the department; and

(19) engage in any activity not specifically authorized by order of the executive director or regulation of the commission.

(d) Hunting with Dogs.

(1) Dogs may be possessed and used to hunt animals and birds on public hunting lands only as provided:

(A) in the "Legal Game Legend" provided for each unit of public hunting lands in the department publication entitled "Map Booklet for Public Hunting Lands;" or

(B) by executive order published on the department's official website.

(2) It is an offense for any person to use a dog to hunt a bird or animal on public hunting lands except as authorized:

(A) in the "Legal Game Legend" provided for each unit of public hunting lands in the department publication entitled "Map Booklet for Public Hunting Lands;" or

(B) by executive order published on the department's official website.

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

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For further information, please call: (512) 389-4775

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SUBCHAPTER N. MIGRATORY GAME BIRD
PROCLAMATION

The Texas Parks and Wildlife Department (the department) in a duly noticed meeting on March 20, 2019, adopted an amendment to §65.313, new §§65.314 - 65.320, and repeal of §§65.314 - 65.321, concerning the Migratory Game Bird Proclamation. New §65.316 and §65.319 are adopted with changes to the proposed text as published in the February 15, 2019, issue of the *Texas Register* (44 TexReg 683) and will be republished. Corrections were made to Texas Administrative Code references. Amended §65.313, new §§65.315, 65.317, 65.318, and 65.320, and repealed §§65.314 - 65.321 are adopted without changes and therefore, will not be republished.

The United States Fish and Wildlife Service (Service) issues annual frameworks for the hunting of migratory game birds in the United States. Regulations adopted by individual states may be more restrictive than the federal frameworks but may not be less restrictive. Responsibility for establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within Service frameworks is delegated to the Texas Parks and Wildlife Commission (Commission) under Parks and Wildlife Code, Chapter 64, Subchapter C.

Prior to 2016, the Service issued annual regulatory frameworks for migratory game birds at different times of the year (the preliminary early-season (dove, teal, snipe, woodcock, rails, gallinules) frameworks in late June and the preliminary late-season (ducks, geese, cranes) frameworks in early August). In 2017, the Service began issuing all final migratory game bird frameworks in November, and as a result, the commission included deliberation of migratory game bird regulations as part of the regular statewide hunting proclamation process, which allows hunters of migratory game birds to know season dates, bag limits, and other regulations much earlier. Because there is no longer a distinction at the federal level between early season species and late season species, the department has determined that there is no longer a reason for the state's migratory game bird proclamation to be organized according to those distinctions. The new rules reorganize existing provisions by individual species, including zone boundaries, season dates, bag limits, exceptions to possession limits, and any special provisions. The reorganization is completely nonsubstantive; no existing provisions are being eliminated or altered and no new provisions are being added, other than the designation of calendar dates for hunting seasons and the bag limit for pintail ducks.

The amendment to §65.313, concerning General Rules, states that the possession limit for migratory birds is three times the daily bag limit, unless otherwise specifically provided. Under the current rules, the possession limit is also three times the daily bag limit, which is stated repeatedly for each species of migratory game bird. By simply having a general provision regarding possession limits, it is not necessary to repeat the same provision multiple times.

The new sections, in addition to the nonsubstantive reorganization discussed previously, also specify the season dates for the 2019-2020 migratory game bird seasons. In all cases, the proposed new rules retain the season structure and bag limits for all migratory game birds from last year, with one exception, while adjusting the season dates to allow for calendar shift (i.e., to ensure that seasons open on the desired day of the week, since dates from a previous year do not fall on the same days in following years).

The single exception is a reduction in the bag limit of pintail ducks, from two birds to one bird. The Service frameworks specify a bag limit of one pintail duck per person per day.

The department received seven comments opposing adoption of the proposed rules. Of those comments, eight articulated a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the daily bag limit for woodcock should be five. The department disagrees with the comment and responds that the federal frameworks allow a maximum daily limit of three woodcock, which the commission cannot exceed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that snipe season should end later in February to allow additional opportunity during duck and goose seasons. The department disagrees with the comment and responds that the dates selected are intended to provide a concurrent season with gallinules, rails, and woodcock. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limit for pintail should be two. The department disagrees with

the comment and responds that the federal frameworks allow a maximum daily limit of one pintail duck, which the commission cannot exceed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limit for the light goose conservation order should be five. The department disagrees with the comment and responds that the federal frameworks allow for unlimited harvest of light geese during the conservation order, which the department believes is beneficial in the effort to reduce light goose overpopulation that threatens their breeding grounds in Canada. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limit for Canada geese during the early season should be three. The department disagrees with the comment and responds that the daily bag limit as adopted is sustainable and there is not biological need for a reduction. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limits for wood ducks, mallards, and canvasbacks should be reduced. The department disagrees with the comment and responds that the bag limits as adopted are sustainable and will not result in negative population impacts. No changes were made as a result of the comment.

One commenter opposed adoption and stated that duck season should not open on the same day as deer season. The department disagrees with the comment and responds that making opening day for both deer and duck seasons concurrent provides additional hunting opportunity because hunters can hunt two popular species. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the opening date in the South Dove Zone should be on a Friday to allow for a three-day weekend. The department disagrees with the comment and responds that hunter and landowner preference is for the earliest opening day possible under the federal frameworks, which in 2019 falls on a Saturday. No changes were made as a result of the comment.

31 TAC §§65.313 - 65.320

The amendment and new rules are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

§65.316. *Geese.*

(a) Zone boundaries.

(1) Western Zone: that portion of Texas lying west of a line from the international toll bridge at Laredo, thence northward following IH 35 and 35W to Fort Worth, thence northwest along U.S. Highways 81 and 287 to Bowie, thence northward along U.S. Highway 81 to the Texas-Oklahoma state line.

(2) Eastern Zone: the remainder of the state.

(b) Season dates and bag limits.

(1) Western Zone.

(A) Light geese: November 2, 2019 - February 2, 2020. The daily bag limit for light geese is 20, and there is no possession limit.

(B) Dark geese: November 2, 2019 - February 2, 2020. The daily bag limit for dark geese is five, to include no more than two white-fronted geese.

(2) Eastern Zone.

(A) Light geese: November 2, 2019 - January 26, 2020. The daily bag limit for light geese is 20, and there is no possession limit.

(B) Dark geese:

(i) Season: November 2, 2019 - January 26, 2020;

(ii) Bag limit: The daily bag limit for dark geese is five, to include no more than two white-fronted geese.

(c) September Canada goose season. Canada geese may be hunted in the Eastern Zone during the season established by this subsection. The season is closed for all other species of geese during the season established by this subsection.

(1) Season dates: September 14 - 29, 2019.

(2) The daily bag limit is five.

(d) Light Goose Conservation Order. The provisions of paragraphs (1) - (3) of this subsection apply only to the hunting of light geese. All provisions of this subchapter continue in effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.

(1) Means and methods. The following means and methods are lawful during the time periods set forth in paragraph (4) of this subsection:

(A) shotguns capable of holding more than three shells; and

(B) electronic calling devices.

(2) Possession. During the time periods set forth in paragraph (4) of this subsection:

(A) there shall be no bag or possession limits; and

(B) the provisions of §65.312 of this title (relating to Possession of Migratory Game Birds) do not apply.

(3) Shooting hours. During the time periods set forth in paragraph (4) of this subsection, shooting hours are from one half-hour before sunrise until one half-hour after sunset.

(4) Season dates.

(A) From January 27 - March 15, 2020, the take of light geese is lawful in the Eastern Zone.

(B) From February 3 - March 15, 2020, the take of light geese is lawful in the Western Zone.

§65.319. *Gallinules, Rails, Snipe, Woodcock.*

(a) Gallinules (moorhen or common gallinule and purple gallinule) may be taken in any county during the season established in this subsection.

(1) Season dates: September 14 - 29, 2019 and November 2 - December 25, 2019.

(2) Daily bag limit: 15 in the aggregate.

(b) Rails may be taken in any county in this state during the season established by this subsection.

(1) Season dates: September 14 - 29, 2019 and November 2 - December 25, 2019.

(2) Daily bag limits:

(A) King and clapper rails. The daily bag limit is 15 in the aggregate;

(B) Sora and Virginia rails. The daily bag limit is 25 in the aggregate;

(c) Snipe may be taken in any county of the state during the season established by this subsection.

(1) Season dates: October 26, 2019 - February 9, 2020.

(2) The daily bag limit is eight.

(d) Woodcock may be taken in any county of the state during the season established by this subsection.

(1) Season dates: December 18, 2019 - January 31, 2020.

(2) The daily bag limit is three.

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

Filed with the Office of the Secretary of State on July 22, 2019.

TRD-201902330

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Effective date: September 1, 2019

Proposal publication date: February 15, 2019

For further information, please call: (512) 389-4775



31 TAC §§65.314 - 65.321

The repeals are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

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

Filed with the Office of the Secretary of State on July 22, 2019.

TRD-201902329

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Effective date: September 1, 2019

Proposal publication date: February 15, 2019

For further information, please call: (512) 389-4775





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

Office of Injured Employee Counsel

Title 28, Part 6

The Office of Injured Employee Counsel (OIEC) will review all sections and subchapters of Chapter 276 of Title 28, Part 6, of the Texas Administrative Code, in accordance with §2001.039 of the Texas Government Code.

OIEC will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedures Act, Texas Government Code Ch. 2001.

You may submit comments on whether these rules should be repealed, readopted, or readopted with amendments. Please submit any comments in writing no later than 5:00 p.m. on August 19, 2019. Comments received after that date will not be considered.

Comments should clearly specify the particular section of the rule to which they apply and include proposed alternative language as appropriate. General comments should be designated as such.

Comments may be submitted by e-mail to Kathleen.Contreras@oiec.texas.gov or by mailing or delivering your comments to Kathleen Contreras, Office of Injured Employee Counsel, 7551 Metro Center Drive, Suite 100, MS-50 Austin, Texas 78744-1645.

TRD-201902364

Gina McCauley

General Counsel

Office of Injured Employee Counsel

Filed: July 24, 2019



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 60, Compliance History.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 60 continue to exist.

Comments regarding suggested changes to the rules in Chapter 60 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rule-making action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 60. Written comments may be submitted to Paige Bond, 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 Non-Rule Project Number 2019-092-060-CE. Comments must be received by September 3, 2019. For further information, please contact Mark Staedtler, Enforcement Division at (512) 239-6662.

TRD-201902341

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 23, 2019



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 307, Texas Surface Water Quality Standards.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 307 continue to exist.

Comments regarding suggested changes to the rules in Chapter 307 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 307. Written comments may be submitted to Paige Bond, 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.

tem. All comments should reference Non-Rule Project Number 2019-061-307-OW. Comments must be received by September 3, 2019. For further information, please contact Debbie Miller, Project Manager, Water Quality Planning Division, at (512) 239-1703.

TRD-201902342

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 23, 2019

◆ ◆ ◆ Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 149, Commissioner's Rules Concerning Educator Standards, Subchapter AA, Teacher Standards; and Subchapter BB, Administrator Standards, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 149, Subchapter AA and BB, in the August 3, 2018 issue of the *Texas Register* (43 TexReg 5099).

Relating to the review of 19 TAC Chapter 149, Subchapter AA, the TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 149, Subchapter BB, the TEA finds that the reasons for adopting Subchapter BB continue to exist and readopts the rules. No changes are necessary as a result of the review.

The TEA received public comments on the rule review of 19 TAC Chapter 149. Following is a summary of the comments received and corresponding responses.

Comment: Texas School Counselor Association, Texas Counseling Association, and one individual recommended using the word "educator" rather than "teacher" to better reflect the diversity of personnel who work directly with students on a campus under the direction and supervision of the campus principal. In addition, the commenters stated that "educator" more closely aligns with Texas Education Code, Chapter 21, Subchapter B. The commenters also made specific recommendations to the standards in §149.2001, Principal Standards, to incorporate the four components of the Texas Model for Comprehensive School Counseling Programs throughout instructional and student support initiatives; focus on students' interpersonal effectiveness, intrapersonal effectiveness, and personal health and safety to help students develop resiliency and self-advocacy skills; and ensure all students have access to school counselors through classroom guidance, individual planning, responsive services, and system support to further their interpersonal and intrapersonal effectiveness, college and career readiness, and personal health and safety.

Response: The agency disagrees with the recommended changes at this time. At a later date, the agency plans to review §149.2001 with broad stakeholder engagement to determine what revisions should be made to the standards as a whole.

Comment: Texas School Counselor Association, Texas Counseling Association, and four individuals commented that the Texas Model for Comprehensive School Counseling Programs is intended for all educational stakeholders to improve the school counseling program in their schools and districts. The commenters stated that the model indicates that principals are key in collaborating with school counselors to de-

sign and deliver a quality school counseling program and that school administrators can make decisions and establish policies considering their understanding and support of the school counseling program's priorities and its demands. The commenters further stated that throughout the model, administrators are included as one of the collaborators to ensure effective delivery of a comprehensive program. Finally, the commenters stated that reciprocity of inclusion of key stakeholders throughout the Texas Administrative Code will help schools to implement and continue a counseling program that will benefit students, teachers, administrators, and the community.

Response: The agency disagrees with the proposed change. Stakeholder feedback during the process of drafting §149.2001, Principal Standards, indicated that these principal standards should not specify, outside of the Educator Code of Conduct, other statutory recommendations or obligations enumerated throughout the Texas Education Code. That is not intended to diminish the importance of any particular recommendation or obligation, but rather to acknowledge that the inclusion of such statutory recommendations or obligations could lead to the principal standards being viewed not as an articulation of standards but as an enumeration of statutory expectations.

Comment: Disability Rights of Texas (DRTx) and one individual commented that the rules in Chapter 149 should be maintained but should be amended to reflect the needs of students with disabilities. DRTx stated that general education teachers are not currently required to receive training related to students with disabilities as part of their professional preparation programs; that educational aides are not required to have experience or training related to students with disabilities; that administrators are not required to receive training related to students with disabilities; that, under 19 TAC §232.11, Number and Content of Required Continuing Professional Education Hours, teachers are required to receive no more than 6.25 hours of continuing professional education credits related to students with disabilities over a five-year period; and that a certified teacher can obtain a special education supplemental certification without any additional coursework or professional development.

Response: The agency agrees that the rules in Chapter 149 should be maintained. However, the comments relating to educator and administrator preparation, certification, and continuing education requirements are outside the scope of the rule review of Chapter 149, Subchapters AA and BB.

Comment: Texas Council of Administrators of Special Education commented in support of the rules and recommended opening the rules in the future to obtain stakeholder feedback on educating students with disabilities.

Response: The agency agrees and plans to review §149.2001 at a later date with broad stakeholder engagement to determine what revisions should be made to the standards as a whole.

This concludes the review of 19 TAC Chapter 149.

TRD-201902349

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: July 23, 2019

◆ ◆ ◆
The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 150, Commissioner's Rules Concerning Educator Appraisal, Subchapter AA, Teacher Appraisal; Subchapter BB, Administrator Appraisal; and Subchapter CC, Superintendent Appraisal, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of

19 TAC Chapter 150, Subchapters AA-CC, in the November 23, 2018 issue of the *Texas Register* (43 TexReg 7685).

Relating to the review of 19 TAC Chapter 150, Subchapter AA, the TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. At a later date, the TEA may propose changes to Subchapter AA to align with legislation passed by the 86th Texas Legislature, 2019.

Relating to the review of 19 TAC Chapter 150, Subchapter BB, the TEA finds that the reasons for adopting Subchapter BB continue to exist and readopts the rules. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 150, Subchapter CC, the TEA finds that the reasons for adopting Subchapter CC continue to exist and readopts the rule. No changes are necessary as a result of the review.

The TEA received one public comment on the rule review of 19 TAC Chapter 150. Following is a summary of the comment and the response.

Comment: Texas Classroom Teachers Association commented that the reasons for adopting 19 TAC Chapter 150, Subchapters AA-CC, continue to exist and that the chapter should be continued.

Response: The agency agrees.

This concludes the review of 19 TAC Chapter 150.

TRD-201902350

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: July 23, 2019



Texas Board of Pardons and Paroles

Title 37, Part 5

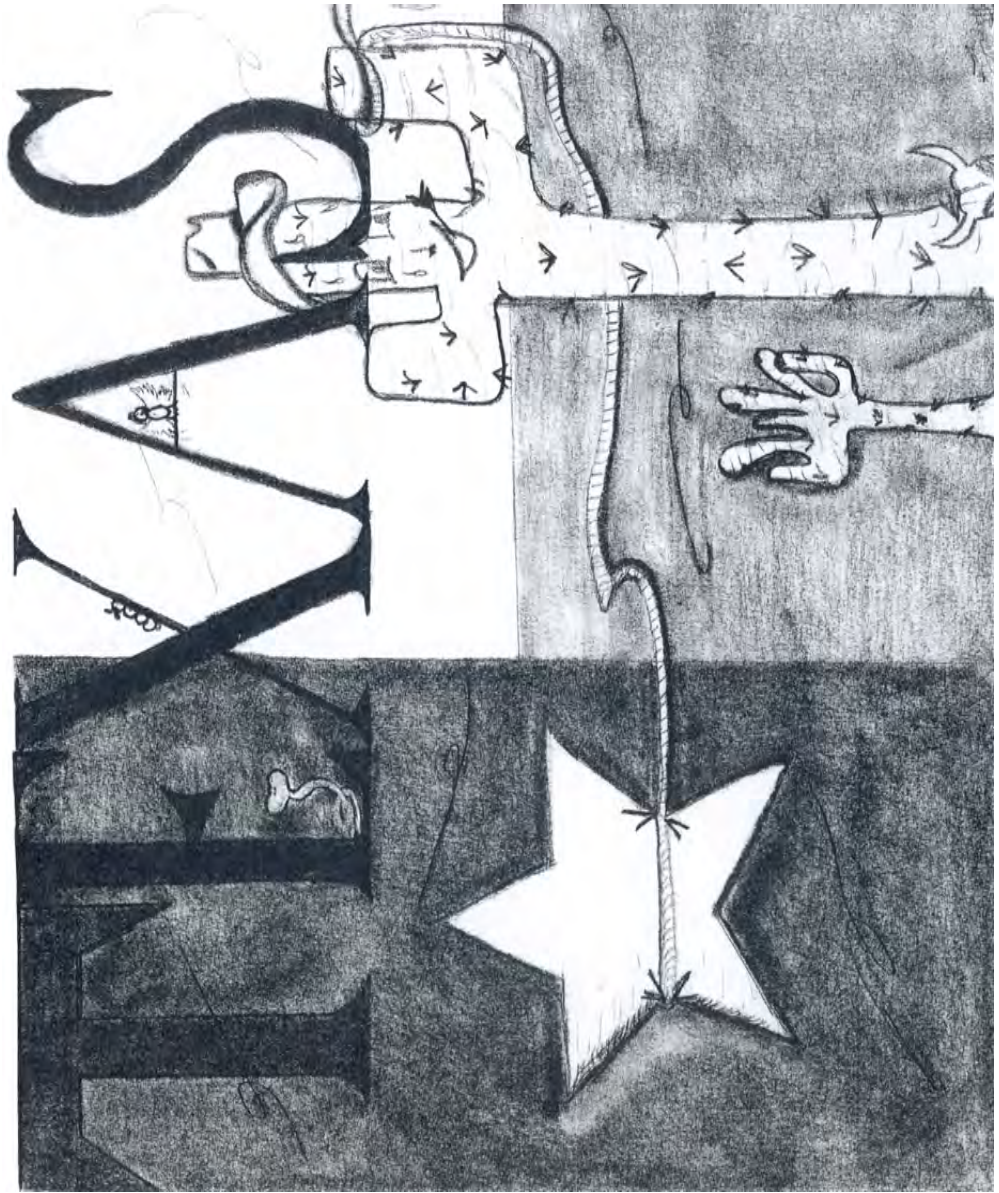
The Texas Board of Pardons and Paroles (Board) files this notice of readoption of 37 TAC, Part 5, Chapter 149, Mandatory Supervision. The review was conducted pursuant to Government Code, §2001.039. Notice of the Board's intention to review was published in the May 3, 2019, issue of the *Texas Register* (44 TexReg 2274).

As a result of the review, the Board has determined that the original justifications for these rules continue to exist. No comments on the proposed review were received. The Board readopts Chapter 149, Mandatory Supervision without amendments.

This concludes the review of 37 TAC Chapter 149, Mandatory Supervision.

TRD-201902297
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Filed: July 19, 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: 1 TAC §354.1707(d)(2)

Minimum Private Hospital Valuations per DY for DY7-8

RHP	Private Hospital Valuation	Minimum Private Hospital Valuation per DY for DY7-8
1	\$38,856,709	\$37,691,007
2	\$12,933,175	\$12,545,180
3	\$133,630,962	\$129,622,034
4	\$64,989,767	\$63,040,074
5	\$108,996,712	\$105,726,810
6	\$68,777,524	\$66,714,199
7	\$84,513,275	\$81,977,876
8	\$9,607,121	\$9,318,907
9	<u>\$120,556,063</u> [\$124,422,742]	<u>\$116,939,381</u> [\$120,690,060]
10	\$50,540,564	\$49,024,347
11	\$21,345,261	\$20,704,903
12	\$40,896,051	\$39,669,169
13	\$14,111,711	\$13,688,360
14	\$13,799,933	\$13,385,935
15	\$39,491,671	\$38,306,921
16	\$8,476,165	\$8,221,880
17	\$12,637,136	\$12,258,022
18	\$5,311,040	\$5,151,709
19	\$5,832,483	\$5,657,509
20	\$11,173,926	\$10,838,708
TOTAL	<u>\$866,477,249</u> [\$870,343,929]	<u>\$840,482,931</u> [\$844,233,611]

Figure: 1 TAC §354.1747(c)

Performer Valuation Funding Distribution

	<u>DY9</u>	<u>DY10</u>
<u>RHP Plan Update Submission</u>	<u>0%</u>	<u>NA</u>
<u>Category A -Required Reporting</u>	<u>0%</u>	<u>0%</u>
<u>Category B -MLIU PPP</u>	<u>10%</u>	<u>10%</u>
<u>Category C -Measure Bundles and Measures</u>	<u>75%</u>	<u>75%</u>
<u>Category D -Statewide Reporting Measure Bundle</u>	<u>15%</u>	<u>15%</u>

Figure: 1 TAC §354.1753(e)(1)

	<u>Innovative P4R Measure or Quality Improvement Collaborative Activity</u>	<u>P4P Measure</u>	<u>Newly Selected DY9-10 P4P Measure</u>
<u>DY9</u>	<u>100% RY3 reporting milestone</u>	<u>33% PY3 reporting milestone</u>	<u>16.5% baseline reporting milestone</u>
			<u>16.5% PY3 reporting milestone</u>
		<u>67% DY9 goal achievement milestone</u>	<u>67% DY9 goal achievement milestone</u>
<u>DY10</u>	<u>100% RY4 reporting milestone</u>	<u>33% PY4 reporting milestone</u>	<u>33% PY4 reporting milestone</u>
		<u>67% DY10 goal achievement milestone</u>	<u>67% DY10 goal achievement milestone</u>

Figure: 1 TAC §354.1753(g)(3)

	<u>QISMC</u>			<u>IOS</u>
	<u>Baseline below MPL</u>	<u>Baseline equal to or greater than the MPL and lower than the HPL</u>	<u>Baseline equal to or greater than the HPL</u>	
<u>DY9</u>	<u>12% gap closure between the MPL and HPL</u>	<u>The greater absolute value of improvement between: 22.5% gap closure towards HPL, or baseline plus (minus) 9% of the difference between the HPL and MPL</u>	<u>The lesser absolute value of improvement of baseline plus (minus) 9% of the difference between the HPL and MPL or the IOS goal</u>	<u>11.75% gap closure</u>
<u>DY10</u>	<u>15% gap closure between the MPL and HPL</u>	<u>The greater absolute value of improvement between: 25% gap closure towards HPL, or baseline plus (minus) 10% of the difference between the HPL and MPL</u>	<u>The lesser absolute value of improvement of baseline plus (minus) 10% of the difference between the HPL and MPL or the IOS goal</u>	<u>12.5% gap closure</u>

Figure: 1 TAC §354.1753(g)(4)

	<u>QISMC</u>			<u>IOS</u>
	<u>Baseline below MPL</u>	<u>Baseline equal to or greater than the MPL and lower than the HPL</u>	<u>Baseline equal to or greater than the HPL</u>	
<u>DY9</u>	<u>MPL</u>	<u>The greater absolute value of improvement between: 10% gap closure towards HPL, or baseline plus (minus) 4% of the difference between the HPL and MPL</u>	<u>The lesser absolute value of improvement of baseline plus (minus) 4% of the difference between the HPL and MPL or the IOS goal</u>	<u>5% gap closure</u>
<u>DY10</u>	<u>10% gap closure between the MPL and HPL</u>	<u>The greater absolute value of improvement between: 20% gap closure towards HPL, or baseline plus (minus) 8% of the difference between the HPL and MPL</u>	<u>The lesser absolute value of improvement of baseline plus (minus) 8% of the difference between the HPL and MPL or the IOS goal</u>	<u>10% gap closure</u>

Figure: 16 TAC §34.2

DESCRIPTION	1 ST Violation	2 nd Violation	3 rd Violation
Minor Related Offenses			
Employing a minor to sell, serve, prepare or otherwise handle alcoholic beverages in violation of §106.09 or §61.71(a)(12), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	30-Cancel \$300 per day
Permit a minor to possess or consume an alcoholic beverage in violation of §106.13, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-Cancel \$300 per day
Sale of an alcoholic beverage to a minor in violation of §106.03, Alcoholic Beverage Code.	8-12 days \$300 per day	16-24 days \$300 per day	48-Cancel \$300 per day
Conducting business in a manner as to allow a simple breach of the peace with no serious bodily injury or deadly weapon involved (as defined in the Texas Penal Code) in violation of §22.12 and §28.11, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-Cancel \$300 per day
Conducting business in a manner as to allow an aggravated breach of the peace with a serious bodily injury, death or involving a deadly weapon (as defined in the Texas Penal Code) in violation of §§22.12, 28.11, 69.13 and 71.09, Alcoholic Beverage Code.	25-35 days \$300 per day	Cancel	Cancel
Failure to report a breach of the peace in violation of Alcoholic Beverage Code §11.61(b)(21) and §61.71(a)(31).	2-5 days \$300 per day	4-10 days \$300 per day	12-Cancel \$300 per day
Possession of, sale or delivery of, or permitting the sale or delivery of narcotics by a licensee or permittee or possession of any equipment used or designed for the administering of a narcotic in violation of §104.01, Alcoholic Beverage Code, or Title 16, §35.41(27), Texas Administrative Code.	25-35 days \$300 per day	Cancel	Cancel

DESCRIPTION	1 ST Violation	2 nd Violation	3 rd Violation
Possession of, sale or delivery of, or permitting the sale or delivery of narcotics by a licensee or permittee or possession of any equipment used or designed for the administering of a narcotic in violation of §104.01, Alcoholic Beverage Code, or Title 16, §35.41(27), Texas Administrative Code.	25-35 days \$300 per day	Cancel	Cancel
The sale or service of an alcoholic beverage to an intoxicated person in violation of §§11.61(b)(14), 61.71(a)(6) or 101.63, Alcoholic Beverage Code.	8-12 days \$300 per day	16-24 days \$300 per day	Cancel
The license or permit holder or any employee being intoxicated on a licensed premise in violation of §11.61(b)(13) or §104.01, Alcoholic Beverage Code.	17-25 days \$300 per day	34-50 days \$300 per day	Cancel
Permitting public lewdness, sexual contact or obscene acts on a licensed premises in violation of §61.71(a)(11) or §104.01, Alcoholic Beverage Code and commission rule, §35.41(1) or the exposure of a person or permitting a person to expose his person in violation of §104.01(2), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	Cancel
Creating excessive noise or having unsanitary conditions at a licensed premises in violation of §101.62 or §11.61(b)(9), Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Sell, serve or deliver alcoholic beverages during prohibited hours in violation of §105.01, et seq, Alcoholic Beverage Code. Consumption or permitted consumption of an alcoholic beverage during prohibited hours on a licensed premises in violation of §§11.61(b)(22), 61.71(a)(18) or 105.06, Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	Cancel
Rudely displaying or permitting a person to rudely display a weapon in a retail establishment in violation of §104.01(3), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	30-Cancel \$300 per day

<p>The place and manner of operation of an establishment is such that it constitutes a violation of §§11.46 (a)(8), 11.61(b)(7), 61.42(a)(3) or 61.71(a)(17), Alcoholic Beverage Code by committing the below listed violations. Requires detail on offenses.</p> <p>Examples (not limited to the following offenses):</p> <p>Possession of any gambling paraphernalia or device;</p> <p>Gambling on a licensed premises;</p> <p>Keeping a gambling place;</p> <hr/> <p><u>Trafficking of an adult with intent that adult engage in forced labor or services or receives a benefit including labor or services per §20A.02(1-2) of the Penal Code;</u></p> <p><u>Trafficking an adult through force, fraud, coercion, causing prostitution-related conduct, receiving a benefit, or engaging in sexual conduct with an adult per §20A.02(3-4) of the Penal Code;</u></p> <p><u>Trafficking of one child with intent that child engage in forced labor or services, or receiving a benefit of such trafficking, including labor or services per §20A.02(5-6) of the Penal Code;</u></p> <p><u>Trafficking of one child causing child to engage in, be victim of, or conduct prohibited by sexual offenses described in §20A.02(7), received benefit, or participation in sexual conduct with a child trafficked per §20A.02(7-8) of the Penal Code;</u></p> <p><u>Continuous trafficking of persons under §20A.03 of the Penal Code;</u></p> <p>Prostitution;</p> <p>Promotion of prostitution;</p>	<p>5-7/\$300</p> <p>8-12/\$300</p> <p>13-18/\$300</p> <hr/> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <hr/> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <hr/> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <hr/> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <hr/> <p>5-7/\$300</p> <p>13-18/\$300</p>	<p>10-14/\$300</p> <p>16-24/\$300</p> <p>26-36/\$300</p> <hr/> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <hr/> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <hr/> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <hr/> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <hr/> <p>10-14/\$300</p> <p>26-36/\$300</p>	<p>Cancel</p> <p>Cancel</p> <p>Cancel</p> <hr/> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <hr/> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <hr/> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <hr/> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <p><u>Cancel</u></p> <hr/> <p>Cancel</p> <p>Cancel</p>
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DESCRIPTION	1 ST Violation	2 nd Violation	3 rd Violation
Prohibited Activities by Persons Younger Than 18 (See AB Code 106.15, Penal Code 43.05, Penal Code 43.25 or Penal Code 43.251); Obscenity.	Cancel Cancel 8-12/\$300	Cancel Cancel 16-24/\$300	Cancel Cancel Cancel
Violation of city codes (relating to health, safety and welfare).	3-5 days \$300 per day	6-10 days \$300 per day	18-Cancel \$300 per day

Chapter 1—Local Accountability System Overview

About this Manual

The *2019 Local Accountability System Manual* is a guide to explain the requirements of creating a local accountability system.

Overview of the 2019 Local Accountability System

House Bill 22 (85th Texas Legislature, Regular Session 2017) established Local Accountability Systems (LAS), which allow districts and open-enrollment charter schools to develop plans to locally evaluate campuses. LAS provides an opportunity for districts and open-enrollment charter schools to voluntarily submit local campus data which is combined with state accountability outcomes to determine the overall campus rating. This process is designed to encourage schools to focus on student outcome-based components shaped around local long-term goals identified by community and stakeholder feedback. This may provide a broader view of district or open-enrollment charter school performance and impact. Texas Education Code (TEC) §39.0544 requires that LAS plans be valid and reliable. LAS plans must also allow for differentiation and must be auditable.

Who is Rated?

All campuses with an overall state accountability rating of *C* or higher are eligible to combine an overall LAS rating with the overall state accountability rating to determine the summative rating. The LAS rating may contribute up to 50 percent of the combined overall rating for the campus.

School Types

Districts and open-enrollment charter schools decide which school types (elementary school, middle school, high school, or K–12) participate in the LAS process and must include all campuses in the district that have common data components. The district or open-enrollment charter school may also request to identify an additional school group within a school type for which to customize the LAS plan.

For example, a district may request to identify a school group consisting of elementary-level magnet schools and design a LAS plan with components unique to that group. Otherwise, all campuses within a school type must be evaluated on a common set of district-determined components. Districts and open-enrollment charter schools submit LAS ratings for all campuses within the school types identified in the approved LAS plan. Districts and open-enrollment charter schools may also request to identify schools rated under alternative education accountability (AEA) provisions as a unique school type.

Phases of the LAS Process

1. Plan Development
 - Districts and open-enrollment charter schools invite community stakeholders to identify community values and desired student outcomes.
 - District and stakeholder groups evaluate data and local initiatives to set goals which impact student success and growth.
2. Plan Submission and Approval
 - Districts and open-enrollment charter schools submit a LAS plan for technical review by agency staff. TEA LAS staff and district staff work collaboratively to refine plans in preparation for approval. Although collaboration with the agency is not required to develop a LAS plan, it is highly recommended to avoid approval-related issues at the time of plan submission.
 - A third-party panel reviews and approves or denies the final LAS plan.
3. Plan Implementation
 - Districts, open-enrollment charter schools, and campuses implement plans with fidelity.
 - Districts, open-enrollment charter schools, and campuses collect, calculate, and process data.
4. Ratings Submission and Approval
 - Districts and open-enrollment charter schools submit component, domain, and overall scaled scores and ratings for each LAS campus by the July 1, 2019, submission deadline.
 - TEA verifies overall scaled score calculations using LAS domain outcomes and weights as approved in the final LAS plan. TEA calculates overall ratings for LAS campuses by weighting the overall LAS scaled score at the proportion determined by the district in combination with the state accountability overall scaled score.
 - TEA releases the combined overall scaled score and rating for LAS campuses in TEAL on August 14, 2019.
 - TEA posts the combined overall scaled score and rating at <https://txschools.gov/> and TEA public websites along with the LAS and state overall and domain scaled scores and ratings on August 15, 2019.
 - Districts and open-enrollment charter schools must post LAS domain and overall ratings, rationales for goals, and methodologies for calculations on the campus website(s).
 - Districts and open-enrollment charter schools must provide TEA with the campus website link for display on <https://txschools.gov/> along with LAS outcomes on each campus report card.

Chapter 2—LAS Plan Design, Submission, and Approval

Plan Development Process

Prior to submitting an LAS plan, districts and open-enrollment charter schools should engage in a data review and goal setting process, similar to processes used for Lone Star Governance (LSG), System of Great Schools (SGS), Community-Based Accountability System (CBAs), Equity Plan Root Cause analysis, or other district processes that include community involvement and a feedback process. As part of the plan submission process, districts and open-enrollment charter schools submit a summary of the data review and goal setting process, including the rationale for the domains and components selected for inclusion in the LAS plan.

Districts and open-enrollment charter schools are encouraged to work with education service center (ESC) LAS representatives for technical assistance during the creation and implementation of LAS plans. During the implementation cycle, local staff should work with stakeholders and the local community during the spring and summer prior to the school year during which the LAS plan is to be implemented. TEC §39.0544 (b)(1) states the following:

The plan may be approved only if after review

- the agency determines the plan meets the minimum requirements under this section and agency rule;
- at the commissioner’s discretion, an audit conducted by the agency verifies the calculations included in the plan; and
- if at least 10 school districts or open-enrollment charter schools have obtained approval of locally developed accountability, the plan is subject to a review panel appointed by the commissioner.

Once plans are approved, districts and open-enrollment charter schools must begin preparing for the statutorily required LAS plan communication process. By July 1, 2019, districts and open-enrollment charter schools are required to submit LAS component and domain ratings and scaled scores as well as the overall LAS rating and scaled scores to TEA. TEA calculates overall ratings for LAS campuses by weighting the overall LAS scaled score at the proportion determined by the district in combination with the state accountability overall scaled score. Campuses that earn an overall rating of *C* or better under state accountability have both the state and LAS overall grades posted on the campus report cards along with a combined overall grade. Campuses that earn a *D* or *F* have the LAS grade displayed on the campus report card but do not receive a combined overall grade.

Typically, district or open-enrollment charter school LAS plans are approved for a three-year period. Beginning with the 2018–19 school year, the first year of district participation in LAS is a pilot year, and ratings are for informational purposes only. At the end of each three-year period, the district or open-enrollment charter school has the option to continue with the LAS process and, if needed, to modify the approved LAS plan. If a significant local change occurs

during the three-year period such that a part of the plan is no longer viable, the district or open-enrollment charter school may request a modification to the approved LAS plan. Districts and open-enrollment charter schools must notify TEA by June 1 to request modification of an approved plan. A school district or open-enrollment charter school approved to assign local accountability ratings must comply with TEC §39.0544(e)(1). Failure to do so subjects the district or open-enrollment charter school to agency actions and interventions under TEC Chapters 39 and 39A.

Timeline for 2018–19 LAS Plan and Data Submissions

Deadline	Submission
March 15, 2019	<p><i>Notification of intent for LAS plan submission for the 2018–19 school year deadline.</i></p> <p>TEA works with districts and open-enrollment charter schools and provides feedback for plan revision, if requested until the LAS plan is submitted to TEA. Notifications must be sent to LAS@tea.texas.gov. Each notification email receives a notification of receipt.</p>
May 20, 2019	<p><i>LAS plan submission deadline.</i></p> <p>Plan submissions must be submitted to LAS@tea.texas.gov. Each plan submission receives a notification of receipt.</p>
July 1, 2019	<p><i>LAS scaled score and rating submission deadline.</i></p> <p>Scaled scores and ratings for each LAS component, domain, and overall must be submitted to LAS@tea.texas.gov. All submission emails receive a notification of receipt.</p>
August 15, 2019	<p><i>Combined overall rating deadline for TEA.</i></p> <p>2017–18 LAS pilot campuses who submitted a LAS plan and received “what if” scaled scores and ratings for 2017–18 receive combined overall scaled scores and ratings in TEAL and on the public website reflecting the outcome of combined state and LAS ratings released.</p>
September 13, 2019	<p><i>“What if” Combined overall rating deadline for TEA.</i></p> <p>New 2018–19 cohort campuses who submit a LAS plan and previous 2017–18 pilot campuses who are submitting a LAS plan for the first time receive “what if” ratings reflecting the outcome of combined state and LAS ratings for informational purposes only.</p>

Domains

A LAS plan is organized by the following domains as determined by the district

- Academics
- Culture and Climate
- Extra and Co-Curricular
- Future-Ready Learning
- One optional locally-determined domain

Components

Districts and open-enrollment charter schools use the information gathered during the data review and goal setting process to identify the components to include in each domain. A plan consisting of a single domain must contain a minimum of two components. For plans involving two or more domains, the minimum number of components is three across all domains. Districts and open-enrollment charter schools must have at least one year of baseline data for each component included in the LAS plan. Components may not duplicate measures currently included in the state accountability system. Districts and open-enrollment charter schools must provide the following information for each component as part of the LAS plan approval process:

Component Criteria

Criteria	Explanation
School Type/Group	Identify which school type/group is evaluated on each component.
Metric	Provide information on the measures to be used for each component.
Rationale	Describe the district rationale for including each component in the LAS plan, including the information used to identify the component as a key area of focus for the district. Describe the relevance and utility (equitable, rigorous, growth-focused, and quality of impact) of each component.
Data Source/Vetting	Indicate by whom the metric was developed and the vetting conducted. Describe from whom data are collected for each measure (e.g. all first graders, middle school students in RtI).
Data Collection Protocol	Describe the data collection protocols for each measure, such as sampling/assessment design, staff training for data collection and handling, data collection timeline, monitoring processes for data collection, and data storage plan.
Baseline Data	Provide current baseline data for each measure, including a frequency distribution based on proposed cut points.

Criteria	Explanation
Methodology and Scaling	Provide the cut points and scaling for each component and describe the processes used for determining cut points and scaling. Include any minimum size requirements applicable to each component. At the component and domain level, all ratings must be scaled on a 0–100 scale, with A=90–100, B=80–89, C=70–79, D=60–69, and F=<60.

Component Weighting and Rigor

Components must be weighted based on the rigor of the component design and equity among the student demographic population on the campus. TEA staff and the LAS review panel provide feedback and suggestions if needed. Component scores must be rounded to the first decimal place, and domain scores must be rounded to a whole number. The following examples are provided to assist districts and open-enrollment charter schools when determining component rigor and weight.

Level of Rigor	Components
Less Rigorous (Weight Range=10–20%)	<ul style="list-style-type: none"> • Summative participation data • Open surveys with no sampling design or demographic analysis • Program performance for initiatives involving less than 10 percent of campus enrollment, not including disaggregated performance measures
(Weight Range=10%–40%)	<ul style="list-style-type: none"> • Disaggregated summative participation data • Targeted surveys with limited sampling design and/or demographic analysis • Program performance for initiatives involving 11–20 percent of campus enrollment, not including disaggregated performance measures <hr/> <ul style="list-style-type: none"> • Analysis of participation through the growth lens • Targeted surveys with limited sampling design and demographic analysis • Program performance for initiatives involving 21–40 percent of campus enrollment, not including disaggregated performance measures

Level of Rigor	Components
(Weight Range=10%–40%) (continued)	<ul style="list-style-type: none"> ▪ Disaggregated analysis of participation through the growth lens ▪ Targeted surveys with proficient sampling design and demographic analysis • Program performance for initiatives involving 41–60 percent of campus enrollment, not including disaggregated performance measures
<p style="text-align: center;">More Rigorous (Weight Range=10%–60%)</p>	<ul style="list-style-type: none"> ▪ Disaggregated analysis of participation through the growth lens incorporating target goals based on historical data ▪ Targeted surveys with rigorous sampling design and demographic analysis based on historical data • Equity among student populations is measured ▪ Disaggregated analysis of student performance on a designated measure with an emphasis on equity across student populations ▪ Program performance for initiatives involving more than 60 percent of campus and/or grade level enrollment, not including disaggregated performance measures

LAS Component Samples

The following samples are provided to give districts additional guidance about expectations for component design.

Sample Component 1: Percentage of middle school students successfully completing one or more advanced courses (Pre-AP, Algebra I, etc.)

Overview: Research confirms that a student’s path to college begins in middle school, with a strong correlation between advanced courses taken in middle school and college admission. Middle school courses build the foundation for advanced courses in high school. A review of course enrollment data since 2017 of graduating students (four-year) who successfully transition to college or career within one year of graduation revealed a strong correlation with successful completion of one or more advanced classes in middle school. This data was then shared with parents, former students, and other stakeholders who confirmed successful completion of advanced classes in middle school is a high leverage area. As a result, the district has adjusted the processes for scheduling, staffing, and systems of support for students to increase successful completion of advanced classes.

- Successful completion of an advanced course is defined as scoring at 75 or higher on a district developed end-of-course exam. The end of course exams for all advanced middle school classes will be administered during a three-week window in May. Students will receive accommodations as specified by 504 and/or IEP determinations.

- To calculate the campus rating, the number of students successfully completing an advanced course, as defined above, will be divided by the total number of students on campus. Students who successfully complete more than one advanced course will only be counted once for purposes of this measure.
- The district has collected one year of baseline data for each exam and has used that data to set the following cut-points for campus performance on this measure: 90% = A, 80% = B, 70%=C, 60%=D, <60% = F. The baseline data shows that the highest percentage successfully completing a single course on any campus was 80 percent. Ultimately, the goal is to have 100 percent passing every course, but the current goal is set at 90 percent to push performance as a district.
- Using baseline data from the previous year and the proposed cut-points, the frequency distribution of ratings would be: $A_s = 0$, $B_s = 2$, $C_s = 4$, $D_s = 2$, $F_s = 1$.

Technical Feedback

1. Areas of Strength

- The district has engaged in careful analysis, using data and stakeholder feedback, to identify factors contributing to student graduation and post-secondary readiness.
- The plan reflects a systemic approach to addressing this area by reviewing and refining district processes that impact course enrollment (scheduling, staffing, etc.) and successful course completion (staffing, support, etc.).
- The plan reflects rigorous, yet reasonable, goal-setting using baseline data, intended to increase district performance.

2. Areas for Growth

Although the district has set a high target for successful completion of one or more advanced courses, this component could be strengthened by setting targets to ensure all student groups are demonstrating comparable levels of success. The use of disaggregated data could strengthen this component and help ensure more equitable outcomes for all students.

Sample Component 2: Percentage of high school teachers receiving training in sheltered instruction for English learners to integrate language and content instruction

Technical Feedback:

Although sheltered instruction has been shown to be an effective strategy, this component looks only at the percentage of teachers participating in training. To be considered for inclusion in the LAS plan, at a minimum the district must incorporate a process for evaluating effective implementation of the strategy, involving rubric-based observation of teacher implementation that includes a training and calibration process for observers.

Sample Component 3: Performance of campus Academic Decathlon at regional competition

Technical Feedback:

This component represents the performance of a very small percentage of student enrollment. While we recognize and celebrate outstanding performance by one or more students, the intent of LAS is to provide a broader perspective of district impact on student performance beyond assessment results. The narrow scope of this component does not provide a broader perspective.

If the district believes achieving a high degree of proficiency in specified areas is an important and noteworthy skill, perhaps the component could be restructured to provide information about the percentage of students reaching proficiency level or better by a designated time of the year and strengthened by ensuring all student groups represented at the campus are reaching comparable levels of proficiency.

Sample Component 4: Percentage of kindergarten students demonstrating kindergarten readiness at the beginning of the school year as defined by the Texas Kindergarten Entry Assessment (TX-KEA)

Research is clear that schools do not create the “gap” but that effective and targeted instruction in prekindergarten through second grade can greatly reduce the gap by the time students reach third grade. To better understand the effectiveness of district instruction, the district has reviewed two years of data from the TX-KEA and the subsequent performance of students in kindergarten and first grade. Based on that analysis, the district has determined that students achieving a certain score at the beginning of first grade are more likely to close the gap with year over year gains in kindergarten and first grade. Based on these findings, the district has revised the prekindergarten curriculum, provided training in areas of need identified by data, and has adjusted staffing to strengthen instruction in prekindergarten classes across the district.

- The district has collected two years of baseline data and has used that data to set the following cut-points for campus performance on this measure: 90% of students scoring XX or better = A, 80% = B, 70%=C, 60%=D, <60% = F. The baseline data shows that the highest percentage students achieving a 60 or better on any campus was 75 percent. Ultimately, the goal is to have 100 percent achieving a 60 or higher but the goal is set at 90 percent to push the performance as a district.
- Using baseline data from the previous year and the proposed cut-points, the frequency distribution of ratings would be: As = 0, Bs = 0, Cs = 9, Ds = 4, Fs = 2.
- The TX-KEA will be administered during a six-week window in September through October. Students will receive accommodations as specified by 504 and/or IEP determinations.

Technical Feedback

1. Areas of Strength
 - The district has engaged in careful analysis using data to identify factors related to accelerating student readiness for kindergarten.

- The plan reflects a systemic approach to addressing the issue by reviewing and refining district processes that impact effective instruction (training, staffing, etc.).
- The plan reflects rigorous, yet reasonable, goal-setting using baseline data, intended to increase district performance.

2. Areas for Growth

Although the district has set a high target for student performance, this component would be strengthened by setting targets to ensure all student groups are demonstrating comparable levels of success. The use of disaggregated data would strengthen this component and help ensure more equitable outcomes for all students.

Sample Component 5: Tenth Grade Student Engagement Survey by Student Population

Many years of research have shown that student perceptions strongly correlate with learning outcomes and can be an important improvement tool for school systems. The survey has been administered to students in grades 9-12 for three years. Results are provided to the district by the vendor via secure upload. Analysis over the past three years combined with community feedback has identified tenth grade as a critical time for student engagement in the district. The district has used the most recent data to establish a baseline and the trajectory of data from the last three years to establish cut-points for the proposed LAS plan.

1. Using baseline data from the previous year and the proposed cut-points, the frequency distribution of ratings would be: *As*=3, *Bs* =10, *Cs*=11, *Ds*=3, *Fs*=2.
2. The surveys are available in four languages and are conducted twice a year during a two-week window approximately halfway through both the fall and spring semester.
3. Students receive unique links that allow the district to analyze how survey participation matches grade level demographics, however, individual responses are anonymous unless the student mentions possible harm to self or others. The survey program provides an override to alert district administrators in the event of that situation.
4. At the end of the first week of each survey administration period, participation rates are reviewed to allow the campus to provide additional opportunities for survey completion if needed. Campuses with participation rates that differ by more than 10 percent for each student group will not have this data included for LAS ratings.
5. Cut-points for each student group are as follows: 90 percent of students rating engagement at 90 or better=*A*, 80% = *B*, 70%=*C*, 60%=*D*, <60%=*F*.

Technical Feedback

Areas of Strength

- The survey process includes disaggregated analysis and appropriate safeguards to ensure representative participation.
- The plan reflects a systemic approach to review and refine survey administration processes.

- The plan reflects rigorous, yet reasonable, and sets goals using baseline and trajectory data, intended to increase campus performance.

Required District Postings

TEC §39.0544 (a)(5)(6) and §39.0544 (e)(2) require districts and open-enrollment charter schools produce and display a campus score card on the campus website. The campus score card should include at a minimum the scaled score and rating for each component, domain, and for LAS overall. Districts and open-enrollment charter schools are required to include an explanation of the goals for components, domains, and methodologies chosen to produce LAS ratings. Districts and open-enrollment charter schools must also include the methodology for how goals were derived from local community and stakeholder feedback and the rationale for each goal. A link to each campus website must be provided to the agency and is included on the school report card located on <https://txschools.gov/>.

Chapter 3—LAS Ratings, Audits, and Appeals

LAS Ratings Submission Process

For each campus in an identified school type, all scaled component and scaled domain scores and ratings must be submitted to the agency in addition to the overall LAS score and rating. An agency-provided scaling tool is available to assist with the scaling process. In order to combine LAS scores with state accountability scores, each LAS component and domain score is required to be scaled to a 0–100 range, with the following cut points:

Cut Points	Rating
90–100	A
80–89	B
70–79	C
60–69	D
<60	F

Scores should be rounded as follows according to usual rounding conventions:

- Component scores rounded to one decimal place;
- Domain scores are rounded to the nearest whole number

LAS Ratings Review Process

TEA verifies the LAS campus overall scaled scores submitted by districts and open-enrollment charter schools. Any data discrepancies and/or any indication that data have been compromised may result in an audit of LAS data. The audit process may include requests for data used for campus-level calculation of component and/or domain scaled scores.

On an annual basis, TEA randomly selects districts or open-enrollment charter schools for a LAS audit, and, for each such audit, TEA randomly selects components for review. Districts and open-enrollment charter schools selected must submit the requested data for review within the timeframe specified. Districts and open-enrollment charter schools must maintain documentation of the LAS plan development process along with all associated data for campus ratings for two years. Suggested documentation could include meeting dates, agendas, handouts, and sign-in sheets in accordance with locally-established policies and procedures.

LAS Ratings Appeal Process

Due to the diversity and number of districts, open-enrollment charter schools, and campuses in Texas, as well as the range of data sources eligible for inclusion in LAS, there may be situations that are not specifically addressed in this manual. If an approved LAS data source is unintentionally affected by unforeseen circumstances, such as natural disasters and test administration issues, the commissioner of education will consider those circumstances and the impact in determining whether or how that data source will be used to calculate ratings for the LAS.

A successful LAS appeal is usually limited to situations such as a calculation error attributable to the Texas Education Agency or testing contractor. Accurate data is fundamental to local accountability ratings. LAS depends upon the responsible collection and submission of data by school districts and open-enrollment charter schools. Responsibility for the accuracy and quality of data used to determine local accountability ratings, therefore, rests with each district and open-enrollment charter school. Superintendent certification of data accuracy during the LAS ratings submission process includes an assurance that calculations have been verified to ensure that all data were included as appropriate for all LAS components.

Appeals may be submitted by the superintendent or chief operating officer once ratings are released. Districts and charter schools may appeal a LAS rating by mailing the appeal letter along with all supporting documentation to: Attention: Performance Reporting Division/LAS Appeal, Texas Education Agency, 1701 Congress Avenue, Austin, Texas 78701. Appeals not signed by the district superintendent or chief operating office of the charter school are denied. Appeals must be postmarked or hand-delivered no later than September 13, 2019, by 5:00 p.m. CDT to be considered. Commissioner's decisions are mailed in the form of response letters to each district and charter school that filed an appeal by the September 13, 2019, deadline.

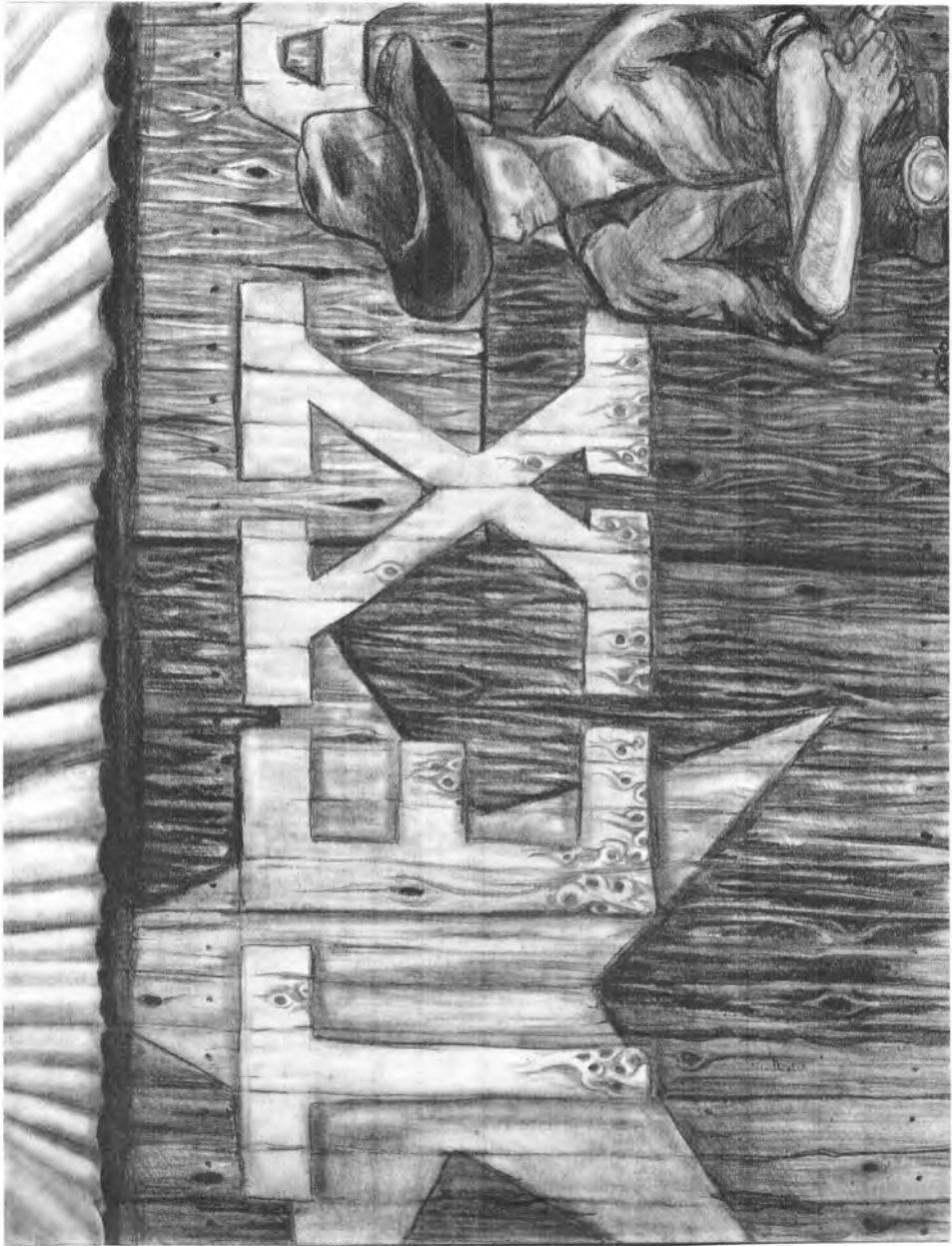
LAS Appeals Timeline

August 15—State Accountability and LAS Ratings Released (TEAL and TEA Public Website)

August 15–September 13—LAS Appeals Window

September 13—LAS Appeals Deadline

December—LAS Appeal Decisions Released



IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Grant Applications-Surplus Agricultural Grant Program

Pursuant to the Texas Agriculture Code Chapter 21, the Texas Department of Agriculture (TDA) requests applications for projects, to be completed during the period from October 1, 2019, through September 30, 2021, that collect and distribute surplus agricultural products to food banks and other charitable organizations that serve needy or low-income individuals.

Eligibility.

Grant applications will be accepted from non-profit organizations that have been determined by the Internal Revenue Service (IRS) to be exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code. These organizations must be established and operate for religious, charitable or educational purposes and not for financial gain. Additionally, these organizations must not distribute any of their income to their members, directors or officers. Organizations must have at least 5 years of experience coordinating a statewide network of food banks and charitable organizations that serve each of the 254 counties in this state.

For purposes of this application, the term "agricultural product" means an agricultural, apicultural, horticultural, or vegetable food product, either in its natural or processed state, for human consumption, including: (1) fish or other aquatic species; (2) livestock, a livestock product, or a livestock by-product; (3) poultry, a poultry product, or a poultry by-product; (4) wildlife processed for food or by-products; and (5) fruit, vegetables and grains. In addition to agricultural products grown in excess of a producer's needs, the term "surplus" includes any products not meeting that definition that are made available by a producer for distribution to food banks and other charitable organizations that serve the needy or low-income individuals.

TDA will follow §2155.444 of the Texas Government Code, relating to preference to Texas and United States products and Texas services, in making awards under this request for applications.

Funding Parameters.

Awards are subject to the availability of funds. If funds are not appropriated or collected for this purpose, Applicants will be informed accordingly.

Applications are limited to a total of \$4,850,000 in fiscal year 2020 and \$4,850,000 in fiscal year 2021. Funding is limited to the operation of a program that coordinates the collection and transportation of surplus agricultural products to a statewide network of food banks or other charitable organizations that provide food to needy or low-income individuals.

Application Requirements.

Application and information can be downloaded from the Grants Office section under the Grants and Services tab at www.TexasAgriculture.gov.

Submission Information.

Only materials actually received by TDA by 5:00 p.m. CT on Thursday, August 15, 2019, will be reviewed as part of the proposal.

For questions regarding submission of the proposal and/or TDA requirements, please contact TDA's Grants Office, at (512) 463-7448, or by email at Grants@TexasAgriculture.gov.

TRD-201902300

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Filed: July 19, 2019

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - June 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 June 2019 is \$45.00 per barrel for the three-month period beginning on March 1, 2019, and ending May 31, 2019. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of June 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 June 2019 is \$1.78 per mcf for the three-month period beginning on March 1, 2019, and ending May 31, 2019. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of June 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 June 2019 is \$54.71 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 June 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 June 2019 is \$2.33 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 June 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.

TRD-201902319
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: July 22, 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 07/29/19 - 08/04/19 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 07/29/19 - 08/04/19 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/19 - 08/31/19 is 5.50% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/19 - 08/31/19 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-201902338
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 23, 2019

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Texas Department of Criminal Justice

Correction of Error

The Texas Department of Criminal Justice filed proposed amendments to 37 TAC §151.25 on June 21, 2019 for publication in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3431). Due to an error by the Texas Register, the government growth impact statement included in the proposal was published incorrectly. The correct statement is as follows:

"The rule will have no impact on government growth; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy."

Additionally, the text of subsection (a) was published incorrectly. The correct text for the subsection is as follows:

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

TRD-201902325

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Texas Council for Developmental Disabilities

Request for Proposals: Texas Council for Developmental Disabilities Meaningful Day Transformation Improvement Projects

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for service providers in Texas to make improvements in the way programs are administered so that more people with developmental disabilities are supported to keep the meaningful work they want in their communities and to have purposeful days when not working.

The intent of offering funding for the project described in this Request for Proposals (RFP) is to develop and/or pilot strategies that will enhance traditional program models that result in a person-directed meaningful day that include an individual's wants and needs for improved community access and integration. Grantees will document the development, implementation, barriers and successes of their proposed ideas and activities as well as survey the individuals served in this project.

Applicants will identify the specific activities to be conducted to reach identified goals. Examples are provided in the RFP. The project's activities should be able to be shared with other providers and organizations around the state to improve person-centered outcomes.

TCDD has approved funding for up to 10 projects for up to \$15,000 per organization for one year. Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFP may be obtained through TCDD's website at www.tcdd.texas.gov. All questions pertaining to this RFP should be directed in writing to Danny Fikac via email at Danny.Fikac@tcdd.texas.gov. Mr. Fikac may also be reached by telephone at (512) 437-5415.

Deadline: Proposals must be submitted through www.tcdd.texas.gov and will be reviewed by TCDD according to the following schedule: applications received between July 1, 2019, and September 14, 2019, may be reviewed at the November 2019 meeting; applications received between September 15, 2019, and December 31, 2019, may be reviewed at the February 2020 meeting; applications received between January 1, 2020, and March 31, 2020, may be reviewed at the May 2020 meeting; applications received between April 1, 2020, and June 30, 2020, may be reviewed at the August 2020 meeting. Proposals will not be accepted outside of these due dates.

TRD-201902353
Beth Staley
Executive Director
Texas Council for Developmental Disabilities
Filed: July 24, 2019

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the com-

mission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 3, 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 **September 3, 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: Addie Marlin dba Marlin Marina Water System; DOCKET NUMBER: 2019-0428-PWS-E; IDENTIFIER: RN101196079; LOCATION: Freeport, Brazoria 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 first quarter of 2017 through the third quarter of 2018; 30 TAC §290.117(i)(1), by failing to timely report lead and copper tap sample results to the ED for July 1, 2018 - December 31, 2018, monitoring period; and 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification was distributed in a manner consistent with TCEQ requirements for the January 1, 2018 - June 30, 2018, monitoring period; PENALTY: \$778; ENFORCEMENT COORDINATOR: James Knittel, (512) 239-2518; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: City of Austin; DOCKET NUMBER: 2019-0418-MLM-E; IDENTIFIER: RN100625292; LOCATION: Austin, Travis County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Transition Zone; 30 TAC §334.42(h) and TWC, §26.3476(b), by failing to incorporate secondary containment for underground storage tanks, lines, or dispensers installed after January 1, 2009; and 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to ensure that all installed spill containment devices are maintained in good operating condition; PENALTY: \$7,188; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(3) COMPANY: City of Kaufman; DOCKET NUMBER: 2018-1353-MLM-E; IDENTIFIER: RN102410461; LOCATION: Kaufman, Kaufman County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(b)(14)(ix), by failing to maintain authorization to discharge stormwater; 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012114001, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0012114001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; and 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ0012114001, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring reports at the intervals specified in the permit; PENALTY: \$22,588; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$18,071; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of West; DOCKET NUMBER: 2019-0596-MWD-E; IDENTIFIER: RN102079282; LOCATION: West, McLennan County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010544001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; PENALTY: \$7,250; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Coryell County Road and Bridge Department; DOCKET NUMBER: 2019-0918-WR-E; IDENTIFIER: RN110733888; LOCATION: Gatesville, Coryell County; TYPE OF FACILITY: municipal construction site; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: \$350; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: E S Water Utility Consolidators Incorporated; DOCKET NUMBER: 2019-0547-PWS-E; IDENTIFIER: RN101430080; LOCATION: Porter, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum well capacity of 0.6 gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; and 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gpm per connection; PENALTY: \$150; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Fort Davis Water Supply Corporation; DOCKET NUMBER: 2019-0678-PWS-E; IDENTIFIER: RN101218022; LOCATION: Fort Davis, Jeff Davis County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 15 picoCuries per liter for gross alpha particle activity based on the running annual average; PENALTY:

\$157; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(8) COMPANY: Friendswood Energy Genco, LLC; DOCKET NUMBER: 2019-0579-AIR-E; IDENTIFIER: RN106425242; LOCATION: Houston, Harris County; TYPE OF FACILITY: peak power generating plant; RULES VIOLATED: 30 TAC §116.615(2) and §117.2010(i)(2)(A), Standard Permit Registration Number 103230, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum emissions rate and the concentration limit; and 30 TAC §117.2035(e)(9) and THSC, §382.085(b), by failing to submit a test report for review and approval within 60 days after completion of the testing; PENALTY: \$12,938; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Georgetown Baptist Church; DOCKET NUMBER: 2019-0635-PWS-E; IDENTIFIER: RN104375548; LOCATION: Pottsboro, Grayson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(O), by failing to protect all completed well units by intruder-resistant fences, the gates of which are provided with locks or enclose the well units in locked, ventilated well houses to exclude possible contamination or damage to the facilities by trespassers; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's ground storage tank annually; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's pressure tank annually; 30 TAC §290.46(m)(2), by failing to conduct an annual visual inspection of the filter media and internal filter surfaces to ensure that the filter media is in good condition and the coating materials continue to provide adequate protection to internal surfaces; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$450; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-1704; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: GURUDEO CORPORATION dba K A Minimart; DOCKET NUMBER: 2019-0444-PST-E; IDENTIFIER: RN101431583; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: \$12,401; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Kingsbridge Municipal Utility District; DOCKET NUMBER: 2019-0193-PWS-E; IDENTIFIER: RN102684727; LOCATION: Sugar Land, Fort Bend County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(iv) and Texas Health and Safety Code, §341.0315(c), by failing to provide a minimum elevated storage tank capacity of 100 gallons per connection for a system with more than 2,500 connections; PENALTY: \$1,098; ENFORCEMENT COORDINATOR: Marla Waters, (512)

239-4712; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: KMCO, LLC; DOCKET NUMBER: 2018-1464-AIR-E; IDENTIFIER: RN101613511; LOCATION: Crosby, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 9383, Special Conditions Number 13, Federal Operating Permit Number O1441, General Terms and Conditions and Special Terms and Conditions Number 7, and Texas Health and Safety Code, §382.085(b), by failing to comply with the minimum scrubbing fluid flow rate, and failing to use an authorized scrubbing fluid; PENALTY: \$150,000; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Kuraray America, Incorporated; DOCKET NUMBER: 2019-0190-AIR-E; IDENTIFIER: RN100212216; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: 30 TAC §§115.722(c)(1), 116.115(c), and 122.143(4), New Source Review Permit Number 9576, Special Conditions Number 1, Federal Operating Permit Number O3011, General Terms and Conditions and Special Terms and Conditions Numbers 1.A and 11, 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: \$10,200; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Lone Pine Enterprises, Incorporated; DOCKET NUMBER: 2019-0478-MLM-E; IDENTIFIER: RN106178619; LOCATION: Creedmoor, Travis County; TYPE OF FACILITY: recycling business; RULES VIOLATED: 30 TAC §37.921 and §328.5(f)(3), by failing to provide adequate financial assurance for the closure of the facility that stores combustible materials outdoors; 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to develop and implement a Stormwater Pollution Prevention Plan; and 30 TAC §328.5(b), by failing to submit a Notice of Intent to the executive director prior to the commencement of recycling activities; PENALTY: \$21,730; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(15) COMPANY: Marathon Oil EF LLC; DOCKET NUMBER: 2019-0381-AIR-E; IDENTIFIER: RN107050122; LOCATION: Whittsett, Atascosa County; TYPE OF FACILITY: oil and gas production plant; RULES VIOLATED: 30 TAC §116.615(2) and §122.143(4), Standard Permit Registration Number 115965, Federal Operating Permit Number O3970/General Operating Permit Number 514, Site-wide Requirements (b)(9)(B), and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$8,888; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,555; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: Milagro Interests, Incorporated; DOCKET NUMBER: 2019-0511-PWS-E; IDENTIFIER: RN105910442; LOCATION: Humble, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(B), by failing to provide a well casing extending a minimum of 18 inches above the elevation of the finished floor of the pump house or natural ground surface; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block extending at least three feet from the well casing in all

directions, with a minimum thickness of six inches, and sloped to drain away at not less than 0.25 inches per foot around the wellhead; 30 TAC §§290.41(c)(3)(O), 290.42(m), and 290.43(e), by failing to provide all well units, water treatment plants, and pressure maintenance facilities with an intruder-resistant fence with a lockable gate or a locked and ventilated wellhouse or lockable building which is kept locked when the facilities are unattended; and 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the public water system until the facility is decommissioned; PENALTY: \$500; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: North Texas Epitaxy, LLC; DOCKET NUMBER: 2018-1260-AIR-E; IDENTIFIER: RN100734169; LOCATION: Allen, Collin County; TYPE OF FACILITY: semiconductor manufacturing plant; 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: \$24,066; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Pecos County State Bank; DOCKET NUMBER: 2019-0514-PST-E; IDENTIFIER: RN102238706; LOCATION: Van Horn, Culberson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(1)(A)(ii) and (B) and (3), by failing to notify the agency of any change or additional information regarding the underground storage tank (UST) system within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, Class B, and Class C for the facility; PENALTY: \$5,900; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(19) COMPANY: Phillips 66 Company; DOCKET NUMBER: 2019-0145-AIR-E; IDENTIFIER: RN100229319; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 21593, Special Conditions Number 15.A, Federal Operating Permit Number O831, General Terms and Conditions and Special Terms and Conditions Number 8, and Texas Health and Safety Code, §382.085(b), by failing to ensure that the uninsulated storage tank exterior surfaces exposed to the sun are white or aluminum; PENALTY: \$11,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$4,500; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: QUIKTRIP CORPORATION dba QUIKTRIP 4045; DOCKET NUMBER: 2019-0423-PST-E; IDENTIFIER: RN110644879; LOCATION: Kirby, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.6(a)(2) and (b)(4), by failing to provide notification of a major construction activity for an underground storage tank (UST) system at least 30 days prior to initiating such activity; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery

certificate before accepting delivery of a regulated substance into the regulated USTs; PENALTY: \$8,276; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: Rambling Vines RVP, L.L.C.; DOCKET NUMBER: 2019-0274-PWS-E; IDENTIFIER: RN104394119; LOCATION: Magnolia, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director (ED) prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(f)(2) and (3)(A)(i)(III), (B)(iv), (D)(ii), and (E)(i), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(n)(1), by failing to maintain at the facility accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with monitoring requirements; PENALTY: \$257; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Stephen P. Krebs dba Timber Ridge Section 2; DOCKET NUMBER: 2019-0588-PWS-E; IDENTIFIER: RN104394317; LOCATION: Houston, Chambers County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; PENALTY: \$60; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201902335

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 23, 2019



Combined Notice of Public Meeting and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater New Permit No. WQ0015713001

APPLICATION AND PRELIMINARY DECISION. RR 417, LLC, 8839 Farm to Market 470, Bandera, Texas 78003, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015713001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 49,000 gallons per day. TCEQ received this application on July 30, 2018.

The facility will be located at 8839 Farm to Market 470, in Bandera County, Texas 78003. The treated effluent will be discharged to Commissioners Creek, thence to Hondo Creek in Segment No. 2114 of the Nueces River Basin. The unclassified receiving water use is a presumed high aquatic life use for Commissioners Creek. The designated uses for Segment No. 2114 are primary contact recreation, public wa-

ter supply, aquifer protection, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ's *Procedures to Implement the Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Commissioners Creek, which has a presumed high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.666944&lng=-99.231944&zoom=13&type=>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Bandera County Public Library, 515 Main Street, Bandera, Texas.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application because it was requested by a local legislator.

The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, August 26, 2019, at 7:00 p.m.

Mansfield Park Recreation Hall

2886 Hwy 16 N.

Bandera, Texas 78003

AGENCY CONTACTS AND INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period

to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www14.tceq.texas.gov/epic/eComment/. **Public comments and requests must be submitted within 30 days from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.** Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.**

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

Further information may also be obtained from RR 417, LLC at the address stated above or by calling Ms. Jamie Miller, P.E., Integrated Water Services, Inc., at (303) 993-3713.

Issuance Date July 18, 2019

TRD-201902363

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 24, 2019



Enforcement Orders

An agreed order was adopted regarding Dolores S. Perez dba Falcon Automotive, Docket No. 2017-1453-PST-E on July 23, 2019 assessing \$5,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RCI HOLDINGS, INC., Docket No. 2018-0787-PWS-E on July 23, 2019 assessing \$2,290 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jake Marx, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201902359

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 24, 2019



Notice and Comment Hearing Draft Permit No.: O1381

This is a notice for a notice and comment hearing on Federal Operating Permit Number O1381. During the notice and comment hearing, informal questions on the Federal Operating Permit will be answered and formal comments will be received. The Texas Commission on Environmental Quality (TCEQ) has scheduled the notice and comment hearing regarding this application and draft permit as follows:

Thursday, August 29, 2019, at 7:00 p.m.

Hartman Park Community Center

9311 East Avenue P

Houston, Texas 77012

Phone: (713) 928-4803

Application and Draft Permit. Valero Refining-Texas, L.P., 9701 Manchester St, Houston, Texas 77012-2408, has applied to the TCEQ for a renewal of Federal Operating Permit (herein referred to as Permit) No. O1381, Application No. 24377, to authorize operation of the Houston Refinery, a Petroleum Refineries facility. The area addressed by the application is located at 9701 Manchester Avenue in Houston, Harris County, Texas 77012. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to the application. You can find an electronic map of the facility at: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.72222&lng=-95.255&zoom=13&type=r>.

The purpose of a federal operating permit is to improve overall compliance with the rules governing air pollution control by clearly listing all applicable requirements, as defined in Title 30 Texas Administrative Code §122.10 (30 TAC §122.10). The draft permit, if approved, will codify the conditions under which the area must operate. The permit will not authorize new construction. The executive director has completed the technical review of the application and has made a preliminary decision to prepare a draft permit for public comment and review. The executive director recommends issuance of this draft permit. The permit application, statement of basis, and draft permit will be available for viewing and copying at the TCEQ Central Office, 12100 Park 35 Circle, Building E, First Floor, Austin, Texas 78753; the TCEQ Houston Regional Office, 5425 Polk St, Ste H, Houston, Texas 77023-1452; and the Park Place Regional Library, 8145 Park Place, Houston, Texas 77017. The draft permit and statement of basis are available at the TCEQ Website:

www.tceq.texas.gov/goto/tvnotice

At the TCEQ central and regional offices, relevant supporting materials for the draft permit, as well as the New Source Review permits which have been incorporated by reference, may be reviewed and copied. Any person with difficulties obtaining these materials due to travel constraints may contact the TCEQ central office file room at (512) 239-2900.

Notice and Comment Hearing. A public hearing will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public hearing is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. The purpose of this hearing will be to receive formal public comment which the TCEQ will consider in determining whether to revise and/or issue the permit and in determining the accuracy and completeness of the permit. Any person may attend this hearing and submit written or oral comments. The hearing will be conducted in accordance with the Texas Clean Air Act §382.0561, as codified in the Texas Health and Safety Code, and 30 TAC §122.340.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the

TCEQ Public Education Program toll free at (800) 687-4040 or (800) RELAY-TX (TDD), at least one week prior to the hearing.

Any person may also submit written comments before the hearing to the Texas Commission on Environmental Quality, Office of Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at <http://www14.tceq.texas.gov/epic/eComment/>. Written comments should include (1) your name, address, and daytime telephone number, and (2) the draft permit number found at the top of this notice.

A notice of proposed final action that includes a response to comments and identification of any changes to the draft permit will be mailed to everyone who submitted public comments, a hearing request, or requested to be on the mailing list for this application. This mailing will also provide instructions for public petitions to the U.S. Environmental Protection Agency (EPA) to request that the EPA object to the issuance of the proposed permit. After receiving a petition, the EPA may only object to the issuance of a permit which is not in compliance with the applicable requirements or the requirements of 30 TAC Chapter 122.

Mailing List. In addition to submitting public comments, a person may ask to be placed on a mailing list for this application by sending a request to the Office of the Chief Clerk at the address above. Those on the mailing list will receive copies of future public notices (if any) mailed by the Chief Clerk for this application.

Information. For additional information about this permit application or the permitting process, please contact the Texas Commission on Environmental Quality, Public Education Program, MC-108, P.O. Box 13087, Austin, Texas 78711-3087 or toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained for Valero Refining-Texas, L.P. by calling Mr. Matthew Lindquist at (713) 923-3300.

Notice Issuance Date: July 22, 2019

TRD-201902367

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 24, 2019



Notice of Hearing Tex-Mix Partners, Ltd.: SOAH Docket No. 582-19-5584; TCEQ Docket No. 2019-0440-AIR; and Proposed Registration No. 152399

APPLICATION. Tex-Mix Partners, Ltd., has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration No. 152399, which would authorize construction of a permanent concrete batch plant located on the east side of U.S. Highway 281 approximately 0.5 mile south of its intersection with Rebecca Creek Road, Spring Branch, Comal County, Texas 78070. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code (TAC), Chapter 101, Subchapter J. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.915476&lng=-98.408588&zoom=13&type=r. For the exact location, refer to the application. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter

with diameters of 10 microns or less and 2.5 microns or less. This application was submitted to the TCEQ on June 20, 2018.

The TCEQ Executive Director has determined that the application meets all of the requirements of a standard permit authorized by 30 TAC §116.611, which would establish the conditions under which the plant must operate. The Executive Director has made a preliminary decision to issue the registration because it meets all applicable rules. The application, executive director's preliminary decision, and standard permit are available for viewing and copying at the TCEQ central office, the TCEQ San Antonio regional office, and the Bulverde Spring Branch Library, 131 Bulverde Crossing, Bulverde, Comal County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas. Visit www.tceq.texas.gov/goto/cbp to review the standard permit.

CONTESTED CASE HEARING. The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - September 4, 2019

Historic Courthouse

2nd Floor Courtroom

100 Main Plaza

New Braunfels, Texas 78130

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on May 23, 2019. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 TAC Chapter 116, Subchapters A and B; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be affected by the application in a way not common to the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

MAILING LIST. You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en Español, puede llamar al (800) 687-4040. General information regarding the TCEQ may be obtained electronically at www.tceq.texas.gov.

In accordance with 1 TAC §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION. If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information regarding the TCEQ can be found at www.tceq.texas.gov.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Further information may also be obtained from Tex-Mix Partners, Ltd., P.O. Box 830, Leander, Texas 78646-0830 or by calling Mrs. Melissa Fitts, Vice-President, Westward Environmental, Inc. at (830) 249-8284.

Issued: July 22, 2019

TRD-201902361

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 24, 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 **September 3, 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 September 3, 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: K & Z Enterprises, LLC dba Quickway Food Store 1; DOCKET NUMBER: 2018-0660-PST-E; TCEQ ID NUMBER: RN101534790; LOCATION: 6101 East Rosedale Street, Fort Worth, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenient store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certification before accepting delivery

of a regulated substance into the USTs; 30 TAC §334.8(c)(4)(C), by failing to obtain a UST delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of tank ownership change; 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 in 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; 30 TAC §334.602(a), by failing to identify and designate for the UST Station at least one named individual for each class of operator - Class A, B, and C; Texas Health and Safety Code, §382.085(b) and 30 TAC §115.225, by failing to comply with annual Stage I vapor recovery testing requirements; PENALTY: \$11,681; STAFF ATTORNEY: Taylor Pearson, Litigation Division, MC 175, (512) 239-5937; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: B & W United, LLC dba Cash & Carry; DOCKET NUMBER: 2018-0789-PST-E; TCEQ ID NUMBER: RN102324712; LOCATION: 1330 Woodhaven Boulevard, Fort Worth, Tarrant 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 UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; STAFF ATTORNEY: John S. Mercurief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Haider & Sons Enterprises Inc. dba Swift-T; DOCKET NUMBER: 2018-0895-PST-E; TCEQ ID NUMBER: RN102463460; LOCATION: 2033 Military Parkway, Mesquite, 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 §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: \$15,000; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201902333

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 23, 2019



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed 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 **September 3, 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 September 3, 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: F & L Auto Body, LLC; DOCKET NUMBER: 2018-0324-AIR-E;

TCEQ ID NUMBER: RN101653699; LOCATION: 9725 Carnegie Avenue, El Paso, El Paso County; TYPE OF FACILITY: auto body repair and refinishing shop; 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 operating a source of air emissions; PENALTY: \$1,312; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(2) COMPANY: Lee Exceptional Investments, LLC dba Exceptional Landscapes; DOCKET NUMBER: 2018-1521-AIR-E; TCEQ ID NUMBER: RN107569725; LOCATION: 2700 Acton Highway, Granbury, Hood County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by causing, suffering, allowing, or permitting outdoor burning within the State of Texas; PENALTY: \$1,696; STAFF ATTORNEY: Logan Harrell, Litigation Division, MC 175, (512) 239-1439; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201902334

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 23, 2019



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Charles Trois and Rebecca Trois: SOAH Docket No. 582-19-6276; TCEQ Docket No. 2018-1125-PWS-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative

Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - August 22, 2019

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed March 19, 2019, concerning assessing administrative penalties against and requiring certain actions of Charles Trois and Rebecca Trois for violations in Gillespie County, Texas, of: Tex. Water Code §5.702 and 30 Texas Administrative Code §§290.51(a)(6), 290.106(c)(6), and 290.118(c).

The hearing will allow Charles Trois and Rebecca Trois, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Charles Trois and Rebecca Trois, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Charles Trois and Rebecca Trois to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Charles Trois and Rebecca Trois, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Health and Safety Code ch. 341, Tex. Water Code ch. 5, and 30 Texas Administrative Code chs. 70 and 290; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ryan Rutledge, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the

public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: July 22, 2019

TRD-201902360

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 24, 2019



Notice of Public Meeting for Water Quality Land Application
Permit for Municipal Wastewater New Permit No.
WQ0015694001

APPLICATION. Veranta Capital, LLC, 700 Barton Creek Boulevard, Austin, Texas 78746, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Proposed TCEQ Permit No. WQ0015694001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 12,240 gallons per day via subsurface area drip dispersal system with a minimum area of 2.8 acres public access land.

The domestic wastewater treatment facility and disposal area will be located south of the intersection of Farm-to-Market Road 812 and Stork Road in Bastrop County, Texas 78617. The wastewater treatment facility and disposal site will be located in the drainage basin in Segment No. 1434 of the Colorado River. The wastewater treatment discharge is treated on site on drip irrigation disposal. No discharge of pollutants into water in the State is authorized by this permit. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application.

<http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.095833&lng=-97.601666&zoom=13&type=r>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT/PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment

Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, September 5, 2019 at 7:00 p.m.

Circuito 812 Retail Center

105 Acuna Court, Suite 105

Del Valle, Texas 78617

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Bastrop County Building, 211 Jackson Street, Bastrop, Texas.

Further information may also be obtained from Veranta Capital, LLC at the address stated above or by calling Mr. Rey Cedillos, P.E., Engineer, Cedilos & Company at (512) 306-1322.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issuance Date: July 24, 2019

TRD-201902365

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 24, 2019



Notice of Water Quality Application

The following notices were issued on July 18, 2019.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

CITY OF CACTUS, which operates City of Cactus Wastewater Treatment Plant, has applied for a minor amendment to TCEQ Permit No. WQ0003436000 to authorize the removal of the following statement from the facility description: "Additional irrigation facilities may also include a 3.5 MG on-farm surge pond and irrigation of approximately 1,200 acres of farm land. The additional facilities will not be used and were not required. The draft permit authorizes the disposal of treated wastewater consisting of slaughterhouse and tannery effluent commingled with domestic wastewater at an annual average flow not to exceed 3.26 million gallons per day via irrigation of 3,782 acres. This permit will not authorize the discharge of pollutants into water in the state. The facility and land application site are located approximately 2.0 miles north of the intersection of Farm-to-Market Road 281 and U.S. High-

way 287, which is east of the City of Cactus, in Moore County, Texas 79013 and 79029.

Brazoria County Municipal Utility District No. 55 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0014724003 to add the Interim III phase to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 480,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 980,000 gallons per day. The facility is located at 4320 ½ Meridiana Parkway, in Brazoria County, Texas 77583.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201902362

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 24, 2019



Request for Nominations for the Tax Relief for Pollution Control Property Advisory Committee

In 1993, a ballot initiative listed as Proposition 2 (Prop 2) was approved by Texas voters, amending the Texas Constitution to authorize the Texas Legislature to exempt from ad valorem taxation "all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by an environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution." The Texas Legislature implemented Prop 2 by enacting Texas Tax Code, §11.31. The Texas Commission on Environmental Quality (TCEQ or commission) adopted 30 Texas Administrative Code Chapter 17, establishing the procedures for obtaining a "positive use determination" under the program. The goal of the program is to provide tax relief to individuals, companies, and political subdivisions that make capital investments to meet or exceed federal, state, or local environmental rules or regulations.

House Bill (HB) 3206 and HB 3544, 81st Texas Legislature, 2009, amended Texas Tax Code, §11.31 to require the TCEQ to form a permanent advisory committee that will make recommendations to the TCEQ commissioners on matters relating to property tax exemptions for pollution control property. Tax Relief for Pollution Control Property Advisory Committee (advisory committee) members were appointed by the TCEQ commissioners to four-year staggered terms. Once the advisory committee members were selected by the commission, a random drawing was used to assign term lengths. Advisory committee members were initially appointed by the commission on January 27, 2010.

HB 2280, 82nd Texas Legislature, 2011, amended Texas Tax Code, §11.31(n) by adding a requirement that at least one of the advisory committee members be a representative of a school district or junior college district containing property that has or had a Texas Tax Code, §11.31 tax exemption.

Six of the 13 advisory committee members' terms expire on December 31, 2019, and the other seven expire on December 31, 2021.

The TCEQ is currently accepting applications for potential advisory committee members from the following affiliations: three industry representatives, one taxing unit representative, one school or junior col-

lege district representative, and one environmental group representative. Current advisory committee members whose terms are expiring may apply for reappointment.

Applications for the advisory committee can be found on the TCEQ's website at: http://www.tceq.texas.gov/airquality/taxrelief/advisory_group.html. To apply, complete the nomination form and submit it to the TCEQ by 5:00 p.m. on September 3, 2019. Applications post-marked after that date will only be considered if there are insufficient qualified applicants. You can apply to nominate yourself or someone else to the advisory committee, but the TCEQ asks that only interested persons be nominated.

Questions regarding the advisory committee application process can be directed by phone to Elizabeth Sartain of the Tax Relief Program at (512) 239-3933 or by email to txrelief@tceq.texas.gov.

TRD-201902343

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 23, 2019



Texas Facilities Commission

Request for Proposals #303-1-20668

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-1-20668. TFC seeks a five (5) or ten (10) year lease of approximately 9,854 square feet of usable space that consists of 9,659 sq. ft. of office space and 195 sq. ft. of outdoor employee lounge area spacer in Angleton, Texas.

The deadline for questions is August 12, 2019, and the deadline for proposals is August 19, 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/303-1-20668>.

TRD-201902351

Naomi Gonzalez

Acting General Counsel

Texas Facilities Commission

Filed: July 23, 2019



Request for Proposals #303-1-20669

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-1-20669. TFC seeks a five (5) or ten (10) year lease of approximately 9,796 square feet of usable space that consists of 9,601 sq. ft. of office space and 195 sq. ft. of outdoor employee lounge area in Denton, Texas.

The deadline for questions is August 13, 2019, and the deadline for proposals is August 27, 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/303-1-20669>.

TRD-201902336

Naomi Gonzalez

Acting General Counsel

Texas Facilities Commission

Filed: July 23, 2019

General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 27, 2019, to July 19, 2019. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, July 26, 2019. The public comment period for this project will close at 5:00 p.m. on Sunday, August 25, 2019.

FEDERAL AGENCY ACTIONS:

Applicant: Brazoria County Parks

Location: The project site is located in Cold Pass, at 14001 County Road 257, in Freeport, Brazoria County, Texas.

Latitude & Longitude (NAD 83): 29.078091, - 95.130203

Project Description: The applicant proposes to periodically hydraulically and/or mechanically dredge for 10 years no more than 6,000 cubic yards per event for the maintenance dredging of an existing entrance channel to the boat ramp at San Luis Pass County Park. The channel will be dredged to -6 feet NAVD88 with 4H:1V side slopes to the existing ground. The alignment of the entrance channel extends from Cold Pass to the San Luis Pass County Park. The material dredged from the channel is to be placed in an upland placement area (PA). The applicant also proposes to improve and maintain the upland PA as necessary to allow a maximum capacity to contain approximately 12,000 cubic yards of dredged material.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2010-01134. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

CMP Project No: 19-1245-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Ms. Allison Buchtien, P.O. Box 12873, Austin, Texas 78711-2873, or via email at federal.consistency@glo.texas.gov.

Comments should be sent to Ms. Buchtien at the above address or by email.

TRD-201902352

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: July 23, 2019

Notice of Deepwater Port License Application

Notice is hereby given that Bluewater Texas Terminal, LLC (Bluewater) has submitted an application to the Maritime Administration (MARAD) and the U.S. Coast Guard for a license under the Deepwater Port Act of 1974 to own, construct, and operate a deepwater port in the Gulf of Mexico for the export of domestically produced oil. The proposed deepwater port would allow for the loading of Very Large Crude Carriers (VLCCs) via a single point mooring buoy system located approximately 15 nautical miles off the coast of San Patricio County, Texas.

As described in the application, the overall proposed project would include construction of a 19-acre booster station located on Harbor Island in Nueces County, the deepwater port, and approximately 56.48 miles of two parallel 30-inch crude oil pipelines. About 29.35 miles of the pipeline would extend from a planned multi-use terminal located south of the City of Taft in San Patricio County to the booster station in Nueces County, and 27.13 miles of the pipeline will extend from the shoreline crossing at the interface of San Jose Island, terminating at a single point mooring (SPM) buoy system located in the Outer Continental Shelf Matagorda Island Area TX4 lease blocks 698 and 699. The SPM buoy system would be located approximately 15 nautical miles off the coast of San Patricio County, in a water depth of 89 feet.

The Bluewater deepwater port license application may be viewed at <http://www.regulations.gov> under docket number MARAD-2019-0094. The docket will also be the repository for all associated *Federal Register* notices, communications, comments, and the Draft and Final Environmental Impact Statement. Pursuant to the criteria provided in the Deepwater Port Act of 1974 (33 U.S.C. §§1501 - 1524), Texas is the designated Adjacent Coastal State for this deepwater port license application. For additional information regarding deepwater ports, and the statutes and regulations governing their licensing, including the application review process for the proposed Bluewater deepwater port, please refer to the notice published by the MARAD in the June 26, 2019, edition of the *Federal Register* (84 FR 30301).

TRD-201902368

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: July 24, 2019

Notice of Deepwater Port License Application

Notice is hereby given that Texas GulfLink, LLC has submitted an application to the Maritime Administration (MARAD) and the U.S. Coast Guard for a license under the Deepwater Port Act of 1974 to own, construct, and operate a deepwater port in the Gulf of Mexico for the export of domestically produced oil. The proposed deepwater port would allow for the loading of Very Large Crude Carriers (VLCCs) via a single point mooring buoy system located approximately 28.3 nautical miles off the coast of Freeport, Texas.

As described in the application, the proposed project's onshore storage and supply components would include: the proposed 200-acre Jones Creek storage terminal in Brazoria County, which would accommodate up to 13 aboveground storage tanks for a total of 8.6 million barrels of working capacity; 9.45 miles of 36-inch incoming crude oil pipeline, originating at the DOE Bryan Mound facility, with market connectivity to Houston; and 12.45 miles of 42-inch outgoing pipeline, connecting the Jones Creek Terminal to the shore crossing where it becomes the subsea pipeline supplying the offshore deepwater port. Texas GulfLink's proposed offshore and marine components would include 32.57 miles of 42-inch pipeline from the shoreline crossing in Brazoria County and terminating at a single point mooring (SPM) buoy system located in the Galveston Outer Continental Shelf lease block 423, in a water depth of 104 ft.

The Texas GulfLink deepwater port license application may be viewed at <http://www.regulations.gov> under docket number MARAD-2019-0093. The docket will also be the repository for all associated *Federal Register* notices, communications, comments, and the Draft and Final Environmental Impact Statement. Pursuant to the criteria provided in the Deepwater Port Act of 1974 (33 U.S.C. §§1501 - 1524), Texas is the designated Adjacent Coastal State for this deepwater port license application. For additional information regarding deepwater ports, and the statutes and regulations governing their licensing, including the application review process for the proposed Texas GulfLink deepwater port, please refer to the notice published by the MARAD in the June 26, 2019, edition of the *Federal Register* (84 FR 30298).

TRD-201902369

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: July 24, 2019

Texas Health and Human Services Commission

Public Hearing Notice

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 2, 2019, at 3:00 p.m., to receive comment on proposed payment rates for the non-state operated Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID). The proposed rates will be effective September 1, 2019.

The public hearing will be held in HHSC's Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing. Persons watching remotely can submit written comments. The broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>, and will be archived for access on demand at the same website. The public hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. HHSC proposes to increase the following payment rates for non-state operated ICF/IID in accordance with the 2020-21 General Appropriations Act, H.B. 1, 86th Legislature, Regular Session, 2019, (Article II, HHSC, Rider 44).

Setting and Level of Need (LON) Proposed Rate

Small LON 1 \$152.96

Small LON 5 \$170.97

Small LON 8 \$195.60

Small LON 6 \$241.67

Medium LON 1 \$125.18

Medium LON 5 \$142.69

Medium LON 8 \$170.04

Medium LON 6 \$204.52

Large LON 1 \$117.74

Large LON 5 \$126.27

Large LON 8 \$141.35

Large LON 6 \$191.96

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code (1 TAC) §355.456, relating to the reimbursement methodology for ICF/IID.

Briefing Package. A briefing package describing the proposed payment rates will be available at <http://rad.hhs.texas.gov/rate-packets> on or after July 19, 2019. Interested parties may obtain a copy of the briefing package before the hearing by contacting the HHSC Rate Analysis Department by telephone at (512) 424-6637; by fax at (512) 730-7475; or by e-mail at RAD-LTSS@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RAD-LTSS@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 424-6637 at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-201902298

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: July 19, 2019

Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for Incline Reinsurance, a domestic reinsurer. The home office is in Austin, Texas.

Application to do business in the state of Texas for Incline Re, a foreign reinsurer. The home office is in Austin, Texas.

Application to do business in the state of Texas for American Liberty Insurance Company, Inc., a foreign fire and/or casualty company. The home office is in Provo, Utah.

Application for Worth Casualty Company, a domestic fire and/or casualty company, to change its name Incline Casualty Company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-201902355
James Person
General Counsel
Texas Department of Insurance
Filed: July 24, 2019



Notice

Texas Automobile Insurance Plan Association Filing Request for Amendments to Texas Plan of Operation

The Commissioner of Insurance will consider the Texas Automobile Insurance Plan Association's (TAIPA) request to amend its *Texas Plan of Operation* (Plan) concerning the selection of governing committee members. On March 29, 2019, TAIPA filed the proposed changes with TDI for Commissioner approval under Insurance Code §2151.151(b).

TAIPA is administered by a manager and a governing committee. The current governing committee includes 15 members. Eight of the 15 members represent insurer interests and are selected by certain association members identified in the Plan:

- four members are elected by TAIPA members;
- three members are selected by three trade associations; and
- one member is selected by an association member who has no affiliation with the three trade associations.

The three trade associations named in the current Plan are the American Insurance Association, Property Casualty Insurers Association of America, and Association of Fire & Casualty Companies in Texas. The American Insurance Association and Property Casualty Insurers Association of America recently merged to become the American Property Casualty Insurance Association. The governing committee proposes to amend the Plan to reflect this merger.

Due to the merger, TAIPA will choose an additional trade association that will select an insurer member. The governing committee proposes to name the National Association of Mutual Insurance Companies (NAMIC) as one of the three trade associations that can select an insurer member to serve on the governing committee. NAMIC represents the interests of mutual insurers in Texas.

On March 22, 2019, the governing committee voted in favor of the proposed amendment under Section 39 of the Plan. You can view the proposed amended Plan, which reflects the changes outlined above and provides information about NAMIC, in Exhibit A at <http://www.tdi.texas.gov/rules/2019/documents/a031904.pdf#Petition>. The following section of the Plan will be affected by the requested amendment:

Sec. 36. ADMINISTRATION

A. Governing Committee Composition

Current Language:

1. Eight members shall represent the interests of insurers. To be eligible to act as a representative of insurers, a person must be a full time employee of an authorized insurer. Representatives of the insurers shall be elected by the members of the Association as follows:
 - a. One insurer member shall be selected by each of the following trade associations:

American Insurance Association (AIA)
Association of Fire & Casualty Companies in Texas (AFACT)
Property Casualty Insurers Association of America (PCI)

Proposed Language:

1. Eight members shall represent the interests of insurers. To be eligible to act as a representative of insurers, a person must be a full time employee of an authorized insurer. Representatives of the insurers shall be elected by the members of the Association as follows:

- a. One insurer member shall be selected by each of the following trade associations:

American Property Casualty Insurance Association (APCIA)
Association of Fire & Casualty Companies in Texas (AFACT)
National Association of Mutual Insurance Companies (NAMIC)

The Commissioner has jurisdiction over this matter under Insurance Code §2151.151(b). The Commissioner will consider comments on the proposed changes before issuing an order on the amended Plan.

TDI requests written comments on or before 5:00 p.m., Central time, on September 3, 2019. Send comments by email to Chief Clerk@tdi.texas.gov, or by mail to:

Office of the Chief Clerk, Mail Code 113-2A

Texas Department of Insurance

P.O. Box 149104

Austin, Texas 78714-9104

TRD-201902326

James Person

General Counsel

Texas Department of Insurance

Filed: July 22, 2019



Texas Lottery Commission

Scratch Ticket Game Number 2186 "Power 5s"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2186 is "POWER 5s". The play style is "other".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2186 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2186.

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: BELL SYMBOL, POT OF GOLD SYMBOL, CHEST SYMBOL, CLOVER SYMBOL, CROWN SYMBOL, GOLD BAR SYMBOL, VAULT SYMBOL, HORSESHOE SYMBOL, PIGGY BANK SYMBOL, COINS SYMBOL, \$25 SYMBOL, \$50 SYMBOL, \$100 SYMBOL, 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22,

23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, STAR 5 SYMBOL, 5X SYMBOL, \$5, \$10, \$15, \$25, \$50, \$100, \$500 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2186 - 1.2D

PLAY SYMBOL	CAPTION
BELL SYMBOL	BELL
POT OF GOLD SYMBOL	POTGLD
CHEST SYMBOL	CHEST
CLOVER SYMBOL	CLOVER
CROWN SYMBOL	CROWN
GOLD BAR SYMBOL	GOLD
VAULT SYMBOL	VAULT
HORSESHOE SYMBOL	HSHOE
PIGGY BANK SYMBOL	PIGBANK
COINS SYMBOL	COINS
\$25 SYMBOL	WIN\$25
\$50 SYMBOL	WIN\$50
\$100 SYMBOL	WIN\$100
1	ONE
2	TWO
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELVN
12	TWLV
13	THTN
14	FRTN
15	FFTN
16	SXTN
17	SVTN
18	EGTN
19	NITN
20	TWNY
21	TWON
22	TWTW
23	TWTH
24	TWFR
25	TWV

26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTW
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FTY
41	FTON
42	FTTW
43	FTTH
44	FTFR
45	FTFV
46	FTSX
47	FTSV
48	FTET
49	FTNI
50	FVTY
STAR 5 SYMBOL	WIN\$
5X SYMBOL	WINX5
\$5	FIVDOL
\$10	TENDOL
\$15	FIFTN
\$25	TWYFIV
\$50	FIFTY
\$100	ONEHUN
\$500	FIVHUN
\$100,000	ONHNTHO

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 (2186), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2186-0000001-001.

H. Pack - A Pack of the "POWER 5s" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "POWER 5s" Scratch Ticket Game No. 2186.

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 "POWER 5s" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. If the player reveals a "STAR 5" Play Symbol, the player wins the PRIZE for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. POWER SPOTS: If a player reveals a prize amount in any of the POWER SPOTS, the player wins that amount. 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 forty-five (45) 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 forty-five (45) 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 forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. FIND: A non-winning Prize Symbol will never match a winning Prize Symbol, unless restricted by other parameters, play action or prize structure.

D. FIND: A Ticket may have up to four (4) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

E. FIND: The "5X" (WINX5) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

F. FIND: No duplicate non-winning Play Symbols on a Ticket.

G. FIND: The "STARS" (WIN\$) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

H. POWER SPOTS: No matching non-winning "POWER \$25 SPOT", "POWER \$50 SPOT" and/or "POWER \$100 SPOT" Play Symbols on a Ticket.

I. POWER SPOTS: The winning "\$25" (WIN\$25) PRIZE Symbol will only appear on intended winning Tickets in the two (2) "POWER \$25 SPOT" play areas on a Ticket.

J. POWER SPOTS: The winning "\$50" (WIN\$50) PRIZE Symbol will only appear on intended winning Tickets in the two (2) "POWER \$50 SPOT" play areas on a Ticket.

K. POWER SPOTS: The winning "\$100" (WIN\$100) PRIZE Symbol will only appear on intended winning Tickets in the one (1) "POWER \$100 SPOT" play area on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "POWER 5s" Scratch Ticket Game prize of \$5.00, \$10.00, \$25.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "POWER 5s" Scratch Ticket Game prize of \$100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "POWER 5s" 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 "POWER 5s" 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 "POWER 5s" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

- A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the

player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2186. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2186 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	755,200	9.38
\$10	472,000	15.00
\$25	354,000	20.00
\$50	94,400	75.00
\$100	12,980	545.45
\$500	708	10,000.00
\$100,000	4	1,770,000.00

*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 4.19. 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. 2186 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. 2186, 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-201902348
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: July 23, 2019



North Central Texas Council of Governments

Request for Information for Wrong-Way Driver Detection, Verification and Notification through Mobile and/or In-Vehicle Technology

The North Central Texas Council of Governments (NCTCOG) is seeking letters of interest and product information for wrong-way driver detection, verification and notification through mobile and/or in-vehicle technology. Crashes caused by wrong-way driving are especially dangerous and often fatal. Due to the severity of these crashes, NCTCOG and regional transportation partners have initiated efforts to prevent these incidents through the Wrong-Way Driving (WWD) Mitigation Pilot Programs. To continue this effort, NCTCOG is interested in working with technology companies to determine if there is a way to detect wrong-way drivers and notify first responders and other travelers along the roadway using mobile and/or in-vehicle technology.

Responses must be received no later than 5:00 p.m. Central Time, on Friday, August 31, 2019, to Natalie Bettger, Senior Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Responses must be received via mail or hand-delivery. The Request for Information will be available at www.nctcog.org/rfp by the close of business on Friday, August 2, 2019.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201902366

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: July 24, 2019

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Public Utility Commission of Texas

**Notice of Application for Approval of the Provision of
Non-Emergency 311 Service**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) for approval to provide non-emergency 311 services.

Docket Style and Number: Application of Southwestern Bell Telephone Company dba AT&T Texas for Approval to Provide Non-Emergency 311 Service for Harris County, Docket Number 49760.

The Application: On July 17, 2019, Southwestern Bell Telephone Company dba AT&T Texas filed an application with the commission under 16 Texas Administrative Code §26.127, for approval to provide non-emergency 311 service for Harris County.

NE311 service is available to local governmental entities to provide to their residents an easy-to-remember number to call for access to non-emergency services. By implementing 311 service, communities can improve 911 response times for those callers with true emergencies. Each local government entity that elects to implement 311 service will determine the types of non-emergency calls their 311 call center will handle.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is September 3, 2019. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 49760.

TRD-201902299
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: July 19, 2019

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Texas Department of Transportation

**Aviation Division - Request for Qualifications (RFQ) for
Professional Services**

The City of Kenedy, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a qualified firm for professional services. This solicitation is subject to 49 U.S.C. §47107(a)(17) and will be administered in the same manner as a solicitation conducted under Chapter 2254, Subchapter A, of the Texas Government Code. TxDOT Aviation Division will solicit and receive qualification statements for professional services as described below:

Airport Sponsor: City of Kenedy, TxDOT CSJ No. 1916KARNE

The TxDOT Project Manager is Ben Breck.

Scope: Airport Layout Plan update with narrative report. Prepare an Airport Development Plan which includes, but is not limited to, information regarding existing airport conditions, forecast of future levels of aviation activity, proposed facility development, alternatives or

proposed development, identification of environmental issues capital improvement plan, as well as an updated Airport Layout Plan. The Airport Development Plan should be tailored to the individual needs of the airport.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises (DBE).

The DBE goal is set at 0%.

To assist in your qualification statement preparation, the criteria and most recent Airport Layout Plan are available online at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm> by selecting "Kenedy Regional Airport."

AVN-551 Preparation Instructions:

Interested firms shall utilize the latest version of Form AVN-551, titled "Qualifications for Aviation Planning Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, (800) 68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. The form may not be altered in any way. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-551 template. The AVN-551 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-551. If a prime provider submits more than one AVN-551, or submits a cover letter with the AVN-551, that provider will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

The completed Form AVN-551 must be received in the TxDOT Aviation eGrants system no later than August 30, 2019, 11:59 p.m. (CDST). Electronic facsimiles or forms sent by email or regular/overnight mail will not be accepted.

Firms that wish to submit a response to this solicitation must be a user in the TxDOT Aviation eGrants system no later than one business day before the solicitation due date. To request access to eGrants, please complete the Contact Us web form located at <http://txdot.gov/government/funding/egrants-2016/aviation.html>.

Instructions on how to respond to a solicitation in eGrants are available at <http://txdot.gov/government/funding/egrants-2016/aviation.html>.

Step by step instructions on how to respond to a solicitation in eGrants will also be posted in the RFQ packet at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm>.

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-551s. The committee will review all AVN-551s and rate and rank each. The evaluation criteria for airport planning projects can be found at

<http://www.txdot.gov/inside-txdot/division/aviation/projects.html> under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at (800) 68-PILOT (74568). For procedural questions, please contact Bobby Hidrogo, Grant Manager. For technical questions, please contact Ben Breck, Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the TxDOT Aviation help desk at (800) 687-4568 or avn-egrantshelp@txdot.gov.

TRD-201902291
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: July 18, 2019



Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing Tuesday, August 20, 2019, at 10:00 a.m. at 200 East Riverside Drive, First Floor, Room 1A.2 in Austin, Texas to receive public comments on the August 2019 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2019-2022.

The STIP reflects the federally funded transportation projects in the FY 2019-2022 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Dallas-Fort Worth, El Paso, Houston and San Antonio. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed August 2019 Quarterly Revisions to the FY 2019-2022 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5004, and on the department's website at <http://www.txdot.gov/government/programs/stips.html>.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5004 no later than Wednesday, August 14, 2019, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either

orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

The public hearing will be conducted in English. Persons who have special communication or accommodation needs and who plan to attend the hearing are encouraged to contact the Transportation Planning and Programming Division, at 118 East Riverside Drive Austin, Texas 78704-1205, (512) 486-5053. Requests should be made at least three working days prior to the public hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed August 2019 Quarterly Revisions to the FY 2019-2022 STIP to Peter Smith, P.E., Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Tuesday, September 3, 2019.

TRD-201902324
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: July 22, 2019



Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html.

Or visit www.txdot.gov, and under How Do I, choose Find Hearings and Meetings, then choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or (800) 68-PILOT.

TRD-201902340
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: July 23, 2019



Public Notice - Lighting Standards for Highway Maintenance or Construction Vehicles and Service Vehicles

The Texas Department of Transportation (the department) adopts lighting standards to provide guidance to state and local government agencies and their contractors, utility providers, tow truck operators, escort flag vehicle operators, and other stakeholders as required by Texas Transportation Code §547.105. This section and related references in

the Transportation Code were amended during the 86th Legislature by House Bill 61, which changed some of the definitions and authorized uses for vehicles that must comply with the department's lighting standards.

The department is updating its lighting standards document to comply with HB 61, and seeks input from interested stakeholders. Changes include the types of equipment designated as highway maintenance or construction vehicles that must be equipped with safety and warning lights, and guidance on the types of lighting allowed on certain service vehicles and how this lighting may be used.

The draft lighting standards document may be viewed at <http://ftp.dot.state.tx.us/pub/txdot/fod/vehicle-lighting-standards-draft.pdf>. Stakeholders may submit comments on the proposed standards by emailing Fleet_Operations@txdot.gov by 5:00 p.m. Friday, August 9, 2019.

TRD-201902339

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Filed: July 23, 2019



Public Notice - Photographic Traffic Signal Enforcement Systems: Municipal Reporting of Traffic Crashes

The Texas Department of Transportation (department) is requesting that each municipality subject to the requirements of Transportation Code §707.004(d) provide the required data to the department **no later than October 25, 2019**, in order for the department to meet the deadline for an annual report mandated by the Texas Legislature.

Pursuant to Section 7 of House Bill 1631, 86th Legislature, Regular Session, municipalities meeting certain criteria may continue to operate photographic traffic signal enforcement systems. Pursuant to Transportation Code §707.004(d), each such municipality must continue to compile and submit to the department annual reports after installation showing the number and type of crashes that have occurred at the intersection.

Those municipalities that do not meet the criteria contained in Section 7 of House Bill 1631, 86th Legislature, Regular Session can no longer implement or operate photographic traffic enforcement systems.

The department is required by Transportation Code §707.004 to produce an annual report of the information submitted to the department by December 1 of each year.

The department has created a web page detailing municipal reporting requirements and to allow the required data to be submitted electronically at <http://www.txdot.gov/driver/laws/red-light.html>.

For additional information, contact the Texas Department of Transportation, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483 or call (512) 416-3204.

TRD-201902285

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Filed: July 18, 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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