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# TEXAS REGISTER

*Volume 44 Number 46*

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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.

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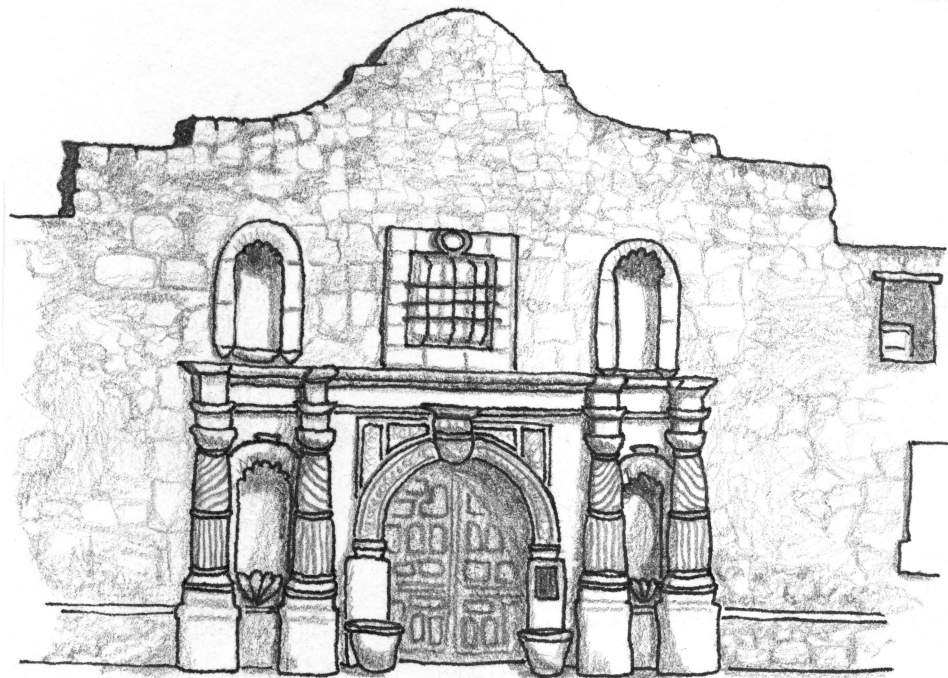
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# THE GOVERNOR

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

## Appointments

### Appointments for October 23, 2019

Appointed to the Radiation Advisory Board, for a term to expire April 16, 2021, Sanjay Narayan of Dallas, Texas (replacing Melissa R. "Missy" Shorey of Dallas, who is deceased).

Appointed to the Radiation Advisory Board, for a term to expire April 16, 2023, John P. Hageman of San Antonio, Texas (Mr. Hageman is being reappointed).

Appointed to the Radiation Advisory Board, for a term to expire April 16, 2023, William J. "Will" Pate, Dr.P.H., of League City, Texas (replacing Robert Emery, Ph.D. of Houston, whose term expired).

Appointed to the Radiation Advisory Board, for a term to expire April 16, 2023, Douglas N. "Doug" Posey, D.V.M. of Robstown, Texas (replacing John R. "Johnny" Johnson, D.V.M. of San Antonio, whose term expired).

Appointed to the Radiation Advisory Board, for a term to expire April 16, 2023, Lynn S. Silguero of Frisco, Texas (replacing Karen C. Newton of San Antonio, whose term expired).

Appointed to the Radiation Advisory Board, for a term to expire April 16, 2025, Thierno S. Barry of Austin, Texas (replacing William C. "Bill" Campbell of Fort Worth, whose term expired).

Appointed to the Radiation Advisory Board, for a term to expire April 16, 2025, Kenneth "Ken" Peters of Granbury, Texas (replacing Mitchel L. "Mitch" Lucas of Fort Worth, whose term expired).

Appointed to the Radiation Advisory Board, for a term to expire April 16, 2025, Darlene F. Metter, M.D. of San Antonio, Texas (Dr. Metter is being reappointed).

Appointed to the Radiation Advisory Board, for a term to expire April 16, 2025, Robert J. "Bob" Redweik of Tomball, Texas (replacing Judith M. "Judy" Raab of Alvarado, whose term expired).

Appointed to the Radiation Advisory Board, for a term to expire April 16, 2025, Darshan J. Sachde of Austin, Texas (Mr. Sachde is being reappointed).

### Appointments for October 28, 2019

Appointed to the Texas Commission on Judicial Selection, for a term to expire at the pleasure of the Governor, Charles L. "Chip" Babcock, IV of Houston, Texas.

Appointed to the Texas Commission on Judicial Selection, for a term to expire at the pleasure of the Governor, David J. Beck of Houston, Texas. Mr. Beck will serve as presiding officer of the commission.

Appointed to the Texas Commission on Judicial Selection, for a term to expire at the pleasure of the Governor, Martha Hill Jamison of Houston, Texas.

Appointed to the Texas Commission on Judicial Selection, for a term to expire at the pleasure of the Governor, David G. Oliveira of McAllen, Texas.

### Appointments for October 29, 2019

Appointed to the Brazos River Authority Board of Directors, for a term to expire February 1, 2021, David "Austin" Ruiz, O.D. of Harker Heights, Texas (replacing Russel D. "Rusty" Boles of Round Rock, who resigned).

Appointed to the Brazos River Authority Board of Directors, for a term to expire February 1, 2025, Thomas "Tom" Abraham of Sugar Land, Texas (replacing Salvatore A. Zaccagnino of Caldwell, whose term expired).

Appointed to the Brazos River Authority Board of Directors, for a term to expire February 1, 2025, Gary O. Boren of Lubbock, Texas (replacing Frank LeRoy Bell of Tuscola, whose term expired).

Appointed to the Brazos River Authority Board of Directors, for a term to expire February 1, 2025, Michael L. "Mike" Fernandez of Abilene, Texas (replacing Richard Lee Ball of Mineral Wells, whose term expired).

Appointed to the Brazos River Authority Board of Directors, for a term to expire February 1, 2025, James P. "Jim" Lattimore, Jr. of Graford, Texas (Mr. Lattimore is being reappointed).

Appointed to the Brazos River Authority Board of Directors, for a term to expire February 1, 2025, Wesley D. "Wes" Lloyd of Waco, Texas (Mr. Lloyd is being reappointed).

Appointed to the Brazos River Authority Board of Directors, for a term to expire February 1, 2025, David L. Savage of Katy, Texas (replacing George D. "Dave" Scott, III of Richmond, whose term expired).

Appointed to the Brazos River Authority Board of Directors, for a term to expire February 1, 2025, Darren G. Yancy, Sr. of Burleson, Texas (replacing Peter G. Bennis of Fort Worth, whose term expired).

### Appointments for October 30, 2019

Appointed to the Governing Board of the Texas School for the Deaf, for a term to expire January 31, 2021, Dina L. Moore of Round Rock, Texas (replacing Ryan D. Hutchison of Austin, who resigned).

### Appointments for November 4, 2019

Designated as chair of the Advisory Council on Cultural Affairs, for a term to expire at the pleasure of the Governor, Aaron S. Demerson of Austin (replacing Ruth Ruggero Hughes of Austin)

Appointed to the Advisory Council on Cultural Affairs, for a term to expire February 1, 2021, Mike Arismendez, Jr. of Shallowater, Texas (replacing Steven N. Nguyen, O.D. of Irving, whose term expired).

Appointed to the Advisory Council on Cultural Affairs, for a term to expire February 1, 2021, Ezzard G. Castillo of Floresville, Texas (replacing Mohammed "Ali" Zakaria of Sugar Land, whose term expired).

Appointed to the Advisory Council on Cultural Affairs, for a term to expire February 1, 2021, Ricardo J. Solis, Ph.D. of Laredo, Texas (replacing Lisa A. Hembry of Dallas, whose term expired).

Appointed to the Advisory Council on Cultural Affairs, for a term to expire February 1, 2023, Juan G. Ayala of New Braunfels, Texas (General Ayala is being reappointed).

Appointed to the Advisory Council on Cultural Affairs, for a term to expire February 1, 2023, Veronica "Ronnye" Vargas Stidvent of Austin, Texas (Ms. Stidvent is being reappointed).

Appointed to the Texas Privacy Protection Advisory Council, for a term to expire December 31, 2020, Bart W. Huffman of San Antonio, Texas.

Appointed to the Texas Privacy Protection Advisory Council, for a term to expire December 31, 2020, Justin L. Koplou of Dallas, Texas.

Appointed to the Texas Privacy Protection Advisory Council, for a term to expire December 31, 2020, Jeanette A. "Jeannie" White of Keller, Texas.

Appointed to the Texas Privacy Protection Advisory Council, for a term to expire December 31, 2020, Lemuel C. Williams, Jr. of Austin, Texas.

Appointed to the Texas Privacy Protection Advisory Council, for a term to expire December 31, 2020, Michael S. Wyatt of Austin, Texas.

Greg Abbott, Governor

TRD-201904136



Proclamation 41-3696

**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 28th day of October, 2019.

Greg Abbott, Governor

TRD-201904137



# THE ATTORNEY GENERAL

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

An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. For information about pending requests for opinions, telephone (512) 463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <https://www.texasattorneygeneral.gov/attorney-general-opinions>.)

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## Opinions

### Opinion No. KP-0277

The Honorable Jim Murphy

Chair, Committee on Pensions, Investments, and Financial Services

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of a credit services organization to assist a consumer with obtaining an extension of consumer credit in a form other than a deferred presentment transaction or a motor vehicle title loan (RQ-0300-KP)

### SUMMARY

Chapter 393 of the Finance Code does not restrict credit services organizations, other than when operating as credit access businesses, from

obtaining for a consumer or assisting in obtaining an extension of consumer credit in a form other than a deferred presentment transaction or motor vehicle title loan.

A determination about whether any specific extension of credit complies with the requirements of chapter 393 will involve a factual inquiry into the precise offering, and such questions are beyond the scope of an attorney general opinion.

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

TRD-201904109

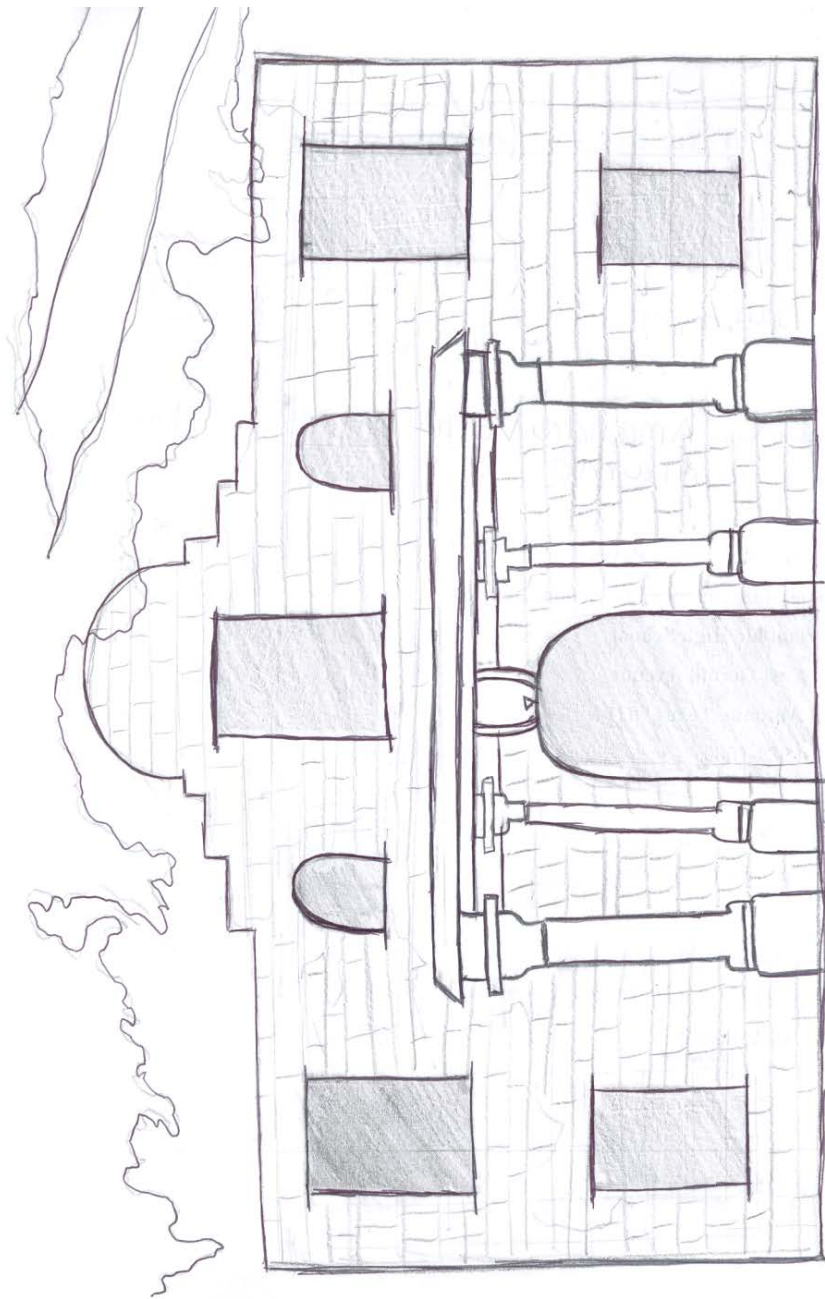
Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: November 5, 2019





# EMERGENCY RULES

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

## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 1. AGENCY ADMINISTRATION

##### SUBCHAPTER DD. TITLE IX TRAINING ADVISORY COMMITTEE

###### 19 TAC §§1.9531 - 1.9536

The Texas Higher Education Coordinating Board proposes new Chapter 1, Subchapter DD, §§1.9531 - 1.9536, concerning the Title IX Training Advisory Committee, on an emergency basis. The proposed new rules authorize the Board to create an advisory committee to make recommendations to the Coordinating Board regarding rules for adoption under §51.295 of the Texas Education Code; and develop recommended training for responsible and confidential employees designated under §51.290, for employees in the course and scope of their employment and for Title IX coordinators and deputy Title IX coordinators at postsecondary educational institutions. The newly added rules will affect students when the recommendations are adopted by the Board.

The rules are being adopted on an emergency basis pursuant to Section 2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than a 30 days' notice. The rules will be in effect for 120 days and may be renewed once for not longer than 60 days. During this time, the rules will be posted for a 30-day comment period and will be presented for Committee approval at the next quarterly meeting.

Dr. Stacey Silverman, Interim Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the new rules. There would be minimal costs to public institutions of higher education to support the expenses of committee members who may travel to the Coordinating Board in Austin for meetings.

Dr. Silverman has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of administering the new rules will be improvements in procedures at public institutions of higher education for addressing incidents of sexual misconduct. There would be minimal costs to public institutions of higher education to support travel and other expenses of committee members who may travel to the Coordinating Board in Austin for meetings. There is no impact on local employment. There is no impact on small businesses, micro businesses, and rural communities.

Comments on the proposed rules may be submitted to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas,

78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### Government Growth Impact Statement

- (1) The rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the proposal will create new rules;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will positively affect the state's economy by providing guidance and training for institutions of higher education as they implement policies to handle instances of sexual misconduct.

The new rules are proposed under the Texas Education Code, Sections 51.290 and 51.295, which provide the Coordinating Board with the authority to develop rules addressing sexual misconduct at institutions of higher education with the assistance of advisory committees and Texas Government Code, Section 2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The new rules affect the implementation of Texas Education Code, Chapter 51.

#### §1.9531. Authority and Purpose of the Title IX Training Advisory Committee.

(a) Statutory authority for this subchapter is provided in the Texas Education Code (TEC), Chapter 51, §51.294 and §51.260.

(b) The Title IX Training Advisory Committee is created to provide the Board with recommendation(s) regarding the training for responsible and confidential employees and student advocates designated under TEC Section 51.290, Title IX Coordinators and other institutional employees who may receive confidential disclosures from students under Section 51.290.

#### §1.9532. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Recommended Training--training developed by the advisory committee for responsible and confidential employees and student advocates designated under Section 51.290, for employees in the course and scope of their employment, and for Title IX coordinators and deputy Title IX coordinators at postsecondary educational institutions.

§1.9533. Committee Membership and Officers.

(a) The advisory committee consists of nine members appointed by the commissioner of higher education. Eight members must be chief executive officers of postsecondary educational institutions or representatives designated by those officers; and one member must be a representative of an advocacy organization for victims of sexual assault or family violence.

(b) Members of the committee shall select the presiding officer, who will be responsible for conducting meetings. A co-chair shall also be elected by the committee to serve in the presiding officer's stead as needed.

(c) Members shall serve staggered 3-year terms and may serve multiple terms.

§1.9534. Duration.

The committee shall be abolished no later than November 1, 2023, in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§1.9535. Meetings and Tasks of the Committee.

(a) The committee shall meet as required by workload and tasks to meet the deadline listed under subsection (c) of this section. Thereafter the committee shall meet on an annual basis, as required by TEC Section 51.294. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties. Minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the committee.

(b) Tasks assigned the committee include:

(1) make recommendations to the coordinating board regarding rules for adoption under Section 51.295; and

(2) develop recommended training for responsible and confidential employees and student advocates designated under TEC Section 51.290, for employees in the course and scope of their employment and for Title IX coordinators and deputy Title IX coordinators at postsecondary educational institutions.

(c) Not later than December 1, 2019, the advisory committee shall develop the recommended training under subsection (b) of this section.

(d) The advisory committee shall annually review and, if necessary, update the training recommended under subsection (b)(2) of this section.

§1.9536. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The committee shall report any recommendations to the Board on no less than an annual basis. The committee shall also report committee activities to the Board to allow the Board to properly evaluate the committee's work, usefulness, and the costs related to the committee's existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request

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

Filed with the Office of the Secretary of State on November 4, 2019.

TRD-201904091

William Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 4, 2019

Expiration date: March 2, 2020

For further information, please call: (512) 427-6206

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SUBCHAPTER EE. STUDY AND REPORT ON  
CORE CURRICULUM ADVISORY COMMITTEE

**19 TAC §§1.9541 - 1.9546**

The Texas Higher Education Coordinating Board proposes, on an emergency basis, new Chapter 1, Subchapter EE, 1.9541 - 1.9546, concerning the Study and Report on Core Curriculum Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to provide the Board with recommendation(s) regarding the effectiveness of the requirements regarding the transfer of course credit between institutions of higher education for courses in the core curriculum under Section 61.822 in supporting more efficient undergraduate transfer between institutions of higher education. The newly added rules will affect students when the recommendations are adopted by the Board.

The amendments are being adopted on an emergency basis pursuant to Section 2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than a 30 days' notice. The rules will be in effect for 120 days and may be renewed once for not longer than 60 days. During this time, the rules will be posted for a 30-day comment period and will be presented for Committee approval at the next quarterly meeting.

Dr. Stacey Silverman, Interim Assistant Commissioner for Academic Quality and Workforce, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Silverman has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be improvements in core curriculum course transfer at public institutions of higher education for students. There would be minimal costs to public institutions of higher education to support travel and other expenses of committee members who may travel to the Coordinating Board in Austin for meetings. There is no impact on local employment. There is no impact on small businesses, micro businesses, and rural communities.

Comments on the proposed amendments may be submitted to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

**Government Growth Impact Statement**

(1) the rules *will not* create or eliminate a government program;



- (2) implementation of the rules *will not* require the creation or elimination of employee positions;
- (3) implementation of the rules *will not* require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules *will not* require an increase or decrease in fees paid to the agency;
- (5) the rules *will not* create a new rule;
- (6) the rules *will not* limit an existing rule;
- (7) the rules *will not* change the number of individuals subject to the rule; and
- (8) the rules *will* positively affect the state's economy.

The new section is proposed under the Texas Education Code, Section 61.8221, which provides the Coordinating Board with the authority to establish an advisory committee to assist the Board in completing the board's duties under this section and provide the Board with subject matter expertise and analysis; and Texas Government Code, Section 2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The amendments affect Texas Education Code, Sections §28.009 and §61.059.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§1.9541. Authority and Purpose of the Study and Report on Core Curriculum Advisory Committee.

(a) Statutory authority for this subchapter is provided in the Texas Education Code (TEC), Chapter 61, §61.8221.

(b) The Study and Report on Core Curriculum Advisory Committee is created to provide the Board with recommendation(s) regarding the effectiveness of the requirements regarding the transfer of course credit between institutions of higher education for courses in the core curriculum under Section 61.822 in supporting more efficient undergraduate transfer between institutions of higher education.

§1.9542. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

- (1) Board--The Texas Higher Education Coordinating Board.
- (2) Core Curriculum or Texas Core Curriculum--the curriculum in the liberal arts, humanities, sciences, and political, social, and cultural history that all undergraduates of an institution of higher education are required to complete before receiving an academic undergraduate degree. Core curriculum provisions apply to institutions of higher education that offer academic undergraduate degree programs.

§1.9543. Committee Membership and Officers.

(a) The advisory committee consists of up to 24 of the following members appointed by the board in equal numbers:

- (1) representatives of public junior colleges designated by the applicable college to represent the college on the advisory committee; and
- (2) representatives of general academic teaching institutions designated by the applicable institution to represent the institution on the advisory committee.

(b) A majority of members appointed to the advisory committee under subsection (a)(2) of this section must be representatives of a general academic teaching institution at which at least 25 percent of students enrolled at the institution for the 2018 fall semester were classified as transfer students.

(c) In appointing members to the advisory committee under subsection (b) of this section, the board shall, to the greatest extent practicable, ensure that the membership of the advisory committee is balanced with respect to:

(1) institutional representation, including:

- (A) the regions of the state;
- (B) the mission type of the general academic teaching institution or public junior college;
- (C) university system affiliation, as applicable;
- (D) student enrollment; and
- (E) institutional groupings under the board's higher education accountability system;

(2) representation of faculty and administrators at general academic teaching institutions or public junior colleges;

(3) representation of academic disciplines; and

(4) any other factors the board determines relevant.

(d) Members of the committee shall select the presiding officer, who will be responsible for conducting meetings. A co-chair shall also be elected by the committee to serve in the presiding officer's stead as needed.

(e) Members shall serve single terms lasting until the abolishment of the committee no later than September 1, 2021.

§1.9544. Duration.

The committee shall be abolished no later than September 1, 2021, in accordance with Texas Education Code, Chapter 61, §61.8221.

§1.9545. Meetings and Tasks of the Committee.

(a) The committee shall meet as required by workload and tasks to meet the deadline listed under subsection (d) of this section. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties. Minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the committee.

(b) The advisory committee shall study and make recommendations to the board regarding the effectiveness of the requirements regarding the transfer of course credit between institutions of higher education for courses in the core curriculum under Section 61.822 in supporting more efficient undergraduate transfer between institutions of higher education. The study and recommendations must include an analysis of:

(1) the efficacy of dividing the recommended core curriculum for each meta major into a general academic core curriculum and an academic discipline core curriculum and, if determined to be efficacious, the recommended number of semester credit hours for each component of the recommended core curriculum for each meta major;

(2) methods to ensure that courses completed in the general academic core curriculum and academic discipline core curriculum transfer between institutions of higher education for course credit applied toward a student's major at the receiving institution; and

(3) the potential inclusion of courses in the field of study curricula adopted by the board under Section 61.823 in the recommended core curriculum adopted by the board under Section 61.822.

(c) Each quarter ending before November 1, 2020, the advisory committee shall submit to the chairs of the standing legislative committees with primary jurisdiction over higher education and to the Board a report on the advisory committee's progress on the study and recommendations required under subsection (b) of this section.

(d) Not later than July 1, 2020, the advisory committee shall submit to the Board a report that includes the results of the study conducted under subsection (b) of this section and any recommendations for legislative or other action.

§1.9546. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The committee shall report any recommendations to the Board on no less than an annual basis. The committee shall also report committee activities to the Board to allow the Board to properly evaluate the committee's work, usefulness, and the costs related to the committee's existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on November 4, 2019.

TRD-201904093

William Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 4, 2019

Expiration date: March 2, 2020

For further information, please call: (512) 427-6206



## CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

### SUBCHAPTER BB. NURSING SHORTAGE REDUCTION PROGRAM RIDER 28 STUDY WORK GROUP

#### 19 TAC §§22.751 - 22.757

The Texas Higher Education Coordinating Board proposes new rules Chapter 22, Subchapter BB, §§22.751 through 22.757 of Board rules concerning the establishment of the Nursing Shortage Reduction Program Rider 28 Study Work Group.

The proposed rules establish the Nursing Shortage Reduction Program (NSRP) Rider 28 Study Work Group. The work group will be charged with studying the effectiveness of the NSRP in addressing the shortage of professional nurses in the state, studying the structure and efficiency of the program, and studying other funding strategies to address the nursing shortage. The work group members will include the following: an equitable representation of institutions eligible to participate in the program, the Texas Nursing Association, the Texas Board of Nursing, The Department of State Health Services Center for Nursing Workforce Studies, and other stakeholders. The work

group will include two ad-hoc members from the Texas Higher Education Coordinating Board (THECB) staff. Each higher education institution in Texas that is eligible to participate in the NSRP will have an opportunity to nominate an individual to the work group. Tasks assigned to the work group will include advising the Board of the THECB, providing THECB staff with feedback about processes and procedures, and addressing any other issues related to the NSRP Rider 28 Study as determined by the Board of the THECB.

The rules were adopted by the Board on an emergency basis at the October 2019 meeting pursuant to Section 2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than a 30 days' notice. The rules are now being submitted to the Committee for final approval and adoption.

There will be no fiscal implications for state or local governments as a result of adding the new sections. There would be no impact on small businesses or rural communities as described in Texas Government Code, Chapter 2006.002; therefore, an Economic Impact analysis is not required.

The public benefits anticipated as a result of administering the new sections will be to enable a work group, as required by the general appropriations act, to study the effectiveness of the NSRP in addressing the shortage of professional nurses in the state. There would be no impact on public institutions of higher education and local employment.

#### Government Growth Impact Statement

- (1) the rules *will not* create or eliminate a government program;
- (2) implementation of the rules *will not* require the creation or elimination of employee positions;
- (3) implementation of the rules *will not* require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules *will not* require an increase or decrease in fees paid to the agency;
- (5) the rules *will not* create a new rule;
- (6) the rules *will not* limit an existing rule;
- (7) the rules *will not* change the number of individuals subject to the rule; and
- (8) the rules *will* positively affect the state's economy.

Comments on the proposed amendments may be submitted to Julie Eklund, Assistant Commissioner for Strategic Planning and Funding, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at Julie.Eklund@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed to create a work group to study the effectiveness of the Nursing Shortage Reduction Program in addressing the shortage of professional nurses in the state, as required by General Appropriations Act, HB 1, Article III-56, Section 28, Subsection g, 86th Texas Legislature.

§22.751. Authority and Specific Purpose of the Nursing Shortage Reduction Program Rider 28 Study Work Group.

(a) Authority. Authority for this subchapter is provided in the General Appropriations Act, HB 1, Article III-56, Section 28, Subsection g, 86th Texas Legislature.

(b) Purpose. The Nursing Shortage Reduction Program Rider 28 Study Work Group is created to provide the Commissioner and the Board with guidance regarding the Nursing Shortage Reduction Program.

§22.752. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education.

(3) Nursing Shortage Reduction Program--The program authorized in the General Appropriations Act, HB 1, Article III-56, Section 28, 86th Texas Legislature.

§22.753. Work Group Membership.

(a) The work group members will include the following: an equitable representation of institutions eligible to participate in the Nursing Shortage Reduction Program, the Texas Nursing Association, the Texas Board of Nursing, The Department of State Health Services Center for Nursing Workforce Studies, and industry.

(b) The work group will include two ad-hoc members from the Texas Higher Education Coordinating Board (THECB) staff.

(c) Each higher education institution that is eligible to participate in the NSRP will have an opportunity to nominate an individual to the work group.

(d) Board staff will recommend for Board appointment individuals who are nominated.

(e) The number of work group members shall not exceed twenty-four (24).

(f) Members shall serve until the work group is abolished.

§22.754. Duration.

The work group shall be abolished no later than November 2, 2020, in accordance with Texas Government Code, Chapter 2110.

§22.755. Meetings.

The Work Group shall meet as necessary. Meetings shall be open to the public and broadcast via the web, unless prevented by technical

difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Work Group.

§22.756. Tasks Assigned to the Work Group.

Tasks assigned to the Work Group include:

(1) study the effectiveness of the Professional Nursing Shortage Reduction Program in addressing the shortage of professional nurses in the state;

(2) study the structure and efficiency of the program;

(3) study other funding strategies to address the nursing shortage; and

(4) any other issues related to the Nursing Shortage Reduction Program as determined by the Board.

§22.757. Report to the Board; Evaluation of Work Group Costs and Effectiveness.

The Work Group shall report recommendations to the Board. The Work Group shall also report Work Group activities to the Board to allow the Board to properly evaluate the work of the Work Group, usefulness, and the costs related to the Work Group existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on November 4, 2019.

TRD-201904094

William Franz

General Counsel

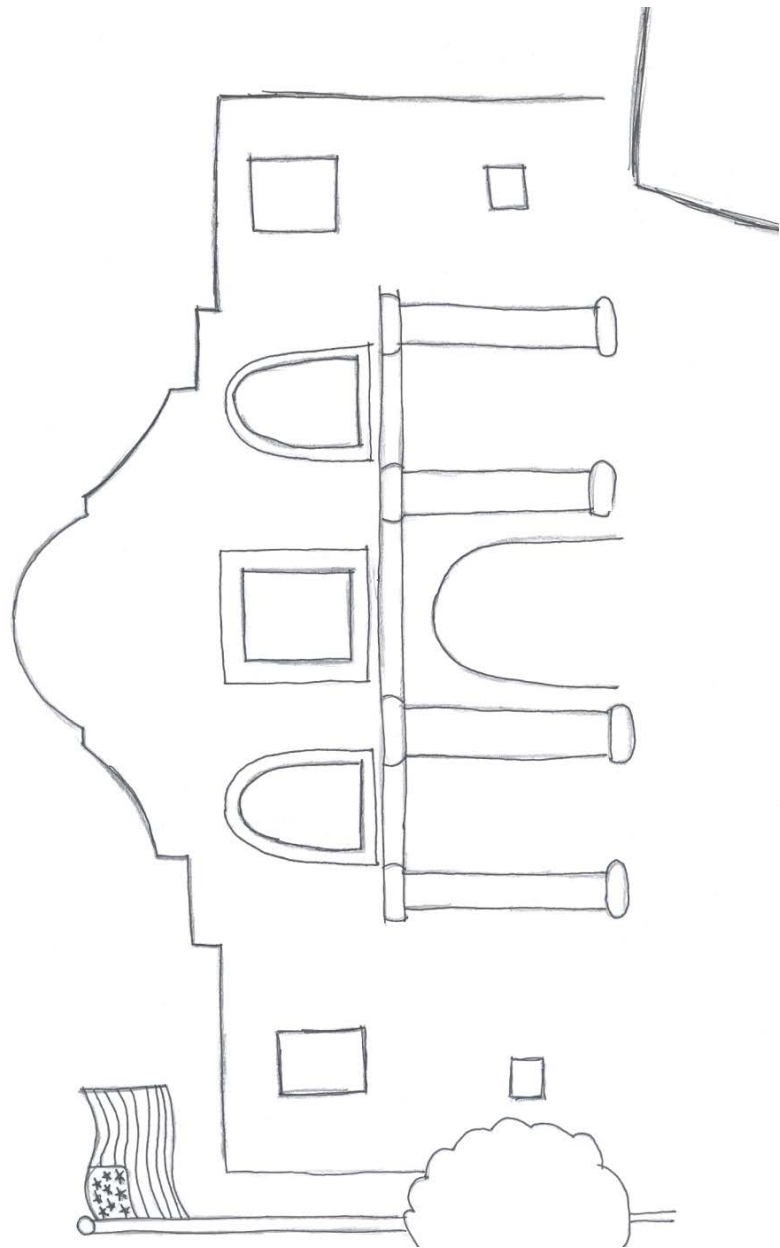
Texas Higher Education Coordinating Board

Effective date: November 4, 2019

Expiration date: March 2, 2020

For further information, please call: (512) 427-6533





# PROPOSED RULES

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

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

## TITLE 7. BANKING AND SECURITIES

### PART 6. CREDIT UNION DEPARTMENT

#### CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

#### SUBCHAPTER K. CREDIT UNION DEVELOPMENT DISTRICTS

##### 7 TAC §91.2000

The Credit Union Commission (the Commission) proposes an amendment to §91.2000, relating to the purpose and scope of implementation of credit union development districts under Texas Finance Code, Chapter 279. The Commission proposes this amendment as a result of its regular rule review under Texas Government Code §2001.039.

The proposed amendment to §91.2000 corrects a reference to the Texas Tax Code relevant to the Tax Increment Financing Act or the Property Redevelopment and Tax Abatement Act.

**FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS.** John J. Kolhoff, Commissioner, has determined that for the first five-year period the proposed amendment is in effect, there are no reasonably foreseeable implications relating to cost or revenues of state or local governments, under Government Code §2001.024(a)(4), as a result of enforcing or administering the amended rule, as proposed.

**PUBLIC BENEFIT/COST NOTE.** Mr. Kolhoff has determined, under Government Code §2001.024(a)(5), that for the first five-year period the amended rule is in effect, the public benefit of rule clarity will provide improved guidance to the industry. He further has determined there will be no probable economic cost to the credit union system or to persons required to comply with the rule.

**IMPACT ON LOCAL EMPLOYMENT OR ECONOMY.** There is no reasonably forecasted effect on local economy for the first five years that the proposed amendment is in effect. Therefore, no economic impact statement, local employment impact statement, nor regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

**COST TO REGULATED PERSONS (COST-IN/COST-OUT).** This proposal is not subject to Texas Government Code §2001.0045, concerning increasing costs to regulated persons, because this agency is a Self-Directed Semi-Independent (SDSI) agency under Finance Code Chapter 16 and is exempt from that cost provision.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES.** Mr. Kolhoff has also determined that for each year of the first five years the proposed amendment is in effect, there will be no reasonably forecasted adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing these amendments, and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002 is required.

**GOVERNMENT GROWTH IMPACT STATEMENT.** In compliance with Texas Government Code §2001.0221, the Board has prepared a government growth impact statement.

Unless indicated below, for each year of the first five years that the rule will be in effect, the rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- lead to an increase or decrease in the fees paid to the department;
- create new regulations;
- expand, limit or repeal existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect this state's economy.

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

**ENVIRONMENTAL RULE ANALYSIS.** The proposed rule is not a "major environmental rule" as defined by Government Code §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

**REQUEST FOR PUBLIC COMMENT.** Written comments on the proposed amendments may be submitted in writing to John J. Kolhoff, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUD-Mail@ cud.texas.gov. To be considered, a written comment must

be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register*.

**STATUTORY AUTHORITY.** The amendments are proposed pursuant to Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D.

**STATUTORY SECTIONS AFFECTED.** The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 15 and Title 3, Subtitle Z specifically §279.101 - 105.

§91.2000. *Purpose and Scope.*

(a) This subchapter implements Tex. Fin. Code §279.001 et seq. regarding the establishment of credit union development districts.

(b) This subchapter does not affect or circumvent requirements under the Tax Increment Financing Act or the Property Redevelopment and Tax Abatement Act (Tex. Tax [Gov.] Code, Chapters 311 and 312, respectively), including requirements for designation of an area as a municipal or county reinvestment zone or for authorization to enter into a tax abatement agreement.

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

Filed with the Office of the Secretary of State on November 4, 2019.

TRD-201904090

John J. Kolhoff

Commissioner

Credit Union Department

Earliest possible date of adoption: December 15, 2019

For further information, please call: (512) 837-9236



## CHAPTER 95. SHARE AND DEPOSITOR INSURANCE PROTECTION SUBCHAPTER B. LIQUIDATING AGENTS

### 7 TAC §95.200

The Credit Union Commission (the Commission) proposes amendments to §95.200, relating to notice by the Department to a deposit insurer when taking possession of the assets of a credit union, the appointment of a deposit insurer as a liquidating agent, and the subrogation of the members rights to the deposit insurer in the event coverage is provided by a deposit insurance provider. The Commission proposes the amendments as a result of its regular rule review under Texas Government Code §2001.039.

The proposed amendments to §95.200 would allow the Department to name a liquidating agent other than a deposit insurer as authorized under the Texas Finance Code, ensure consistent language relative to both federal and private deposit insurance providers, and reference the guidelines for liquidation action found within the Texas Finance Code §126.201 instead of reiterating the specific guidelines within the rule.

**FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS.** John J. Kolhoff, Commissioner, has determined that for the first five-year period the proposed amendments are in effect, there are no reasonably foreseeable implications relating to cost or rev-

enues of state or local governments, under Government Code §2001.024(a)(4), as a result of enforcing or administering these amendments, as proposed.

**PUBLIC BENEFIT/COST NOTE.** Mr. Kolhoff has determined, under Government Code §2001.024(a)(5) that for the first five-year period the amended rule is in effect, the public benefit of rule clarity will provide improved guidance to the industry. He further has determined there will be no probable economic cost to the credit union system or to persons required to comply with the rule.

**IMPACT ON LOCAL EMPLOYMENT OR ECONOMY.** There is no reasonably forecasted effect on local economy for the first five years that the proposed amendments are in effect. Therefore, no economic impact statement, local employment impact statement, nor regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

**COST TO REGULATED PERSONS (COST-IN/COST-OUT).** This rule proposal is not subject to Texas Government Code §2001.0045, concerning increasing costs to regulated persons, because this agency is a Self-Directed Semi-Independent (SDSI) agency under Finance Code Chapter 16 and is exempt from that cost provision.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES.** Mr. Kolhoff has also determined that for each year of the first five years the proposed rule is in effect, there will be no reasonably forecasted adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing these amendments, and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002 is required.

**GOVERNMENT GROWTH IMPACT STATEMENT.** In compliance with Texas Government Code §2001.0221, the Board has prepared a government growth impact statement.

Unless indicated below, for each year of the first five years that the rule will be in effect, the rule will not:

create or eliminate a government program;

require the creation of new employee positions or the elimination of existing employee positions;

require an increase or decrease in future legislative appropriations to the agency;

lead to an increase or decrease in the fees paid to the department;

create new regulations;

expand, limit or repeal existing regulation

increase or decrease the number of individuals subject to the rule's applicability;

positively or adversely affect this state's economy.

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

**ENVIRONMENTAL RULE ANALYSIS.** The proposed rule is not a "major environmental rule" as defined by Government Code,

§2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be submitted in writing to John J. Kolhoff, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUD-Mail@tud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D.

STATUTORY SECTIONS AFFECTED. The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Chapter 15 and Title 3, Subtitle D specifically §126.201.

§95.200. *Notice of Taking Possession; Appointment of Liquidating Agent; Subordination of Rights.*

(a) The department shall give prompt notice to the NCUA or other [the] applicable insuring organization whenever the commissioner through conservatorship takes possession of the property and assets of a respective insured [federally-insured] or participating credit union. The Department shall give further prompt notice of the Commissioner's intent [whenever the commissioner determines] to liquidate the property and assets of such insured [federally- insured] or participating credit union.

(b) If the commissioner finds [that the closing of a credit union and] the liquidation of the credit union's assets is prudent under the guidelines established by Texas Finance Code §126.201 [are in the public interest and the best interest of the credit union members, depositors, and creditors, the NCUA or, alternatively], the insuring organization may [shall] be appointed liquidating agent for [the purpose of liquidation or the winding up of the affairs of] the credit union.

(c) When any member's share or deposit account is paid, the NCUA or, alternatively, the insuring organization shall be subrogated to all rights of the member, up to the amount paid by the NCUA or the insuring organization to such member.

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

Filed with the Office of the Secretary of State on November 4, 2019.

TRD-201904092

John J. Kolhoff

Commissioner

Credit Union Department

Earliest possible date of adoption: December 15, 2019

For further information, please call: (512) 837-9236



## PART 7. STATE SECURITIES BOARD

### CHAPTER 102. COMPLAINT PROCESS

#### 7 TAC §§102.1 - 102.6

The Texas State Securities Board proposes a new Chapter 102, §§102.1-102.6, concerning the Agency's Complaint Process, pursuant to House Bill (HB) 1535 amendments to §2-6 of the Texas Securities Act, during the 86th legislative session, which became effective September 1, 2019. Specifically, §2-6 of the Act was amended to require the Agency to maintain a system to promptly and efficiently act on complaints; to maintain information about the parties to the complaint, subject matter of the complaints, a summary of the results of the review or investigation of the complaint, and its disposition; to make information available describing the Agency's complaint procedures; and to periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize a law enforcement investigation.

The new provisions would also implement a recommendation made by the Texas Sunset Advisory Commission to lay out and describe all phases of the Agency's complaint process, including the steps that precede contested cases at the State Office of Administrative Hearings, so that they are available to the public. As recommended by the Sunset Commission, the proposed new rules would summarize the Agency's existing procedures for handling complaints as part of the Agency's rules and provide transparency to members of the public and to those who are under investigation.

Travis J. Iles, Securities Commissioner; Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; and Joe Rotunda, Director, Enforcement Division, have determined that for the first five-year period the proposed rules are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

Mr. Iles, Mr. Edgar, Mr. Green, and Mr. Rotunda have also determined that for each year of the first five years the proposed rules are in effect, the public benefit expected as a result of adoption of the proposed rules will be that complainants and the subjects of the complaints will be apprised of the process the Agency follows for complaint receipt, investigation, and resolution and to ensure that the Agency's process for handling complaints is both fair and timely.

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

Mr. Iles, Mr. Edgar, Mr. Green, and Mr. Rotunda have determined that for the first five-year period the proposed rules are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed new rules do not limit, expand, or repeal an existing regulation. The proposed rules would create new rules to lay out and describe all phases of the Agency's complaint process.

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

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

The proposed rules affect Texas Civil Statutes, Article 581-1, et seq.

#### §102.1. Policy.

(a) It is the Board's policy for the Agency to:

(1) review, prioritize and investigate all complaints received in a timely manner;

(2) ensure conduct found to be in violation of the Act or a Board rule is brought to a fair, just, and equitable resolution; and

(3) protect confidential, investigatory, and inspection information while maximizing Agency transparency.

(b) The Commissioner shall maintain a system to promptly and efficiently act on complaints received by the Agency. The system shall:

(1) periodically, but at least every six months, notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize a law enforcement investigation;

(2) ensure all periodic notifications of complaint status to complaint parties are made in conformance with the confidentiality provisions of the Act and Board rules; and

(3) make information available on the Agency's website ([www.ssb.texas.gov](http://www.ssb.texas.gov)) that describes the Agency's complaint process, including the procedures for complaint investigation and resolution.

(c) Complaint information to be maintained shall include:

(1) information about parties to the complaint;

(2) the subject matter of the complaint;

(3) a summary of the results of the review or investigation of the complaint; and

(4) the disposition of the complaint.

(d) The Commissioner may provide information on the Agency's website ([www.ssb.texas.gov](http://www.ssb.texas.gov)) about:

(1) administrative actions taken by the Agency; and

(2) civil and criminal actions in which the Agency was involved whether through investigation, participation, or provision of assistance.

#### §102.2. Definitions.

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

(1) Complaint--a written communication submitted to the Agency by a person that alleges misconduct by an individual or entity believed to be engaged in an activity that is regulated by the Agency.

(2) Complainant--person filing a complaint with the Securities Commissioner.

(3) Jurisdictional authority--conduct regulated by the Agency as provided for in the Act and Board rules.

#### §102.3. Filing Complaints.

(a) A complaint against an individual or entity subject to the Agency's jurisdictional authority may be filed by a member of the public or by an individual or entity regulated by the Agency.

(b) A complaint form promulgated by the Agency is available on the Agency website ([www.ssb.texas.gov](http://www.ssb.texas.gov)). An electronic or print version of the complaint form may also be obtained by contacting any office of the Agency and requesting one.

(c) A complaint must be made in writing to the Securities Commissioner.

(1) A complaint using the Agency's complaint form must be submitted in person, by mail or facsimile to an Agency office, or electronically to the email address for complaints identified on the Agency's website ([www.ssb.texas.gov](http://www.ssb.texas.gov)).

(2) A complaint made by letter or other written format must be submitted electronically through the email address for complaints identified on the Agency's website ([www.ssb.texas.gov](http://www.ssb.texas.gov)).

(d) The complaint shall include the following information:

(1) the name and contact information of the complainant, unless the complainant wishes to remain anonymous;

(2) identifies the individual or entity against whom the complaint is filed; and

(3) sufficient facts to enable the Agency to determine the nature of the complaint and the specific facts and circumstances giving rise to the filing of the complaint.

#### §102.4. Processing of Complaints.

(a) Agency staff shall promptly review complaints to determine if the Agency has jurisdictional authority to investigate the complaint. Agency staff may contact the complainant or other persons for additional information.

(b) When the complaint relates to an individual or entity registered with the Securities Commissioner, the Inspections and Compliance Division, with assistance from the Enforcement Division as appropriate, will review the allegations in the complaint.

(c) When the complaint relates to an individual or entity that is not registered with the Securities Commissioner, the Enforcement Division, with assistance from the Inspections and Compliance Division as appropriate, will review the allegations in the complaint.

(d) Upon determination that the complaint contains the information required by §102.3(d) of this chapter (relating to Filing Complaints), the complaint will be entered in the complaint tracking system of the Agency division leading the review and investigation.

(e) The complainant will be notified of the Agency's receipt of the complaint and be given the name and contact information for an Agency staff member assigned the complaint.

#### §102.5. Prioritization of Complaint Investigations.

The following factors will be considered by Agency staff in prioritizing complaints for further investigation:



- (1) the ongoing nature of the underlying alleged conduct;
- (2) the amount and degree of financial harm presented by the alleged conduct;
- (3) extent to which the alleged conduct relates to senior or vulnerable victims;
- (4) the risk associated with the type of investment product underlying the alleged conduct;
- (5) the seriousness, nature, circumstances, extent and persistence of the alleged conduct;
- (6) the history of previous misconduct by the individual or entity alleged to be responsible for the underlying alleged conduct;
- (7) the availability of Agency resources to pursue investigation of the alleged conduct;
- (8) the extent another governmental agency or regulatory body is better positioned to investigate the alleged conduct; and
- (9) such other matters as the facts and circumstances may require.

*§102.6. Complaint Resolution.*

(a) During the investigation of a complaint, Agency staff will make a determination on what further action by the Agency is appropriate under the particular facts and circumstances.

(b) The Division reviewing the complaint shall maintain a record of the summary of the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and the disposition of the complaint.

(c) Agency staff shall consider, on a case-by-case basis, aggravating and mitigating factors, such as the extent and pervasiveness of financial harm, prior violative conduct, cooperation, and past Agency sanctions redressing similar conduct, when determining an appropriate resolution to a complaint.

(d) Formal Agency action taken after investigation of a complaint could include an administrative sanction or penalty, civil action, or criminal prosecution. Formal administrative sanctions available to the Agency include an order to cease and desist; denial of a registration application; suspension, revocation, or probation of a registration; administrative fine; and refund to a client or purchaser of amounts paid for a service or transaction regulated by the Agency.

(e) After review and investigation of the complaint, the resolution could be one or more of the following:

- (1) no further action, closed;
- (2) informal, non-public action to bring the individual or entity into compliance with applicable securities laws and regulations;
- (3) informal, non-public, action to bring the individual or entity into compliance with the Act and Board rules through the imposition of an undertaking and/or placing restrictions on future securities-related activities;
- (4) formal, public action by agreement or consent order, which may include administrative sanctions;
- (5) formal, public action to initiate an administrative contested case at the State Office of Administrative Hearings (SOAH) which, after notice and opportunity for hearing, could include an order imposing administrative sanctions;
- (6) formal, ex parte public action (emergency cease and desist order) to prevent immediate and irreparable public harm;

(7) referral to the Attorney General for a civil action seeking injunction, restitution, and other civil penalties, and/or the imposition of a receivership; or

(8) further development through a law enforcement investigation prior to referral to an appropriate prosecutorial office for criminal prosecution.

(f) The Agency's most current penalty matrix, describing the range of possible sanctions for misconduct by registered persons and the administrative penalties and sanctions that can be levied against a registrant, is posted on the Agency's website (www.ssb.texas.gov).

(g) For contested matters before SOAH, Agency staff shall notify any respondent known by Agency staff to be self-represented of any guide for self-represented litigants disseminated by SOAH.

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

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Travis J. Iles  
Securities Commissioner  
State Securities Board

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



## CHAPTER 115. SECURITIES DEALERS AND AGENTS

### 7 TAC §115.23

The Texas State Securities Board proposes new §115.23, concerning Notice of Cybersecurity Incident. The new rule is proposed to require a registered dealer ("registrant") to notify the Securities Commissioner promptly if it experiences a material cybersecurity incident in its information system.

Specifically, proposed subsection (a) provides definitions. Subsection (b) would require the registrant to notify the Securities Commissioner when a notice is otherwise provided to a state or federal agency, law enforcement, or self-regulatory body, or a data breach notification is provided to customers of the registrant. Subsection (c) would allow the registrant to comply with the notification requirement by merely adding the Securities Commissioner to the list of persons and entities receiving notice of the cybersecurity incident under other applicable state or federal law. If available, the number of customers located in Texas affected by the triggering event should be provided.

The Agency has resources available to registrants on its website to assist them in cybersecurity issues, including checklists, guidance, and information about how to prevent and/or respond to cybersecurity incidents.

Clint Edgar, Deputy Securities Commissioner and Tommy Green, Director Inspections and Compliance Division, have determined that for the first five-year period the proposed rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Edgar and Mr. Green have also determined that for each year of the first five years the proposed rule is in effect, the public benefit expected as a result of adoption of the proposed rule will be enhanced regulatory oversight over registrants, particularly regarding the ability to protect sensitive customer information. Regulatory oversight of a registrant's remediation and compliance efforts in response to a material cybersecurity incident can better inform the Agency's inspection process, resulting in stronger and more secure protection of sensitive customer information and other confidential information.

There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. A registrant would merely add the Securities Commissioner to the list of persons and entities receiving notice of the cybersecurity incident under other applicable state or federal law. There is no anticipated impact on local employment.

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

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

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

The proposed rule affects: none applicable.

§115.23. Notice of Cybersecurity Incident.

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

(1) Cybersecurity incident--

(A) the unauthorized acquisition of computerized or electronic data that compromises the security, confidentiality, or integrity of sensitive personal information being maintained;

(B) an occurrence that otherwise jeopardizes the security of the information system or the information the system processes, stores or transmits; or

(C) violates the security policies, security procedures or acceptable use policies of the information system owner to the extent such occurrence results from unauthorized or malicious activity.

(2) Information system--a set of applications, services, information technology assets or other information-handling components organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, which is maintained by the dealer, an affiliate, or a third party service provider at the direction of the dealer.

(3) "Triggering event" means a cybersecurity incident regarding the information system maintained by or on behalf of the dealer, that will require:

(A) submission of a notice to a state or federal agency, law enforcement, or to a self-regulatory body; or

(B) sending a data breach notification to customers of the dealer under applicable state or federal law, including Business and Commerce Code, §521.053, or a similar law of another state.

(b) Notice to the Securities Commissioner. When a triggering event occurs that does or may affect customers or clients of the dealer located in Texas, the registered dealer must provide notice to the Securities Commissioner at the time the notice or notification identified in paragraph (3)(A) or (3)(B) of subsection (a) of this section occurs.

(c) Content of notice. The notice required by subsection (b) of this section is met by the registered dealer forwarding a copy of the notice or notification identified in paragraph (3)(A) or (3)(B) of subsection (a) of this section or other document containing substantially the same information. Additionally, if such information is available to the registered dealer at the time the notice is provided, the dealer should identify the number of customers located in Texas affected by the triggering event.

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

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Travis J. Iles

Securities Commissioner

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



## CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

### 7 TAC §116.23

The Texas State Securities Board proposes new §116.23, concerning Notice of Cybersecurity Incident. The new rule is proposed to require a registered investment adviser ("registrant") to notify the Securities Commissioner promptly if it experiences a material cybersecurity incident in its information system.

Specifically, proposed subsection (a) provides definitions. Subsection (b) would require the registrant to notify the Securities Commissioner when a notice is otherwise provided to a state or federal agency, law enforcement, or self-regulatory body, or a data breach notification is provided to customers of the registrant. Subsection (c) would allow the registrant to comply with the notification requirement by merely adding the Securities Commissioner to the list of persons and entities receiving notice of the cybersecurity incident under other applicable state or federal law. If available, the number of customers located in Texas affected by the triggering event should be provided.

The Agency has resources available to registrants on its website to assist them in cybersecurity issues, including checklists, guidance, and information about how to prevent and/or respond to cybersecurity incidents.

Clint Edgar, Deputy Securities Commissioner and Tommy Green, Director Inspections and Compliance Division, have determined that for the first five-year period the proposed rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Edgar and Mr. Green have also determined that for each year of the first five years the proposed rule is in effect, the public benefit expected as a result of adoption of the proposed rule will be enhanced regulatory oversight over registrants, particularly regarding the ability to protect sensitive customer information. Regulatory oversight of a registrant's remediation and compliance efforts in response to a material cybersecurity incident can better inform the Agency's inspection process, resulting in stronger and more secure protection of sensitive customer information and other confidential information.

There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. A registrant would merely add the Securities Commissioner to the list of persons and entities receiving notice of the cybersecurity incident under other applicable state or federal law. There is no anticipated impact on local employment.

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

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to

(512) 305-8336. Comments may also be submitted electronically to [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov). In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

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

The proposed rule affects: none applicable.

§116.23. Notice of Cybersecurity Incident.

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

(1) Cybersecurity incident--

(A) the unauthorized acquisition of computerized or electronic data that compromises the security, confidentiality, or integrity of sensitive personal information being maintained;

(B) an occurrence that otherwise jeopardizes the security of the information system or the information the system processes, stores or transmits; or

(C) violates the security policies, security procedures or acceptable use policies of the information system owner to the extent such occurrence results from unauthorized or malicious activity.

(2) Information system--a set of applications, services, information technology assets or other information-handling components organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, which is maintained by the investment adviser, an affiliate, or a third party service provider at the direction of the investment adviser.

(3) "Triggering event" means a cybersecurity incident regarding the information system maintained by or on behalf of the investment adviser, that will require:

(A) submission of a notice to a state or federal agency, law enforcement, or to a self-regulatory body; or

(B) sending a data breach notification to customers of the investment adviser under applicable state or federal law, including Business and Commerce Code, §521.053, or a similar law of another state.

(b) Notice to the Securities Commissioner. When a triggering event occurs that does or may affect customers or clients of the investment adviser located in Texas, the registered investment adviser must provide notice to the Securities Commissioner at the time the notice or notification identified in paragraph (3)(A) or (3)(B) of subsection (a) of this section occurs.

(c) Content of notice. The notice required by subsection (b) of this section is met by the registered investment adviser forwarding a copy of the notice or notification identified in paragraph (3)(A) or (3)(B) of subsection (a) of this section or other document containing substantially the same information. Additionally, if such information is available to the registered investment adviser at the time the notice is provided, the investment adviser should identify the number of customers located in Texas affected by the triggering event.

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

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Travis J. Iles

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## CHAPTER 127. MISCELLANEOUS

### 7 TAC §127.2

The Texas State Securities Board proposes new §127.2, concerning Alternative Dispute Resolution, pursuant to House Bill (HB) 1535 addition of §2-8 of the Texas Securities Act, during the 86th legislative session, which became effective September 1, 2019. Section 2-8 of the Act requires the Board to establish a policy on the use of alternative dispute resolution procedures under Chapter 2009, Texas Government Code, to assist in the resolution of internal and external disputes under the Board's jurisdiction. The Board's procedures relating to alternative dispute resolution (ADR) must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings (SOAH) for the use of ADR by state agencies.

The new rule would establish the Agency's policies and procedures for the use of ADR to resolve disputes as required by §2-8 of the Texas Securities Act. It would make ADR an option for contract claims involving the Agency as well as contested case matters that are pending before SOAH.

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

Mr. Iles, Mr. Edgar, Mr. Green, Mr. Lauterjung, and Mr. Rotunda have also determined that for each year of the first five years the proposed rule is in effect, the public benefit expected as a result of adoption of the proposed rule will be to provide a clear and consistent process for resolving disputes through ADR.

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

Mr. Iles, Mr. Edgar, Mr. Green, Mr. Lauterjung, and Mr. Rotunda have determined that for the first five-year period the proposed rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease

in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed new rule does not limit, expand, or repeal an existing regulation. The proposed rule would create a new rule to comply with an amendment to the Texas Securities Act.

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

The new rule is proposed under Texas Civil Statutes, Articles 581-2-8 and 581-28-1; Chapter 2009 of the Government Code; and Chapter 154 of the Civil Practice and Remedies Code. Section 2-8 authorizes the Board to develop a policy to encourage the use of appropriate ADR procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the Board's jurisdiction. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Chapter 2009 of the Government Code authorizes governmental bodies to develop and use ADR procedures which are consistent with Chapter 154 of the Civil Practice and Remedies Code and the administrative procedure law, Chapter 2001 of the Government Code. Chapter 154 of the Civil Practice and Remedies Code sets forth ADR procedures for Texas trial and appellate courts.

The proposed rule affects Texas Civil Statutes, Article 581-2-8.

#### §127.2. Alternative Dispute Resolution.

(a) Policy. It is the Board's policy to encourage the fair and expeditious resolution of disputed matters, internal and external, through voluntary and informal settlement negotiations. This section sets out the Agency's alternative dispute (ADR) procedures to be used when proceeding under Chapter 2009 of the Government Code. However, the ADR procedures in this section are intended to supplement and do not limit the use of any other informal dispute resolution or negotiated settlement procedures available to the Agency.

(b) Resolution and costs. Any resolution reached as a result of ADR procedures is intended to be through the voluntary agreement of the parties. The allocation of the costs of ADR are subject to negotiation and agreement between the parties. The party who requests ADR may be liable for the cost of any third-party mediator, moderator, arbitrator, or ombudsman and shall otherwise bear his or her own costs arising from the use of ADR.

(c) Coordinator. The Securities Commissioner shall designate at least one employee of the Agency to serve as the Agency's ADR coordinator to:

(1) coordinate the implementation of the Agency's ADR policies;

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

(3) collect data concerning the effectiveness of the ADR procedures as implemented by the Agency.

(d) Statutory requirements. ADR must be consistent with the Government Code, Chapter 2009; Civil Practice and Remedies Code, Chapter 154; and the Administrative Procedure Act, Government Code, Chapter 2001. Confidentiality of records and communications related to the subject matter of an ADR proceeding shall be governed by Civil Practices and Remedies Code, §154.073.

(e) State Office of Administrative Hearings (SOAH).

(1) SOAH mediators may be assigned to disputed matters or contested cases as needed. If the mediator is a SOAH Administrative Law Judge (ALJ), that person will not also sit as the ALJ for the case if the disputed matter or contested case goes to public hearing.

(2) When ADR procedures do not result in the full settlement of a contested matter, the participants, in conjunction with the mediator, shall limit the contested issues which will be tried at SOAH through the entry of written stipulations. Such stipulations shall be forwarded or formally presented to the ALJ assigned to conduct the hearing and shall be included in the hearing record.

(f) Contract claims.

(1) In addition to the requirements of Government Code, Chapter 2009, ADR for contracting claims must also be consistent with the Government Code, Chapter 2260; and the Office of the Attorney General's rules for negotiation and mediation of certain contract disputes (1 TAC Chapter 68).

(2) Upon receipt of notice of a contract claim under Government Code Chapter 2260, the Securities Commissioner, in consultation with the ADR coordinator and the Director of Staff Services, or their designees, shall determine whether use of an ADR procedure is a required or appropriate method for resolving the contract dispute.

(3) If ADR procedures are determined to be the appropriate method for resolving a contract claim, the Securities Commissioner, or the Commissioner's designee, shall recommend to the claimant that the parties use ADR to resolve the dispute.

(4) The ADR coordinator and Director of Staff Services will collaborate with the claimant to select an appropriate procedure for ADR, and implement the agreed upon procedure consistent with the applicable statutory requirements and the guidelines established by the Office of the Attorney General and SOAH.

(g) Contested cases.

(1) A contested case pending before SOAH may be submitted for ADR if both the respondent and the Director of the Division signing the notice of hearing agree that ADR would be an appropriate means to attempt to reach a negotiated settlement of the matter.

(2) ADR will be conducted before SOAH. The parties to the contested case shall collaborate to select an appropriate procedure for ADR and implement the agreed upon procedure consistent with SOAH's model guidelines.

(3) The full resolution of a contested case reached as a result of ADR must be in writing and signed by all of the parties and submitted to the Securities Commissioner for review and approval.

(4) "Party" as used in this subsection shall have the same meaning as set forth in the Administrative Procedure Act, Government Code, Chapter 2001.

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

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Travis J. Iles

Securities Commissioner

State Securities Board

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



## 7 TAC §127.4

The Texas State Securities Board proposes new §127.4, concerning Prosecutorial Assistance to County or District Attorneys, pursuant to House Bill (HB) 1535 amendment to §3 of the Texas Securities Act, during the 86th legislative session, which became effective September 1, 2019, that requires the Board to adopt rules to establish a process to determine staff resources available to support prosecutions of referred cases. Specifically, the Securities Commissioner would be required to make certain determinations and consider certain factors before Agency resources are provided to county or district attorneys to support the prosecution of referred cases.

Travis J. Iles, Securities Commissioner, and Joseph Rotunda, Director, Enforcement Division, have determined that for the first five-year period the proposed rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Iles and Mr. Rotunda have also determined that for each year of the first five years the proposed rule is in effect, the public benefit expected as a result of adoption of the proposed rule will be ensure that the Agency continues to use its appropriated resources in a responsible manner that supports the prosecution of securities crimes while being mindful of its other statutory responsibilities.

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

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

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to

(512) 305-8336. Comments may also be submitted electronically to [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov). In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rule is proposed under Texas Civil Statutes, Article 581-3. Section 3 requires the Board to adopt rules to establish a process to enable the Securities Commissioner to determine whether to provide any requested assistance to the appropriate prosecuting attorney following referral of a case, and if so, the appropriate amount of such assistance.

The proposed rule affects Texas Civil Statutes, Article 581-3.

§127.4. Prosecutorial Assistance to County or District Attorneys.

(a) Prior to referring a case to a county or district attorney for prosecution pursuant to the Texas Securities Act, Section 3.A, the Commissioner shall make a determination of:

(1) the Agency resources, including the number and types of Agency employees, that would potentially be needed to assist in the prosecution of the case; and

(2) the availability of Agency employees and other resources necessary to carry out any request for assistance.

(b) In making the determination in subsection (a) of this section, the Commissioner must consider:

(1) whether resources are available after taking into account any ongoing Board investigations, investigations under §28 of this Act, and criminal prosecutions for which assistance is being provided;

(2) the seriousness of the alleged violation or violations in the case, including the severity of the harm and number of victims involved; and

(3) the state's interest in the prosecution of a particular case and the availability of other methods of redress for the alleged violations, including the pursuit of a civil action.

(c) If a change in circumstances occurs after the time of the determination under subsection (a) of this section, the Commissioner may reconsider the determination and may increase or reduce the number of Board employees or other resources to be made available for a case using the process established in 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.

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## TITLE 16. ECONOMIC REGULATION

### PART 8. TEXAS RACING COMMISSION

## CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

### SUBCHAPTER B. OPERATIONS OF RACETRACKS

#### DIVISION 1. GENERAL PROVISIONS

##### 16 TAC §309.106

The Texas Racing Commission ("the Commission") proposes new 16 TAC §309.106, Transfers to Texas-Bred Incentive Fund. The proposed rule would implement House Bill 3366 (86th Legislature, Regular Session, 2019), which requires the Commission to adopt rules relating to the deposit and use of Texas-bred incentive funds. As the Commission rules already address the use of the funds, this rule would address their deposit with the state by memorializing the current practice.

#### FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the rule. Enforcing or administering the rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

#### ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the rule is in effect, the anticipated public benefit would be compliance with H.B. 3366 and a clear process relating to the deposit of Texas-bred funds. There is no probable economic cost to persons required to comply with the rule.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

For each year of the first five years that the proposed rule is in effect, the government growth impact is as follows: the rule does not create or eliminate a government program; the rule does not create any new employee positions or eliminate any existing employee positions; implementation of the rule does not require an increase or decrease in future legislative appropriations to the agency; the rule does not require an increase or decrease in fees paid to the agency; the rule does not create a new regulation; the rule does not expand or limit existing regulations; the rule does not repeal existing regulations; the rule does not increase or decrease the number of individuals subject to the rule's applicability; and the rule does not significantly positively or negatively affect this state's economy.

#### EFFECT ON SMALL AND MICRO-BUSINESSES

The proposed rule will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

#### IMPACT ON EMPLOYMENT CONDITIONS

There are no negative impacts upon employment conditions in this state as a result of the proposed rule.

## ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

There will be no adverse effect on rural communities as a result of the proposed rule. Because the agency has determined that the proposed rule will have no adverse economic effect on rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

## REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that this proposed rule does not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

## TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed rule will not affect private real property and will not restrict, limit, or impose a burden on an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

## EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

The proposed rule will not have an adverse effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

## PUBLIC COMMENTS

All comments or questions regarding the proposed rule may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

## STATUTORY AUTHORITY

The rule is proposed under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and §2028.103, which requires the Commission to adopt rules relating to the deposit of Texas-bred funds.

No other statute, code, or article is affected by the proposed rule.

§309.106. Transfers to Texas-Bred Incentive Fund.

A racetrack association shall initiate the transfer of funds due to the Texas-bred incentive fund within two business days of the date of the performance for which the funds were earned.

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 October 31, 2019.

TRD-201904059

Chuck Trout

Executive Director

Texas Racing Commission

Earliest possible date of adoption: December 15, 2019

For further information, please call: (512) 833-6699



## CHAPTER 311. OTHER LICENSES

### SUBCHAPTER A. LICENSING PROVISIONS

#### DIVISION 1. OCCUPATIONAL LICENSES

##### 16 TAC §311.2

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §311.2, Application Procedure. The proposed amendments would implement Senate Bill 1200 (86th Legislature, Regular Session, 2019), which created Section 55.0041, Texas Occupations Code, regarding military spouses acting under an occupational license issued by another jurisdiction. These amendments would establish a process for the Commission to follow in processing requests from military spouses licensed in another jurisdiction to participate in horse racing in Texas under a license issued by the other jurisdiction.

##### FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing the amendments. Enforcing or administering the amendments does not have foreseeable implications relating to cost or revenues of the state or local governments.

##### ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amendments are in effect, the anticipated public benefit would be compliance with S.B. 1200 and facilitating the transition to Texas for a military spouse with a license to participate in racing from a different jurisdiction. There is no probable economic cost to persons required to comply with the amendments.

##### LOCAL EMPLOYMENT IMPACT STATEMENT

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

##### GOVERNMENT GROWTH IMPACT STATEMENT

For each year of the first five years that the proposed amendments are in effect, the government growth impact is as follows: the amendments do not create or eliminate a government program; the amendments do not create any new employee positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; the amendments do not require an increase or decrease in fees paid to the agency; the amendments do not create a new regulation; the amendments do not expand or limit existing regulations; the amendments do not repeal existing regulations; the amendments do not increase or decrease the number of individuals subject to the rule's applicability; and the amendments do not significantly positively or negatively affect this state's economy.

##### EFFECT ON SMALL AND MICRO-BUSINESSES

The proposed amendments will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

##### IMPACT ON EMPLOYMENT CONDITIONS

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

#### ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

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

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that these proposed amendments do not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

#### TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed amendments will not affect private real property and will not restrict, limit, or impose a burden on an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

#### EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

The proposed amendments will not have an adverse effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

#### PUBLIC COMMENTS

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

#### STATUTORY AUTHORITY

The amendments are proposed under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and § 55.0041, which requires occupational licensing agencies to adopt rules to implement S.B. 1200.

No other statute, code, or article is affected by the proposed amendments.

#### §311.2. Application Procedure.

(a) - (e) (No change.)

(f) License provisions for military service members, military spouses, and military veterans.

(1) - (7) (No change.)

(8) Military spouse acting under out-of-state license. A military spouse who holds a racing license issued by another jurisdiction and who wishes to participate in racing in Texas under that license shall submit to the Commission the information required by Section 55.0041 of the Texas Occupations Code. Upon receipt of such information, the Commission shall determine whether the requirements of Section 55.0041 are satisfied and notify the military spouse that the person is authorized to act under that section if it confirms, through communication with the other jurisdiction or through other means, that:

(A) the jurisdiction that issued the license on which the military spouse is relying to act in Texas has substantially equivalent license requirements; and

(B) the military spouse is licensed in good standing in the other jurisdiction.

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 October 31, 2019.

TRD-201904060

Chuck Trout

Executive Director

Texas Racing Commission

Earliest possible date of adoption: December 15, 2019

For further information, please call: (512) 833-6699



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

#### SUBCHAPTER F. MOTOR VEHICLE SALES TAX

##### 34 TAC §3.82

The Comptroller of Public Accounts proposes amendments to §3.82, concerning exemption for churches or religious societies. The amendments implement the changes made by House Bill 2338, 86th Legislature, 2019, to Tax Code, §152.001(12) (Definitions).

The comptroller amends subsection (a) to address the exemption provided by Tax Code, §152.088 (Motor Vehicle Used for Religious Purposes). The comptroller amends the existing language to state the general rule that the taxes imposed by Tax Code, Chapter 152 do not apply to the sale or use of, or the receipts from the rental of, a motor vehicle used for religious purposes. The comptroller inserts the heading "Exemption from Motor Vehicle Sales Tax," and adds new paragraphs (1) - (4) addressing sales tax, use tax, and gross rental receipts tax, respectively.

The comptroller redesignates the remainder of current subsection (a) as new subsection (b), defining the term "motor vehicle used for religious purposes." The comptroller modifies the existing language to add two paragraphs. In paragraph (1), the comptroller revises the requirement that a vehicle be used primarily by a church or religious society. The amendment in paragraph (2) implements Tax Code, §152.001(12)(A) and (B), as revised by House Bill 2338.

The comptroller reletters subsequent subsections accordingly.

The comptroller amends relettered subsection (d) to use the term "motor vehicle" in place of "vehicle" for consistency with other sections of this title.



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

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by clarifying agency tax policy. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed new rule would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic cost to the public.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This amendment is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amendment implements Tax Code, §152.001 (Definitions) and §152.088 (Motor Vehicles Used for Religious Purposes).

§3.82. *Exemption for Churches or Religious Societies.*

(a) Exemption from motor vehicle taxes. A motor vehicle that is used for religious purposes is exempt from motor vehicle taxes on the sale or use of or the receipts from the rental of the motor vehicle. The exemption includes:

- (1) the retail sales tax imposed on the retail sale of a motor vehicle sold in this state;
- (2) the use tax imposed on a motor vehicle purchased at retail outside this state and used on the public highways of this state;
- (3) the use tax imposed on a new resident of the state who brings into the state a motor vehicle that has been registered previously in the new resident's name in any other state or foreign country or that the person leased in another state or foreign country; and
- (4) the tax imposed on the gross rental receipts from the rental of a rented motor vehicle.

(b) ~~[(a)]~~ "Motor vehicle used for religious purposes" means ~~[There are exempted from motor vehicle sales tax and use taxes the receipts from the sale or rental and the use of]~~ a motor vehicle that is:

- (1) ~~[designed to carry more than six passengers; is sold to or used by a church or religious society; and is] used primarily by a church or religious society; and [for the purpose of providing transportation to and from church or religious services or meetings: This exemption does]~~
- (2) ~~not used primarily [apply to a vehicle registered as a passenger vehicle and the primary use of which is] for the personal or official needs or duties of a minister.~~

(c) ~~[(b)]~~ A "church or religious society" is a regularly organized group of people associating for the sole purpose of holding, con-

ducting, and sponsoring, according to the rites of the sect, religious worship. An organization supporting and encouraging religion as an incidental purpose or an organization with the general purpose of furthering religious work or instilling its membership with a religious understanding is not sufficient to qualify such an entity as a church or religious society.

(d) ~~[(e)]~~ The "primary use" means a use of a motor vehicle for at least 80% of the motor vehicle's operating time.

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

Filed with the Office of the Secretary of State on November 1, 2019.

TRD-201904065

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: December 15, 2019

For further information, please call: (512) 475-0387



## SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

### 34 TAC §3.280

The Comptroller of Public Accounts proposes an amendment to §3.280, concerning aircraft. The comptroller proposes to amend the section to reflect the changes in Tax Code, §151.328 (Aircraft) made by Senate Bill 1214, 86th Legislature, 2019, effective September 1, 2019.

Subsection (e)(5)(C) is amended to remove the 30 mile limitation for travel to and from a location to perform specified agricultural services from the determination of whether an aircraft is exclusively used for agricultural purposes.

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

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by conforming the rule to current statute. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic cost to the public.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.328, (Aircraft).

§3.280. *Aircraft.*

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

(1) Affiliate--A member of a group of entities in which a controlling interest is owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member entities.

(2) Agricultural aircraft operation--The operation of an aircraft licensed by the FAA under 14 Code of Federal Regulations, Part 137. Agricultural aircraft operations include crop dusting, pollination, and seeding.

(3) Agricultural use--This term includes, but is not limited to, the following activities: cultivating the soil, producing crops for human food, animal feed, or planting seed or for the production of fibers; floriculture, viticulture, and horticulture; raising or keeping livestock; raising or keeping exotic animals for the production of human food or of fiber, leather, pelts, or other tangible products having a commercial value; planting cover crops or leaving land idle for the purpose of participating in a governmental program, provided the land is not used for residential purposes or a purpose inconsistent with agricultural use; and planting cover crops or leaving land idle in conjunction with normal crop or livestock rotation procedure. The term also includes the use of land to produce or harvest logs and posts for the use in constructing or repairing fences, pens, barns, or other agricultural improvements on adjacent qualified open-space land having the same owner and devoted to a different agricultural use. The term also includes the use of land for wildlife management. The term also includes the use of land to raise or keep bees for pollination or for the production of human food or other tangible products having a commercial value, provided that the land used is not less than 5 or more than 20 acres.

(4) Aircraft--A fixed-wing, heavier-than-air craft that is operated by a pilot from within the craft, is driven by propeller or jet and is supported by the dynamic reaction of the air against its wings; a helicopter; or an airplane flight simulation training device approved by the FAA under Appendices A and B, 14 Code of Federal Regulations, Part 60. The term does not include balloons, gliders, rockets, missiles, or unmanned aerial vehicles.

(5) Certificated or licensed carrier--A person authorized by the FAA to operate an aircraft to transport persons or property in compliance with the certification and operations specifications requirements of 14 Code of Federal Regulations, Part 121, 125, 133, or 135. Letters of authorization, certificates of inspection, and airworthiness certificates are not appropriate evidence of authority to operate as a certificated or licensed carrier.

(6) Component part--Tangible personal property that is intended to be permanently affixed to, and become a part of, an aircraft; is necessary to the normal operations of the aircraft, or is required by FAA regulations; and is secured or attached to the aircraft. The term includes tangible personal property necessary to the normal operations of the aircraft that can be removed temporarily from the aircraft for servicing, such as engines, seats, radar equipment, and other electronic devices used for navigational or communications purposes, and air cargo containers, food carts, fire extinguishers, survival rafts, and emergency

evacuation slides. Items such as pillows, blankets, trays, ice for drinks, kitchenware, and toilet articles are not component parts.

(7) Consumable supplies--Tangible personal property that is used by a service provider to repair, remodel, maintain, or restore tangible personal property belonging to another; is not transferred into the care, custody, or control of the purchaser of the service; and, having been used once for its intended purpose, is completely used up or destroyed. Examples of consumable supplies include, but are not limited to, canned air used to remove dust from equipment and solvents used to clean equipment parts.

(8) Exotic animals--Livestock and fowl that are not indigenous to Texas and are defined as exotic livestock or exotic fowl by Agriculture Code, §161.001(a) (Definitions). Examples include, but are not limited to, nilgai antelope, blackbuck antelope, axis deer, fallow deer, sika deer, aoudad, ostriches, and emus.

(9) Extended warranty or service policy--A contract sold to the purchaser of tangible personal property for an amount in addition to the charge for the tangible personal property, or sold to an owner of tangible personal property, to extend the terms of the manufacturer's written warranty or provide a warranty in addition to or in place of the manufacturer's written warranty.

(10) FAA--Federal Aviation Administration, an agency of the United States Department of Transportation.

(11) Incorporated materials--Tangible personal property that is attached or affixed to, and becomes a part of, an aircraft, aircraft engine, or component part in such a manner that the property loses its distinct identity as separate tangible personal property.

(12) Livestock--Horses, mules, donkeys, llamas, alpacas, and animal life of a kind that ordinarily constitutes food for human consumption. The term livestock does not include wildlife or pets.

(13) Lump-sum contract--A written agreement in which the agreed price is one lump-sum amount and in which the charge for incorporated materials is not separated from the charge for skill and labor. Separated invoices or billings issued to the customer will not change a written lump-sum contract into a separated contract unless the terms of the contract require separated invoices or billings.

(14) Maintain--To perform maintenance.

(15) Maintenance--Work performed on operational and functioning tangible personal property that is necessary to sustain or support safe, efficient, and continuous operation of the tangible personal property, or is necessary to keep the tangible personal property in good working order by preventing decline, failure, lapse, or deterioration.

(16) Manufacturer's written warranty--A manufacturer's guarantee made for no additional charge to the purchaser of an item of tangible personal property that the item is operable and will remain operable for a specified period of time.

(17) Operational control--This term has the meaning assigned by FAA regulations and includes the exercise of authority over initiating, conducting, or terminating a flight.

(18) Predator control--A form of wildlife and exotic animal management regulated by the Texas Department of Parks and Wildlife under Parks and Wildlife Code, Chapter 43, Subchapter G (Permits to Manage Wildlife and Exotic Animals from Aircraft) used to protect or aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops. Feral hog eradication using an aircraft is one form of predator control.

(19) Qualified flight instruction--Training recognized by the FAA that is designed to lead to a pilot certificate or rating issued by the FAA, or is otherwise required by rule or regulation of the FAA, and that is conducted under the direct or general supervision of a flight instructor certified by the FAA. Qualified flight instruction includes FAA-required check flights, maintenance flights, and test flights, but does not include demonstration flights for marketing purposes or training in aerobatic maneuvers.

(20) Remodel--To modify or remake tangible personal property belonging to another in a similar but different manner, or to change the style, shape, or form of tangible personal property belonging to another, without causing a loss of its identity or without causing it to operate in a new or different manner. Remodeling does not include processing.

(21) Repair--To mend or restore to working order or operating condition tangible personal property that was broken, damaged, worn, defective, or malfunctioning.

(22) Restore--To return tangible personal property that is still operational and functional, but that has faded, declined, or deteriorated, to its former or original state.

(23) Sale for resale--The sale, lease, or rental of an aircraft to a person who acquires the aircraft for the purpose of leasing, renting, or reselling the aircraft to another person, or for the purpose of transferring operational control of the aircraft to one or more persons pursuant to one or more written lease agreements, in exchange for a fixed, variable, or periodic consideration, whether or not the consideration is in the form of a cash payment, in the United States of America or a possession or territory of the United States of America or in the United Mexican States in the form or condition in which the aircraft is acquired.

(24) Separated contract--A written agreement in which the agreed price is divided into a separately stated charge for incorporated materials and a separately stated charge for skill and labor. An agreement is a separated contract if the charge for incorporated materials and the charge for labor are separately stated on an invoice or billing that, according to the terms of the contract, is deemed to be a part of the contract. Adding the separated charge for incorporated materials and the separated charge for labor together to give a lump-sum total does not transform a separated contract into a lump-sum contract. An aircraft completion, repair, remodeling, maintenance, or restoration contract that separates the charge for incorporated materials from the charge for labor is a separated contract even if the charge for labor is zero.

(25) Service provider--A person who repairs, remodels, maintains, or restores tangible personal property belonging to another.

(26) Wildlife--Animals, other than insects, that normally live in a state of nature and are not ordinarily domesticated.

(b) Sales tax.

(1) The sale, lease, or rental of an aircraft, aircraft engine, or component part in Texas is the sale, lease, or rental of tangible personal property, and is subject to sales tax, unless otherwise exempt under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) or Chapter 163 (Sales and Use Taxation of Aircraft). The lease or rental of an aircraft complete with pilot or crew for a single charge is a nontaxable transportation service, rather than the lease or rental of an aircraft, even when the charges for the aircraft and the pilot or crew are separately stated. For more information about leases and rentals, refer to §3.294 of this title (relating to Rental and Lease of Tangible Personal Property).

(2) Sales tax is due on the total sales, lease, or rental price of the aircraft, aircraft engine, or component part. The total sales, lease, or rental price includes separately stated charges for any service or expense connected with the sale, lease, or rental, including transportation or delivery charges. The total sales, lease, or rental price does not include separately stated cash discounts or the value of any tangible personal property taken as a trade-in by the seller in the regular course of business in lieu of all or part of the price of the aircraft. For more information on determining the taxable sales price of an item of tangible personal property, refer to Tax Code, §151.007 ("Sales Price" or "Receipts") and §3.294 of this title.

(c) Use tax.

(1) General rule. Use tax is due on the use, storage, or other consumption in this state of an aircraft purchased, leased, or rented outside of Texas and brought into Texas to be used in Texas. For more information about the application of the use tax to aircraft engines and component parts, refer to §3.346 of this title (relating to Use Tax).

(2) Presumption of purchase for use in Texas. An aircraft purchased, leased, or rented outside of Texas and then brought into Texas by a purchaser is presumed to have been purchased from a seller for use in Texas and is subject to Texas use tax. An aircraft that is brought into Texas by a person who did not purchase the aircraft directly from a seller is not presumed to have been purchased for use in Texas.

(3) Predominant use outside of Texas.

(A) An aircraft purchased, leased, or rented outside of Texas and then brought into Texas is not subject to Texas use tax if the aircraft is predominantly used outside of Texas for a period of one year beginning on the later of:

(i) the date the aircraft was acquired, by purchase, lease, rental, or otherwise, by the person bringing the aircraft into Texas; or

(ii) the date the aircraft was substantially complete in the condition for its intended use and conducted its first flight for the carriage of persons or property.

(B) For purposes of this subsection, an aircraft is predominantly used outside of this state if more than 50% of its total departures are from locations outside of Texas.

(C) The owner or operator of the aircraft must maintain records sufficient to show each of the aircraft's departures. The controller may examine all records maintained on any aircraft brought into Texas, including logs, to determine the percentage of the aircraft's total departures that were made from locations in Texas.

(4) Completing, repairing, remodeling, or restoring aircraft in Texas. An aircraft purchased, leased, or rented outside of Texas and then brought into Texas for the sole purpose of completing, repairing, remodeling, or restoring the aircraft is not subject to Texas use tax.

(A) Completion, repair, remodeling, or restoration includes flights solely for troubleshooting, testing, or training, and flights between service locations under an FAA-issued ferry permit.

(B) Any use of the aircraft for business or pleasure travel during the time that the aircraft is being completed, repaired, remodeled, or restored means the aircraft was not brought into Texas for the sole purpose of completion, repairs, remodeling, or restoration, and Texas use tax may be due on the aircraft.

(C) The owner or operator of the aircraft must maintain records sufficient to show all uses of the aircraft within Texas. The

comptroller may examine all records maintained on the aircraft, including logs, to determine the actual use of the aircraft in Texas.

(5) Use tax credit. The purchaser or lessee of an aircraft is allowed to claim a credit against Texas use tax due on the use of the aircraft for any legally imposed sales or use tax due and paid on the sale or use of the item by the purchaser or lessee of the item to another state or any political subdivision of another state. For information on taking a credit for tax paid to another state, refer to §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(d) Related parties.

(1) The sale, lease, rental, or other transaction between a person and a member, owner, or affiliate of the person involving an aircraft that would not be subject to tax, or would qualify for an exemption from tax if the transaction were between unrelated persons remains not subject to tax or exempt from tax to the same extent as if the transaction were between unrelated persons.

(2) Except as provided in paragraph (3) of this subsection, the use of an aircraft by an affiliate of the purchaser of the aircraft, or an owner or member of either the purchaser or its affiliate, is not subject to tax if the purchaser paid Texas sales or use tax on the purchase of the aircraft, or the purchase of the aircraft was exempt from Texas sales or use tax.

(3) The exemption in paragraph (2) of this subsection does not apply if the purchase of the aircraft was exempt as:

(A) a sale for resale; or

(B) an occasional sale, unless the owner, member, affiliate, or the owner or member of the affiliate, who is leasing or renting the aircraft could have purchased the aircraft as an occasional sale. For information on the occasional sale exemption, see subsection (j) of this section.

(e) Tax exemptions specific to aircraft. In addition to the other exemptions from tax provided under Tax Code, Chapter 151, the following tax exemptions apply specifically to the sale, lease, rental, and use in Texas of aircraft, aircraft engines, and component parts. A person selling, leasing, or renting an aircraft, aircraft engine, or component part may accept a properly completed exemption certificate from the purchaser in lieu of collecting Texas sales and use tax at the time of the transaction. A purchaser claiming a sales tax exemption under this subsection may provide the seller with a properly completed exemption certificate at the time of the transaction. A purchaser who does not claim the exemption at the time of the transaction may subsequently provide documentation to the comptroller to prove that the exemption applies, except as provided in paragraph (4) of this subsection. For more information, refer to §3.287 of this title (relating to Exemption Certificates).

(1) Certificated or licensed carriers.

(A) Sales and use tax is not due on the sale, lease, or rental of an aircraft to a certificated or licensed carrier.

(B) Sales and use tax is not due on the sale, lease, or rental of component parts of an aircraft to a certificated or licensed carrier.

(C) Sales and use tax is not due on the sale or use of tangible personal property that is necessary for the normal operations of, and is pumped, poured, or otherwise placed in, an aircraft owned or operated by a certificated or licensed carrier.

(D) Sales and use tax is due on the sale, lease, or rental of machinery, tools, and equipment that support the overall operation

of a certificated or licensed carrier, such as baggage loading or handling equipment, reservation or booking machinery and equipment, garbage and other waste disposal equipment, and office supplies and equipment, unless otherwise exempt under Tax Code, Chapter 151.

(E) Sales tax is not due on the sale of tangible personal property transferred to a certificated or licensed carrier in Texas, if the carrier, using its own facilities, ships the items to a point outside of Texas under a bill of lading and the items are purchased for use by the carrier in the conduct of its business as a certificated or licensed carrier solely outside Texas.

(2) Flight schools, instructors, and students.

(A) Sales or use tax is not due on the sale, lease, or rental of an aircraft to a person who:

(i) holds a current flight school or flight instructor certificate issued by the FAA;

(ii) holds a current sales and use tax permit issued under Tax Code, Chapter 151; and

(iii) uses the aircraft to provide qualified flight instruction.

(B) Any use of the aircraft other than that described in this paragraph is subject to tax as a divergent use under subsection (f) of this section, unless otherwise exempt under Tax Code, Chapter 151.

(C) Sales or use tax is not due on the sale or use of component parts of an aircraft owned or operated by a flight school or flight instructor to provide qualified flight instruction.

(D) Sales or use tax is not due on the sale or use of tangible personal property that is necessary for the normal operations of, and is pumped, poured, or otherwise placed in, an aircraft owned or operated by a flight school or flight instructor to provide qualified flight instruction.

(E) A student enrolled in a program providing qualified flight instruction may claim an exemption from sales tax on the short-term hourly rental of an aircraft for qualified flight instruction, including solo flights and other flights. When completing an exemption certificate claiming this sales tax exemption, the student must identify the flight school by name and address or, if the student is not enrolled in a flight school program, the student must identify the student's flight instructor and the instructor's address. The student must also retain copies of written tests and instructor's endorsements. Without evidence that the student is in pursuit of a FAA-certified pilot certificate or flight rating, aircraft rentals are subject to sales tax.

(3) Foreign governments. Sales tax is not due on the sale, lease, or rental of an aircraft to a foreign government. Sales tax is due on the sale or lease of component parts or materials incorporated in Texas into an aircraft owned by a foreign government, unless otherwise exempt under Tax Code, Chapter 151. Refer to subsection (g) of this section for information concerning the repair, remodeling, maintenance, and restoration of aircraft, aircraft engines, and component parts.

(4) Fly-away exemption.

(A) Sales tax is not due on the sale or lease of an aircraft in Texas to a person for use and registration in another state or nation before any use in Texas other than:

(i) completing, repairing, remodeling, maintaining, or restoring the aircraft in Texas, including necessary flights for troubleshooting, testing, or flights between service locations under an FAA-issued ferry permit; or

(ii) flight training in the aircraft.

(B) Any use of the aircraft in Texas other than that described in subparagraph (A) of this paragraph before the aircraft is flown out of this state for use and registration in another state or nation will result in the loss of the exemption.

(C) The subsequent use of an aircraft in Texas after the aircraft has left Texas will not subject the aircraft to tax on the purchase price if the aircraft is predominantly used outside of Texas for a period of one year beginning on the later of:

(i) the date the aircraft was purchased or leased by the person bringing the aircraft into Texas; or

(ii) the date the aircraft was substantially complete in the condition for its intended use and conducted its first flight for the carriage of persons or property.

(D) For purposes of this subsection, an aircraft is predominantly used outside of Texas if more than 50% of its total departures are from locations outside of Texas.

(E) The owner or operator of the aircraft must maintain records sufficient to show each of the aircraft's departures. The comptroller may examine all records maintained on any aircraft brought into Texas, including logs, to determine the percentage of the aircraft's total departures that were made from locations in Texas.

(F) The fly-away exemption does not apply to the short-term hourly rental of an aircraft in Texas, even if the person renting the aircraft intends to use the aircraft in another state.

(G) Exemption certificate required.

(i) A purchaser claiming the fly-away exemption under this paragraph must provide the seller with a properly completed Texas Aircraft Exemption Certificate Out-of-State Registration and Use, Form 01-907, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form. The seller may only accept the certificate if the seller lacks actual knowledge that the claimed exemption is invalid. Within 30 days of the sale of the aircraft, a copy of the completed certificate signed by both the seller and the purchaser must be provided to the Comptroller of Public Accounts, Business Activity Research Team, P. O. Box 13003, Austin, Texas, 78711-3003.

(ii) By signing the certificate, the purchaser authorizes the comptroller to provide a copy of the certificate to the state or nation in which the aircraft is intended to be used and registered.

(iii) Issuing an invalid certificate is a misdemeanor punishable by a fine not to exceed \$500 in addition to the assessment of tax and, when applicable, penalty and interest on the purchase price of the aircraft.

(5) Agricultural use.

(A) Sales or use tax is not due on the sale, lease, or rental of an aircraft for use exclusively in connection with an agricultural use, as defined in this section, when used for:

(i) predator control;

(ii) wildlife or livestock capture;

(iii) wildlife or livestock surveys;

(iv) census counts of wildlife or livestock;

(v) animal or plant health inspection services; or

(vi) agricultural aircraft operations, such as crop dusting, pollination, or seeding.

(B) Component parts and necessary supplies for aircraft used exclusively in agricultural aircraft operations.

(i) Sales or use tax is not due on the sale or use of component parts of an aircraft used exclusively in agricultural aircraft operations.

(ii) Sales or use tax is not due on the sale or use of tangible personal property that is necessary for the normal operations of, and is pumped, poured, or otherwise placed in, an aircraft used exclusively in agricultural aircraft operations.

(iii) Exemption certificate required. A person claiming the exemption under this subparagraph must have a valid Texas Agricultural and Timber Exemption Registration Number issued by the comptroller, and must issue a properly completed Texas Agricultural Sales and Use Tax Exemption Certification, Form 01-924, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form.

(iv) This exemption does not include the sale or use of firearms, ammunition, or other equipment or tangible personal property used to perform predator control, wildlife census counts, or any other activity not included in the definition of agricultural aircraft operation.

(C) Use of an aircraft is considered to be "for use exclusively in connection with an agricultural use" if 95% of the use of the aircraft is for a purpose described by subparagraph (A) of this paragraph. Travel [of less than 30 miles each way] to a location to perform a service described by subparagraph (A) of this paragraph will not disqualify the sale, lease, or rental of an aircraft from the exemption, and will not be regarded as divergent use.

(D) Selling the use of a gunner's seat on an aircraft that is exempt under this paragraph to a person participating in aerial wildlife management, as authorized by Parks and Wildlife Code, §43.1075 (Using Helicopters to Take Certain Animals), will not result in a loss of the exemption. The sale of the gunner seat is subject to sales tax as a taxable amusement service under Tax Code, §151.0028 (Amusement Services) and §3.298 of this title (relating to Amusement Services).

(E) A person who claims an exemption under this paragraph must maintain and make available to the comptroller upon request flight records for all uses of the aircraft, as well as any other records requested by the comptroller, such as Aerial Wildlife Management Permits issued under Parks and Wildlife Code, Chapter 43, Subchapter G. Failure to maintain adequate records may result in loss of the exemption.

(6) Fractional ownership operations. Sales and use tax is not due on the sale, lease, or rental of an aircraft operated as part of a fractional ownership program under 14 Code of Federal Regulations Part 91, Subpart K-Fractional Ownership Operations. Sales tax is due on the sale or lease of component parts or materials incorporated into an aircraft that is part of an aircraft fractional ownership operation, unless otherwise exempt under Tax Code, Chapter 151.

(f) Divergent use.

(1) Exempt aircraft, aircraft engines, and component parts. Sales and use tax is due when an aircraft, aircraft engine, or component part sold, leased, or rented tax-free under a properly completed exemption certificate is subsequently put to a taxable use other than the use allowed under the certificate. For more information, refer to §3.287 of this title.

(2) Sales for resale. Sales and use tax is due when an aircraft engine or component part sold, leased, or rented tax-free under a

properly completed resale certificate is subsequently put to a taxable use other than the use allowed under the certificate. For more information, refer to §3.285 of this title (relating to Resale Certificate; Sales for Resale). Sales and use tax is not due on the divergent use of an aircraft that is purchased for resale.

(3) Agricultural use and agricultural aircraft operations. No divergent use may be made of an aircraft exempted under subsection (e)(5) of this section, relating to agricultural use, without a total loss of the exemption. Certain limited uses identified in subsection (e)(5)(C) of this section do not constitute divergent use of an agricultural aircraft. No divergent use of component parts or necessary tangible personal property exempted under subsection (e)(5)(B) of this section, relating to agricultural aircraft operations, can be made without a total loss of that exemption.

(g) Repair, remodeling, maintenance, restoration, and completion.

(1) Labor to complete, repair, remodel, maintain, or restore aircraft in Texas is not subject to sales tax. The sale or use of materials incorporated into an aircraft, aircraft engine, or component part being completed, repaired, remodeled, maintained, or restored in Texas is subject to sales and use tax as provided in paragraph (2) of this subsection, unless otherwise exempt.

(2) Tax responsibilities of service providers.

(A) Incorporated materials. Whether the service provider owes tax on the purchase of materials that will become incorporated materials as part of the completion, repair, remodeling, maintenance, or restoration of an aircraft, aircraft engine, or component part depends upon whether the service provider is operating under a lump-sum or separated contract.

(i) Separated contracts. If the services are performed under a separated contract, the service provider is regarded as the seller of the incorporated materials. If the service provider has a sales and use tax permit, the service provider may issue a properly completed resale certificate to the supplier in lieu of paying sales tax on the purchase of the incorporated materials. The service provider must then collect sales tax from the customer on either the agreed contract price for the incorporated materials, or the amount the service provider paid for the incorporated materials, whichever amount is greater. The service provider may also use incorporated materials removed from an inventory of items upon which sales or use tax was paid at the time of purchase. In such a case, sales tax is to be collected from the customer on the agreed contract price of the incorporated materials as though the incorporated materials had been purchased tax-free with a resale certificate.

(ii) Lump-sum contracts. If the services are performed under a lump-sum contract, the service provider is the ultimate consumer of all incorporated materials. The service provider may not collect sales tax from the customer. The service provider must pay sales or use tax to the suppliers of the incorporated materials at the time of purchase, unless the service provider works under both lump-sum and separated contracts and uses incorporated materials removed from a valid tax-free inventory that were originally purchased tax-free by use of a resale certificate. In such a case, the service provider incurs a tax liability based upon the purchase price of the incorporated materials and must report and remit the tax to the comptroller. The service provider owes sales or use tax on the purchase of incorporated materials even when the services are performed for a customer that is exempt from tax under Tax Code, Chapter 151.

(B) Tools, equipment, and consumable supplies. Sales and use tax is due on the purchase, lease, or rental of tools, equipment,

and consumable supplies used by the service provider but not incorporated into the aircraft, aircraft engine, or component part at the time of the service, regardless of the type of contract used to perform the service, and the service provider may not collect sales or use tax from the customer on any charges for such items.

(3) Exemption for certificated or licensed carriers, flight schools or instructors, and persons operating aircraft for an agricultural use.

(A) The total charge for services to complete, repair, remodel, maintain, or restore aircraft, aircraft engines, or component parts by or for a certificated or licensed carrier, a flight school or instructor providing qualified flight instruction, or a person operating aircraft for an agricultural use is exempt from sales and use tax, whether the charge is lump-sum or separately stated.

(B) Sales and use tax is not due on the sale, lease, or rental of machinery, tools, supplies, and equipment used directly and exclusively in the repair, remodeling, maintenance, or restoration of aircraft, aircraft engines, or component parts by or for a certificated or licensed carrier, a flight school or a flight instructor providing qualified flight instruction, or person conducting an agricultural aircraft operation, provided the purchaser issues the seller a properly completed exemption certificate. This includes equipment, such as battery chargers and diagnostic equipment, used to sustain or support safe and continuous operations and to keep the aircraft in good working order by preventing its decline, failure, lapse, or deterioration.

(4) Aircraft used outside Texas. The following guidelines apply to aircraft brought into Texas by out-of-state owners or operators for completion, repair, remodeling, or restoration.

(A) Separated contracts. Sales or use tax is not due on the separately stated charge for labor to complete, repair, remodel, maintain, or restore an aircraft, aircraft engine, or component part performed under a separated contract. The cost of incorporated materials is:

(i) subject to sales tax when the owner or operator takes delivery of the aircraft in Texas; or

(ii) not subject to sales tax when the aircraft is delivered to an out-of-state location by the service provider.

(B) Lump-sum contracts. Sales tax is not due by the owner or operator of an aircraft completed, repaired, remodeled, maintained, or restored under a lump-sum contract. The service provider owes sales or use tax on the incorporated materials, whether the service provider delivers the aircraft out of state or the owner or operator takes delivery of the aircraft in Texas.

(5) The repair, remodeling, maintenance, or restoration of component parts removed from and returned to an aircraft pursuant to the repair, remodeling, maintenance, or restoration of that aircraft is to be treated in accordance with the provisions of this subsection. The repair, remodeling, maintenance, or restoration of a component part removed from an aircraft that is not returned to the aircraft is subject to the provisions of §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property).

(h) Jet turbine aircraft engines.

(1) Sales or use tax is not due on the sale, lease, or rental of the following items used in electrochemical plating or a similar process by persons overhauling, retrofitting, or repairing jet turbine aircraft engines and their component parts:

(A) machinery, equipment, or replacement parts or accessories with a useful life in excess of six months; and

(B) supplies, including aluminum oxide, nitric acid, and sodium cyanide.

(2) A person claiming an exemption under paragraph (1) of this subsection must maintain documentation sufficient to show that no exclusion under Tax Code, §151.318 (Property Used in Manufacturing) applies. Also refer to §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

(3) Sales tax is not due on the sale of electricity or natural gas used in the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier. For more information, refer to §3.295 of this title (relating to Natural Gas and Electricity).

(i) Warranties.

(1) Manufacturer's written warranty or recall campaign.

(A) Sales or use tax is not due on the use of incorporated materials or services furnished by the manufacturer to repair an aircraft, aircraft engine, or component part under a manufacturer's written warranty or recall campaign.

(B) Records must be kept by a service provider showing that the incorporated materials or services were used in repairing an item under a manufacturer's written warranty or recall campaign.

(C) A service provider purchasing incorporated materials used in a repair under a manufacturer's written warranty or recall campaign may issue a properly completed exemption certificate to the seller in lieu of paying tax on the purchase.

(2) Extended warranties and service policies.

(A) Sales tax is not due on the sale of an extended warranty or service policy that covers an aircraft, aircraft engine, or component part.

(B) A service provider performing services under an extended warranty or service policy must collect sales or use tax on the sale or use of incorporated materials as required under subsection (g)(2)(A) of this section, unless the aircraft, aircraft engine, or component part is owned by a certificated or licensed carrier, a flight school or instructor providing qualified flight instruction, or an agricultural aircraft operation.

(j) Occasional sales. The purchase of an aircraft, aircraft engine, or component part is exempt from sales and use tax if the purchase meets the definition of an occasional sale provided by §3.316 of this title (relating to Occasional Sales; Transfers Without Change in Ownership; Sales by Senior Citizens' Organizations; Sales by University and College Student Organizations; and Sales by Nonprofit Animal Shelters).

(k) Sales for resale.

(1) A person selling, leasing, or renting an aircraft, aircraft engine, or component part may accept a properly completed and signed resale certificate from the purchaser at the time of sale in lieu of collecting tax on the sale if the person does not know, and does not have reason to know, that the sale is not a sale for resale. For more information on the good faith acceptance of a resale certificate, refer to §3.285 of this title.

(2) A person purchasing, leasing, or renting an aircraft in a transaction that meets the definition of a sale for resale may provide the seller or lessor with a properly completed resale certificate if the person:

(A) holds a valid sales and use tax permit at the time of the transaction; and

(B) does not intend to exclusively lease the aircraft together with a crew or pilot.

(3) A person purchasing, leasing, or renting an aircraft in a transaction that meets the definition of a sale for resale who does not provide the seller or lessor with a properly completed resale certificate at the time of the transaction may subsequently provide documentation to the comptroller to prove that the resale exemption applies.

(4) The purchase of an aircraft for lease or rental to another does not qualify as a sale for resale unless more than 50% of the aircraft's departures during the one year period beginning on the date of purchase are made under the operational control of a person other than the purchaser, pursuant to one or more written lease agreements, in exchange for consideration. For purposes of this subsection, consideration is not required to be in the form of a cash payment, and may be fixed, variable, or periodic.

(l) Local tax. Local sales and use taxes, including taxes imposed by a city, county, transit authority, or special purpose district, apply to aircraft in the same manner as any other tangible personal property.

(1) Sales consummated in Texas. Generally, local sales taxes are allocated to the local taxing jurisdictions in which the seller's place of business is located, and the seller must collect the local sales tax, without regard to whether the aircraft is actually delivered to, or intended for use in, a Texas location in a different local taxing jurisdiction. If the seller does not collect the applicable local tax, the purchaser must accrue and remit local tax to the comptroller.

(2) Sales consummated outside of Texas. When an aircraft is purchased or leased outside of Texas and brought into Texas, local use tax is due based on the local taxing jurisdictions in which the aircraft is first stored or used. If the seller does not collect the applicable local tax, the purchaser must accrue and remit to the comptroller any local use tax due.

(3) For more information regarding the local tax collection and reporting responsibilities of sellers and purchasers, refer to §3.334 of this title (relating to Local Sales and Use Tax).

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

Filed with the Office of the Secretary of State on November 1, 2019.

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Special Counsel for Tax Administration

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



### 34 TAC §3.320

The Comptroller of Public Accounts proposes amendments to §3.320, concerning the Texas emissions reduction plan surcharge; off-road, heavy-duty diesel equipment. The comptroller proposes to amend the section to reflect the changes in Tax Code, §151.0515 (Texas Emissions Reduction Plan Surcharge) made by House Bill 3745, 86th Legislature, 2019.

The comptroller amends subsection (c) to update the title of §3.286.

New subsection (f) is added to include an expiration date to the surcharge. The surcharge expires on the last day of the fiscal biennium during which the Texas Commission on Environmental Quality publishes in the *Texas Register* the notice required by Health and Safety Code, §382.037 (Notice in *Texas Register* Regarding National Ambient Air Quality Standards for Ozone).

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

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by implementing current statutes into a published rule. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amendment would have no fiscal impact on the state government, units of local government, or individuals. There would be no anticipated economic cost to the public.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This amendment is proposed under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.0515 (Texas Emissions Reduction Plan Surcharge).

§3.320. *Texas Emissions Reduction Plan Surcharge; Off-Road, Heavy-Duty Diesel Equipment.*

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

(1) Off-road, heavy-duty diesel equipment--Diesel-powered equipment of 50 horsepower or greater, other than motor vehicles and equipment used directly in oil and gas exploration and production at an oil or gas well site. See §3.96 of this title (relating to Imposition and Collection of a Surcharge on Certain Diesel Powered Motor Vehicles) for information about the imposition of the surcharge on motor vehicles. Off-road, heavy-duty diesel equipment includes accessories and attachments sold with the equipment. Off-road, heavy-duty diesel equipment includes, but is not limited to, the following diesel-powered equipment:

- (A) backhoes;
- (B) bore equipment and drilling rigs, except drilling rigs used to drill oil and gas wells;
- (C) bulldozers;
- (D) compactors (plate compactors, etc.);
- (E) cranes;

- (F) crushing and processing equipment (rock and gravel crushers, etc.);
- (G) dumpsters and tenders;
- (H) excavators;
- (I) forklifts (rough terrain forklifts, etc.);
- (J) graders;
- (K) light plants (generators) and signal boards;
- (L) loaders;
- (M) mining equipment;
- (N) mixers (cement mixers, mortar mixers, etc.);
- (O) off-highway vehicles and other moveable specialized equipment (equipment, such as a motorized crane, that does not meet the definition of a motor vehicle because it is designed to perform a specialized function rather than designed to transport property or persons other than the driver);
- (P) paving equipment (asphalt pavers, concrete pavers, etc.);
- (Q) rammers and tampers;
- (R) rollers;
- (S) saws (concrete saws, industrial saws, etc.);
- (T) scrapers;
- (U) surfacing equipment;
- (V) tractors; and
- (W) trenchers.

(2) Surcharge--A fee imposed on the sale, lease, or rental in Texas of new or used off-road, heavy-duty diesel equipment and on the storage, use, or other consumption of such equipment subject to use tax as provided for in §3.346 of this title (relating to Use Tax). This surcharge is in addition to state and local sales and use taxes that are due on the equipment and is for the benefit of the Texas Emissions Reduction Fund, which is administered by the Texas Commission on Environmental Quality.

(3) Sales price--The total amount a purchaser pays a seller for the purchase, lease, or rental of off-road, heavy-duty diesel equipment as set out in Tax Code, §151.007. The sales price includes charges for accessories, transportation, installation, services, and other expenses that are connected to the sale.

(b) Imposition of Surcharge.

(1) A surcharge is due on the sales price of off-road, heavy-duty diesel equipment sold in Texas. If the purchaser takes possession of or title to the equipment on or after September 1, 2015, the surcharge is 1.5% of the sales price. If the purchaser took possession of or title to the equipment on or after July 1, 2003, and before September 1, 2015, the surcharge is 2.0% of the sales price.

(2) A surcharge is due on the sales price, excluding separately stated interest charges, of off-road, heavy-duty diesel equipment leased under a financing lease, as defined in §3.294 of this title (relating to Rental and Lease of Tangible Personal Property). If the lessee takes possession of the equipment on or after September 1, 2015, the surcharge is 1.5% of the sales price. If the lessee took possession of the equipment on or after July 1, 2003, and before September 1, 2015, the surcharge is 2.0% of the sales price.



(3) A surcharge is due on the lease payments for off-road, heavy-duty diesel equipment that is leased under an operating lease, as defined in §3.294 of this title. If the lessee takes possession of the equipment on or after September 1, 2015, the surcharge is 1.5% of the lease payments. If the lessee took possession of the equipment on or after July 1, 2003, and before September 1, 2015, the surcharge is 2.0% of the lease payments.

(4) A surcharge is due on the sales price of off-road, heavy-duty diesel equipment purchased, leased, or rented out of state and brought into Texas for use. If the purchaser brings the equipment into Texas for use on or after September 1, 2015, the surcharge is 1.5% of the sales price. If the purchaser brought the equipment into Texas for use on or after July 1, 2003, and before September 1, 2015, the surcharge is 2.0% of the sales price. See §3.346 of this title.

(5) A 1.0% surcharge is due on off-road, heavy-duty diesel construction equipment sold, leased, or rented if the purchaser took possession of or title to the equipment on or after August 31, 2001 and before July 1, 2003. No surcharge is due on equipment sold, leased, or rented during this time period if the equipment is subject to use tax or is used in non-construction activities.

(c) Collection of surcharge. A seller must collect the surcharge from the purchaser on the sales price of each sale, lease, or rental in Texas of off-road, heavy-duty diesel equipment that is not exempt from sales tax. The surcharge is collected at the same time and in the same manner as sales or use tax. See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities[; including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules]) for information on the collection and remittance of sales or use tax. The surcharge is collected in addition to state and local sales or use taxes but is not collected on the amount of the sales or use tax.

(d) Exemptions. No surcharge is collected on the sale, lease, or rental of off-road, heavy-duty diesel equipment that is exempt from sales and use tax. A seller who accepts a valid and properly completed resale or exemption certificate, direct payment exemption certificate, or other acceptable proof of exemption from sales and use tax is not required to collect the surcharge. For example, a seller may accept an exemption certificate in lieu of collecting sales tax and the surcharge from a farmer who purchases a bulldozer to be used exclusively in the construction or maintenance of roads and water facilities on a farm that produces agricultural products that are sold in the regular course of business.

(e) Reports and payments.

(1) A seller or purchaser with a surcharge account, including a direct payment holder, must report and pay the surcharge in the same manner as sales or use tax, but separate reports and payments for the surcharge are required.

(A) A seller's or purchaser's reporting period (i.e., monthly, quarterly, or yearly) and due date for the surcharge are determined by the amount of surcharge that the seller collects or purchaser owes. See §3.286 of this title.

(B) A purchaser who does not hold a surcharge account must report and pay the surcharge by the 20th day of the month following the month in which the purchaser acquired off-road, heavy-duty diesel powered equipment on which the seller did not collect the surcharge.

(2) A seller or purchaser must report and pay the surcharge to the comptroller on forms prescribed by the comptroller for the surcharge. A seller or purchaser is not relieved of the responsibility for filing a surcharge report and paying the surcharge by the due date be-

cause the seller or purchaser fails to receive the correct form from the comptroller.

(3) The penalties and interest imposed for failure to timely file and pay the surcharge are the same as those imposed for failure to timely file and pay sales or use tax. Likewise, the 0.5% discount for timely filing and payment is applicable to surcharge reports and payments. No prepayment discount will be paid a seller or purchaser for prepayment of the surcharges.

(f) Expiration. The surcharge expires on the last day of the state fiscal biennium during which the Texas Commission on Environmental Quality publishes in the *Texas Register* the notice required by Health and Safety Code, §382.037.

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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Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



## SUBCHAPTER JJ. CIGARETTE, E-CIGARETTE, AND TOBACCO PRODUCTS REGULATION

### 34 TAC §3.1202

The Comptroller of Public Accounts proposes amendments to §3.1202, concerning warning notice signs. The amendments implement Senate Bill 21, 86th Legislature, 2019, effective September 1, 2019. The bill amends Health and Safety Code, §161.084 (Warning Notice) to update and add language to be included in the warning notice sign.

The comptroller amends subsection (d)(1)(A) to reflect statutory language to be included in the warning notice sign.

The comptroller adds new subparagraph (B) to include the temporary statutory language concerning persons born prior to September 1, 2001, to be included in the warning notice sign. The subsequent subparagraph is re-lettered.

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

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by conforming the rule to current statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural

communities. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic cost to the public.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The comptroller proposes the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2, and taxes, fees, or other charges that the comptroller administers under other law.

The amendments implement Health and Safety Code, §161.084 (Warning Notice).

§3.1202. *Warning Notice Signs.*

(a) Warning notice signs. Each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine must post a warning notice sign in a location that is conspicuous to all employees and customers and that is close to the cash register, check-out stand, or vending machine where cigarettes, e-cigarettes, or tobacco products may be purchased. The failure to display a sign as prescribed by this section is a Class C misdemeanor.

(b) Sign distribution. Upon request, the comptroller will provide the warning notice signs without charge to any person who sells cigarettes, e-cigarettes, or tobacco products, including distributors or wholesale dealers of cigarettes, e-cigarettes, or tobacco products in this state for distribution to persons who sell cigarettes, e-cigarettes, or tobacco products. A distributor or wholesale dealer may not charge for distributing a sign under this subsection. Requests for the warning notice signs may be made by calling the Comptroller of Public Accounts toll free at 1-800-862-2260, or by writing to the attention of the Account Maintenance Division, Comptroller of Public Accounts, 111 East 17th Street, Austin, Texas 78774-0100. In Austin, call (512) 463-3731. A request must include the number of signs needed, and the person and address to whom the signs are to be mailed.

(c) Alternate signs. Retailers, distributors, and wholesale dealers may develop their own warning notice signs provided the signs meet minimum size and design specifications, including wording and font size, described in subsection (d) of this section. A retailer, distributor, or wholesale dealer may submit a sample of its proposed sign for review to the address as noted in subsection (b) of this section.

(d) Sign design and minimum size requirements. The design, minimum size, and placement location of each sign are as follows.

(1) Design. Each sign must be designed according to the following:

(A) it must contain the following statutory language: "PURCHASING OR ATTEMPTING TO PURCHASE CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY A PERSON [MINOR] UNDER 21 [18] YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO A PERSON [MINOR] UNDER 21 [18] YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500 MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S

OFFICE BY CALLING 1-800-345-8647. PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT. THE PROHIBITIONS ON THE PURCHASE OR ATTEMPT TO PURCHASE DESCRIBED ABOVE DO NOT APPLY TO A PERSON WHO IS IN THE UNITED STATES MILITARY FORCES OR STATE MILITARY FORCES."<sub>2</sub>

(B) it must contain the following statutory language until September 1, 2022: "THE PROHIBITIONS ON THE PURCHASE OR ATTEMPT TO PURCHASE DESCRIBED ABOVE DO NOT APPLY TO A PERSON WHO WAS BORN ON OR BEFORE AUGUST 31, 2001."; and

(C) [(B)] retailers must display the English version. The comptroller will make a Spanish version available. Both the Spanish and English versions may be posted.

(2) Size and placement. The sign is to be posted on or near:

(A) a cash register or check-out stand and must be no less than 8-1/2 inches wide by 14 inches in length. The font size for the statutory language that must appear on the sign must be no less than 14-point type. The mandatory warning notice sign must be conspicuous from each cash register or check-out stand where cigarettes, e-cigarettes, or tobacco products may be purchased. If a retailer chooses, an additional warning notice sign, regardless of size, may be conspicuously placed on each cash register or check-out stand where cigarettes, e-cigarettes, or tobacco products may be purchased; and

(B) a vending machine and must be no less than 3 inches wide by 7 inches in length. The font size for the statutory language that must appear on the sign must be no less than 10-point type.

(e) Effective date. Sellers of cigarettes and tobacco products must display the warning notice signs in the appropriate locations beginning January 1, 1998. E-cigarette sellers must display the warning notice signs in the appropriate locations beginning October 1, 2015.

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

Filed with the Office of the Secretary of State on November 1, 2019.

TRD-201904061

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: December 15, 2019

For further information, please call: (512) 475-0387



**34 TAC §3.1205**

The Comptroller of Public Accounts proposes amendments to §3.1205, concerning delivery sales of cigarettes (Health and Safety Code, Chapter 161, Subchapter R). The amendments implement Senate Bill 21, 86th Legislature, 2019, which is effective September 1, 2019. The bill amends provisions of the Health and Safety Code to raise the minimum legal age for the sale, distribution, possession, purchase, consumption, or receipt of cigarettes, e-cigarettes, or tobacco products from 18 to 21 years of age; and Health and Safety Code, §161.081 (Definitions) to define a "minor" as a person under 21 years of age.

Throughout the section, the comptroller replaces the phrases "person younger than 18 years of age" or "individual younger than 18 years of age" with the defined term "minor."

The comptroller amends subsection (a)(4) by deleting the definition of the term "shipping container" pursuant to the SB 21 amendment that repealed Health and Safety Code, §161.455 (Shipping Requirements). The comptroller adds the definition of the term "minor" to mean a person under 21 years of age. The new paragraph also includes the exceptions to the age restrictions reflected in SB 21 but not included in the statutory definition of the term.

The comptroller deletes paragraph (5) by deleting the definition of the term "shipping document" pursuant to the SB 21 amendment that repealed Health and Safety Code, §161.455 (Shipping Requirements). The subsequent paragraph is re-lettered.

The comptroller amends subsection (b)(1)(A) to provide an exception to the requirement that out-of-state sellers obtain cigarette distributor's permits from the comptroller's office if they intend to make delivery sales to Texas customers. The out-of-state seller does not need a distributor's permit if the seller is purchasing Texas-stamped cigarettes.

The comptroller amends subsection (b)(1)(B) to update the title of the referenced §3.286.

The comptroller amends the headings to subsections (c)(3)(A) and (B) to remove the duplicated heading and to be more descriptive of the paragraphs' contents.

The comptroller deletes subsection (d) as SB 21 removed the shipping requirement language from the statute.

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

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by conforming the rule to current statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic cost to the public.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The comptroller proposes the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2, and

taxes, fees, or other charges that the comptroller administers under other law.

The amendments implement Health and Safety Code, §§161.081 (Definitions), 161.082 (Sale of Cigarettes, E-Cigarettes, or Tobacco Products to Persons Younger Than 21 Years of Age Prohibited; Proof of Age Required), 161.083 (Sale of Cigarettes, E-Cigarettes, or Tobacco Products to Persons Younger Than 30 years of Age), 161.084 (Warning Notice), 161.085 (Notification of Employees and Agents), 161.251 (Definitions), and 161.252 (Possession, Purchase, Consumption, or Receipt of Cigarettes, E-Cigarettes, or Tobacco Products by Minors Prohibited); and Health and Safety Code, Subchapter R (Delivery Sales of Cigarettes and E-Cigarettes).

§3.1205. *Delivery Sales of Cigarettes (Health and Safety Code, Chapter 161, Subchapter R).*

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

(1) Cigarette--A roll for smoking:

(A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and

(B) that is not a cigar.

(2) Delivery sale--A sale of cigarettes to a consumer in Texas in which:

(A) the purchaser submits the order for the sale:

(i) by telephone or any other method of voice transmission;

(ii) by mail or any other delivery service; or

(iii) through the Internet or another on-line service;

or

(B) the cigarettes are delivered by mail or another delivery service.

(C) A sale of cigarettes not for personal consumption to a person who is a wholesale dealer or a retail dealer is not a delivery sale.

(D) A sale of cigarettes is a delivery sale regardless of whether the seller is located outside or within Texas.

(3) Delivery service--A person, including the United States Postal Service, who is engaged in the commercial delivery of letters, packages, or other containers.

(4) Minor--A person under 21 years of age. The term "minor" does not include a person who is at least 18 years of age and is in the United States military forces or the state military forces. The term "minor" does not include a person who was born on or before August 31, 2001. [Shipping container--A container in which cigarettes are shipped in connection with a delivery sale.]

~~[(5) Shipping document--A bill of lading, airbill, United States Postal Service form, or any other document used to document a delivery.]~~

(5) ~~[(6)]~~ Seller--A person, located outside or within Texas, who takes or accepts delivery sale orders from the public by telephone, mail, or on the Internet, or who mails or ships cigarettes in connection with a delivery sale.

(b) Seller permits and registration.

(1) Cigarette tax permits and sales and use tax permits.

(A) Out-of-state sellers who intend to make delivery sales to Texas customers must apply for and obtain a cigarette retailer's permit and, unless purchasing Texas stamped cigarettes, a cigarette distributor's permit from the comptroller's office as described in §3.102 of this title (relating to Applications, Definitions, Permits, and Reports).

(B) Sellers located in Texas who intend to make delivery sales to Texas customers must apply for and obtain a cigarette retailer's permit from the comptroller's office, as described in §3.102 of this title, and must obtain a Texas sales and use tax permit, as described in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities[, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules]).

(2) Delivery sale registration. Before making a delivery sale in Texas, all sellers must register with the comptroller by filing a statement that includes:

(A) the seller's name and trade name;

(B) the address of the seller's principal place of business and any other place of business;

(C) the seller's telephone number; and

(D) the person's e-mail address.

(c) Seller and purchaser responsibilities.

(1) Collection and payment of taxes. The comptroller's office collects cigarette excise tax through the sale of cigarette tax stamps to permitted distributors. A seller located outside of Texas who has obtained a distributor permit is required to purchase and pay for tax stamps before the comptroller's office will ship the stamps to the seller. In addition, as provided in Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax), a seller engaged in business in Texas is required to collect and remit to the comptroller's office sales tax on all cigarette sales made in Texas.

(2) Stamping requirements. A seller located outside of Texas must affix a Texas tax stamp to each package of cigarettes that is to be shipped or delivered to a purchaser in Texas before shipment. A Texas seller can purchase only stamped packages of cigarettes from distributors and wholesalers.

(3) Age verification. A seller must confirm the age of the prospective purchaser placing an order for cigarettes to be delivered by the United States Postal Service or by a delivery service before the cigarettes can be mailed or delivered to a purchaser in Texas.

(A) Purchaser [Written] verification. A seller is required to obtain from the prospective purchaser a written certification that includes a reliable confirmation that the prospective purchaser is not a minor [at least 18 years of age] and a statement signed by the prospective purchaser under penalty of law:

(i) certifying the prospective purchaser's address and date of birth;

(ii) confirming that the prospective purchaser understands that signing another person's name to the certification is illegal, that sales of cigarettes to, and the purchase of cigarettes by a minor, [; an individual younger than 18 years of age] are illegal under state law; and

(iii) confirming that the prospective purchaser wants to receive mailings from a tobacco company.

(B) Seller [Age] verification. A seller must make a good faith effort to verify the information contained in the certification

required under subparagraph (A) of this paragraph. A seller may compare the information against a commercially available database or obtain a photocopy or other image of a government-issued identification bearing a photograph and date of birth of the prospective purchaser.

(4) Disclosure requirements. A seller must send a prospective purchaser, by e-mail or other means, a notice that includes a prominent and clearly legible statement that:

(A) cigarette sales to minors [individuals younger than 18 years of age] are illegal under state law;

(B) sales of cigarettes are restricted to those individuals who provide verifiable proof of age in accordance with paragraph (3) of this subsection;

(C) sales of cigarettes are taxable under Texas Tax Code, Chapter 154 (Cigarette Tax);

(D) the excise tax due on the cigarettes has been paid by the purchase of a tax stamp for each cigarette package; and

(E) that a tax stamp has been affixed to each cigarette package sold.

(5) Purchaser age certification. A person placing an order for cigarettes to be mailed or delivered must first:

(A) provide the seller with proof of age;

(B) provide the seller with a signed written statement that confirms:

(i) the purchaser's address and date of birth;

(ii) the purchaser's permission for a tobacco company to send mailings to the purchaser;

(iii) the purchaser's knowledge that signing another person's name to the written statement is illegal, and that state law prohibits the sales of cigarettes to, and the purchase of cigarettes by a minor [; an individual younger than 18 years of age]; and

(C) pay for the cigarettes ordered by mail or over the Internet by check or by a credit or debit card that has been issued in the purchaser's name.

~~[(d) Seller shipping requirements: Anyone who mails, ships, or delivers cigarettes into Texas in connection with a delivery sale order must:]~~

~~[(1) include as part of the shipping documents a clear and conspicuous statement: "CIGARETTES: TEXAS LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER 18 YEARS OF AGE AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES";]~~

~~[(2) require, or use a method of mailing or shipping that obligates the delivery service to require:]~~

~~[(A) the purchaser who placed the delivery sale order, or an adult who resides at the purchaser's address and who is at least 18 years of age, to sign to accept delivery of the shipping container; and]~~

~~[(B) the person signing to accept delivery of the shipping container to provide proof, in the form of a government-issued identification bearing a photograph, that the person is:]~~

~~[(i) the purchaser, or an adult who is at least 18 years of age and resides at the purchaser's address; and]~~

~~[(ii) at least 18 years of age if the person appears to be younger than 27 years of age; and]~~

{(3) if applicable, provide the delivery service with a written and signed statement that a Texas cigarette tax stamp has been affixed to each package of cigarettes included in the delivery sale. If the seller is located in Texas, the seller must also include a written and signed statement that the sales tax due on each package of cigarettes included in the delivery sale will be remitted to the comptroller's office.}

(d) [(e)] Reporting requirements.

(1) Each seller who has made a delivery sale, and each person who has delivered cigarettes in connection with a delivery sale, is required to file a delivery sales report with the comptroller's office.

(A) For each delivery sale, a person must file a memorandum or a copy of an invoice that provides:

(i) the name, address, telephone number, and e-mail address of the individual to whom the delivery sale was made;

(ii) the brand or brands of the cigarettes that were sold; and

(iii) the quantity of cigarettes that were sold.

(B) A person may comply with the reporting requirement described in this paragraph by filing a Texas Cigarette/E-Cigarette Delivery Sales Report. The report is available on the comptroller's website.

(C) This filing is due on or before the 10th day of each month based on delivery sales made in the previous month.

(2) A seller who submits a monthly "Jenkins Act" report required by 15 U.S.C. Section 376, as amended, to the comptroller's office has complied with the monthly delivery sales reporting requirement and no further report is required.

(3) A person is exempt from the filing requirement in this subsection, if in the preceding two years from the date the report is due, the person is not in violation of the requirements under Health and Safety Code, Chapter 161, Subchapter R (Delivery Sales of Cigarettes and E-Cigarettes) and has not been reported under Health & Safety Code, §161.090 (Reports of Violations) to the comptroller as having violated Subchapter H (Distribution of Cigarettes, E-Cigarettes, or Tobacco Products).

(A) A person is exempt from the filing requirement in this subsection, even if the person does not have a two-year report filing history, provided that the person has not committed a violation during the time the person has been making delivery sales.

(B) If a person violates the requirements of Health and Safety Code, Chapter 161, Subchapter R, or is reported to the comptroller under §161.090 for violating Health and Safety Code, Chapter 161, Subchapter H, the person must comply with the monthly filing requirements described in this subsection.

(i) A person who commits a violation, and who does not have two years of prior delivery sales, must file the required information from its first day of business.

(ii) A seller who commits a violation is liable for reporting all delivery sales for all business locations of the seller.

(e) [(f)] Violations and Penalties.

(1) A person commits an offense if the person violates a provision of Health and Safety Code, Chapter 161, Subchapter R for which a criminal penalty is not otherwise provided, or Tax Code, Chapter 154. For example, a seller who makes a delivery sale of cigarettes to a minor [person younger than 18 years of age] commits an offense. The person's first offense is a Class C misdemeanor. If it is shown on

the trial of a person that the person has previously been convicted of an offense under Health and Safety Code, Chapter 161, Subchapter R, the offense is a Class B misdemeanor.

(2) Knowing violations. A person who knowingly violates a provision of Health and Safety Code, Chapter 161, Subchapter R, or knowingly submits a certification described in subsection (c)(3)(A) of this section, in another person's name commits a felony of the third degree.

(3) Non-payment of tax. A person who fails to pay the cigarette tax or remit the sales and use tax due in connection with a delivery sale must pay to the state a civil penalty in an amount equal to five times the amount of tax due. This penalty is in addition to penalties imposed under Tax Code, Chapter 154.

(4) Forfeiture of cigarettes and property. Cigarettes sold, or cigarettes that a person attempted to sell in a delivery sale that does not comply with Health and Safety Code, Chapter 161, Subchapter R, are forfeited to the state and will be destroyed. A fixture, equipment, or other material or personal property on the premises of a person who, with the intent to defraud the state, fails to comply with the provisions of Health and Safety Code, Chapter 161, Subchapter R, is also forfeited to the state.

(5) Tax code violations. If the comptroller finds that a person violates Tax Code, Chapter 154, or a rule made pursuant to Chapter 154, the comptroller may impose a penalty of not more than \$2,000 for each violation per day and suspend or revoke the person's permit pursuant to Tax Code, §154.1141 (Summary Suspension of a Permit).

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

Filed with the Office of the Secretary of State on November 1, 2019.

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William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

#### CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

##### 37 TAC §163.31

The Texas Board of Criminal Justice proposes amendments to §163.31, concerning Sanctions, Programs, and Services. The amendments are proposed in conjunction with a proposed rule review of §163.31 as published in another section of the *Texas Register*. The proposed amendments add opportunities for CSCDs and judicial districts to make cost effective and efficient choices about providing service for adult probationers.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the rule, will be to permit CSCDs and judicial districts more choices as to how to offer services to the adult probation community. No cost will be imposed on regulated persons.

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.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogcomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register*.

The amendments are proposed under Texas Government Code §§492.013, 509.003.

Cross Reference to Statutes: None.

§163.31. *Sanctions, Programs, and Services.*

(a) Core Services. ~~[All Community Supervision and Corrections Departments (CSCDs) shall provide the following core services:]~~

(1) Court Services. Each community supervision and corrections department (CSCD) shall:

- (A) conduct pre/post-sentence investigations as ordered by the court and in accordance with law;
- (B) report violations to the court;
- (C) provide testimony as custodian of the record;
- (D) conduct assessments and complete reports mandated by law;
- (E) make recommendations to the court regarding conditions of supervision; and
- (F) maintain case files.

(2) Basic Supervision. Each CSCD shall:

- (A) enforce conditions of community supervision;
- (B) perform case intake;
- (C) conduct assessments, reassessments, and case ~~[supervision]~~ planning, and implement strategies to address identified offender risks and needs with the resources available to jurisdictions;
- (D) provide contacts to offenders on direct community supervision per Texas Department of Criminal Justice (TDCJ) ~~Community [Justice Community]~~ Justice Assistance Division (CJAD) ~~[(TDCJ-CJAD)]~~ standards;
- (E) maintain case files;

(F) develop and monitor community service restitution programs;

(G) as ordered by the court, assess and, when needed, provide access to education, substance abuse, and mental impairment services;

(H) monitor employment and provide job and/or vocational services to employable offenders; and

(I) provide access to assessment and treatment services for sex offenders and violent offenders and maintain appropriate levels of supervision for these offenders.

(3) Administrative Services. Each CSCD shall provide ~~[Provide]~~ adequate management and support service to the CSCD operation, commensurate with available resources, to include ~~[but not limited to]:~~

- (A) administrative support staff;
- (B) data processing support;
- (C) data control and evaluation support;
- (D) fiscal services support; and
- (E) training coordinators.

(b) Continuum of Sanctions. Each ~~[All]~~ CSCD director ~~[directors]~~ shall ensure the development and implementation of a continuum of sanctions that address the risks and needs of offenders as identified in the jurisdiction's strategic plan ~~[community justice plan]~~, subject to available resources and local policy.

(c) Regional Planning. Regional programs and services shall ~~[be designed to]~~ address regional needs as identified in each jurisdiction's strategic plan ~~[community justice plan]~~ and respond efficiently and economically ~~[as the more efficient economical response]~~ to specific offender issues for each of the participating jurisdictions. Each CSCD director ~~[directors]~~ participating in regional programs and services shall work with other CSCD directors affected ~~[the directors of other CSCDs impacted]~~ by those regional efforts in the planning, developing ~~[development]~~, and implementing ~~[implementation of]~~ regional programs and services to address offender needs.

(d) Community Service Restitution (CSR). Each CSCD director ~~[directors]~~ shall maintain written agreements with governmental and/or nonprofit entities ~~[agencies and organizations]~~ to provide offenders opportunities to comply with court-ordered community service restitution according to ~~[the]~~ Texas Code of Criminal Procedure article 42A.304 ~~[42.12 §16]~~.

(e) Educational Skill Level. Using a standardized educational screening instrument, each ~~[the]~~ CSCD director shall ensure that all persons placed on community supervision, who are unable to document attainment of a high school diploma or GED shall be screened to determine if the persons possess:

(1) Educational skills equal to or greater than the sixth grade level; or

(2) The intellectual capacity or learning ability to achieve the sixth grade skills level. Programs that assist offenders in attaining the educational skill level of sixth grade and above shall be developed and/or made available to the courts for offender referral. Each CSCD director ~~[directors]~~ may maintain written agreements with school and volunteer organizations to provide tutoring to teach reading to functionally illiterate offenders.

(f) Methods for Measuring the Success of Community Supervision and Corrections Program. For purposes of Texas Government

Code §509.007(b), the success of programs provided by a CSCD or an entity served by a CSCD is measured by assessing rates of program completion and recidivism.

(1) Program [~~For purposes of Texas Government Code §509.007(b), the method for measuring program~~] completion is [~~defined as~~] the completion of all required components of the program, and/or an offender's release from the program that is not related to any non-compliant behavior, an inappropriate placement, or death.

(2) Recidivism [~~The method for measuring recidivism~~] is [~~defined as~~] a subsequent arrest for a new, separate offense that is punishable by incarceration [~~(i.e., Class B misdemeanors and up)~~]. This definition does not include arrests for motions to revoke community supervision and bond forfeitures.

(g) Conflicts of Interest. ~~Each~~ [~~The~~] CSCD director shall ensure the adoption of [~~that there is~~] a written policy that prohibits [~~concerning conflicts of interest. The policy shall address the prohibition of~~] possible conflicts of interest affecting the CSCD, its supervision officers, and [~~or~~] employees.

(h) Partnerships with Law Enforcement Agencies. ~~Each~~ CSCD [~~CSCDs~~] shall cooperate with and provide assistance to municipal, county, and state law enforcement agencies or peace officers in situations relating to offender supervision, absconder apprehension, victim services, and other community-based criminal justice activities.

(i) A CSCD may contract with another CSCD for services or facilities.

(j) A judicial district may contract for programs and services with a CSCD established for another judicial district, in lieu of establishing its own CSCD, if such a contract promotes administrative convenience, economy, or improved services.

(k) More than one CSCD may serve a judicial district that includes more than one county if providing more than one CSCD promotes administrative convenience, economy, or improved services.

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

Filed with the Office of the Secretary of State on November 1, 2019.

TRD-201904076

Erik Brown

Director of Legal Affairs

Texas Department of Criminal Justice

Earliest possible date of adoption: December 15, 2019

For further information, please call: (936) 437-6700



### 37 TAC §163.41

The Texas Board of Criminal Justice proposes amendments to §163.41, concerning Medical and Psychological Information. The amendments are proposed in conjunction with a proposed rule review of §163.41 as published in another section of the *Texas Register*. The proposed amendments make minor organizational changes, delete superfluous guidance, and otherwise make no substantive changes.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering

the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the rule, will be to enhance clarity. No cost will be imposed on regulated persons.

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.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register*.

The amendments are proposed under Texas Government Code §§492.013, 509.003.

Cross Reference to Statutes: None.

#### §163.41. *Medical and Psychological Information.*

(a) Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) Policies. Community Supervision and Corrections Department (CSCD) directors shall develop and implement policies relevant to HIV and AIDS in accordance with guidelines established by the Texas Department of State Health Services and adopted by the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD). These policies shall be incorporated in the CSCD's administrative manuals and shall include, at a minimum, the following:

- (1) education and training [~~Education and Training~~];
- (2) confidentiality [~~Confidentiality~~];
- (3) workplace [~~Workplace~~] guidelines; and
- (4) supervision [~~Supervision~~] of individuals with HIV or AIDS infection.

(b) [~~Employee Training.~~] In accordance with Texas [~~Tex.~~] Health & Safety Code §85.142 and §85.143, the HIV-AIDS policy must:

- (1) provide for periodic education of employees and offenders [~~probationers~~] concerning HIV;
- (2) ensure that education programs for employees include information and training relating to the infection control procedures and that employees have infection control supplies and equipment readily available; [~~and~~]
- (3) ensure access to appropriate services and protect the confidentiality of medical records relating to HIV infection; [~~and~~]. In addition, CSCD residential directors shall ensure that residential staff attend and complete HIV-AIDS classroom training within the first year of employment and each year thereafter. Training shall include, at a minimum, information relating to infection control procedures; information regarding infection control supplies and equipment; and poli-

cies regarding the handling, care, and treatment of HIV-AIDS infected persons in their custody.]

(4) conform with the model policy guidelines. See e.g., <https://www.dshs.texas.gov/hivstd/policy/policies/090-020.shtm>

(c) Employee Training. CSCD residential directors shall ensure that residential staff attend and complete HIV-AIDS classroom training within the first year of employment and each year thereafter. Training shall include, at a minimum, information relating to infection control procedures, information regarding infection control supplies and equipment, and policies regarding the handling, care, and treatment of HIV-AIDS infected persons in their custody.

(e) HIV Confidentiality. Information regarding HIV-AIDS testing and results is confidential and shall be maintained in a safe and secure manner. Access to this confidential information shall be restricted to only those persons who have been authorized to receive this information by law or with a duly executed release and waiver of confidentiality. The CSCD may disclose HIV-AIDS information relating to special offenders in accordance with Tex. Health & Safety Code §§614.001 - 614.021 and other state and federal law.]

(d) Medical and Psychological Information. All records and other information concerning an offender's physical or mental state, including [aH] information pertaining to an offender's HIV-AIDS testing, results, and status, are confidential in accordance with [the statutes and other] state and federal law. Medical and psychological information shall be maintained in a safe and secure manner. Access to this confidential information shall be restricted to only those persons who have been authorized to receive this information by law or with a duly executed release and waiver of confidentiality from the offender. The CSCD may disclose medical and psychological information relating to special needs offenders in accordance with Texas [Tex.] Health & Safety Code §§614.001 - 614.021 and other state and federal 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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Erik Brown

Director of Legal Affairs

Texas Department of Criminal Justice

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For further information, please call: (936) 437-6700



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 2. ENVIRONMENTAL REVIEW OF TRANSPORTATION PROJECTS

##### SUBCHAPTER A. GENERAL PROVISIONS

###### 43 TAC §2.3

The Texas Department of Transportation (department) proposes amendments to §2.3, concerning environmental review and public participation requirements for certain transportation projects.

## EXPLANATION OF PROPOSED AMENDMENTS

Amendments to §2.3, Applicability; Exceptions, revise the applicability of the department's Chapter 2 environmental review rules to more closely align with the applicable state statutes.

Existing §2.3, states that the department's environmental review rules apply not only to the department's own projects, but also to private or public entities' projects if such a project receives state funding distributed by the department or requires any kind of approval by the department, even if the project has no FHWA funding and is not on the state highway system. The department believes that this broad application is not required by statute.

The original statute requiring the department to have environmental review rules was enacted in 1991 (S.B. 352, 72nd Legislature, Regular Session) and was codified in 1995 as Transportation Code, §201.604. Section 201.604 directs the Texas Transportation Commission (commission) by rule to "provide for the commission's environmental review of the department's transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.)." The statute calls for environmental review of "the department's transportation projects," not other private or public entities' transportation projects.

In 2011, the Texas Legislature enacted Transportation Code 201, Subchapter I-1. Subchapter I-1 established deadlines and other requirements for the department's environmental review of highway projects, and instructed the commission to implement the new requirements through rulemaking. The Legislature specified that the new environmental review requirements applied to (1) projects that are "part of the state highway system," and (2) projects that are not part of the state highway system, but are federally funded. (Transportation Code, §§201.752(a) and 201.751(3).) Off-system projects that are not federally funded, such as county road or city street projects undertaken by local governments with or without some form of state funding, were not included. However, off-system projects that are not federally funded but receive state funding are nonetheless required to undergo the department's environmental review procedures under the department's current rules.

Amendments to §2.3(a) specify that the department's environmental review rules apply only to (1) an FHWA transportation project, or (2) any portion of a state transportation project that will take place on the state highway system or other real property owned by the department. The department believes that this change to §2.3(a) more accurately implements the legislative mandates in Transportation Code, §201.604 and Transportation Code, §201.752(a). Non-federally funded projects undertaken by local governments or other entities with the assistance of state funding would not be subject to the department's environmental review process. Such a project would not require a project scope, which is now done electronically using the department's Environmental Compliance Oversight System, and would not require the department's issuance of a categorical exclusion determination, environmental assessment/finding of no significant impact, or environmental impact statement/record of decision. Of course, local governments or other entities would still be legally required to comply with all applicable environmental laws, such as the Clean Water Act and Endangered Species Act, when undertaking a transportation project.

The department believes that the change is appropriate for reasons beyond alignment with the underlying statutes. When a local government or other entity undertakes a non-federally funded



transportation project on its own property, the local government or entity, not the department, should be responsible for evaluating the environmental impacts of the project and determining whether and how to proceed. Currently, local governments must comply with all applicable environmental laws plus the department's environmental review process. Allowing local governments and other entities to develop off-system, non-federally funded projects according to their own procedures, and using their own expertise and knowledge of local conditions, without having to also comply with the department's environmental review requirements, will provide greater flexibility and autonomy for those entities. This change will also reduce the administrative burden on department environmental staff, allowing for a higher level of focus on the environmental review of the department's own projects.

The amendments also remove the exceptions in §2.3(b) and (d). The revised statement of applicability in amended §2.3(a), makes these exceptions unnecessary because the excepted projects are no longer described by the revised statement.

#### FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be a reduction in costs for state and local governments as a result of enforcing or administering the rules. For off-system, non-federally funded projects, local governments will avoid costs associated with preparation of a project scope, the collection and provision of certain project information for the department's review, and other actions related to complying with the department's Chapter 2 environmental review process. For such projects the department will avoid the administrative burden associated with reviewing project information provided by the local governments, processing the projects in the department's environmental clearance operating system, and issuing an environmental decision. The number of projects that would otherwise be subject to the department's Chapter 2 rules would vary from year to year and is not known. The local government's costs of complying with the department's Chapter 2 rules, and the amount of time spent by department staff reviewing such projects, would vary depending on project-specific factors and the local government's familiarity with the department's environmental review process. For these reasons, the fiscal impact is expected to be positive but the amount of cost reductions for state and local governments cannot be calculated.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Carlos Swonke, Director, Environmental Affairs Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

#### PUBLIC BENEFIT

Mr. Swonke has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be increased efficiency and a reduction in the potential for delays in distributing state funding for off-system, non-federally funded projects.

#### COSTS ON REGULATED PERSONS

Mr. Swonke has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

#### GOVERNMENT GROWTH IMPACT STATEMENT

The proposed rules limit an existing regulation. Mr. Swonke has considered the requirements of Government Code, §2001.0221 and has determined that for the first five years in which the proposed rules are in effect, the number of transportation projects that will be required to comply with the department's environmental review rules, in addition to other applicable environmental laws, will be reduced. The rules will not create or eliminate a government program, or change the fees paid to the agency. The rules will not require a change in the legislative appropriations to the agency. The change does not create a new regulation, but rather limits an existing regulation and decreases the number of individuals subject to the rule's applicability. Although the rules will reduce the administrative burden on the department, due to the department's existing workload the change is not anticipated to require the elimination of existing employee positions, nor it is anticipated to require a change in future legislative appropriations. The improved efficiency of local government projects could positively affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

Mr. Swonke has determined that a written takings impact assessment is not required under Government Code, §2007.043.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The proposed amendment of §2.3 is subject to the Texas Coastal Management Program (CMP) and must be consistent with all applicable CMP policies.

The department has historically reviewed projects within the coastal boundary for consistency with the CMP as part of its environmental review process under Chapter 2. See 43 TAC §2.134. Under amended §2.3, off-system, non-federally funded projects proposed and undertaken by other entities, such as local governments, will no longer be required to comply with the department's environmental review process, even if receiving state funding for the project. Therefore, the department would no longer review such a project for consistency with the CMP. The department concludes that this amendment is consistent with applicable CMP policies, as the CMP does not require the department to conduct a consistency review of such projects.

Rules implementing the CMP provide that "[a]n agency, when proposing an action listed in §505.11(a) of this chapter (relating to Actions and Rules Subject to the Coastal Management Program) that may adversely affect a coastal natural resource area (CNRA), shall comply with the CMP goals and policies." (31 TAC §505.30(a).) Section 505.11 contains an "exclusive list" of individual agency actions that must be consistent with the CMP

goals and policies. (31 TAC §505.11(a).) Subsection (a)(4) of that rule is applicable to the department: "for the Texas Transportation Commission when approving: (A) an acquisition of a site for the placement or disposal of dredge material from, or the expansion, relocation, or alteration of, the Gulf Intracoastal Waterway; or (B) an environmental document for a transportation construction project or maintenance program." As explained above, state statutes do not require the department to approve an environmental document for off-system, non-federally funded projects proposed and undertaken by local governments or other entities. Therefore, the department is not required to conduct a CMP consistency review for such a project.

Additionally, under 31 TAC §501.31(b), the underlying CMP policies for transportation projects specifically apply only to approvals under certain statutes relating to public transportation (Transportation Code §§455.001-455.004, 456.001-456.008, and 456.021-456.026) and projects on the state highway system (Transportation Code, §221.001, et seq.). Off-system projects are not included.

The department will continue to conduct a CMP consistency review for Gulf Intracoastal Waterway disposal site acquisitions and projects subject to the department's environmental review process in accordance with 43 TAC §2.134, Coastal Management Program, which is not affected by this rulemaking.

A copy of this rulemaking will be submitted to the General Land Office for its comments on the consistency of the proposed rulemaking with the CMP. The department requests that the public also give comment on whether the proposed rulemaking is consistent with the CMP.

#### PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 1:30 p.m. on December 4, 2019, in the Ric Williamson Hearing Room, First Floor, Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 1:00 p.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content.

Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact the General Counsel Division, 125 East 11th Street,

Austin, Texas 78701-2483, (512) 463-8630 at least five working days before the date of the hearing so that appropriate services can be provided.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §2.3 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Applicability of Chapter 2." The deadline for receipt of comments is 5:00 p.m. on December 16, 2019. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.604, which requires the commission to adopt rules to provide for the environmental review of the department's transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.), and §201.752, which requires the commission to establish standards for processing an environmental review document for a highway project.

#### CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §201.604 and §201.752.

#### §2.3. *Applicability; Exceptions.*

(a) Application of chapter. This chapter prescribes the environmental review and public participation requirements for:

(1) ~~an [a state transportation project or] FHWA transportation project [conducted by the department]; or~~

(2) ~~any portion of a state transportation project that will take place on the state highway system or other real property owned by the department. [or FHWA transportation project of a private or public entity that is funded in whole or in part by the department; or]~~

~~{(3) a state transportation project or FHWA transportation project of a private or public entity that requires commission or department approval.}~~

~~{(b) Exceptions.}~~

~~{(1) Notwithstanding subsection (a) of this section, this chapter does not apply to:}~~

~~{(A) a transportation project that is not on the state highway system and that the department funds solely with money held in a project subaccount created under Transportation Code, §228.012;}~~

~~{(B) a transportation project that is developed by a county under Transportation Code, §228.011, or developed by a local toll project entity under Transportation Code, Chapter 373, and that is not on the state highway system and for which the department does not use funds other than funds derived solely from money held in a project subaccount created under Transportation Code, §228.012; or}~~

~~{(C) a state transportation project that is covered by an interagency cooperation contract between the department and the Texas Parks and Wildlife Department for the design, construction, or maintenance of a project.}~~

nance of a road or parking area or facility within or adjacent to a facility of the Texas Parks and Wildlife Department, and that is on a park road that is owned and operated by the Texas Parks and Wildlife Department and not on the state highway system.]

~~[(2) An agreement entered into by the department for a transportation project excepted under paragraph (1) of this subsection must require that the entity responsible for implementing the project will comply with all environmental review and public participation requirements applicable to that entity under other state and federal law in connection with the project.]~~

~~[(3) Notwithstanding subsection (a) of this section only §2.132 of this chapter (relating to Gulf Intracoastal Waterway Projects) applies to a project concerning the Gulf Intracoastal Waterway.]~~

~~(b) [(e)] Compliance with rules of federal transportation agency other than FHWA. For transportation projects conducted or supported by a federal transportation agency other than FHWA, and for transportation projects conducted or supported by multiple federal transportation agencies and for which FHWA is not the lead federal agency, the department delegate and project sponsor will comply with the environmental review rules of the lead federal agency, and not the rules in this chapter.~~

~~[(d) Transportation project developed by a local governmental entity or private entity. This chapter does not apply to a transportation project that:]~~

~~[(1) is developed by a local governmental entity or private entity;]~~

~~[(2) is not on the state highway system or on other department-owned property;]~~

~~[(3) is funded with no state or federal funds; and]~~

~~[(4) does not require department approval.]~~

~~(c) [(e)] Excepted activities. For the purposes of this chapter:~~

~~(1) a contractor activity that is not directed or directly controlled by the department and that is in an area outside of the right-of-way, including a staging area, disposal site, equipment storage site, or borrow site selected by a contractor, is not part of a transportation project; and~~

~~(2) the relocation of an individual, family, business, farm operation, nonprofit organization, or utility to a location outside of the right-of-way is not part of a transportation project.~~

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 October 31, 2019.

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Becky Blewett

Deputy General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8630



## CHAPTER 7. RAIL FACILITIES

## SUBCHAPTER E. RAIL FIXED GUIDEWAY SYSTEM STATE SAFETY OVERSIGHT PROGRAM

The Texas Department of Transportation (department) proposes amendments to §7.81, Definitions, and §7.82, System Safety Program Plan, the repeal of §§7.83 - 7.95, and new §§7.83 - 7.96, all concerning the rail fixed guideway system state safety oversight program.

### EXPLANATION OF PROPOSED REVISIONS

Transportation Code, Chapter 455, Subchapter B, designates the department as the state agency responsible for implementing a state safety oversight program that satisfies the requirements of 49 U.S.C. Section 5329(e) and generally aligns state law with the requirements of that provision. This rulemaking makes changes to the state safety oversight program rules for transit agencies other than small public transportation providers, to satisfy the requirements of federal law, including 49 C.F.R. Parts 673 and 674. Simultaneously with this rulemaking, changes are also being considered to 43 TAC Chapter 31, Subchapter A, which governs the small public transportation providers (small urban bus systems) state safety oversight program, to satisfy the requirements of federal law. 49 C.F.R. 673.11 contains some elements that apply only to rail transit agencies, others that apply only to small urban bus systems, and some that apply to both. Section 673.11, Subsections (a)(1)-(5) and (c), apply to both systems, while §673.11, Subsections (a)(6), (b), and (e), apply only to rail transit agencies. Section 673.11, Subsection (d) applies only to small urban bus agencies.

This rulemaking adds a new §7.83, Public Transportation Agency Safety Plan. Because of that addition, existing §§7.83 - 7.95 are renumbered as §§7.84 - 7.96 and references in the rules to those sections are changed, as appropriate. Even though only two substantive changes are being made to the renumbered sections, rules of the Office of the Secretary of State require that to renumber sections, the existing sections must be repealed and then readopted with the new section numbers.

Amendments to §7.81, Definitions, restate many of the definitions used in Chapter 7, Subchapter E, without substantive changes. The definitions of "accident," "accountable executive," "administrator," "contractor," "corrective action plan," "event," "fatality," "FRA," "NTSB," "occurrence," "public transportation agency safety plan," "serious injury," and "vehicle" have been added or modified. The definition of "injury" is deleted and replaced with a definition for "serious injury." These changes are made to be consistent with the definitions in 49 C.F.R. §674.7 and federal guidance on state safety oversight.

Amendments to §7.82, System Safety Program Plan, state the final date that a system safety program plan developed under 49 C.F.R. Part 659 may be in effect, as required by 49 C.F.R. Part 673. The amendments also correct section numbers changed in this rulemaking.

New §7.83, Public Transportation Agency Safety Plan, is added to state the safety plan general requirements provided by 49 C.F.R. §673.11. Rail agencies under the department's oversight must establish a public transportation agency safety plan meeting the requirements of this section by July 20, 2020. The general requirements included are consistent with the minimum set of requirements listed in federal regulations.

New §7.84, Hazard Management Process, contains the substance of former §7.83 except that the new section removes the requirement that rail transit agencies submit, not later than the 15th day of each month, a log that lists each hazard that was identified during the preceding month. The electronic reporting system used by the department to receive hazard notifications and reports can automatically generate logs thereby eliminating the need to manually track and report hazards logs on a monthly basis.

New §7.85, New State Rail Transit Agency Responsibilities, and §7.86, Modifications to a System Safety Program Plan, are the same as former sections as §7.84 and §7.85, respectively.

New §7.87, Rail Transit Agency's Annual Review, is the same as former §7.86, except that the rail transit agency's annual internal safety review submission deadline is changed from December 1st to February 1st. This change provides rail transit agencies with additional time to submit to the department the information and data required by Federal Transit Administration. The department must consolidate this information and data in order to submit to the FTA by March 15th.

New §7.88, Department System Safety Program Plan Audit, is the same as former §7.87.

New §7.89, Accident Notification, is the same as former §7.88, except that the word "incident" is replaced with "accident." 49 C.F.R. Part 674 requires rail transit agencies to notify FTA and the department of accidents, not incidents, within two hours.

New §7.90, Accident Investigations, is the same as former §7.89.

New §7.91, Corrective Action Plan, is the same as former §7.90, except that the new section removes the requirement that rail transit agencies submit corrective action reports at 30-day intervals until the issue has been corrected and compliance has been achieved. The electronic reporting system used by the department to receive corrective action plans can automatically generate reports thereby eliminating the need to manually report corrective actions at 30-day intervals.

New §7.92, Administrative Actions by the Department, §7.93, Administrative Review, §7.94, Escalation of Enforcement Action, §7.95, Emergency Order to Address Imminent Public Safety Concerns, and §7.96, Admissibility; Use of Information, are the same as the former §7.91 - §7.95, respectively.

#### FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the rules are in effect, there will be no fiscal implications for state or local governments as a result of administering the rules. The requirement to provide the new public transportation agency safety plan is an obligation imposed by the new federal regulations and is not a cost associated with these rules. The rules express the federal requirements for the department to carry out its oversight responsibilities.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Eric Gleason, Director, Public Transportation Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

#### PUBLIC BENEFIT

Eric Gleason, Director, Public Transportation Division, has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be implementation of public transportation agency safety plans across applicable transit providers in the state. Improved safety practices and procedures will benefit citizens who utilize public transportation throughout the state.

#### COSTS ON REGULATED PERSONS

Mr. Gleason, Director, Public Transportation Division, has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Gleason has considered the requirements of Government Code, §2001.0221 and expects that the proposed rules will have no effect on government growth. He anticipates that during the first five years that the rule would be in effect:

- (1) it would not create or eliminate a government program;
- (2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;
- (3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;
- (4) it would not require an increase or decrease in fees paid to the agency;
- (5) it would not create a new regulation;
- (6) it would not expand, limit, or repeal an existing regulation;
- (7) it would not increase or decrease the number of individuals subject to its applicability; and
- (8) it would not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

Mr. Gleason has determined that a written takings impact assessment is not required under Government Code, §2007.043.

#### SUBMITTAL OF COMMENTS

Written comments on the amendments of §7.81 and §7.82, the repeal of §§7.83 - 7.95, and new §§7.83 - 7.96 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "State Safety Oversight Program." The deadline for receipt of comments is 5:00 p.m. on December 16, 2019. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit mon-

etarily from the proposed amendments, or is an employee of the department.

### 43 TAC §§7.81 - 7.96

#### STATUTORY AUTHORITY

The amendments and new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department and more specifically, Transportation Code, §455.060, which authorizes the commission to adopt rules necessary to implement Transportation Code, Chapter 455, Subchapter B.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 455, Subchapter B.

#### §7.81. Definitions.

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

(1) Accident--An event that involves any of the following: A loss of life; a report of a serious injury to a person; a collision involving a rail transit vehicle; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause.

(2) Accountable Executive--A single, identifiable individual who has:

(A) ultimate responsibility for carrying out the public transportation agency safety plan of a public transportation agency;

(B) responsibility for carrying out the agency's transit asset management plan; and

(C) control or direction over the human and capital resources needed to develop and maintain both the agency's public transportation agency safety plan, in accordance with 49 U.S.C. §5329(d), and the agency's transit asset management plan in accordance with 49 U.S.C. §5326.

(3) Administrator--The Federal Transit Administrator or the Administrator's designee.

(4) Contractor--An entity that performs tasks on behalf of FTA, a state safety oversight agency, or a rail transit agency, through contract or other agreement.

(5) Corrective action plan--A plan developed by a rail transit agency that describes the actions the rail transit agency will take to minimize, control, correct, or eliminate risks and hazards, and the schedule for taking those actions. Either a state safety oversight agency or FTA may require a rail transit agency to develop and carry out a corrective action plan.

(6) [(4)] Department--The Texas Department of Transportation.

(7) Event--An accident, incident, or occurrence.

(8) [(2)] Executive director--The executive director of the department.

(9) [(3)] Fatality--A death that results from an event [~~incident~~] and that occurs within 30 days after the date of the event [~~incident~~].

(10) FRA--The Federal Railroad Administration, an agency within the United States Department of Transportation.

(11) [(4)] FTA--The Federal Transit Administration, an agency of the United States Department of Transportation.

(12) [(5)] Hazard--any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a rail fixed guideway public transportation system; or damage to the environment.

(13) [(6)] Incident--An event that involves any of the following: A personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a rail transit agency.

[(7)] Injury--Any physical damage or harm that occurs to an individual as a result of an incident and that requires immediate medical attention away from the scene.]

(14) [(8)] Investigation--The process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.

(15) NTSB--The National Transportation Safety Board, an independent federal agency.

(16) Occurrence--An event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a rail transit agency.

(17) [(9)] Passenger--An individual who is on board, boarding, or alighting from a rail transit vehicle used for the individual's travel.

(18) [(10)] Pre-revenue Operations--Operation of the rail fixed guideway public transportation system prior to revenue service that includes identification and performance of tests, drills, exercises, and audits designed to verify the functional capability and readiness of the system.

(19) Public transportation agency safety plan--The comprehensive agency safety plan for a transit agency, including a rail transit agency, that is required by 49 U.S.C 5329(d) and based on a safety management system.

(20) [(11)] Rail fixed guideway public transportation system--Any fixed guideway system that uses rail, is operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration, or any such system in engineering or construction. Rail fixed guideway public transportation systems include but are not limited to rapid rail, heavy rail, light rail, monorail, trolley, inclined plane, funicular, and automated guideway.

(21) [(12)] Rail transit agency--Any entity that provides services on a rail fixed guideway public transportation system.

(22) [(13)] Rail transit controlled property--Property that is used by the rail transit agency.

(23) [(14)] Rail transit vehicle--The rail transit agency's rolling stock, including passenger and maintenance vehicles.

(24) [(15)] Revenue Service--Operation of the rail fixed guideway public transportation system to carry passengers that pay fares, provide payment through a contractual arrangement, or have the fares subsidized by public policy. Vehicles operated in fare free service are considered in revenue service.

(25) Serious injury--Any injury that:

(A) requires hospitalization for more than 48 hours, with the hospitalization beginning within 7 days after the date that the injury was received;

(B) results in a fracture of any bone, other than a simple fracture of a finger, toe, or nose;

(C) causes severe hemorrhages, nerve, muscle, or tendon damage;

(D) involves any internal organ; or

(E) involves second- or third-degree burns, or any burns affecting more than five percent of the body surface.

(26) Vehicle--Any rolling stock used on a rail fixed guideway public transportation system, including passenger and maintenance vehicles.

*§7.82. System Safety Program Plan.*

(a) Each rail transit agency shall develop and implement a written system safety program plan that complies with the requirements of this section.

(b) A system safety program plan developed pursuant to 49 C.F.R. part 659 may serve as the rail transit agency's safety plan until July 20, 2020.

(c) [(b)] The system safety program plan must include, at a minimum:

(1) a policy statement, signed by the agency's chief executive, that endorses the safety program and describes the authority that establishes the system safety program plan;

(2) a clear definition of the goals and objectives for the safety program and stated management responsibilities to ensure that those goals and objectives are achieved;

(3) an overview of the management structure of the rail transit agency, including:

(A) an organization chart;

(B) a description of how the safety function is integrated into the rest of the rail transit organization; and

(C) clear identification of the lines of authority used by the rail transit agency to manage safety issues;

(4) a description of the process used to control changes to the system safety program plan, which must include:

(A) an annual assessment of whether the system safety program plan should be updated in accordance with §7.87 [~~§7.86~~] of this subchapter (relating to Rail Transit Agency's Annual Review); and

(B) coordination with the department, including timeframes for submission, revision, and approval;

(5) a description of the specific activities required to implement the system safety program, including:

(A) tasks to be performed by the rail transit agency as its safety function, by position and management accountability, specified in matrices or a narrative format; and

(B) safety-related tasks to be performed by other rail transit departments, by position and management accountability, specified in matrices or a narrative format;

(6) a description of the process used by the rail transit agency to implement its hazard management program, which must include activities for:

(A) hazard identification;

(B) hazard investigation, evaluation, and analysis;

(C) hazard control and elimination;

(D) hazard tracking; and

(E) requirements for on-going reporting to the department relating to hazard management activities and status;

(7) a description of the process used by the rail transit agency to ensure that safety concerns are addressed in modifications to existing systems, vehicles, and equipment that do not require formal safety certification but may have safety impacts;

(8) a description of the safety certification process required by the rail transit agency to ensure that safety concerns and hazards are adequately addressed before the initiation of passenger operations and before subsequent major projects to extend, rehabilitate, or modify an existing system, or to replace vehicles and equipment;

(9) a description of the process used to collect, maintain, analyze, and distribute safety data to ensure that the safety function within the rail transit organization receives the necessary information to support implementation of the system safety program;

(10) a description of the process used by the rail transit agency to perform accident notification, investigation, and reporting, which must include:

(A) notification thresholds for internal and external organizations;

(B) accident investigation process and references to procedures;

(C) the process used to develop, implement, and track corrective actions that address investigation findings;

(D) reporting to internal and external organizations; and

(E) coordination with the department;

(11) a description of the process used by the rail transit agency to develop an approved, coordinated schedule for all emergency management program activities, which must include:

(A) meetings with external agencies;

(B) emergency planning responsibilities and requirements;

(C) the process used to evaluate emergency preparedness, such as annual emergency field exercises;

(D) after action reports and implementation of findings;

(E) revision and distribution of emergency response procedures;

(F) familiarization training for public safety organizations; and

(G) employee training;

(12) a description of the process used by the rail transit agency to ensure that planned and scheduled internal safety reviews are performed to evaluate compliance with the system safety program plan, which must include:

(A) identification of departments and functions subject to review;

(B) identification of responsibility for scheduling reviews;

- (C) the process used for conducting reviews, including the development of checklists and procedures and the issuing of findings;
  - (D) review of reporting requirements;
  - (E) tracking the status of implemented recommendations; and
  - (F) coordination with the department;
- (13) a description of the process used by the rail transit agency to develop, maintain, and ensure compliance with rules and procedures having a safety impact, which must include:
- (A) identification of operating and maintenance rules and procedures subject to review;
  - (B) techniques used to assess the implementation of operating and maintenance rules and procedures by employees, such as performance testing;
  - (C) techniques used to assess the effectiveness of supervision relating to the implementation of operating and maintenance rules; and
  - (D) the process used for documenting results and incorporating them into the hazard management process;
- (14) a description of the process used for facilities and equipment safety inspections, which must include:
- (A) identification of the facilities and equipment subject to regular safety related inspection and testing;
  - (B) techniques used to conduct inspections and testing;
  - (C) inspection schedules and procedures; and
  - (D) a description of how results are entered into the hazard management process;
- (15) a description of the maintenance audits and inspections program, which must include identification of the affected facilities and equipment, maintenance cycles, documentation required, and the process for integrating identified problems into the hazard management process;
- (16) a description of the training and certification program for employees and contractors, which must include:
- (A) the categories of safety-related work requiring training and certification;
  - (B) a description of the training and certification program for employees and contractors in safety-related positions;
  - (C) the process used to maintain and access employee and contractor training records; and
  - (D) the process used to assess compliance with training and certification requirements;
- (17) a description of the configuration management control process, which must include:
- (A) the authority to make configuration changes;
  - (B) the process used for making changes; and
  - (C) assurances necessary for formally notifying all involved departments;
- (18) a description of the safety program for employees and contractors that incorporates the applicable local, state, and federal requirements, which must include:

- (A) the safety requirements that employees and contractors must follow when working on, or in close proximity to, rail transit agency property; and
  - (B) the processes used for ensuring that the employees and contractors know and follow the requirements;
- (19) a description of the hazardous materials program, which must include the process used to ensure knowledge of and compliance with program requirements;
- (20) a description of the drug and alcohol program and the process used to ensure knowledge of and compliance with program requirements; and
- (21) a description of the measures, controls, and assurances in place to ensure that safety principles, requirements, and representatives are included in the rail transit agency's procurement process.

§7.83. Public Transportation Agency Safety Plan.

(a) A transit agency, other than a small public transportation provider governed by Title 43, Chapter 31 of the Texas Administrative Code, must, by July 20, 2020, establish a public transportation agency safety plan that meets the requirements of 49 C.F.R. Part 673, and that at a minimum, satisfies the requirements of this subsection.

(1) The public transportation agency safety plan, and subsequent updates, must be signed by the accountable executive and approved by the agency's board of directors, or an equivalent authority.

(2) The public transportation agency safety plan must document the processes and activities related to safety management system implementation.

(3) The public transportation agency safety plan must include performance targets based on the safety performance measures established under the National Public Transportation Safety Plan.

(4) The public transportation agency safety plan must address all applicable requirements and standards as set forth in FTA's Public Transportation Safety Program and the National Public Transportation Safety Plan. Compliance with the minimum safety performance standards authorized under 49 U.S.C. §5329(b)(2)(C) is not required until standards have been established through the public notice and comment process.

(5) Each transit agency must establish a process and timeline for conducting an annual review and update of the public transportation agency safety plan.

(6) A rail transit agency must include or incorporate by reference in its public transportation agency safety plan an emergency preparedness and response plan or procedures that address, at a minimum, the assignment of employee responsibilities during an emergency and coordination with Federal, State, regional, and local officials with roles and responsibilities for emergency preparedness and response in the transit agency's service area.

(b) A transit agency may develop one public transportation agency safety plan for all modes of service or may develop a public transportation agency safety plan for each mode of service not subject to safety regulation by a federal entity other than the FTA.

(c) A transit agency must maintain its public transportation agency safety plan in accordance with the recordkeeping requirements in 49 C.F.R. Part 673, Subpart D, Safety Plan Documentation and Recordkeeping.

(d) Any rail fixed guideway public transportation system that had a system safety program plan compliant with 49 C.F.R. Part 659 on October 1, 2012, may keep that plan in effect until July 20, 2020.

§7.84. Hazard Management Process.

(a) Each rail transit agency shall develop, and document in its system safety program plan, a process to identify and resolve hazards during its operation, including any hazards resulting from a subsequent system extension, rehabilitation, or modification, from operational changes, or from other changes within the rail transit environment.

(b) The hazard management process must, at a minimum:

(1) define the rail transit agency's approach to hazard management and the implementation of an integrated system-wide hazard resolution process;

(2) specify the mechanisms used for the on-going identification of hazards;

(3) define the process used to evaluate identified hazards and prioritize them for elimination or control;

(4) identify the mechanism used to track through resolution the identified hazards;

(5) define minimum thresholds for the notification and reporting of hazards to the department; and

(6) specify the process used by the rail transit agency to provide on-going reporting of hazard resolution activities to the department.

(c) A rail transit agency shall report to the department each identified hazard within 24 hours of the time that the hazard is identified.

§7.85. New State Rail Transit Agency Responsibilities.

(a) A rail transit agency may not begin operation before a system safety program plan is approved by the department.

(b) Each new rail transit agency is required to submit its system safety program plan to the department not later than 180 days before the target date of pre-revenue operations.

(c) The department will conduct an on-site pre-revenue review of each new rail transit agency's system safety program plan within 60 days after the date that the plan is received by the department under subsection (b) of this section.

(d) The department may request additional information or clarification related to, or revisions of, the system safety program plan.

(e) On approval, the department will issue to the chief executive of the rail transit agency a formal letter of approval of the initial system safety program plan.

§7.86. Modifications to a System Safety Program Plan.

(a) If a rail transit agency determines, or is notified by the department, that the safety program plan needs to be modified, the rail transit agency shall submit the modified plan and any subsequently modified procedures to the department for review and approval.

(b) Except as provided by subsection (c) of this section, the rail transit agency may not implement the proposed modifications before the modified plan is approved by the department.

(c) If the rail transit agency determines that a modification is necessary to address an imminent safety hazard, the rail transit agency may make a temporary modification to its system safety program plan before that modification is approved by the department, but the modification must be approved by the department before it may become permanent.

§7.87. Rail Transit Agency's Annual Review.

(a) Annually, each rail transit agency shall conduct an internal review of its system safety program plan to ensure that all elements of the system safety program plan are performing as intended.

(b) The internal review process must, at a minimum:

(1) describe the process used by the rail transit agency to determine if all identified elements of its system safety program plan are performing as intended;

(2) ensure that all elements of the system safety program plan are reviewed in an ongoing manner; and

(3) include checklists or procedures that the rail transit agency will use for the review.

(c) The rail transit agency shall notify the department at least 60 days before the day of conducting the internal safety review. This notification must include any checklists or procedures that will be used during the review.

(d) The rail transit agency shall permit the department to participate in or observe the on-site portions of the rail transit agency's internal review.

(e) Before February 1 of each year, the rail transit agency shall submit a report documenting internal safety review activities that have been performed since the last report and the findings and status of corrective actions.

(f) The annual report must be accompanied by a formal letter, signed by the rail transit agency's chief executive, that:

(1) certifies that the rail transit agency is in compliance with its system safety program plan; or

(2) if the rail transit agency determines that the findings from its internal safety review indicate that it is not in compliance with its system safety program plan, states that the rail transit agency is not in compliance with its system safety program plan, specifies each non-compliance issue, the activities that the rail transit agency will take to achieve compliance, the date that those activities will be completed, and the projected date that compliance with the plan will be achieved.

§7.88. Department System Safety Program Plan Audit.

(a) The department will conduct an audit of the rail transit agency at least once every three years. The audit will evaluate whether the rail transit agency has implemented a system safety program plan that meets the requirements of 49 C.F.R. Part 659, 49 C.F.R. Part 674.27, the department's program standards, and the National Public Transportation Safety Plan and whether the rail transit agency complies with the plan.

(b) The department will provide an audit checklist based on the required elements of the system safety program plan.

(c) The department will verify the required elements by:

(1) interviews;

(2) document review;

(3) field observations;

(4) testing;

(5) measurements;

(6) spot checks; and

(7) demonstrations provided by the rail transit agency staff.

(d) To determine compliance with the system safety program plan, the department will sample accident reports, internal review reports, and the agency's hazard management program.



(e) The audit may be conducted as a single on-site assessment or in an ongoing manner over a three-year cycle.

(f) In planning the audit the department will:

(1) develop the audit schedule in coordination with the rail transit agency;

(2) designate the audit team and an audit team lead;

(3) prepare an audit plan that includes all elements identified in the rail transit agency's system safety program plan;

(4) prepare audit checklists and templates;

(5) identify methods of verification for each checklist item;  
and  
(6) request and review the rail transit agency's safety documents.

(g) In conducting the audit, the department will:

(1) conduct an entrance meeting with the rail transit agency's administration;

(2) conduct interviews with appropriate rail transit staff;

(3) observe on-site operations;

(4) evaluate documents and data maintained on-site;

(5) take measurements and conduct spot checks;

(6) review all checklist items for compliance; and

(7) inform the rail transit agency of initial findings and observations.

(h) The rail transit agency shall cooperate with the department during the audit review and provide access to all documents, records, equipment, and property necessary to complete the audit.

(i) The department will issue a draft report to the rail transit agency within 60 days after the date of the completion of the audit.

(j) The rail transit agency may submit written comments on the draft audit report. The department will include in the final audit report any comments received within 30 days after the date that the draft report was issued.

(k) The department will prepare a final audit report and deliver a copy to the rail transit agency.

(l) Within 45 days after the date of its receipt of the final audit report, the rail transit agency shall provide to the department all corrective action plans necessary to address the findings in the report.

(m) The department will notify the rail transit agency when all findings have been addressed and the audit is closed.

#### §7.89. Accident Notification.

(a) Each rail transit agency shall notify the department and FTA within two hours of any accident involving a rail transit vehicle or taking place on property used by rail transit agency if the accident:

(1) results in a fatality at the scene;

(2) results in one or more persons suffering serious injury;

(3) results in property damage from a collision involving a rail transit vehicle or derailment of a rail transit vehicle;

(4) results in an evacuation for life safety reasons;

(5) is a collision at a grade crossing resulting in serious injury or a fatality;

(6) is a main-line or yard derailment;

(7) is a collision with an individual resulting in serious injury or a fatality;

(8) is a collision with an object resulting in serious injury or a fatality;

(9) is a runaway train;

(10) is a fire resulting in a serious injury or a fatality; or

(11) is a collision between rail transit vehicles.

(b) If an accident involving a rail transit vehicle or taking place on property used by rail transit agency results in a fatality away from the scene of the accident but within 30 days after the accident, the rail transit agency shall notify the department within two hours of the confirmation of the death of the individual.

(c) A rail transit agency that shares track over the general railroad system of transportation and is subject to the Federal Railroad Administration notification requirements, shall notify the department within two hours of an incident for which the rail transit agency must notify the Federal Railroad Administration.

(d) A rail transit agency must track and report to FTA and the department each accident that does not qualify for reporting under subsection (a) of this section and that results in one or more non-serious injuries that require medical transportation from the accident scene or that results in non-collision related damage to equipment, rolling stock, or infrastructure that disrupts operation. The report must be filed within 30 days after the date of the accident.

(e) A rail transit agency must track and make the resulting information available when requested by the department or FTA any accident or event that does not qualify for reporting under subsection (a), (b), or (d) of this section.

(f) Notification to the department under this section must be provided in the method specified by the department in the program standards and must contain all the information required in the program standards.

#### §7.90. Accident Investigations.

(a) The department will investigate any accident that is required to be reported under §7.89(a), (b) and (d) of this subchapter (relating to Accident Notification).

(b) The department may authorize the rail transit agency to conduct the investigation on the department's behalf or may join the investigation being conducted by the National Transportation Safety Board through the NTSB's Party System.

(c) If the department authorizes the rail transit agency to conduct the investigation, all personnel and contractors in the investigation must be trained in accordance with the Public Transportation Safety Certification Program and department approved procedures shall be followed.

(d) An investigation conducted by a rail transit agency shall be documented in a final report and submitted to the department within 30 days after the date of the accident. The final report must be in the form prescribed in the department's program standard.

(e) If the department does not agree with the rail safety agency's accident report, the department will conduct an accident investigation and will issue a separate accident report.

(f) The department may conduct an independent accident investigation for any accident required to be reported under §7.89(a),(b) and (d) of this subchapter. The rail transit agency shall provide all in-

formation and access to all property necessary for the department to conduct the investigation. The department's investigation report will be submitted to the rail transit agency within 45 days after the date of the completion of the report.

(g) If the National Transportation Safety Board conducts the accident investigation, the department and the rail transit agency shall cooperate and provide information to the board when requested.

§7.91. Corrective Action Plan.

(a) Each rail transit agency shall develop a corrective action plan for:

(1) results from investigations in which identified causal and contributing factors are determined by the rail transit agency or the department to require corrective actions; and

(2) findings from safety and security reviews performed by the department that require corrective action.

(b) Each corrective action plan must identify the action to be taken by the rail transit agency, an implementation schedule, and the individual or department responsible for implementation of the plan.

(c) The department will review the corrective action plan within 30 days after the date of receipt. If a plan is not approved, the department will work with the rail transit agency to develop appropriate corrective action plans.

(d) The rail transit agency shall provide the department with verification that corrective actions have been implemented, as described in the corrective action plan, or that proposed alternate actions will be implemented, subject to department review and approval.

(e) If the rail transit agency disputes the department's decision related to a corrective action plan, the rail transit agency shall submit an application for administrative review under §7.93 of this subchapter (relating to Administrative Review) not later than 30 days after the date of receipt of the written decision.

(f) Failure to complete a corrective action plan is a violation under this subchapter.

§7.92. Administrative Actions by the Department.

(a) If the department determines that a rail transit agency violates this subchapter, 49 C.F.R. Part 659, 49 C.F.R. Part 674.27, or Transportation Code, Chapter 455, the department may initiate an administrative action.

(b) The department will notify the rail transit agency in writing of any findings of violations.

(c) Notification under subsection (b) of this section will specify each violation identified by the department, the administrative action to be taken by the department, the compliance action needed to address the violation, and the information concerning the process for requesting administrative review of the department's determination.

(d) Within 45 days after the date of receipt of notification under subsection (b) of this section, the rail transit agency shall submit documentation showing compliance with the action needed to address the violation or shall request administrative review under §7.93 of this subchapter (relating to Administrative Review).

(e) Failure to act as required by subsection (d) of this section will lead to the escalation of an enforcement action under §7.94 of this subchapter (relating to Escalation of Enforcement Action) and may lead to the removal of the department's approval of the rail transit agency's system safety program plan.

§7.93. Administrative Review.

(a) If a rail transit agency disagrees with a decision by the department regarding the corrective action plan under §7.91 of this subchapter (relating to Corrective Action Plan) or a violation finding under §7.92 of this subchapter (relating to Administrative Actions by the Department), the rail transit agency may file a request for an administrative review with the executive director.

(b) The request for administrative review must:

(1) be in writing; and

(2) specify the reasons that the department's action is in error and provide evidence that supports the rail transit agency's position.

(c) The executive director or the executive director's designee, who is not below the level of division director, will make a final determination on the appeal within 60 days after the date the executive director receives the request for the appeal and will notify the rail transit agency of the determination. If the final determination upholds the department's decision under §7.91 of this subchapter or finding under §7.92 of this subchapter, the executive director or the executive director's designee will send the final determination to the rail transit agency stating the reason for the decision and setting a deadline for compliance with the department's violation notice or the corrective action plan.

(d) The determination of executive director or the executive director's designee under subsection (c) of this section is final. The rail transit agency is not entitled to a contested case hearing and has no right to appeal the decision of the executive director or the executive director's designee.

(e) Failure of a rail transit agency to comply with a deadline provided by the executive director or the executive director's designee under subsection (c) of this section may result in the rescission of the department's approval of the rail transit agency's system safety program plan and the department may petition a court of competent jurisdiction to halt the operation of the rail transit agency's rail fixed guideway system program.

§7.94. Escalation of Enforcement Action.

(a) If a rail transit agency fails to comply with an administrative action notification, the department will notify the executive director.

(b) The executive director will notify the rail transit agency's governing body of the violation and the failure of the rail transit agency's correction of the violation.

(c) Within 45 days after the date on which the rail transit agency's governing body receives notice under subsection (b) of this section, the governing body shall provide to the executive director evidence that the violation has been resolved.

(d) If the rail transit agency's governing body is unable to show that the corrective action has been satisfactorily completed, the department shall rescind approval of the rail transit agency's system safety program plan.

(e) If the department rescinds approval of a rail transit agency's system safety program plan, the department may petition a court of competent jurisdiction to halt the operation of the rail transit agency's rail fixed guideway system program.

§7.95. Emergency Order to Address Imminent Public Safety Concerns.

(a) Notwithstanding §7.92 of this subchapter (relating to Administrative Actions by the Department), §7.93 of this subchapter (relating to Administrative Review), and §7.94 of this subchapter (relating to Escalation of Enforcement Action), if there is good cause for the executive director, or the executive director's designee, to believe that the

operations of a rail transit agency poses an imminent threat to the safety of the general public, the executive director or the executive director's designee immediately will notify the governing body of the rail transit agency.

(b) If the rail transit agency is unable to immediately eliminate the threat identified under subsection (a) of this section, the executive director will rescind approval of the system safety program plan and order the rail transit agency to cease all operations of its rail fixed guideway public transportation system until the rail transit agency eliminates the threat.

(c) If the rail transit agency fails to cease operation of its rail fixed guideway public transportation system in accordance with an order issued under subsection (b) of this section, the department may seek a temporary injunction to enforce the executive director's order.

*§7.96. Admissibility; Use of Information.*

The data collected and the report of any investigation conducted by the department or a contractor acting on behalf of the department, or any part of a system security plan or safety program plan that concerns security for the system, may not be admitted in evidence or used for any purpose in any action or proceeding arising out of any matter referred to in an investigation except in an action or a proceeding instituted by the 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.

Filed with the Office of the Secretary of State on October 31, 2019.

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Becky Blewett  
Deputy General Counsel  
Texas Department of Transportation  
Earliest possible date of adoption: December 15, 2019  
For further information, please call: (512) 463-8630



**43 TAC §§7.83 - 7.95**

**STATUTORY AUTHORITY**

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department and more specifically, Transportation Code, §455.060, which authorizes the commission to adopt rules necessary to implement Transportation Code, Chapter 455, Subchapter B.

**CROSS REFERENCE TO STATUTE**

Transportation Code, Chapter 455, Subchapter B.

- §7.83. Hazard Management Process.*
- §7.84. New State Rail Transit Agency Responsibilities.*
- §7.85. Modifications to a System Safety Program Plan.*
- §7.86. Rail Transit Agency's Annual Review.*
- §7.87. Department System Safety Program Plan Audit.*
- §7.88. Accident Notification.*
- §7.89. Accident Investigations.*
- §7.90. Corrective Action Plan.*

*§7.91. Administrative Actions by the Department.*

*§7.92. Administrative Review.*

*§7.93. Escalation of Enforcement Action.*

*§7.94. Emergency Order to Address Imminent Public Safety Concerns.*

*§7.95. Admissibility; Use of Information.*

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**CHAPTER 9. CONTRACT AND GRANT MANAGEMENT**

The Texas Department of Transportation (department) proposes the amendments §9.17, concerning Award of Contract, and §9.227, concerning Information from Bidders.

**EXPLANATION OF PROPOSED AMENDMENTS**

The Federal Highway Administration reviewed the department's rules related to awarding contracts and the Disadvantaged Business Enterprise (DBE) documentation required from all bidders and determined that the department needed to make changes to comply with 49 C.F.R. 26.53 b(2) and 3(i)(B). This rulemaking requires all bidders, rather than only low bidders, to submit the required documentation within five calendar days after the date the bids are opened. In addition to changes to the department's rules for compliance with 49 C.F.R. 26.53 b(2) and 3(i)(B), the department is adding the requirement that all low bidders provide within that five-day period evidence of participation in the Department of Homeland Security's E-Verify system, in accordance with Transportation Code, §223.051, as added by Sec. 24, Ch. 533 (S.B. 312), Acts of the 85th Legislature, Regular Session, 2017. The department has been requiring evidence of the use of the E-Verify system through provisions in the advertisement for contracts and in the contracts and is now codifying the requirement in the rules. These changes in process will have minimal administrative impact on the department and essentially no negative impact on bidders who under the current process, in anticipation of being designated as the low bidder for a project, are preparing the DBE and E-Verify documentation for submission.

Amendments to §9.17(b), make a minor, non-substantive correction for alignment with the subsequent changes.

Amendments to §9.17(i), require that all bidders on a contract with a DBE goal must submit required DBE documentation within five calendar days after the date bids are opened.

Amendments to §9.17(j), clarify that all low bidders must be participating in the Department of Homeland Security's E-Verify System within five calendar days after the date bids are opened. The

amendments to this subsection also repeal the provision that allows the next lowest bidder an additional day to submit the required DBE documentation.

Amendments to §9.227, Information from Bidders, clarify that each bidder on a contract with a DBE goal must submit required DBE documentation within the five-day period required under §9.17(i).

#### FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Michael D. Bryant, Director, Civil Rights Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

#### PUBLIC BENEFIT

Mr. Michael D. Bryant, Director, Civil Rights Division, has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be faster negotiation and execution of jointly funded contracts, and earlier commencement and completion of projects.

#### COST ON REGULATED PERSON

Mr. Michael D. Bryant, Director, Civil Rights Division, has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are not anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code §2001.045, does not apply to this rulemaking.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no significant adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code §2006.002.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Michael D. Bryant, Director, Civil Rights Division, has considered the requirements of Government Code, §2001.0221 and has determined that for the first five years in which the proposed rules are 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 the department's employee positions;
- (3) implementation of the proposed rule will not increase or decrease future legislative appropriations to the department;
- (4) the proposed rule will not affect fees paid to the department;
- (5) the proposed rule will not create a new regulation;

(6) the proposed rule will narrowly expand, but will not limit or repeal existing regulation;

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

(8) the proposed rule will positively affect the state's economy by providing a more efficient, predictable process for all bidders.

#### TAKINGS IMPACT ASSESSMENT

Mr. D. Bryant, Director, Civil Rights Division, has determined that a written takings impact assessment is not required under Government Code, §2007.043.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§9.17 and 9.227 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@tx-dot.gov with the subject line "Highway Improvement Contracts Rules." The deadline for receipt of comments is 5:00 p.m. on December 16, 2019. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

## SUBCHAPTER B. HIGHWAY IMPROVEMENT CONTRACTS

### 43 TAC §9.17

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.004, which authorizes the commission to adopt rules to prescribe conditions under which a bid may be rejected by the department.

#### CROSS REFERENCE TO STATUTE

Transportation Code, §201.702, Chapter 223, Subchapter A and §223.051.

#### §9.17. Award of Contract.

(a) The commission may reject any and all bids opened, read, and tabulated under §9.15 and §9.16 of this subchapter (relating to Acceptance, Rejection, and Reading of Bids and Tabulation of Bids, respectively). It will reject all bids if:

(1) there is reason to believe collusion may have existed among the bidders;

(2) the lowest bid is determined to be both mathematically and materially unbalanced;

(3) the lowest bid is higher than the department's estimate and the commission determines that re-advertising the project for bids may result in a significantly lower low bid;

(4) the lowest bid is higher than the department's estimate and the commission determines that the work should be done by department forces; or

(5) the lowest bid is determined to contain a bid error that meets the notification requirements contained in §9.16(e)(1) of this subchapter and satisfies the criteria contained in §9.16(e)(2) of this subchapter.

(b) Except as provided in subsection (c), (d), (e), or (f); or (i) of this section, if the commission does not reject all bids, it will award the contract to the lowest bidder.

(c) In accordance with Government Code, Chapter 2252, Subchapter A, the commission will not award a contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of:

(1) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which:

(A) the nonresident's principal place of business is located; or

(B) the nonresident is a resident manufacturer; or

(2) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing related to the contract will be performed.

(d) For a maintenance contract for a building or a segment of the state highway system involving a bid amount of less than \$300,000, if the lowest bidder withdraws its bid after bid opening, the executive director may recommend to the commission that the contract be awarded to the second lowest bidder.

(1) For purposes of this subsection, the term "withdrawal" includes written withdrawal of a bid after bid opening, failure to provide the required insurance or bonds, or failure to execute the contract.

(2) The executive director may recommend award of the contract to the second lowest bidder if he or she, in writing, determines that the second lowest bidder is willing to perform the work at the unit bid prices of the lowest bidder; and

(A) the unit bid prices of the lowest bidder are reasonable, and delaying award of the contract may result in significantly higher unit bid prices;

(B) there is a specific need to expedite completion of the project to protect the health or safety of the traveling public; or

(C) delaying award of the contract would jeopardize the structural integrity of the highway system.

(3) The commission may accept the withdrawal of the lowest bid after bid opening if it concurs with the executive director's determinations.

(4) If the commission awards a contract to the second lowest bidder and the department successfully enters into a contract with the second lowest bidder, the department will return the lowest bidder's bid guaranty upon execution of that contract. The lowest bidder may be considered in default.

(e) If the lowest bidder is not a preferred bidder and the contract will not use federal funds, the department, in accordance with Transportation Code, Chapter 223, Subchapter B, will award the contract to the lowest-bidding preferred bidder if that bidder's bid does not exceed the amount equal to 105 percent of the lowest bid. For purposes of this subsection, "preferred bidder" means a bidder whose principal place of business is in this state or a state that borders this state and that does not give a preference similar to Transportation Code, §223.050.

(f) When additional information is required to make a final decision, the commission may defer the award or rejection of the contract until the next regularly scheduled commission meeting.

(g) Contracts with an engineer's estimate of less than \$300,000 may be awarded or rejected by the executive director under the same conditions and limitations as provided in subsections (a) - (c) of this section.

(h) The commission may rescind the award of any contract prior to contract execution upon a determination that it is in the best interest of the state. In such an instance, the bid guaranty will be returned to the bidder. No compensation will be paid to the bidder as a result of this cancellation.

(i) For a contract with a DBE goal, all bidders must ~~[If, for a contract with a DBE goal, the lowest bidder fails to]~~ submit the DBE information required by §9.227 of this chapter (related to Information from Bidders) within five calendar days after the date that the bids are opened. ~~]; the commission may:]~~

~~{(1) reject all bids; or}~~

~~{(2) reject the bid of the lowest bidder and award the contract to the next lowest bidder.}~~

(j) ~~Prior to contract award, all low bidders must be participating or provide documentation of participation in the Department of Homeland Security's (DHS) E-Verify system within five calendar days after the date that the bids are opened. [If a contract is to be awarded to the next lowest bidder under subsection (i) of this section, the next lowest bidder shall submit the DBE information required by §9.227 of this subchapter within one calendar day after the date of receipt of the notification of bid acceptance.]~~

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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Becky Blewett

Deputy General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8630



## SUBCHAPTER J. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

### 43 TAC §9.227

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.004, which authorizes the commission to adopt rules to prescribe conditions under which a bid may be rejected by the department.

#### CROSS REFERENCE TO STATUTE

Transportation Code, §201.702, Chapter 223, Subchapter A and §223.051.

§9.227. *Information from Bidders.*

(a) Each [~~Before the execution of a contract, the apparent successful~~] bidder must submit to the department within the period provided by §9.17(i) of this chapter (relating to Award of Contract):

- (1) the names and addresses of each subcontractor, identifying DBEs that will participate in the contract;
- (2) a description of the work that each DBE will perform;
- (3) the dollar amount of the participation of each DBE;
- (4) written documentation of the bidder's commitment to use each DBE subcontractor whose participation the bidder submits to meet a contract goal; and
- (5) written confirmation from each DBE that it is participating in the contract as provided in the bidder's commitment.

(b) Each bidder shall document the bidder's good faith efforts to obtain commitment to meet the contract goal. Good faith efforts are shown if the bidder documents that:

- (1) sufficient DBE participation has been obtained to meet the contract goal; or
- (2) the bidder took the types of action that may be considered as good faith efforts as referenced in 49 C.F.R. Part 26, Appendix A, to obtain the commitments to meet the contract goal even though the bidder did not succeed in obtaining sufficient DBE participation to meet the contract goal.

(c) In addition to the information required under subsection (a) of this section, if the contract goal is not met by DBE commitments, the [~~apparent successful~~] bidder must submit to the department, within the period provided by §9.17(i) of this chapter [~~before the execution of a contract~~], evidence of the bidder's good faith efforts to obtain DBE participation to meet the contract goal.

(d) If the apparent successful bidder fails to obtain the commitments to meet the DBE contract goal and fails to comply with good faith efforts requirements described by subsection (b) of this section, the proposal guaranty filed with the bid is forfeited to the department.

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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Becky Blewett

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## CHAPTER 11. DESIGN

### SUBCHAPTER C. ACCESS CONNECTIONS TO STATE HIGHWAYS

#### 43 TAC §11.52

The Texas Department of Transportation (department) proposes amendments to §11.52, concerning access connections to state highways.

#### EXPLANATION OF PROPOSED AMENDMENTS

Amendments to §11.52, Access Connection Facilities, provide modification of the approval authority for driveway permits within a district and minor changes to remove a version date reference to the department's Access Management Manual.

Amendments to §11.52(b)(4) allow the district engineer to delegate the authority to approve driveway permits within the district but continue to require that all decisions to deny a request for access be signed by the district engineer. These changes will ensure that requests for driveway permits within a district that comply with department standards are timely approved and that all denials receive due diligence reviews by the district engineer.

Amendments to §11.52(c) remove the reference to the December 2009 version of the Access Management Manual to reflect that the manual is updated from time to time.

Amendments to §11.52(e) allow the district engineer to delegate the authority to grant a variance to a requirement in the access management standards if justified in accordance with subsection (e), but continue to require that all decisions to deny a request for a variance be made by the district engineer.

#### FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules. The administrative cost of the delegated approval procedure is expected to be the same as the current procedure.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Camille Thomason, Design Division Director, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

#### PUBLIC BENEFIT

Ms. Thomason has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be improved efficiency with driveway permit approvals, and with driveway variance approvals.

#### COSTS ON REGULATED PERSONS

Ms. Thomason has also determined, as a required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Thomason has considered the requirements of Government Code, §2001.0221 and has determined that for the first five years in which the proposed rules are 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 the department's employee positions;
- (3) implementation of the proposed rule will not increase or decrease future legislative appropriations to the department;
- (4) the proposed rule will not affect fees paid to the department;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed rule will not affect the state's economy.

#### TAKINGS IMPACT ASSESSMENT

Ms. Thomason has determined that a written takings impact assessment is not required under Government Code, §2007.043.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §11.52 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Access Connection Rules." The deadline for receipt of comments is 5:00 p.m. on December 16, 2019. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §203.031, which provides the commission with the authority to control access to highways.

#### CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 203, Subchapter C.

#### §11.52. Access Connection Facilities.

##### (a) Permit.

##### (1) A permit is required before:

- (A) the construction of an access connection; or
- (B) a material change in the use of a permittee's real property, traffic volume for the access connection, or vehicle types using the access connection, that would result in the application of more stringent requirements under the department's access management standards than are applicable to the existing approved access connection.

(2) The permit provides for a definite understanding as to the location and manner in which the access connection will be constructed and maintained.

(3) No term or condition of a permit will be construed to grant, convey, or extinguish an interest in real property held by either the state or a permittee.

##### (b) Permit requirements.

(1) The permit will include the terms, conditions, and attachments for driveway design and location plans that are prescribed by the director and the district engineer in order to ensure compliance with the access management standards and to protect and preserve the state highway system and the safety, health, and welfare of its use by the traveling public.

(2) Permits will be issued in accordance with the access management standards and all applicable state and federal laws, including rules and regulations. Access connection spacing, materials, geometrics, accessibility, and other design specifications will be considered, as well as the impact on drainage and hydraulics, utility location or relocation, and the environment that will result from the requested construction of an access connection.

(3) An engineering study may be required to assist in the permit evaluation process.

(4) The district engineer, or the district engineer's designee, will approve [or deny] each request for a permit that conforms with the standards listed in the department's Access Management Manual and all applicable laws. A decision denying a request for access to a specific location must be in writing, [and] include the reasons for the denial, and be signed by the district engineer.

(c) Access Management Standards. Chapter 2, Access Management Standards, of the department's [December 2009] Access Management Manual, governs the standards, criteria, and specifications for the location, design, construction, and maintenance of all access connections. Chapter 2, Access Management Standards is available online at the Texas Department of Transportation web site. That chapter may be periodically revised and updated by the department, provided that the revisions and updates are first approved by written order of the commission. The web site will reflect each change approved by the commission and the changes will be applicable to applications for permits filed after the effective date of such a change.

##### (d) Design.

(1) The design for the construction of an access connection is the responsibility of the permittee. The design must be accomplished in a manner and to the standards described in subsection (b) of this section.

(2) The location and manner in which the construction of an access connection will be performed within the right of way must be reviewed and approved by the department.

##### (e) Variance.

(1) A variance to any requirement contained in the access management standards may be granted if justified in accordance with this subsection and approved by the district engineer, or the district engineer's designee.

(2) A request for a variance will be considered only if the property owner or its authorized representative demonstrates that undue hardship or unusual conditions provide justification and alternate measures can be prescribed in keeping with the intent of this subchapter. All requests for a variance must be fully documented with design data and other pertinent information.

(3) For each request for a variance, the property owner, or the owner's authorized representative, must clearly demonstrate that:

(A) a significant negative impact to the owner's real property or its use will likely result from the denial of its request for the variance, including:

- (i) the loss of reasonable access to the property; or
- (ii) undue hardship on a business located on the property; or

(B) an unusual condition affecting the property exists that was not caused by the property owner and justifies the request for the variance.

(4) When the property owner or its authorized representative satisfies the requirement of paragraph (3) of this subsection, the requested variance will be approved unless the district engineer determines that the location, design, and construction of the requested access connection will:

(A) adversely affect the safety, design, construction, mobility, efficient operation, or maintenance of the highway; or

(B) likely impair the ability of the state or the department to receive funds for highway construction or maintenance from the federal government.

(5) Reasonable conditions for approval of a variance, including a requirement for alternate measures, may be prescribed by the department in order to minimize any adverse impact on the safety, design, construction, mobility, efficient operation, or maintenance of the highway.

(f) Platted access points.

(1) Platted access points that are located on undeveloped property are subject to the access management standards in effect on the date that the subdivision plat or replat was properly recorded if:

(A) development of the tract of real property to be served by the permit commences, and the request for a permit at a platted access point location is submitted to the department, before the fifth anniversary of the date that the subdivision plat or replat was properly recorded; and

(B) any material changes to the design of the highway facility in the vicinity of the platted access points after the date that the subdivision plat or replat was properly recorded do not significantly impact traffic patterns to the extent that the platted access points present a threat to public safety.

(2) Platted access points that are located on undeveloped property to which paragraph (1) of this subsection do not apply, are subject to the access management standards in effect on the date that the request for the permit is submitted to the department.

(g) Remodeled business. The remodeling or demolition and rebuilding of a business structure or improvement on a permittee's real property do not require a new permit or the application of more stringent access management standards than are applicable to the approved access connection, unless the district engineer makes an affirmative finding that the remodeled or rebuilt structure or improvement will significantly impact traffic patterns to the extent that the existing access connection location presents a threat to public safety. The finding of significant impact and threat to public safety must be in writing and include the reasons for the finding. To the extent this subsection conflicts with the requirement in subsection (a) of this section for a new permit related to a material change in the use of the permitted real property, this subsection controls.

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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Becky Blewett

Deputy General Counsel

Texas Department of Transportation

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## CHAPTER 31. PUBLIC TRANSPORTATION

The Texas Department of Transportation (department) proposes amendments to §31.3, Definitions, and amendments to §31.38, Public Transit Safety Program, concerning the department's public transportation safety program.

### EXPLANATION OF PROPOSED AMENDMENTS

This rulemaking makes changes to the state public transit safety program, which covers small urban bus systems, to satisfy the requirements of federal law, including 49 C.F.R. Part 673. Simultaneously with these changes, changes are also being considered to 43 TAC Chapter 7, Subchapter E, which governs the rail fixed guideway system state safety oversight program, to satisfy the requirements of federal law. 49 C.F.R. 673.11 contains some elements that apply only to small urban bus systems, others that apply only to rail transit agencies, and some that apply to both. Section 673.11, Subsections (a)(1)-(5) and (c), apply to both systems, while Section 673.11, Subsection (d) applies only to small urban bus agencies. Section 673.11, Subsections (a)(6), (b), and (e), apply only to rail transit agencies.

Amendments to §31.3, Definitions, add definitions of "accountable executive," "chief safety officer," "equivalent authority," "public transportation agency safety plan," "safety assurance," "safety management policy," "safety promotion," "safety risk management," and "small public transportation provider." These definitions align with the federal public transportation agency safety plan codified in 49 C.F.R. Part 673.

The federal public transportation agency safety plan also necessitates amendments to §31.38, Public Transit Safety Program.

Amendments to §31.38(a) substitutes the word "implement" for "develop" to clarify small public transportation providers must implement transit safety plans as required by 49 C.F.R. §673.11(a). Federal law allows but does not require those providers to develop their own plans.

Amendments to §31.38(b) clarify recipients of 5307 Urbanized Area Formula Grants must comply with 49 U.S.C. §5329 (Public Transportation Safety Program), as required in 49 C.F.R. §673.1.

Amendments to §31.38(c)(1) clarify the department's role in drafting and certifying agency safety plans for small public transportation providers, as required by 49 C.F.R. §673.11(d).

Amendments to §31.38(c)(2) clarify the department's role in providing small public transportation providers the ability to opt out of the department's initial drafting effort, as required by 49 C.F.R. §673.11(d).



Amendments to §31.38(c)(3) clarify annual compliance requirements for small transportation providers, as required by 49 C.F.R. §673.13(b).

Amendments to §31.38(d) revise the subsection to state the safety plan general requirements provided by 49 C.F.R. §673.11. Small public transportation providers under the department's oversight must establish a public transportation agency safety plan meeting the requirements of this section by July 20, 2020. The general requirements included are consistent with the minimum set of requirements listed in federal regulations.

Amendments to §31.38(d)(1) clarify specific safety plan requirements in 49 C.F.R. §673.11(a)(1), including the signature of a provider's accountable executive and approval of the plan by a provider's board of directors or equivalent authority. Amendments to this section also replace the word "subrecipient" with "provider" to align with the applicability of the section to a small public transportation provider.

Amendments to §31.38(d)(2) outline safety plan requirements found in 49 C.F.R. §673.21, Safety Management Systems, which are: safety management policy; safety risk management; safety assurance; and safety promotion.

Amendments to §31.38(d) delete paragraph (3) and renumber the paragraphs accordingly. The changes to renumbered §31.38(d)(3) and (5) replace the word "subrecipient" with "provider" to correspond with the applicability of the section to a small public transportation provider. In renumbered §31.38(d)(4), the word "criteria" is replaced with "measures" to be consistent with Chapter 7 and the applicable federal regulations.

Amendments to §31.38(d) delete paragraph (7), which required a comprehensive safety program and continuing safety education and training program and adds new paragraph (6) containing recordkeeping requirements to maintain safety plans for a minimum of three years after they are created and to make them available on request to the FTA, another federal entity, or the department, as required by C.F.R. 49 §673.31.

#### FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules. The requirement to provide the new public transportation agency safety plan is a requirement of new federal regulations and is not a cost associated with these rules. The rules provide the changes needed for the department to carry out its oversight responsibilities in accordance with the federal requirements.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Eric L. Gleason, Public Transportation Director, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

#### PUBLIC BENEFIT

Mr. Gleason has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be implementation of public transportation agency safety plans across appli-

cable transit providers in the state. Improved safety practices and procedures will benefit citizens who utilize public transportation throughout the state.

#### COSTS ON REGULATED PERSONS

Mr. Gleason has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Gleason has considered the requirements of Government Code, §2001.0221 and expects that the proposed rules will have no effect on government growth. He anticipates that during the first five years that the rule would be in effect:

- (1) it would not create or eliminate a government program;
- (2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;
- (3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;
- (4) it would not require an increase or decrease in fees paid to the agency;
- (5) it would not create a new regulation;
- (6) it would not expand, limit, or repeal an existing regulation;
- (7) it would not increase or decrease the number of individuals subject to its applicability; and
- (8) it would not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

Mr. Gleason has determined that a written takings impact assessment is not required under Government Code, §2007.043.

#### SUBMITTAL OF COMMENTS

Written comments on proposed amendments to §31.3 and §31.38 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@tx-dot.gov with the subject line "public transportation agency safety plan." The deadline for receipt of comments is 5:00 p.m. on December 16, 2019. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

#### SUBCHAPTER A. GENERAL

#### 43 TAC §31.3

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

#### CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

49 U.S.C. 5329(d) and 49 C.F.R. Part 673.

#### §31.3. Definitions.

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

(1) Accountable executive--A single, identifiable individual who has:

(A) ultimate responsibility for carrying out the public transportation agency safety plan of a public transportation agency;

(B) responsibility for carrying out the agency's transit asset management plan; and

(C) control or direction over the human and capital resources needed to develop and maintain both the agency's public transportation agency safety plan, in accordance with 49 U.S.C. §5329(d), and the agency's transit asset management plan in accordance with 49 U.S.C. §5326.

(2) [(4)] Administrative expenses--Include, but are not limited to, general administrative expenses such as salaries of the project director, secretary, and bookkeeper; insurance premiums or payments to a self-insurance reserve; office supplies; facilities and equipment rental; and standard overhead rates.

(3) [(2)] Allocation--A preliminary distribution of grant funds representing the maximum amount to be made available to an entity during the fiscal year, subject to the entity's completion of and compliance with all application requirements, rules, and regulations applicable to the specific funding program.

(4) [(3)] Americans with Disabilities Act (ADA)--The Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.), which provides a comprehensive national mandate for the elimination of discrimination against individuals with disabilities. The ADA provides specific requirements related to public transportation.

(5) [(4)] Asset management plan--The transit asset management plan prepared in accordance with 49 U.S.C. §5326 and certified by the department. The plan includes at a minimum, capital asset inventories and condition assessments, decision support tools, and investment prioritization.

(6) [(5)] Authority--A metropolitan transit or regional transportation authority created under Transportation Code, Chapter 451 or 452; a city transit department created under Transportation Code, Chapter 453, by a municipality having a population of not less than 200,000 at the time of its creation; or a coordinated county authority created under Transportation Code, Chapter 460.

(7) [(6)] Average revenue vehicle capacity--The number of seats in all revenue vehicles divided by the number of revenue vehicles.

(8) [(7)] Capital expenses--Include the acquisition, construction, and improvement of public transit facilities and equipment needed for a safe, efficient, and coordinated public transportation system.

(9) Chief safety officer--An adequately trained individual who has responsibility for safety and reports directly to a small public transportation provider agency's chief executive officer, general manager, president, or equivalent officer. A chief safety officer may not

serve in other operational or maintenance capacities, unless the chief safety officer is employed by a transit agency that is a small public transportation provider or a public transportation provider that does not operate a rail fixed guideway public transportation system.

(10) [(8)] Clean Air Act--The federal Clean Air Act (42 U.S.C. §7401 et seq.), which seeks to protect and enhance the quality of the nation's air resources by promoting and financing reasonable federal, state, and local governmental actions for pollution prevention.

(11) [(9)] Commission--The Texas Transportation Commission.

(12) [(10)] Contractor--A recipient of public transportation funds through a contract or grant agreement with the department.

(13) [(11)] Department--The Texas Department of Transportation.

(14) [(12)] Designated recipient--The state, an authority, a municipality that is not included in an authority, a local governmental body, another political subdivision, or a nonprofit entity providing rural public transportation services, that receives federal or state public transportation money through the department or the Federal Transit Administration, or its successor.

(15) [(13)] Director--The director of public transportation for the department.

(16) [(14)] Disability--Disability as defined in the ADA (42 U.S.C. §12102), which includes a physical or mental impairment that substantially limits one or more major life activities of an individual.

(17) [(15)] District--One of the 25 districts of the department for a designated geographic area.

(18) [(16)] Employment-related transportation--Transportation to support services that assist individuals in job search or job preparation. Trips to daycare centers, one-stop workforce centers, jobs interviews, and vocational training are examples.

(19) [(17)] Equipment--Tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

(20) Equivalent authority--An entity that carries out duties similar to that of a board of directors, for a recipient or subrecipient of FTA funds under 49 U.S.C. Chapter 53, including sufficient authority to review and approve a recipient or subrecipient's public transportation agency safety plan.

(21) [(18)] Executive director--The executive director of the department.

(22) [(19)] Fare box revenues--Fares paid by riders, including those who are later reimbursed by a human service agency or other user-side subsidy arrangement. This definition includes subscription service fees, whether or not collected on-board a transit vehicle. Payments made directly to the transportation system by a human service agency are not considered to be fare box revenues.

(23) [(20)] Federal Transit Administration (FTA)--The Federal Transit Administration of the United States Department of Transportation.

(24) [(21)] Federally funded project--A public transportation project that is being funded in part under the provisions of the Federal Transit Act, as amended, 49 U.S.C. §5301 et seq., the Federal-Aid Highway Act of 1973, as amended, 23 U.S.C. §101 et seq., or any other federal program for funding public transportation.

(25) [(22)] Fiscal year--The state accounting period of 12 months that begins on September 1 of each calendar year and ends on August 31 of the following calendar year.

(26) [(23)] Good standing--A status indicating that the department's director of public transportation has not sent a letter to an entity signifying the entity is in noncompliance with any aspect of a program.

(27) [(24)] Incident--An intentional or unintentional act that occurs on or in association with transit-controlled property and that threatens or affects the safety or security of an individual or property.

(28) [(25)] Large urban transit district--A local governmental entity or a political subdivision of the state that provides and coordinates public transportation within an urbanized area with a population greater than or equal to 200,000 in accordance with Transportation Code, Chapter 458. This definition includes urban transportation providers under Transportation Code, Chapter 456, that received state money through the department on September 1, 1994. This definition excludes authorities.

(29) [(26)] Like-kind exchange--The trade-in or sale of a transit vehicle before the end of its useful life to acquire a replacement vehicle of like kind.

(30) [(27)] Local funds--Directly generated funds, as defined in the latest edition of the Federal Transit Administration National Transit Database Reporting Manual. Examples include, but are not limited to, passenger fares, special transit fares, purchased transportation fares, park and ride revenue, other transportation revenue, charter service revenue, freight tariffs, station and vehicle concessions, advertising revenue, funds dedicated to transit at their source, taxes, cash contributions, contract revenue, general revenue, and in-kind contributions.

(31) [(28)] Local governmental entity--Any local unit of government including a city, town, village, municipality, county, city transit department, or authority.

(32) [(29)] Local public entity--Includes a city, county, or other political subdivision of the state, a public agency, or an instrumentality of one or more states, municipalities, or political subdivisions of states.

(33) [(30)] Local share requirement--The amount of funds required and eligible to match federally funded projects for the improvement of public transportation.

(34) [(31)] Low-income individual--An individual whose family income is at or below 150 percent of the poverty line, as that term is defined in the Community Services Block Grant Act (42 U.S.C. §9902(2)), including any revision required by that section, for a family of the size involved, or as otherwise defined by 49 U.S.C. §5302 or 49 U.S.C. §5316, the Job Access and Reverse Commute program as established under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

(35) [(32)] Metropolitan Planning Organization (MPO)--The organization designated or redesignated by the governor under 23 U.S.C. §134 as the responsible entity for transportation planning in urbanized areas over 50,000 in population.

(36) [(33)] Mobility management--Eligible capital expenses consisting of short-range planning and management activities and projects for improving coordination among public transportation and other transportation-service providers carried out by a recipient or subrecipient through an agreement entered into with a person,

including a government entity, under 49 U.S.C. §5301 et seq. (other than §5309 and §5339). Mobility management excludes operating public transportation services and excludes equipment, tires, tubes, material, and reconstruction of equipment and material described as associated capital maintenance in the definition of "capital project" under 49 U.S.C. §5302.

(37) [(34)] Net operating expenses--Those expenses that remain after fare box revenues are subtracted from eligible operating expenses.

(38) [(35)] New public transportation services or alternatives--An activity that, with respect to the New Freedom program:

(A) is targeted toward people with disabilities;

(B) is beyond the ADA requirements;

(C) meets the intent of the program by removing barriers to transportation and assisting persons with disabilities with transportation, including transportation to and from jobs and employment services; and

(D) is not included in a Transportation Improvement Program or Statewide Transportation Improvement Program prior to August 10, 2005.

(39) [(36)] Nonprofit organization--A corporation or association determined by the Secretary of the Treasury of the United States to be an organization described by 26 U.S.C. §501(c), one that is exempt from taxation under 26 U.S.C. §504(a) or §101, or one that has been determined under state law to be nonprofit and for which the state has received documentation certifying the status of the organization.

(40) [(37)] Nonurbanized area--An area outside an urbanized area.

(41) [(38)] Obligated funds--Monies made available under a valid, unexpired contract or grant agreement between the department and a public transportation subrecipient.

(42) [(39)] Private--Pertaining to nonpublic entities. This definition does not include municipalities or other political subdivisions of the state; public agencies or instrumentalities of one or more states; Native American tribes (except private nonprofit corporations formed by Native American tribes); public corporations, boards, or commissions established under the law of any state; or entities subject to control by public authority, whether state or municipal.

(43) [(40)] Project--The public transportation activities to be carried out by a subrecipient, as described in its application for funding.

(44) [(41)] Public transportation--Shared-ride transportation of passengers and their hand-carried packages or baggage on a regular or continuing basis by means of surface or water conveyance by a governmental entity or by a private entity if the private entity receives financial assistance for that conveyance from any governmental entity. This definition includes fixed guideway transportation and underground transportation. This definition excludes services provided by aircraft, ambulances, emergency vehicles, intercity passenger rail transportation, charter bus service, school bus service, sightseeing service, courtesy shuttle service for patrons of one or more specific establishments, or intra-terminal and intra-facility shuttle services.

(45) [(42)] Public transportation agency safety plan--The documented comprehensive agency safety plan for a transit provider that is required by 49 U.S.C. §5329 [The agency safety plan prepared in accordance with 49 U.S.C. §5329 and certified by the department].

(46) [(43)] Real property--Land, including improvements, structures, and appurtenances, but excluding movable machinery and equipment.

(47) [(44)] Revenue service--Passenger transportation occurring when a vehicle is available to the general public and there is a reasonable expectation of carrying passengers that directly pay fares, are subsidized by public policy, or provide payment through some contractual agreement. This does not imply that a cash fare must be paid. Vehicles operated in free fare services are considered in revenue service.

(48) [(45)] Revenue vehicle--The rolling stock used in providing transit service for passengers. This definition does not include a vehicle used in connection with keeping revenue vehicles in operation, such as a tow truck or a staff car.

(49) [(46)] Reverse commute project--A public transportation project designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities, or as otherwise defined by 49 U.S.C. §5302 or 49 U.S.C. §5316, the Job Access and Reverse Commute program as established under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

(50) [(47)] Ridership--Unlinked passenger trips.

(51) [(48)] Rural area--A nonurbanized area.

(52) [(49)] Rural transit district--A political subdivision of the state that provides and coordinates rural public transportation within its boundaries in accordance with the provisions of Transportation Code, Chapter 458.

(53) Safety assurance--Processes within a transit provider's safety management system that functions to ensure the implementation and effectiveness of safety risk mitigation, and to ensure that the transit agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.

(54) Safety management policy--A transit providers documented commitment to safety that defines the transit agency's safety objectives and the accountabilities and responsibilities of its employees in regard to safety.

(55) Safety promotion--A combination of training and communication of safety information to support safety risk management as applied to the transit agency's public transportation system.

(56) Safety risk management--A process within a transit agency's public transportation agency safety plan for identifying hazards and analyzing, assessing, and mitigating safety risks.

(57) [(50)] Senior--An individual who is 65 years of age or older.

(58) Small public transportation provider--A recipient or subrecipient of federal financial assistance under 49 U.S.C. §5307 that has 100 or fewer vehicles in peak revenue service and does not operate a rail fixed guideway public transportation system.

(59) [(51)] Small urban transit district--A local governmental entity or a political subdivision of the state that provides and coordinates public transportation within an urbanized area with a population less than 200,000 in accordance with Transportation Code, Chapter 458. This definition includes urban transportation providers under Transportation Code, Chapter 456, that received state money through the department on September 1, 1994. This definition excludes authorities.

(60) [(52)] Stakeholders--All individuals or groups that are potentially affected by transportation decisions. Examples include public health, work force, and human service agencies; representatives of transportation agency employees or other affected employees; private providers of transportation; non-governmental agencies; local businesses; advocates for persons in diverse and traditionally underserved communities, such as seniors, individuals with disabilities, and persons with low incomes; and other interested parties.

(61) [(53)] Subrecipient--An entity that receives state or federal transportation funding from the department, rather than directly from FTA or other state or federal funding source.

(62) [(54)] Uniform grant and contract management standards--The standards contained in the Texas Administrative Code, Title 1, Chapter 5, Subchapter A, concerning uniform grant and contract management standards for state agencies.

(63) [(55)] U.S. DOT--United States Department of Transportation.

(64) [(56)] Unlinked passenger trips--The number of passengers who board public transportation vehicles. A passenger is counted each time the passenger boards a vehicle even though the passenger might be on the same journey from origin to destination.

(65) [(57)] Urban transit district--A local governmental entity or a political subdivision of the state that provides and coordinates public transportation within an urbanized area in accordance with Transportation Code, Chapter 458. This definition includes urban transportation providers under Transportation Code, Chapter 456, that received state money through the department on September 1, 1994. This definition excludes authorities.

(66) [(58)] Urbanized area--A core area and the surrounding densely populated area with a population of 50,000 or more, with boundaries fixed by the United States Census Bureau.

(67) [(59)] Vehicle miles--The miles a vehicle travels while in revenue service, plus deadhead miles. This definition excludes miles a vehicle travels for charter service, school bus service, operator training, or maintenance testing.

(68) [(60)] Vehicle revenue hours or miles--The hours or miles a vehicle travels while in revenue service. This definition includes layover and recovery, but excludes travel to and from storage facilities, the training of operators prior to revenue service, road tests, deadhead travel, and school bus and charter service.

(69) [(61)] Vehicle utilization--Average daily passenger trips per revenue vehicle, divided by average revenue vehicle capacity. This definition provides a measure of an individual system's ability to use existing seating capacity.

(70) [(62)] Welfare recipient--An individual who has received assistance under a state or tribal program funded under the Social Security Act, Title IV, Part A, at any time during the previous three year period before the date on which the applicant applies for a grant under 49 U.S.C. §5307 or §5311, or as otherwise defined by 49 U.S.C. §5307 or §5311.

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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For further information, please call: (512) 463-8630



## SUBCHAPTER D. PROGRAM ADMINISTRATION

### 43 TAC §31.38

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

#### CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

49 U.S.C. 5329(d) and 49 C.F.R. Part 673.

§31.38. *Public Transit Safety Program.*

(a) Purpose. Title 49 U.S.C. §5329, authorizes the Secretary of the U.S. DOT to create and implement a National Public Transportation Safety Plan. Recipients [and subrecipients] must implement [develop] transit safety plans [and report to the Secretary annually].

(b) Affected agencies. A recipient of §5307 Urbanized Area [Subrecipients of §5314 Rural] Formula Grants [through the department] must comply with 49 U.S.C. §5329 [49 U.S.C. §5326].

(c) Department role. As the certifying [administering] agency the department will:

(1) draft and certify a public transportation agency safety plan for each transit system defined as a small public transportation provider under 49 C.F.R. Part 673.5 [provide guidance to agencies requesting assistance with the development of a transit safety plan];

(2) provide small public transportation providers the ability to develop their own plan by opting out of a state prepared plan [prepare plans for agencies requesting the department prepare plans on their behalf]; and

(3) annually certify all small public transportation provider safety plans for [subrecipient] compliance with 49 C.F.R. Part 673 [49 U.S.C. §5329] requirements regardless of whether they opt out of the department's drafting effort.

(d) Small public transportation provider. A small public transportation provider must, by July 20, 2020, establish a public transportation agency safety plan that meets the requirements of 49 C.F.R. Part 673, and that at a minimum, satisfies the requirements of this subsection.

(1) The public transportation agency safety plan, and subsequent updates, must be signed by the accountable executive and approved by the agency's board of directors, or an equivalent authority.

(2) The public transportation agency safety plan must document the processes and activities related to safety management system implementation.

(3) The public transportation agency safety plan must include performance targets based on the safety performance measures established under the National Public Transportation Safety Plan.

(4) The public transportation agency safety plan must address all applicable requirements and standards as set forth in the FTA's Public Transportation Safety Plan. Compliance with the minimum safety performance standards authorized under 49 U.S.C. §5329(b)(2)(C) is not required until standards have been established through the public notice and comment process.

(5) Each transit agency must establish a process and timeline for conducting an annual review and update of the public transportation agency safety plan.

(6) A transit agency must maintain its public transportation agency safety plan in accordance with the recordkeeping requirements in 49 C.F.R. 673, Subpart D, Safety Plan Documentation and Record-keeping.

~~[(d) Subrecipient responsibilities: Subrecipients will develop a transit safety plan that, at a minimum, includes:]~~

~~[(1) a requirement that the governing body of the subrecipient approve the agency safety plan and any updates to the agency safety plan;]~~

~~[(2) methods for identifying and evaluating safety risks throughout all elements of the public transportation system of the subrecipient;]~~

~~[(3) strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions;]~~

~~[(4) a process and timeline for conducting an annual review and update of the safety plan of the subrecipient;]~~

~~[(5) performance targets based on the safety performance criteria and state of good repair standards when established by the U.S. DOT Secretary in the National Public Transportation Safety Plan;]~~

~~[(6) assignment of an adequately trained safety officer who reports directly to the general manager, president, or equivalent officer of the subrecipient; and]~~

~~[(7) a comprehensive staff training program for operations personnel and personnel directly responsible for safety that includes:]~~

~~[(A) the completion of a safety training program; and]~~

~~[(B) continuing safety education and training.]~~

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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For further information, please call: (512) 463-8630





# WITHDRAWN RULES

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

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 65. WILDLIFE

##### SUBCHAPTER G. THREATENED AND ENDANGERED NONGAME SPECIES

###### 31 TAC §65.175, §65.176

The Texas Parks and Wildlife Department withdraws proposed amended §65.175 and §65.176, which appeared in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5375).

Filed with the Office of the Secretary of State on November 1, 2019.

TRD-201904068

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Effective date: November 1, 2019

For further information, please call: (512) 389-4329



#### CHAPTER 69. RESOURCE PROTECTION SUBCHAPTER A. ENDANGERED, THREATENED, AND PROTECTED NATIVE PLANTS

###### 31 TAC §69.8

The Texas Parks and Wildlife Department withdraws the proposed amended §69.8, which appeared in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5377).

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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 13. TEXAS COMMISSION ON FIRE PROTECTION

#### CHAPTER 437. FEES

###### 37 TAC §437.3

The Texas Commission on Fire Protection withdraws proposed amended §437.3, which appeared in the September 13, 2019, issue of the *Texas Register* (44 TexReg 4973).

Filed with the Office of the Secretary of State on October 29, 2019.

TRD-201904013

Paul Maldonado

Interim Executive Director

Texas Commission on Fire Protection

Effective date: October 29, 2019

For further information, please call: (512) 936-3812



#### CHAPTER 445. ADMINISTRATIVE INSPECTIONS AND PENALTIES

###### 37 TAC §§445.1, 445.7, 445.9, 445.11

The Texas Commission on Fire Protection withdraws proposed amended §§445.1, 445.7, 445.9, and 445.11, which appeared in the September 13, 2019, issue of the *Texas Register* (44 TexReg 4974).

Filed with the Office of the Secretary of State on October 29, 2019.

TRD-201904014

Paul Maldonado

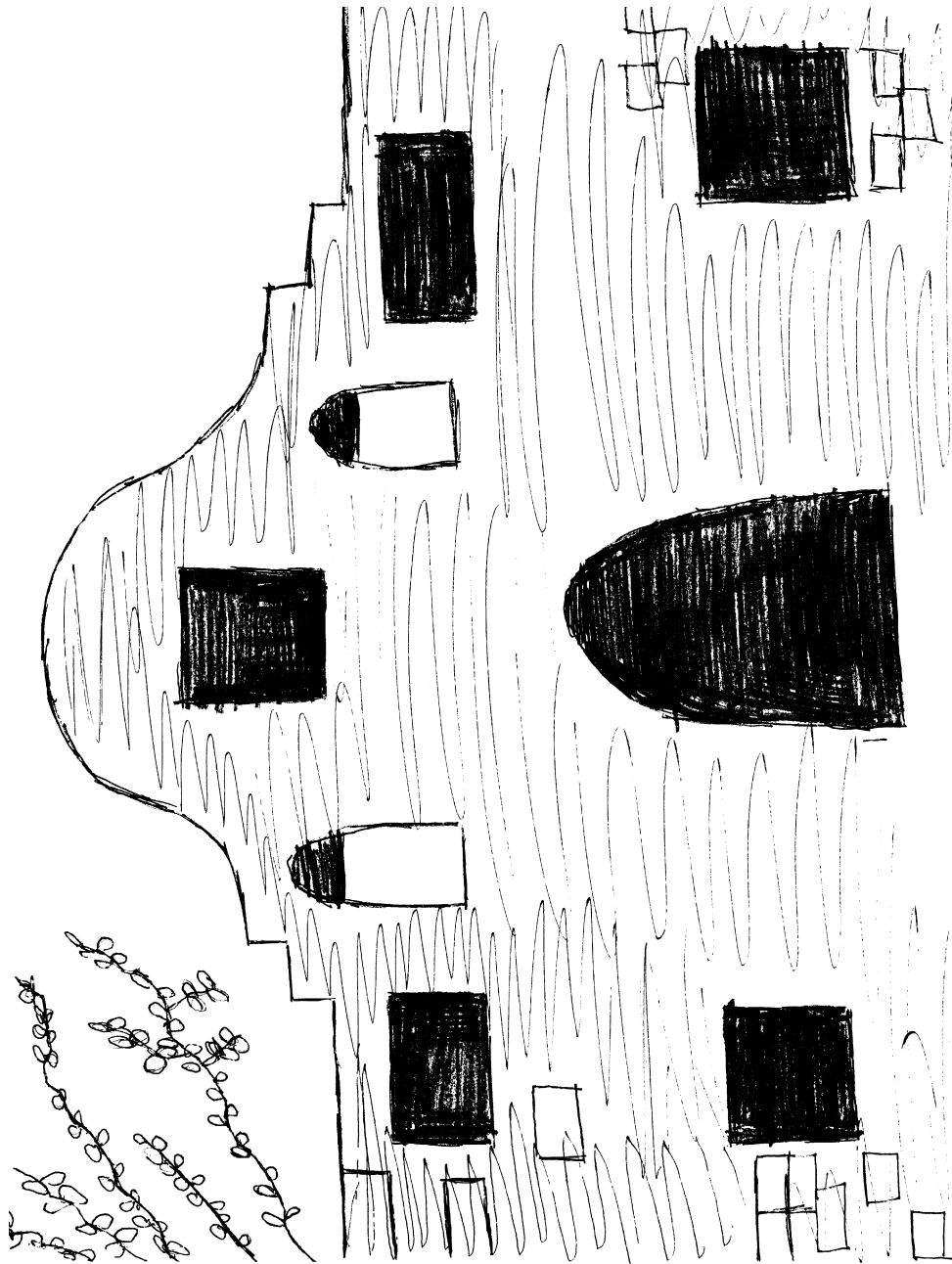
Interim Executive Director

Texas Commission on Fire Protection

Effective date: October 29, 2019

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# 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 7. BANKING AND SECURITIES

### PART 6. CREDIT UNION DEPARTMENT

#### CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

##### SUBCHAPTER A. GENERAL RULES

###### 7 TAC §91.101

The Credit Union Commission (the Commission) adopts the amendments to Texas Administrative Code, Title 7, Chapter 91, Subchapter A, §91.101, concerning definitions and interpretations, with changes to the adopted text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3715). The rule will be republished.

The amended rule defines the term "consolidated CUSO" utilized in §91.401 and addresses minor grammar errors.

The Commission received no written comments on the proposed amendments to the rule.

The rule changes are adopted under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D.

###### §91.101. *Definitions and Interpretations.*

(a) Words and terms used in this chapter that are defined in Finance Code §121.002, have the same meanings as defined in the Finance Code. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--the Texas Credit Union Act (Texas Finance Code, Subtitle D).

(2) Allowance for loan and lease losses (ALLL)--a general valuation allowance that has been established through charges against earnings to absorb losses on loans and lease financing receivables. An ALLL excludes the regular reserve and special reserves.

(3) Applicant--an individual or credit union that has submitted an application to the commissioner.

(4) Application--a written request filed by an applicant with the department seeking approval to engage in various credit union activities, transactions, and operations or to obtain other relief for which the commission is authorized by the act to issue a final decision or order subject to judicial review.

(5) Appraisal--a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of a specifically described asset as of a specific date,

supported by the presentation and analysis of relevant market information.

(6) Automated teller machine (ATM)--an automated, unstaffed credit union facility owned by or operated exclusively for the credit union at which deposits are received, cash dispensed, or money lent.

(7) Community of interest--a unifying factor among persons that by virtue of its existence, facilitates the successful organization of a new credit union or promotes economic viability of an existing credit union. The types of community of interest currently recognized are:

(A) Occupational--based on an employment relationship that may be established by:

(i) employment (or a long-term contractual relationship equivalent to employment) by a single employer, affiliated employers or employers under common ownership with at least a 10% ownership interest;

(ii) employment or attendance at a school; or

(iii) employment in the same trade, industry or profession (TIP) with a close nexus and narrow commonality of interest, which is geographically limited.

(B) Associational--based on groups consisting primarily of natural persons whose members participate in activities developing common loyalties, mutual benefits, or mutual interests. In determining whether a group has an associational community of interest, the commissioner shall consider the totality of the circumstances, which include:

(i) whether the members pay dues;

(ii) whether the members participate in furtherance of the goals of the association;

(iii) whether the members have voting rights;

(iv) whether there is a membership list;

(v) whether the association sponsors activities;

(vi) what the association's membership eligibility requirements are; and

(vii) the frequency of meetings. Associations formed primarily to qualify for credit union membership and associations based on client or customer relationships, do not have a sufficient associational community of interest.

(C) Geographic--based on a clearly defined and specific geographic area where persons have common interests and/or interact. More than one credit union may share the same geographic community of interest. There are currently four types of affinity on which a geographic community of interest can be based: persons, who:

- (i) live in;
- (ii) worship in;
- (iii) attend school in; or
- (iv) work in that community. The geographic community of interest requirements are met if the area to be served is in a recognized single political jurisdiction, e.g., a city or a county, or a portion thereof.

(D) Other--The commissioner may authorize other types of community of interest, if the commissioner determines that either a credit union or foreign credit union has sufficiently demonstrated that a proposed factor creates an identifiable affinity among the persons within the proposed group. Such a factor shall be well-defined, have a geographic definition, and may not circumvent any limitation or restriction imposed on one of the other enumerated types.

(8) Credit union service organization (CUSO)--an organization authorized by §91.801 of this title (relating to Investments in Credit Union Service Organizations). A consolidated CUSO is one where control or ownership by a credit union requires consolidation of the credit union and CUSO financial statements to comply with Generally Accepted Accounting Principles.

(9) Day--whenever periods of time are specified in this title in days, calendar days are intended. When the day, or the last day fixed by statute or under this title for taking any action falls on Saturday, Sunday, or a state holiday, the action may be taken on the next succeeding day which is not a Saturday, Sunday, or a state holiday.

(10) Department newsletter--the monthly publication that serves as an official notice of all applications, and by which procedures to protest applications are described.

(11) Field of membership (FOM)--refers to the totality of persons a credit union may accept as members. The FOM may consist of one group, several groups with a related community of interest, or several unrelated groups with each having its own community of interest.

(12) Finance Code or Texas Finance Code--the codification of the Texas statutes governing financial institutions, financial businesses, and related financial services, including the regulations and supervision of credit unions.

(13) Imminent danger of insolvency--a circumstance or condition in which a credit union is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities; or the credit union has a positive net worth ratio equal to two percent or less of its assets.

(14) Improved residential property--residential real estate containing on-site, offsite or other improvements sufficient to make the property ready for primarily residential construction, and real estate in the process of being improved by a building or buildings to be constructed or in the process of construction for primarily residential use.

(15) Interactive teller machine (ITM)--a video-based interactive technology which allows members to conduct transactions and credit union services driven by a centrally based teller, in a real time video or audio interaction.

(16) Indirect financing--a program in which a credit union makes the credit decision in a transaction where the credit is extended by the vendor and assigned to the credit union or a loan transaction that generally involves substantial participation in and origination of the transaction by a vendor.

(17) Loan and extension of credit--a direct or indirect advance of funds to or on behalf of a member based on an obligation of the member to repay the funds or repayable from the application of the specific property pledged by or on behalf of the member. The terminology also includes the purchase of a member's loan or other obligation, a lease financing transaction, a credit sale, a line of credit or loan commitment under which the credit union is contractually obligated to advance funds to or on behalf of a member, an advance of funds to honor a check or share draft drawn on the credit union by a member, or any other indebtedness not classified as an investment security.

(18) Loan-to-value ratio--the aggregate amount of all sums borrowed and secured by the collateral, including outstanding balances plus any unfunded commitment or line of credit from another lender that is senior to the credit union's lien divided by the current value of the collateral.

(19) Manufactured home--a HUD-code manufactured home as defined by the Texas Manufactured Housing Standards Act. The terminology may also include a mobile home, house trailer, or similar recreational vehicle if the unit will be used as the member's residence and the loan is secured by a first lien on the unit, and the unit meets the requirements for the home mortgage interest deduction under the Internal Revenue Code (26 U.S.C. Section 163(a), (h)(2)(D)).

(20) Market Value--the most probable price which an asset should bring in a competitive and open market under an arm's-length sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of ownership from seller to buyer where:

- (A) buyer and seller are typically motivated;
- (B) both parties are well informed or well advised, and acting in their own best interests;
- (C) a reasonable time is allowed for exposure in the open market;
- (D) payment is made in cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- (E) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(21) Metropolitan Statistical Area (MSA)--a geographic area as defined by the director of the U.S. Office of Management and Budget.

(22) Mobile office--a branch office that does not have a single, permanent site, including a vehicle that travels to various public locations to enable members to conduct their credit union business.

(23) Office--includes any service facility or place of business established by a credit union at which deposits are received, checks or share drafts paid, or money lent. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned ITM or other electronic facility that meets, at a minimum, these requirements; however, it does not include the credit union's Internet website. This definition also includes a shared branch or a shared branch network if either:

- (A) the credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or
- (B) the service facility is local to the credit union and the credit union is an authorized participant in the service center.

(24) Overlap--the situation which exists when a group of persons is eligible for membership in two or more state, foreign, or federal credit unions doing business in this state. Notwithstanding this provision, no overlap exists if eligibility for credit union membership results solely from a family relationship.

(25) Pecuniary interest--the opportunity, directly or indirectly, to make money on or share in any profit or benefit derived from a transaction.

(26) Person--an individual, partnership, corporation, association, government, governmental subdivision or agency, business trust, estate, trust, or any other public or private entity.

(27) Principal office--the home office of a credit union.

(28) Protestant--a credit union that opposes or objects to the relief requested by an applicant.

(29) Real estate or real property--an identified parcel or tract of land. The term includes improvements, easements, rights of way, undivided or future interest and similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights and similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

(30) Remote service facility--an automated, unstaffed credit union facility owned or operated by, or operated for, the credit union, such as an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility, at which deposits are received, cash dispensed, or money lent.

(31) Reserves--allocations of retained earnings including regular and special reserves, except for any allowances for loan, lease or investment losses.

(32) Resident of this state--a person physically located in, living in or employed in the state of Texas.

(33) Respondent--a credit union or other person against whom a disciplinary proceeding is directed by the department.

(34) Secured credit--a loan made or extension of credit given upon an assignment of an interest in collateral pursuant to applicable state laws so as to make the enforcement or promise more certain than the mere personal obligation of the debtor or promisor. Any assignment may include an interest in personal property or real property or a combination thereof.

(35) Shared service center--a facility which is connected electronically with two or more credit unions so as to permit the facility, through personnel at the facility and the electronic connection, to provide a credit union member at the facility the same credit union services that the credit union member could lawfully obtain at the principal office of the member's credit union.

(36) TAC--an acronym for the Texas Administrative Code, a compilation of all state agency rules in Texas.

(37) Title or 7 TAC--Title 7, Part VI of the Texas Administrative Code Banking and Securities, which contains all of the department's rules.

(38) Underserved area--a geographic area, which could be described as one or more contiguous metropolitan statistical areas (MSA) or one or more contiguous political subdivisions, including counties, cities, and towns, that satisfy any one of the following criteria:

(A) a majority of the residents earn less than 80 percent of the average for all wage earners as established by the U.S. Bureau of Labor Statistics;

(B) the annual household income for a majority of the residents falls at or below 80 percent of the median household income for the State of Texas, or the nation, whichever is higher; or

(C) the commission makes a determination that the lack of available or adequate financial services has adversely affected economic development within the specified area.

(39) Uninsured membership share--funds paid into a credit union by a member that constitute uninsured capital under conditions established by the credit union and agreed to by the member including possible reduction under §122.105 of the act, risk of loss through operations, or other forfeiture. Such funds shall be considered an interest in the capital of the credit union upon liquidation, merger, or conversion.

(40) Unsecured credit--a loan or extension of credit based solely upon the general credit financial standing of the borrower. The term shall include loans or other extensions of credit supported by the signature of a co-maker, guarantor, or endorser.

(b) The same rules of construction that apply to interpretation of Texas statutes and codes, the definitions in the Act and in Government Code §2001.003, and the definitions in subsection (a) of this section govern the interpretation of this title. If any section of this title is found to conflict with an applicable and controlling provision of other state or federal law, the section involved shall be void to the extent of the conflict without affecting the validity of the rest of this title.

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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John J. Kolhoff

Commissioner

Credit Union Department

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## SUBCHAPTER H. INVESTMENTS

### 7 TAC §91.801

The Credit Union Commission (the Commission) adopts the amendments to Texas Administrative Code, Title 7, Chapter 91, Subchapter H, §91.801, concerning investments, without changes to the proposed text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3718). The amendments will not be republished.

The amended rule recognizes parity with federal regulations by specifically authorizing credit union ability to invest in CUSOs providing property management services.

The Commission received no written comments on the proposed amendments to the rule.

The rule changes are adopted under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle 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.

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## 7 TAC §91.803

The Credit Union Commission (the Commission) adopts the amendments to Texas Administrative Code, Title 7, Chapter 91, Subchapter H, §91.803, concerning investment limits and prohibitions, with changes to the proposed text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3721). The amendments will be republished.

The amended rule clarifies the limits found in §91.803 apply only to investments as outlined by the Subchapter heading and to provide minor grammar edits.

The Commission received no written comments on the proposed amendments to the rule.

The rule changes are adopted under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D.

### §91.803. *Investment Limits and Prohibitions.*

(a) **Limitations.** Except for deposits placed in a Federal Reserve Bank, a credit union may invest no more than 50% of its net worth with any single obligor or related obligors. This limitation does not apply to the extent that the investment is insured or guaranteed by the United States government, or an agency, sponsored enterprise, corporation, or instrumentality, of the United States government, or to any trust or trusts established for investing, directly or collectively, in such securities, obligations, or instruments. For the purposes of this section, obligor is defined as an issuer, trust, or originator of an investment, including the seller of a loan participation investment.

(b) **Designated Depository.** As a single exception to subsection (a) of this section, a credit union's board of directors may establish the maximum aggregate deposit limit for a single financial institution approved by the board as the credit union's designated depository. This deposit limit shall be a percentage of net worth and must be based on the credit union's liquidity trends and funding needs as documented by its asset/liability management policy. This authority is contingent upon the credit union appropriately documenting its due diligence to demonstrate that the investments in this designated depository do not pose a safety and soundness concern. The credit union's board of directors shall review and approve at least annually the maximum aggregate deposit limit for its designated depository. The review shall include a current due diligence analysis of the financial institution.

(c) **Prohibited Activities.**

(1) **Definitions.**

(A) **Adjusted trading**--selling an investment to a counterparty at a price above its current fair value and simultaneously purchasing or committing to purchase from the counterparty another investment at a price above its current fair value.

(B) **Collateralized mortgage obligation (CMO)**--a multi-class bond issue collateralized by mortgages or mortgage-backed securities.

(C) **Commercial mortgage related security**--a mortgage related security except that it is collateralized entirely by commercial real estate, such as a warehouse or office building, or a multi-family dwelling consisting of more than four units.

(D) **Fair value**--the price at which a security can be bought or sold in a current, arm's length transaction between willing parties, other than in a forced or liquidation sale.

(E) **Real estate mortgage investment conduit (REMIC)**--a nontaxable entity formed for the sole purpose of holding a fixed pool of mortgages secured by an interest in real property and issuing multiple classes of interests in the underlying mortgages.

(F) **Residual interest**--the remainder cash flows from a CMO/REMIC, or other mortgage-backed security transaction, after payments due bondholders and trust administrative expenses have been satisfied.

(G) **Short sale**--the sale of a security not owned by the seller.

(H) **Stripped mortgage-backed security**--a security that represents either the principal-only or the interest-only portion of the cash flows of an underlying pool of mortgages or mortgage-backed securities.

(I) **Zero coupon investment**--an investment that makes no periodic interest payments but instead is sold at a discount from its face value. The holder of a zero coupon investment realizes the rate of return through the gradual appreciation of the investment, which is redeemed at face value on a specified maturity date.

(2) A credit union may not:

(A) Use financial derivatives for replication, or for any purposes other than hedging;

(B) Engage in adjusted trading or short sales;

(C) Purchase stripped mortgage backed securities;

(D) Purchase residual interests in CMOs/REMICs, or other structured mortgage backed securities;

(E) Purchase mortgage servicing rights as an investment but may retain mortgage servicing rights on a loan originated by the credit union and sold on the secondary market;

(F) Purchase commercial mortgage related securities of an issuer other than a U.S. Government sponsored enterprise;

(G) Purchase any security that has the capability of becoming a first credit loss piece which supports another more senior security;

(H) Purchase a zero coupon investment with a maturity date that is more than 10 years from the settlement date;

(I) Purchase investments whereby the underlying collateral consists of foreign receivables or foreign deposits;

(J) Purchase securities used as collateral by a safekeeping concern;

(K) Purchase exchangeable mortgage backed securities, unless they are fully compliant with the provisions outlined in Part 703 of the National Credit Union Administration Rules and Regulations; or

(L) Purchase securities convertible into stock at the option of the issuer.

(d) Investment pilot program.

(1) The commissioner may authorize a limited number of credit unions to engage in other types of investment activities under an investment pilot program. A credit union wishing to participate in an investment pilot program shall submit a request that addresses the following items:

(A) Board policies approving the activities and establishing limits on them;

(B) A complete description of the activities, with specific examples of how the credit union will conduct them and how they will benefit the credit union;

(C) A demonstration of how the activities will affect the credit union's financial performance, risk profile, and asset-liability management strategies;

(D) Examples of reports the credit union will generate to monitor the activities;

(E) A projection of the associated costs of the activities, including personnel, computer, audit, etc.;

(F) A description of the internal systems to measure, monitor, and report the activities, and the qualifications of the staff and/or official(s) responsible for implementing and overseeing the activities; and

(G) The internal control procedures that will be implemented, including audit requirements.

(2) In connection with a request to participate in an investment pilot program, the commissioner will consider the general nature and functions of credit unions, as well as the specific financial condition and management of the applicant credit union, as revealed in the request, examinations, or such other information as may be available to the commissioner. The commissioner may approve the request, approve the request conditionally, approve it in modified form, or deny it in whole or in part. A decision by the commissioner concerning participation in an investment pilot program is not appealable.

(3) The commissioner may find that an investment pilot program previously authorized is no longer a safe and prudent practice for credit unions generally to engage in, that it has become inconsistent with applicable state or federal law, or that it has ceased to be a safe and prudent practice for one or more credit unions in light of their financial condition or management. Upon such a finding, the commissioner will send written notice informing the board of directors of any or all of the credit unions engaging in such a practice that the authority to engage in the practice has been revoked or modified. When the commissioner so notifies any credit union, its directors and officers shall forthwith take steps to liquidate the investments in question or to make such modifications as the commissioner requires. Upon demonstration of good cause, the commissioner may grant a credit union some definite period of time in which to arrange its affairs to comply with the commissioner's direction. The commissioner deems credit unions that continue to engage in investment practices after their authority to do so has been revoked or modified to be engaging in an unsound practice.

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 I. RESERVES AND DIVIDENDS

### 7 TAC §91.901

The Credit Union Commission (the Commission) adopts the amendments to Texas Administrative Code, Title 7, Chapter 91, Subchapter I, §91.901, concerning reserve requirements, without changes to the proposed text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3723). The amendments will not be republished.

The amended rule ensures uniformity between the Commission's rules and federal regulations, specifically those regarding the deadlines for waiver applications contained in NCUA 12 C.F.R. Part 702.201, relating to Prompt Corrective Action (PCA) requirements for waiver applications.

The Commission received no written comments on the proposed amendments to the rule.

The rule changes are adopted under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle 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.

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## TITLE 16. ECONOMIC REGULATION

### PART 8. TEXAS RACING COMMISSION

#### CHAPTER 303. GENERAL PROVISIONS

## SUBCHAPTER G. HORSE INDUSTRY ESCROW ACCOUNT

The Texas Racing Commission ("the Commission") adopts new 16 TAC §303.301, Definitions; §303.302, General Provisions; 16 TAC §303.311, Allocations to Horse Racetrack Associations; 16 TAC §303.312, Limitation on Use of Funds by Racetrack Associations; 16 TAC §303.321, Allocations to Breed Registries; 16 TAC §303.322, Limitations on Use of Funds by Breed Registries; 16 TAC §303.323, Modifications to Approved Events; 16 TAC §303.324, Recordkeeping and Audits; and 16 TAC §303.325, Quarterly Reports, with changes from the text as proposed in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5466). Changes are being made to §§303.301, 303.312, 303.321, and 303.322, which are being republished. The new sections make up Subchapter G relating to the horse industry escrow account created by House Bill 2463 (86th Legislature, Regular Session, 2019). Section 303.301 defines certain terms relating to the account, and §303.302 establishes general provisions relating to both the portion of the funds to be allocated to horse racetrack associations for purses and the portion to be allocated to breed registries for events that further the horse industry. Section 303.311 contains provisions currently in 16 TAC §321.509, Escrowed Purse Account (being repealed elsewhere in this issue) regarding allocations to horse racetrack associations for purses, and §303.312 provides that funds allocated to racetrack associations from the horse industry escrow account may only be used for purses and for administrative expenses specifically authorized in the Racing Act. Section 303.321 establishes the requirements for a breed registry's request for allocation of funds from the account, the criteria for the Commission to approve and prioritize requests, and allows the executive director to act on behalf of the Commission to approve requests prior to January 1, 2020. Section 303.322 establishes limitations on the use of funds by breed registries, including types of expenses that cannot be paid with funds from the account. Section 303.323 contains requirements for requests for approval of changes to previously approved events, including which changes can be approved by the executive director and which changes must be approved by the Commission. Section 303.324 requires breed registries to maintain records of expenses paid with funds from the account, allows the Commission and other agencies to conduct audits, and requires breed registries to include the funds received from the account in the audits they are required to submit to the Commission each year. Last, §303.325 requires breed registries receiving funds from the account to submit quarterly reports to the Commission regarding use of the funds.

The changes from the sections as proposed are as follows: (1) in §303.301, Definitions, the definition of "event" was deleted; (2) §303.312, Limitation on Use of Funds by Racetrack Associations, is amended to allow for the payment of administrative expenses payable to the horsemen's organization pursuant to Section 2028.102 of the Act; (3) §303.322, Limitation on Use of Funds by Breed Registries, is amended to allow up to five percent of the funds a breed registry receives from the Account to be used for operating expenses and/or the purchase of capital assets; and (4) §303.321, Allocations to Breed Registries, is amended to require that any funds to be used for operating expenses and/or the purchase of capital assets be specifically listed in the breed registry's request for allocation from the fund. The changes affect no new persons, entities, or subjects other than those given notice of the original proposal.

## REASONED JUSTIFICATION

The reasoned justification for the new sections is to implement H.B. 2463 to support the horse industry in Texas and to realize the resulting economic benefits of strengthened horse racing and horse industries.

## PUBLIC COMMENTS AND AGENCY RESPONSE

The agency received three oral comments in response to the proposal of these rules.

COMMENT: A representative of the Texas Thoroughbred Association (TTA) spoke against the proposed definition of "event" in §303.301 because the TTA would like to use funds from the Account for activities that may not fit within the proposed definition.

RESPONSE: The Commission recognizes that the proposed definition may not include all activities the breed registries intend to pursue. As the Commission retains the authority to approve or deny requests for funding from the Account, §303.301 is amended to eliminate the definition of "event."

COMMENT: A commenter spoke against the provision in proposed §303.322 against using funds from the Account for operating expenses and capital assets.

RESPONSE: The Commission acknowledges that the breed registries may incur legitimate costs in connection with the administration of the funds from the Account. Accordingly, §303.322 is amended to allow up to five percent of the funds a breed registry receives from the Account to be used for operating expenses and the purchase of capital assets. Section 303.321 is also amended to require breed registries to specifically address in their applications any operating expenses and capital assets they intend to pay for with funds from the Account.

COMMENT: A representative of the Texas Horsemen's Partnership (THP) commented that §303.312 as proposed would not allow the THP to collect administrative expenses payable to the horsemen's organization pursuant to Section 2028.102 of the Act.

RESPONSE: The Commission acknowledges this concern and has added language to §303.312 to allow the THP to collect administrative expenses payable to the horsemen's organization pursuant to Section 2028.102 of the Act.

## DIVISION 1. GENERAL PROVISIONS

### 16 TAC §303.301, §303.302

#### STATUTORY AUTHORITY

The new sections are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and §2028.201, which requires the Commission to adopt rules relating to Tex. Occ. Code Subchapter E, Chapter 2028, which includes the new provisions creating the horse industry escrow account.

No other statute, code, or article is affected by the new sections.

#### §303.301. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

- (1) Account - the horse industry escrow account.
- (2) Association - a horse racetrack association.

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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Chuck Trout

Executive Director

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## DIVISION 2. HORSE RACETRACK ASSOCIATIONS

### 16 TAC §303.311, §303.312

#### STATUTORY AUTHORITY

The new sections are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and §2028.201, which requires the Commission to adopt rules relating to Tex. Occ. Code Subchapter E, Chapter 2028, which includes the new provisions creating the horse industry escrow account.

No other statute, code, or article is affected by the new sections.

#### §303.312. *Limitation on Use of Funds by Racetrack Associations.*

Funds allocated to racetrack associations from the horse industry escrow account may only be used for purses and for administrative expenses payable to the horsemen's organization pursuant to Section 2028.102 of the Act.

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

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## DIVISION 3. BREED REGISTRIES

### 16 TAC §§303.321 - 303.325

#### STATUTORY AUTHORITY

The new sections are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and § 2028.201, which requires the Commission to adopt rules relating to Tex. Occ. Code Subchapter E, Chapter 2028, which includes the new provisions creating the horse industry escrow account.

No other statute, code, or article is affected by the new sections.

#### §303.321. *Allocations to Breed Registries.*

(a) A breed registry is eligible to request funds from the horse industry escrow account if it is listed in Section 2030.002(a) of the Act.

(b) When requesting an allocation from the horse industry escrow account, an eligible breed registry shall indicate the event(s) for which it intends to use the funds and provide the following information for each event:

- (1) the date(s) or approximate date(s);
- (2) a detailed description of the event;
- (3) the dollar amount requested for the event;

(4) a detailed explanation of the budget for the event, with any costs related to personnel, the purchase of assets, and other administrative expenses stated separately; and

(5) the anticipated economic impact of the event on the horse industry.

(c) The Commission may approve a request for allocation of funds submitted by an eligible breed registry if, after considering the factors set forth in the Act, §2028.204(b), it finds that the request satisfies the requirement that the funds be used for events to further the horse industry. Requests may be approved in full or in part, at the discretion of the Commission.

(d) In the event that the total of funds requested by eligible breed registries exceed the funds expected to be available in the account, the Commission may approve requests on a pro rata basis, may approve funding for certain events but not others, or a combination. Priority shall be given to events that the Commission finds likely to have the greatest economic impact in the following areas:

- (1) the state's horse racing industry;
- (2) live racing at the state's racetracks;
- (3) the horse breeding industry;
- (4) the state of Texas as a whole; and
- (5) non-racing horse industry activities.

(e) Notwithstanding subsections (c) and (d) of this section, prior to January 1, 2020, the executive director may act on behalf of the Commission to approve requests for allocation from the account.

#### §303.322. *Limitations on Use of Funds by Breed Registries.*

(a) A breed registry may use horse industry escrow account funds only for events that further the horse industry. The Commission may require a breed registry to repay funds if the breed registry fails to expend the funds in accordance with Section 2028.204 of the Act and this section within twelve months of the date it receives the funds.

(b) The following types of costs may not be paid with funds allocated from the account:

- (1) capital improvements;
- (2) donations or contributions made to any individual or organization without express approval from the Commission for such contribution or donation;
- (3) costs of entertainment, amusements, social activities, and incidental costs relating thereto, including tickets to shows or sports events, meals, alcoholic beverages, lodging, rentals, transportation, tips, and gratuities;
- (4) fines, penalties, or other costs resulting from violations of or failure to comply with federal, state, or local laws and regulations;

(5) liability insurance coverage not specific to a particular event or series of events for which the Commission has allocated funds from the account;

(6) expenses related to litigation;

(7) professional association fees or dues for the breed registry or an individual;

(8) legislative expenses such as salaries and other expenses associated with lobbying the state or federal legislature or similar local governmental bodies, whether incurred for purposes of legislation or executive direction; or

(9) fundraising.

(c) The following types of costs may only be paid with funds allocated from the account, in an amount not to exceed five percent of the total allocated to the breed registry or of the approved allocation for any event, if specifically approved by the Commission:

(1) operating expenses, including the salaries of breed registry staff, interest and other financial costs related to borrowing and the cost of financing, contributions to a contingency reserve or any similar provision for unforeseen events, and audits or other accounting services; and

(2) the purchase of capital assets.

(d) A breed registry may pay a cost out of funds awarded from the horse industry escrow account if it satisfies subsections (a) through (c) of this section and is reasonable and adequately documented.

(1) A cost is reasonable if the cost does not exceed that which would be incurred by a prudent individual or organization under the circumstances prevailing at the time the decision was made to incur the cost and it is necessary to achieve the purpose for which the funds were sought.

(2) A cost is adequately documented if the cost is supported by Generally Accepted Accounting Principles, the breed registry's accounting records, and documented in accordance with §303.325 of this subchapter (relating to Quarterly Reports).

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 309. RACETRACK LICENSES AND OPERATIONS

### SUBCHAPTER A. RACETRACK LICENSES

#### DIVISION 1. GENERAL PROVISIONS

##### 16 TAC §309.8

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §309.8, Racetrack License Fees, with a change from the text as proposed in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5470). The rule will not be republished. The amendments reduce racetrack license fees, increase the number of base race days included in the fee for Class 1 tracks, require Class 1 tracks not using all of their base days to share them with another Class 1 track at no cost, increase the cost of additional race days beyond the base number of days, impose an additional fee in the event that the simulcast tax paid to the Commission under House Bill 1995 (86th Legislature, Regular Session, 2019) falls short of projections, and requires the executive director to impose a moratorium on racetrack license fees in the event that the agency brings in more revenue than it needs. The change from the version as proposed allows the agency to charge less than the stated per-day cost for additional race days if the agency collects more revenue than expected and does not need the full amount stated in the proposed version of the rule. The change affects no new persons, entities, or subjects other than those given notice of the original proposal.

#### REASONED JUSTIFICATION

The reasoned justification for the amendments is consistency with HB 1995's intent to reduce racetrack license fees while ensuring that the agency generates sufficient revenue to cover its costs.

#### SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE

The Commission received two comments in response to the proposed amendments.

Comment: A representative of the Texas Horsemen's Partnership objected to the base number of 48 race days per Class 1 racetrack, saying it hinders the racing industry by limiting the number of race days.

Response: The Commission respectfully disagrees, as the base number of race days is in no way a limit on the number of days a racetrack may hold live racing but rather provides a mechanism to cover the regulatory costs of any additional race days.

Comment: Representatives of a Class 1 racetrack objected to the per-day fee for days beyond the base number of days and requested that subsection (c)(1) be deleted.

Response: The Commission respectfully declines to make this change because that would leave the agency without the ability to raise funds to pay its costs of regulating additional race days beyond the number on which the agency budget is based. Additionally, the fee proposal submitted by all of the racetracks to the agency in July 2019 included the same per-day fee that these commenters now oppose (although the proposed rule structures the number of base days differently and includes more days than the tracks' proposal). However, the rule is being adopted with a minor change to the language of subsection (c)(1)(A) to allow the agency to collect a smaller per-day fee in the event that the agency collects more revenue than expected from other sources.

#### STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and §2025.108, which authorizes the commission to prescribe reasonable annual fees to be paid by racetrack license holders.



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

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## DIVISION 2. ACTIVE AND INACTIVE RACETRACK LICENSES

### 16 TAC §309.51

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §309.51, Designation of Active and Inactive Racetrack Licenses, without changes to the text as proposed in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5472), which will not be republished. The amendments update the name of the Escrowed Purse Account to Horse Industry Escrow Account in light of HB 2463 (86th Legislature, Regular Session, 2019) and also update the citation to Vernon's Civil Statutes in light of SB 1969 (85th Legislature, Regular Session, 2017), which codified the Texas Racing Act as Subtitle A-1, Title 13, Texas Occupations Code, effective April 1, 2019.

#### REASONED JUSTIFICATION

The reasoned justification for these amendments is that the language of the rule will be consistent with amendments to the Texas Racing Act.

#### PUBLIC COMMENTS

No comments were submitted in response to the proposed amendments.

#### STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

No other statute, code, or article is affected by the amendments.

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

Filed with the Office of the Secretary of State on October 31, 2019.

TRD-201904053  
Chuck Trout  
Executive Director  
Texas Racing Commission  
Effective date: November 20, 2019  
Proposal publication date: September 27, 2019  
For further information, please call: (512) 833-6699

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## SUBCHAPTER B. OPERATIONS OF RACETRACKS

### DIVISION 2. FACILITIES AND EQUIPMENT

#### 16 TAC §309.118

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §309.118, Regulatory Office Space and Equipment, without changes to the text as proposed in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5473), which will not be republished. The amendments update provisions requiring racetrack associations to provide telephone lines for accessing the internet to instead require Ethernet or other secure internet lines for this purpose, and also update the title of the executive director of the agency.

#### REASONED JUSTIFICATION

The reasoned justification for these amendments is that they ensure updated telecommunications infrastructure for agency operations at racetracks, as well as updated terminology within the rules.

#### PUBLIC COMMENTS

No comments were submitted in response to the proposed amendments.

#### STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

No other statute, code, or article is affected by the amendments.

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

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Chuck Trout  
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Texas Racing Commission  
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For further information, please call: (512) 833-6699



## CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

### SUBCHAPTER A. GENERAL PROVISIONS

#### 16 TAC §319.3

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §319.3, Medication Restricted, without changes to the text as proposed in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5475), which will not be republished. The amendments add albuterol to the current prohibition on clenbuterol, eliminate the provisions placing a horse on the Veterinarian's List for testing positive for clenbuterol,

and require a negative test for all beta-agonist drugs (the class of drugs that includes clenbuterol and albuterol) before being removed from the Veterinarian's List after being voluntarily placed on the list for therapeutic use of clenbuterol or albuterol.

#### REASONED JUSTIFICATION

The reasoned justification for the amendments is to increase assurance that race animals are not being administered bronchodilators for their anabolic effects, as well as to ensure greater consistency in how medication restrictions are implemented.

#### PUBLIC COMMENTS

No comments were submitted in response to this proposal.

#### STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and §2034.001, which requires the Commission to adopt rules prohibiting a person from unlawfully influencing or affecting the outcome of a race.

No other statute, code, or article is affected by the amendments.

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

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Chuck Trout

Executive Director

Texas Racing Commission

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For further information, please call: (512) 833-6699



## SUBCHAPTER B. TREATMENT OF HORSES

### 16 TAC §319.102

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §319.102, Veterinarian's List, without changes from the text as proposed in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5477), which will not be republished. The amendments would require that a horse participating in a workout or qualifying race for the purpose of being removed from the veterinarian's list have no detectable level of any permissible therapeutic medication other than furosemide.

#### REASONED JUSTIFICATION

The reasoned justification for the amendments is that race animals working off the veterinarian's list should be free of all medications that are not allowed on race day.

#### PUBLIC COMMENTS

No comments were submitted in response to the proposed amendments.

#### STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and §2034.001, which requires the

Commission to adopt rules prohibiting a person from unlawfully influencing or affecting the outcome of a race.

No other statute, code, or article is affected by the amendments.

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

Filed with the Office of the Secretary of State on October 31, 2019.

TRD-201904056

Chuck Trout

Executive Director

Texas Racing Commission

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For further information, please call: (512) 833-6699



## SUBCHAPTER D. DRUG TESTING DIVISION 2. TESTING PROCEDURES

### 16 TAC §319.333

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §319.333, Specimen Tags, without changes to the text as proposed in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5478), which will not be republished. The amendments eliminate the specific requirements for specimen labeling for drug testing, requiring instead that specimens be marked for identification in a manner that ensures that the Commission can identify which horse, trainer, owners, and race the specimen came from and that the laboratory testing the sample cannot, leaving the specific labeling requirements to be outlined in the written test barn procedures.

#### REASONED JUSTIFICATION

The reasoned justification for the amendments is to ensure that the agency can adapt to changing packaging and procedural requirements, such as those of drug testing laboratories, with regard to specimen processing while maintaining the integrity of samples.

#### PUBLIC COMMENTS

No comments were submitted in response to the proposed amendments.

#### STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code 2023.004, which authorizes the Commission to adopt rules to administer the Act.

No other statute, code, or article is affected by the amendments.

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

Filed with the Office of the Secretary of State on October 31, 2019.

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Chuck Trout  
Executive Director  
Texas Racing Commission  
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For further information, please call: (512) 833-6699



CHAPTER 321. PARI-MUTUEL WAGERING  
SUBCHAPTER C. REGULATION OF LIVE  
WAGERING  
DIVISION 2. DISTRIBUTION OF  
PARI-MUTUEL POOLS

**16 TAC §321.313**

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §321.313, Select Three, Four, or Five, without changes to the text as proposed in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5479), which will not be republished. This section establishes the select three, four, or five wager. The amendments require the stewards to declare races a "no contest" for select three, four, or five purposes when the conditions of a turf course warrant a change of racing surface in any race open to a select three, four, or five and the change was not made known to the public before the close of wagering for the first of the races.

REASONED JUSTIFICATION

The reasoned justification for the amendments is that wagers placed with the expectation that a race would be run on turf should not influence the outcome of the Select Three, Four, or Five wager in cases where the race was moved to a dirt track.

PUBLIC COMMENTS

No comments were submitted in response to the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and Tex. Occ. Code §2027.001, which requires the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races.

No other statute, code, or article is affected by the amendments

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

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Chuck Trout  
Executive Director  
Texas Racing Commission  
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For further information, please call: (512) 833-6699



SUBCHAPTER D. SIMULCAST WAGERING  
DIVISION 3. SIMULCASTING AT HORSE  
RACETRACKS

**16 TAC §321.509**

The Texas Racing Commission ("the Commission") adopts the repeal of 16 TAC §321.509, Escrowed Purse Account as proposed in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5480). The repeal is necessary because the content of this section is being reorganized into new Subchapter G of Chapter 303 in light of House Bill 2463 (86th Legislature, Regular Session, 2019), which changed the name of the account to "horse industry escrow account" and expanded its scope and funding.

REASONED JUSTIFICATION

The reasoned justification for this repeal is that the provisions of this rule are being consolidated with the rest of the rules implementing House Bill 2463.

PUBLIC COMMENTS

No comments were submitted in response to the proposed repeal of this section.

STATUTORY AUTHORITY

The repeal is adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

No other statute, code, or article is affected by the repeal.

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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Chuck Trout  
Executive Director  
Texas Racing Commission  
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Proposal publication date: September 27, 2019  
For further information, please call: (512) 833-6699



**TITLE 19. EDUCATION**

**PART 1. TEXAS HIGHER EDUCATION  
COORDINATING BOARD**

**CHAPTER 1. AGENCY ADMINISTRATION  
SUBCHAPTER U. MARKETABLE SKILLS  
TASK FORCE**

**19 TAC §§1.230 - 1.236**

The Texas Higher Education Coordinating Board adopts new Chapter 1, Subchapter U, §§1.230 - 1.236, concerning the establishment of a Marketable Skills Task Force, without changes to the proposed text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3729). The rules will not be republished.

The new rules authorize the Board to establish a Marketable Skills Task Force to provide the Commissioner and the Board with guidance regarding the implementation of the strategies under the Marketable Skills goal of 60x30TX.

No comments were received.

Statutory authority for this subchapter is provided in the Texas Government Code, 2110.0012, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the 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 November 4, 2019.

TRD-201904095

William Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 24, 2019

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For further information, please call: (512) 427-6206



## CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

### SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

#### 19 TAC §§4.83 - 4.85

The Texas Higher Education Coordinating Board adopts amendments to Chapter 4, Rules Applying to All Public Institutions of Higher Education in Texas, Subchapter D, Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges, §4.83, concerning definitions; §4.84, concerning institutional agreements; and §4.85, concerning dual credit requirements without changes to proposed text as published in the August 9, 2019, issue of the *Texas Register* (44 TexReg 4164). The rules will not be republished.

No comments were received.

The amendments are adopted under the Texas Education Code, Sections §28.009(b) and §130.001(b)(3) - (4), which provide the Coordinating Board with the authority to regulate dual credit partnerships between public two-year associate degree-granting institutions and public universities with secondary 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.

Filed with the Office of the Secretary of State on November 4, 2019.

TRD-201904096

William Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 24, 2019

Proposal publication date: August 9, 2019

For further information, please call: (512) 427-6206



## CHAPTER 15. NATIONAL RESEARCH UNIVERSITIES

### SUBCHAPTER C. NATIONAL RESEARCH UNIVERSITY FUND

#### 19 TAC §15.43

The Texas Higher Education Coordinating Board adopts amendments to Texas Administration Code, Chapter 15, Subchapter C, §15.43, concerning the eligibility criteria to receive distributions from the National Research University Fund, without changes to the proposed text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3731).

Specifically, the amendments clarify:

(a) in rule section 15.43(b)(3)(C)(ii), a minimum 75th percentile score for the SAT effective with the fall 2017 semester, based on the concordance table for scores prior to and since fall 2017, as provided by the College Board (<https://collegereadiness.collegeboard.org/educators/highered/scoring/concordance>);

(b) in rule section 15.43(b)(3)(E)(i), corrected names for the academies that provide awards of national and international distinction to faculty; and

(c) in rule section 15.43(b)(3)(E)(ii), corrected names for faculty awards of distinction.

No comments were received.

The amendments are adopted under the Texas Education Code, Chapter 62, Subchapter G, Section 62.146, which provides the Texas Higher Education Coordinating Board with the authority to prescribe standard methods of reporting information for the purpose of determining the eligibility of institutions for the National Research University Fund.

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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William Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6206



## PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS  
SUBCHAPTER A. REQUIRED CURRICULUM  
19 TAC §74.6

*(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 figures in 19 TAC §74.6 are not included in the print version of the Texas Register. The figures are available in the on-line version of the November 15, 2019, issue of the Texas Register.)*

The State Board of Education (SBOE) adopts an amendment to §74.6, concerning college and career readiness and Texas Essential Knowledge and Skills (TEKS) alignment. The amendment is adopted with changes to the proposed text as published in the May 3, 2019 issue of the *Texas Register* (44 TexReg 2207) and will be republished. The adopted amendment updates the alignment charts for the College and Career Readiness Standards (CCRS) and the TEKS to add a new alignment chart for English language arts and to reflect changes resulting from recent updates to the English language arts and mathematics CCRS.

**REASONED JUSTIFICATION:** In 2006, the 79th Texas Legislature required the Texas Education Agency (TEA) and the Texas Higher Education Coordinating Board (THECB) to establish vertical teams composed of public school educators and faculty from institutions of higher education to develop college- and career-ready standards in the areas of English/language arts, mathematics, science, and social studies. The work of the vertical teams was organized in three phases. The first phase included a series of team meetings to create the CCRS for the four subject areas. Phase two required the vertical teams to make recommendations regarding alignment of the TEKS with the CCRS. Phase three required the vertical teams to develop or establish instructional strategies, professional development materials, and online support materials for students who need additional assistance in preparing to successfully perform college-level work. Teams also engaged in a series of gap analyses to ensure alignment between the adopted TEKS and the CCRS.

The THECB adopted the CCRS in January 2008. The commissioner of education approved the CCRS, and the SBOE incorporated them into the TEKS as follows: English language arts and reading TEKS in 2008; mathematics and science TEKS in 2009; and social studies TEKS in 2010.

The 84th Texas Legislature, Regular Session, 2015, passed House Bill 1613, amending Texas Education Code (TEC), §28.008, to require the SBOE to adopt a chart by rule that clearly indicates the alignment of the college readiness standards and expectations with the TEKS. In January 2016, the SBOE approved 19 TAC §74.6, which adopted in rule charts demonstrating the alignment of the TEKS with the mathematics, science, social studies, and cross-disciplinary CCRS. The SBOE did not adopt charts for English language arts and reading because the TEKS for that subject area were being updated at the time the rule was adopted.

The SBOE gave final approval for the revised English language arts and reading TEKS in May 2017. The revised TEKS will be implemented in the 2019-2020 school year for Kindergarten-Grade 8. The high school TEKS will be implemented in the 2020-2021 school year.

In 2018, the THECB updated the CCRS for language arts and mathematics. As a result, the mathematics alignment chart in §74.6 is also updated to reflect the changes to the CCRS. The adopted new English language arts chart also reflects the revisions to the CCRS.

The following changes were made to the chart adopted in §74.6(f) since published as proposed. Standard II.D.2 was updated to add references to English I, student expectation (6)(A), and English III, student expectation (6)(B). Standard II.D.3 was updated to add a reference to English I-IV, student expectation (8)(D). A technical edit was made to Standard V.C.3 to remove course titles that had no student expectations aligned to the CCRS.

The SBOE approved the proposed amendment 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 TEC, §7.102(f), the SBOE approved the amendment 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 ensure accurate information is available related to alignments at the start of the 2019-2020 school year. The effective date is 20 days after filing as adopted with the Texas Register.

**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.** Two teachers expressed concern about the costs to districts associated with the proposed changes to mathematics in §74.6 such as writing new curriculum, training teachers, and printing.

**Response.** The SBOE provides the following clarification. Figure 19 TAC §74.6(b) reflects the alignment of the mathematics CCRS to the TEKS, which are currently implemented in classrooms and are not proposed to be revised. The proposed changes to the figure do not reflect changes to the state curriculum standards but only to the alignment.

**Comment.** One teacher stated that the new wording is clear and specific and would allow for targeting the achievement goals.

**Response.** The SBOE agrees.

**Comment.** One teacher expressed support for the CCRS alignment charts because the charts reflect the multidisciplinary potential of college and career readiness classes.

**Response.** The SBOE agrees.

**Comment.** One teacher requested a clearer explanation of how the CCRS alignment charts should be integrated.

**Response.** The SBOE provides the following clarification. Proposed changes to Figure 19 TAC §74.6(b) and new Figure 19 TAC §74.6(f) reflect the alignment of the mathematics and language arts CCRS to the TEKS, which are not proposed to be revised. The figures reflect the integration of the CCRS with the TEKS and are not new standards.

**Comment.** One teacher requested an explanation of how the alignment between the TEKS and the CCRS would look in a model environment that emphasizes collegial collaboration.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One administrator recommended adding student expectation (4)(H) from the Grade 6 mathematics TEKS to the CCRS I.B.2.

Response. The SBOE disagrees and has determined that the addition of Grade 6 student expectation (4)(H) to CCRS I.B.2 was not necessary.

Comment. One administrator recommended adding student expectation (4)(H) from the Grade 6 mathematics TEKS and student expectation (4)(E) from the Grade 7 mathematics TEKS to CCRS I.C.1.

Response. The SBOE disagrees and has determined that the addition of Grade 6 student expectation (4)(H) and Grade 7 student expectation (4)(E) to mathematics CCRS I.C.1 was not necessary.

Comment. One administrator questioned why the alignment chart includes courses that are not required for graduation and in which not all students will enroll.

Response. The SBOE provides the following clarification. TEC, §28.008(d), requires that the SBOE develop and by rule adopt a chart that clearly indicates the alignment of the college readiness standards and expectations with the TEKS identified by the board for all subjects of the required curriculum.

**STATUTORY AUTHORITY.** The amendment 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; and TEC, §28.008(d), which requires the SBOE to adopt a chart by rule that clearly indicates the alignment of the college readiness standards and expectations with the Texas Essential Knowledge and Skills.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §7.102(c)(4) and §28.008(d).

*§74.6. College and Career Readiness and Texas Essential Knowledge and Skills Alignment.*

(a) In accordance with the Texas Education Code, §28.008, the State Board of Education shall incorporate College and Career Readiness Standards approved by the commissioner of education and the Texas Higher Education Coordinating Board into the essential knowledge and skills and indicate the alignment of the College and Career Readiness Standards with the essential knowledge and skills.

(b) The figure in this subsection identifies the alignment of the College and Career Readiness Standards for mathematics with the essential knowledge and skills.  
Figure: 19 TAC §74.6(b)

(c) The figure in this subsection identifies the alignment of the College and Career Readiness Standards for science with the essential knowledge and skills.  
Figure: 19 TAC §74.6(c) (No change.)

(d) The figure in this subsection identifies the alignment of the College and Career Readiness Standards for social studies with the essential knowledge and skills.  
Figure: 19 TAC §74.6(d) (No change.)

(e) The figure in this subsection identifies the alignment of the College and Career Readiness Standards for cross-disciplinary studies with the essential knowledge and skills.  
Figure: 19 TAC §74.6(e) (No change.)

(f) The figure in this subsection identifies the alignment of the College and Career Readiness Standards for English language arts with the essential knowledge and skills.

Figure: 19 TAC §74.6(f)

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

Filed with the Office of the Secretary of State on November 4, 2019.

TRD-201904083

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## SUBCHAPTER B. GRADUATION REQUIREMENTS

### 19 TAC §74.11

The State Board of Education (SBOE) adopts an amendment to §74.11, concerning high school graduation requirements. The amendment is adopted without changes to the proposed text as published in the May 3, 2019 issue of the *Texas Register* (44 TexReg 2208) and will not be republished. The adopted amendment updates the section to align with the requirements of Texas Education Code (TEC), §28.025(b-7), which allows a student who completes the core curriculum of a Texas institution of higher education (IHE) while in high school to earn an endorsement, the distinguished level of achievement, and a high school diploma.

**REASONED JUSTIFICATION:** The 83rd Texas Legislature, Regular Session, 2013, passed House Bill (HB) 5, amending TEC, §28.025, to transition from three high school graduation programs to one foundation high school program with endorsement options to increase flexibility for students. HB 5 gave the SBOE the authority to identify advanced courses related to the new graduation program, identify the curriculum requirements for the endorsements, and determine the requirements for performance acknowledgments related to the new graduation program.

The SBOE implemented HB 5 by approving proposed revisions to 19 TAC Chapter 74, Subchapter B, Graduation Requirements, as amended, for second reading and final adoption at the January 2014 meeting. The rules were implemented beginning with students entering Grade 9 in the 2014-2015 school year.

The adopted amendment to §74.11 updates the rule to align with the requirements of TEC, §28.025(b-7), which allows a student who completes the core curriculum of a Texas IHE while in high school to earn an endorsement, the distinguished level of achievement, and a high school diploma.

The adopted amendment adds in new subsection (n) the requirement that school districts must permit a student to comply with the curriculum requirements under the Foundation High School Program by successfully completing appropriate courses in the core curriculum of an IHE. The new subsection also specifies

that a student who has completed the core curriculum of an IHE in accordance with TEC, §61.822, is considered to have earned an endorsement and a distinguished level of achievement under the Foundation High School Program and is entitled to receive a high school diploma.

In addition, a technical edit was made in subsection (g) to remove reference to 19 TAC Chapter 118, Texas Essential Knowledge and Skills for Economics with Emphasis on the Free Enterprise System and Its Benefits. The chapter was effective August 26, 2019, to reflect the inclusion of economics courses in 19 TAC Chapter 113, Texas Essential Knowledge and Skills for Social Studies.

The SBOE approved the proposed amendment 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 TEC, §7.102(f), the SBOE approved the amendment 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 ensure the rule aligns with current statute at the earliest date possible. The effective date is 20 days after filing as adopted with the *Texas Register*.

**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 counselor asked if students who are eligible to graduate under proposed new §74.11(n) would be required to take and pass the State of Texas Assessments of Academic Readiness (STAAR®) and end-of-course (EOC) assessments.

**Response.** This comment is outside the scope of the proposed rulemaking.

**Comment.** One counselor asked if the school district would reserve the right to determine whether to rank students who graduate under the provisions of proposed new §74.11(n) with seniors on traditional graduation plans. The commenter also asked if there are requirements for how students should be ranked.

**Response.** This comment is outside the scope of the proposed rulemaking.

**Comment.** One counselor and one administrator stated that it is unclear what endorsement students would earn under the provisions of proposed new §74.11(n).

**Response.** The SBOE provides the following clarification. Local districts would need to review the college courses completed by the student to determine which endorsements, if any, the student would be eligible to receive.

**Comment.** One counselor expressed concerns that average daily attendance may be impacted if the provision to graduate under proposed new §74.11(n) becomes a popular alternative to traditional four-year graduation plans.

**Response.** This comment is outside the scope of the proposed rulemaking.

**Comment.** One administrator stated that additional language to clarify what is meant by "appropriate courses in the core curriculum of an institution of higher education (IHE)" would be helpful.

**Response.** The SBOE disagreed and determined that the language aligned with statute and was appropriate as proposed.

**Comment.** One counselor stated that IHEs are not required to share student information with high schools for reasons of student privacy. The commenter suggested that there would need to be additional guidance from IHEs or TEA in order for high schools to know and be able to document whether a student has completed the core curriculum at an IHE.

**Response.** This comment is outside the scope of the proposed rulemaking.

**STATUTORY AUTHORITY.** The amendment 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; and TEC, §28.025(b-7), which requires the SBOE to by rule ensure that a student may comply with the curriculum requirements under the foundation high school program or for an endorsement by successfully completing appropriate courses in the core curriculum of an institution of higher education (IHE) under TEC, §61.822. Additionally, a student who has completed the core curriculum of an IHE under TEC, §61.822, as certified by the IHE in accordance with 19 TAC §4.28, is considered to have earned a distinguished level of achievement under the foundation high school program and is entitled to receive a high school diploma.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §7.102(c)(4) and §28.025(b-7).

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

Filed with the Office of the Secretary of State on November 4, 2019.

TRD-201904084

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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

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**TITLE 22. EXAMINING BOARDS**

**PART 11. TEXAS BOARD OF NURSING**

**CHAPTER 216. CONTINUING COMPETENCY**

**22 TAC §216.3**

**Introduction.** The Texas Board of Nursing (Board) adopts amendments to §216.3. The amendments are adopted with changes to the proposed text published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4623). The amended rule will be republished.

**Changes to the Adopted Text.** The Board received two written comments on the proposal. In response to the written comments on the published proposal, the Board has made changes to the text of the rule as adopted. None of these changes, however, materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on no-

tice. Further, the Board believes these changes address the commenters' concerns.

**Background.** The amendments are adopted under the authority of the Texas Occupations Code §§301.151, 157.0513 and 301.308, the Texas Health and Safety Code §481.0764 and §481.07635, and House Bills (HB) 2454, 2059, 3285, and 2174, enacted by the 86th Texas Legislature. Three of the bills, HB 2454, HB 2059, and HB 3285, apply only to advanced practice registered nurses (APRNs) who meet certain criteria. HB 2059 applies to all nurses, regardless of level of licensure, who provide direct patient care. The adopted amendments are necessary to implement these new statutory requirements.

#### Requirements for APRNs with Prescriptive Authority

HB 2454, which takes effect September 1, 2019, requires APRNs who have entered into a prescriptive authority agreement authorizing the prescribing of opioids to complete not less than two (2) hours of continuing education *annually* regarding safe and effective pain management related to the prescription of opioids and other controlled substances, including education regarding reasonable standards of care, the identification of drug-seeking behavior in patients, and effectively communicating with patients regarding the prescription of an opioid or other controlled substance. The Board requires licensure renewal every two years. As such, APRNs subject to this new continuing education requirement will need to complete at least four (4) hours of continuing education regarding safe and effective pain management related to the prescription of opioids and other controlled substances each renewal period. This new requirement, however, applies to the renewal of a license on or after January 1, 2021.

HB 3285, which takes effect effective September 1, 2019, requires APRNs whose practice includes the prescription of opioids to attend at least one (1) hour of continuing education *annually* covering best practices, alternative treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments. The Texas Pharmacy Board is tasked with adopting rules to establish the required content of this continuing education. This requirement takes effect September 1, 2019, but expires on August 31, 2023. The Board requires licensure renewal every two years. As such, APRNs subject to this new continuing education requirement will need to complete at least two (2) hours of continuing education covering best practices, alternative treatment options, and multi-modal approaches to pain management each renewal period until the expiration of this statutory requirement on August 31, 2023.

HB 2174, which takes effect September 1, 2019, requires APRNs who are authorized to receive information from the prescription monitoring program under the Texas Health and Safety Code §481.076(a)(5) to complete two (2) hours of continuing education related to approved procedures of prescribing and monitoring controlled substances. An APRN who was authorized to prescribe a controlled substance prior to September 1, 2020, and who is also authorized to receive information from the prescription monitoring program must complete this requirement no later than September 1, 2021. An APRN who is authorized to prescribe a controlled substance after September 1, 2020, and who is also authorized to receive information from the prescription monitoring program must complete this requirement no later than one year after his/her initial licensure date. This is a one-time education requirement.

While the majority of the adopted amendments implement new continuing education requirements for APRNs, the amendments also eliminate an existing continuing education requirement for APRNs. Under the Board's current rules, APRNs who hold prescriptive authority and prescribe controlled substances must complete at least (3) three contact hours of continuing education relating to prescribing controlled substances. These (3) three contact hours are in addition to any other continuing education requirements applicable to an APRN. The Board originally adopted this requirement in November 2013, following the passage of SB 406, enacted by the 83rd Texas Legislature, Regular Session, effective November 1, 2013. SB 406 expanded the scope of APRNs by authorizing the ordering/prescribing of Schedule II controlled substances in certain settings. The additional targeted continuing education adopted by the Board was reasonably related to the expanded scope of practice authorized by SB 406 at that time. The requirement was also adopted during a time when the Board began seeing an increase in the number of its non-therapeutic prescribing cases related to the then up-and-coming opioid crisis.

The Board has now eliminated this requirement in this adoption order. The new continuing education requirements enacted during the 86th Legislative Session more clearly define the topics that must be addressed in the required courses. The courses are designed to provide specific education regarding many of the issues affecting the opioid crisis. The Board believes these concerns will be adequately addressed by the new continuing education course requirements. Further, the Board recognizes there may be overlap between the new continuing education courses and the current education requirements for APRNs. To this end, the adopted amendments eliminate the potentially duplicative requirements. The Board believes this may reduce some of the financial burden associated with the continuing education courses without sacrificing the safety of the public or the competency of its practitioners.

The proposal required APRNs to complete the new education courses in addition to the other existing applicable continuing education requirements of the section. Both of the written comments received specifically addressed this proposed requirement. Both commenters recommended that the Board allow the new continuing education requirements to count towards completion of the existing continuing education requirements for APRNs. The Board agrees with the commenters' recommendations in this regard and has eliminated the language from the rule as adopted that would require the new continuing education requirements to be completed in addition to the existing continuing education requirements for APRNs.

#### Requirements for all Nurses Providing Direct Patient Care

HB 2059, which takes effect September 1, 2019, requires all nurses who provide direct patient care, regardless of licensure level, to complete a human trafficking prevention course approved by the executive commissioner of the Health and Human Services Commission. This new requirement, however, applies to the renewal of a license on or September 1, 2020. However, it will be an ongoing continuing education requirement. As such, nurses will need to complete the human trafficking prevention course each renewal period.

**How the Section Will Function.** Adopted §216.3(c)(3) requires an APRN who holds prescriptive authority to complete at least five additional contact hours of continuing education in pharmacotherapeutics within the licensing period. The adopted subsection eliminates the current requirement that an APRN who holds



prescriptive authority and prescribes controlled substances must complete at least three more additional contact hours of continuing education related to prescribing controlled substances.

Adopted §216.3(4) requires an APRN who has entered into a prescriptive authority agreement authorizing the prescribing of opioids to complete not less than two (2) hours of continuing education annually regarding safe and effective pain management related to the prescription of opioids and other controlled substances, including education regarding reasonable standards of care; the identification of drug-seeking behavior in patients; and effectively communicating with patients regarding the prescription of an opioid or other controlled substance. The adopted amendments clarify that this requirement applies to the renewal of licensure on or after January 1, 2021.

Adopted §216.3(5) requires an APRN whose practice includes the prescription of opioids to attend at least one (1) hour of continuing education annually covering best practices, alternative treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments. The content of the continuing education must meet the requirements set forth by the Texas Pharmacy Board. The amendments further clarify that this requirement applies to the renewal of licensure on or after September 1, 2019, and expires on August 31, 2023.

Adopted §216.3(6) requires an APRN who was licensed prior to September 1, 2020, and authorized to receive information from the prescription monitoring program to complete two (2) hours of continuing education related to approved procedures of prescribing and monitoring controlled substances no later than September 1, 2021. An APRN licensed after September 1, 2020, and authorized to receive information from the prescription monitoring program, must complete the continuing education no later than one year after the APRN's initial licensure date. The amendments further clarify that this is a one-time education requirement.

Adopted §216.3(i) requires a nurse, including an APRN, who provides direct patient care, to complete a human trafficking prevention course approved by the Health and Human Services Commission. The amendments clarify that this requirement applies to the renewal of a license on or after September 1, 2020.

#### Summary of Comments Received

An individual commenter states that many of the new continuing education requirements seem to overlap with the current requirement for three (3) continuing education hours on controlled substances for APRNs who prescribe these medications. The commenter urges the Board to allow some of the new requirements to satisfy the current requirement, as it appears the proposed changes to the rule do not permit this. The commenter does not believe there is anything in the law to prevent this. Further, the commenter states that, if the Board is concerned about inappropriate prescribing patterns, he believes there are other provisions in the law which will help to minimize this. The commenter states that Board Rule 228.1 went into effect in 2015 and it is the commenter's understanding that this helped significantly with ensuring APRNs were prescribing opioids appropriately. The commenter also states that the Board has been required to publish guidelines on the appropriate prescribing of opioids, benzodiazepines, barbiturates, and carisoprodol. The commenter believes once these guidelines are published, that this will indeed continue to re-enforce appropriate prescribing patterns. The commenter further states that the Board is re-

quired to intermittently check the prescriptive monitoring program to identify aberrant prescribing patterns of controlled substances, thus adding yet another mechanism by which to ensure appropriate prescribing.

A commenter representing the APRN Alliance states that its members are concerned with the significant increase in hours during the first and second renewal periods, and others are confused by the additions, subtractions, and expirations. The commenter believes these complaints from its members can be avoided by simply counting these targeted requirements towards the existing requirements. The commenter states that adding these targeted courses on top of existing hours, rather than counting them towards existing hours, is not required by statute. All other targeted hours, including forensic evidence collection, older adult or geriatric care, nursing jurisprudence, tick-borne diseases, and human trafficking all count toward existing hours. The commenter states it is unclear why the Board would have different procedures for what appears to be similar statutory language. The commenter further points out that the Texas Medical Board (TMB) discussed proposing rules at its last meeting on this same subject. The language TMB considered clearly states that the new requirements will be counted toward existing hours. Further, Board members asked whether these requirements could be met simultaneously, given the significant overlap. The commenter states that TMB ultimately decided to seek legislative intent regarding this latter issue. The commenter states that anytime the Board adds new hours, it is taking time away from continuing education in the APRN's specialty and patient population. If the legislature has determined that this is an acceptable tradeoff, the commenter states that nurses will happily comply. Although, if the legislature intended that these requirements count towards existing hours, or that they be met concurrently, the commenter states that the Board should take that intent into consideration. The commenter asks the Board to consider redrafting the proposal until after TMB has received guidance from the legislature. The commenter states that TMB will avoid confusion by counting these towards existing requirements. Depending on the feedback from the legislature, the commenter states that TMB could go further and effectively shorten the time dedicated to these subjects. The commenter states that it would be unfortunate for nurses and their patients if the Board were to have dramatically different set of rules from all other agencies.

#### Agency Response

The Board agrees in part and disagrees in part. First, the Board disagrees with the suggestion by the APRN Alliance that it withdraw its proposal, pending action by TMB. The Board's jurisdiction extends to advanced practice registered nurses, registered nurses, and licensed vocational nurses. Mid-level providers and physicians operate within a unique scope of practice regulated solely by TMB. While there may be some general similarities among these provider groups, the existing statutory and regulatory continuing education requirements for these groups are not the same. As such, the Board declines to delay the adoption of rules that comply with the statutory mandates of House Bill (HB) 2454, HB 2059, HB 3285, and HB 2174, as they apply to APRNs, RNs, and LVNs. The Board, however, does agree with the commenters that the new continuing education requirements should count toward a nurse's existing continuing education requirements. To this end, the Board has amended the rule text accordingly. The Board further adds that it adopted its *Guidelines for the Responsible Prescribing of Opioids, Benzodiazepines, Barbiturates, Carisoprodol (Soma), and Other Con-*

*controlled Substances* at its July 2018 quarterly meeting and published the guidelines on its public website shortly thereafter. Further, the Board regularly receives and reviews reports from the prescription monitoring program, as authorized by law.

Names of Those Commenting For and Against the Proposal.

For: None.

Against: None.

For, with changes: Individual commenter; APRN Alliance.

Neither for nor against, with changes: None.

Statutory Authority. The amendments are adopted under the Texas Occupations Code §§301.151, 157.0513 and 301.308, the Texas Health and Safety Code §481.0764 and §481.07635, and House Bills (HB) 2454, 2059, 3285, and 2174, enacted by the 86th Texas Legislature.

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 157.0513(a) provides that the board, the Texas Board of Nursing, and the Texas Physician Assistant Board shall jointly develop a process to exchange information regarding the names, locations, and license numbers of each physician, APRN, and physician assistant who has entered into a prescriptive authority agreement; by which each board shall immediately notify the other boards when a license holder of the board becomes the subject of an investigation involving the delegation and supervision of prescriptive authority, as well as the final disposition of any such investigation; by which each board shall maintain and share a list of the board's license holders who have been subject to a final adverse disciplinary action for an act involving the delegation and supervision of prescriptive authority; and to ensure that each APRN or physician assistant who has entered into a prescriptive authority agreement authorizing the prescribing of opioids is required to complete not less than two hours of continuing education annually regarding safe and effective pain management related to the prescription of opioids and other controlled substances, including education regarding reasonable standards of care; the identification of drug-seeking behavior in patients; and effectively communicating with patients regarding the prescription of an opioid or other controlled substance.

Section 481.0764(f) provides that a prescriber or dispenser whose practice includes the prescription or dispensation of opioids shall annually attend at least one hour of continuing education covering best practices, alternative treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments. The board shall adopt rules to establish the content of continuing education described by this subsection. The board may collaborate with private and public institutions of higher education and hospitals in establishing the content of the continuing education. This subsection expires August 31, 2023.

Section 481.07635(a) provides that a person authorized to receive information under Section 481.076(a)(5) shall, not later than the first anniversary after the person is issued a license, certification, or registration to prescribe or dispense controlled

substances under this chapter, complete two hours of professional education related to approved procedures of prescribing and monitoring controlled substances.

Section 481.07635(b) states that a person authorized to receive information may annually take the professional education course under this section to fulfil hours toward the ethics education requirement of the person's license, certification, or registration.

Section 481.07635(c) states that the regulatory agency that issued the license, certification, or registration to a person authorized to receive information under Section 481.076(a)(5) shall approve professional education to satisfy the requirements of this section.

*§216.3. Continuing Competency Requirements.*

(a) A nurse must meet either the requirements of this subsection or subsection (b) of this section. A nurse may choose to complete 20 contact hours of continuing nursing education (CNE) in the nurse's area of practice within licensing period, as defined in this chapter. These contact hours shall be obtained by participation in programs approved by a credentialing agency or provider recognized by the Board. A list of these agencies/providers may be obtained from the Board's office or website.

(b) A nurse must meet either the requirements of this subsection or subsection (a) of this section. A nurse may choose to demonstrate the achievement, maintenance, or renewal of a Board approved national nursing certification in the nurse's area of practice within the licensing period, as defined in this chapter. A list of approved national nursing certifications may be obtained from the Board's office or website.

(c) Requirements for the APRN. A nurse licensed by the Board as an APRN is required to complete 20 contact hours of continuing education or achieve, maintain, or renew the national nursing certification recognized by the Board as meeting the certification requirement for the APRN's role and population focus area of licensure within the licensing period, as defined in this chapter.

(1) The required 20 contact hours are not in addition to the requirements of subsection (a) or (b) of this section.

(2) The 20 contact hours of continuing education must be appropriate to the advanced practice role and population focus area recognized by the Board.

(3) The APRN who holds prescriptive authority must complete, in addition to the requirements of this subsection, at least five additional contact hours of continuing education in pharmacotherapeutics within the licensing period.

(4) The APRN who has entered into a prescriptive authority agreement authorizing the prescribing of opioids must complete not less than two (2) hours of continuing education annually regarding safe and effective pain management related to the prescription of opioids and other controlled substances, including education regarding reasonable standards of care; the identification of drug-seeking behavior in patients; and effectively communicating with patients regarding the prescription of an opioid or other controlled substance. This requirement applies to renewal of licensure on or after January 1, 2021.

(5) The APRN whose practice includes the prescription of opioids must attend at least one (1) hour of continuing education annually covering best practices, alternative treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments. The content of the continuing education described by this paragraph must meet the requirements set forth by the Texas Pharmacy Board. This requirement applies to

renewal of licensure on or after September 1, 2019, and expires on August 31, 2023.

(6) The APRN who is licensed prior to September 1, 2020, and authorized to receive information from the prescription monitoring program (PMP) authorized by Chapter 481, Health and Safety Code, must complete two (2) hours of continuing education related to approved procedures of prescribing and monitoring controlled substances no later than September 1, 2021. The APRN licensed after September 1, 2020, and authorized to receive information from the PMP, must complete the continuing education required by this paragraph no later than one year after the APRN's initial licensure date. This is a one-time education requirement.

(7) Category I Continuing Medical Education (CME) contact hours will meet requirements as described in this chapter, unless otherwise prohibited.

(d) Forensic Evidence Collection.

(1) Pursuant to the Health and Safety Code §323.004 and §323.0045, a nurse licensed in Texas or holding a privilege to practice in Texas, including an APRN, who performs a forensic examination on a sexual assault survivor must have basic forensic evidence collection training or the equivalent education prior to performing the examination. This requirement may be met through the completion of CNE that meets the requirements of this subsection. This is a one-time requirement. An APRN may use continuing medical education in forensic evidence collection that is approved by the Texas Medical Board to satisfy this requirement.

(2) A nurse licensed in Texas or holding a privilege to practice in Texas, including an APRN, who is employed in an emergency room (ER) setting must complete a minimum of two contact hours of CNE relating to forensic evidence collection that meets the requirements of this subsection within two years of the initial date of the nurse's employment in an ER setting. This is a one-time requirement.

(A) This requirement applies to nurses who work in an ER setting that is:

- (i) the nurse's home unit;
- (ii) an ER unit to which the nurse "floats" or schedules shifts; or
- (iii) a nurse employed under contractual, temporary, per diem, agency, traveling, or other employment relationship whose duties include working in an ER.

(B) A nurse shall be considered to have met the requirements of paragraphs (1) and (2) of this subsection if the nurse:

- (i) completed CNE during the time period of February 19, 2006 through September 1, 2013; and
- (ii) the CNE met the requirements of the Board's rules related to forensic evidence collection that were in effect from February 19, 2006 through September 1, 2013.

(C) Completion of at least two contact hours of CNE that meets the requirements of this subsection may simultaneously satisfy the requirements of paragraphs (1) and (2) of this subsection.

(3) A nurse who would otherwise be exempt from CNE requirements for issuance of the initial Texas license and for the immediate licensing period following initial Texas licensure under §216.8(b) or (c) of this chapter (relating to Relicensure Process) shall comply with the requirements of this section. In compliance with §216.7(b) of this chapter (relating to Responsibilities of Individual Licensee), each licensee is responsible for maintaining records of CNE completion.

Record of course completion in forensic evidence collection should be retained by the nurse indefinitely, even if a nurse changes employment.

(4) Continuing education completed under this subsection shall include information relevant to forensic evidence collection and age or population-specific nursing interventions that may be required by other laws and/or are necessary in order to assure evidence collection that meets requirements under the Government Code §420.031 regarding use of an Attorney General-approved evidence collection kit and protocol. Content may also include, but is not limited to, documentation, history-taking skills, use of sexual assault kit, survivor symptoms, and emotional and psychological support interventions for victims.

(5) The hours of continuing education completed under this subsection shall count towards completion of the 20 contact hours of CNE required in subsection (a) of this section. Certification related to forensic evidence collection that is approved by the Board may be used to fulfill the requirements of this subsection.

(e) A nurse who holds or is seeking to hold a valid Volunteer Retired (VR) Nurse Authorization in compliance with the Occupations Code §112.051 and §301.261(e) and §217.9(e) of this title (relating to Inactive and Retired Status):

(1) Must, if licensed by the Board as a LVN and/or RN, have completed at least 10 contact hours of CNE in his or her area of practice within the two years immediately preceding application for, or renewal of, VR status.

(2) Must, if licensed by the Board as an APRN, have completed at least 20 contact hours of continuing education in his or her area of practice within the two years immediately preceding application for, or renewal of, VR status. The 20 hours of continuing education must meet the same criteria as APRN continuing education defined under subsection (c) of this section. A nurse authorized as a VR-RN/APRN may not hold prescriptive authority. This does not preclude a registered nurse from placing his or her APRN license on inactive status and applying for authorization only as a VR-RN.

(3) Is exempt from fulfilling targeted continuing education requirements.

(f) Tick-Borne Diseases. An APRN whose practice includes the treatment of tick-borne diseases is encouraged to participate in continuing education relating to the treatment of tick-borne diseases. The continuing education course(s) should contain information relevant to treatment of the disease within the APRN's role and population focus area of licensure and may represent a spectrum of relevant medical clinical treatment relating to tick-borne disease. Completion of CME in the treatment of tick-borne disease that meets the requirements of this subsection shall count towards completion of the 20 contact hours of continuing education required for APRNs in subsection (c) of this section.

(g) Nursing Jurisprudence and Nursing Ethics. Each nurse, including an APRN, is required to complete at least two contact hours of CNE relating to nursing jurisprudence and nursing ethics before the end of every third two-year licensing period applicable to licensing periods that began on or after January 1, 2014. The CNE course(s) shall contain information related to the Texas Nursing Practice Act, the Board's rules, including §217.11 of this title (relating to Standards of Nursing Practice), the Board's position statements, principles of nursing ethics, and professional boundaries. The hours of CNE completed under this subsection shall count towards completion of the 20 contact hours of CNE required in subsection (a) of this section. Certification and/or CME may not be used to fulfill the CNE requirements of this subsection.

(h) Older Adult or Geriatric Care. A nurse, including an APRN, whose practice includes older adult or geriatric populations is required to complete at least two contact hours of CNE relating to older adult or geriatric populations or maintain certification in an area of practice relating to older adult or geriatric populations before the end of every licensing period, applicable to licensing periods that began on or after January 1, 2014. The CNE course(s) may contain information related to elder abuse, age-related memory changes and disease processes, including chronic conditions, end of life issues, health maintenance, and health promotion. The hours of CNE completed under this subsection shall count towards completion of the 20 contact hours of CNE required in subsection (a) of this section. Certification related to older adult or geriatric populations that is approved by the Board may be used to fulfill the CNE requirements of this subsection.

(i) Human Trafficking Prevention. A nurse, including an APRN, who provides direct patient care must complete a human trafficking prevention course approved by the Health and Human Services Commission. This requirement applies to the renewal of a license on or after September 1, 2020.

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

Filed with the Office of the Secretary of State on October 30, 2019.

TRD-201904026

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Effective date: November 19, 2019

Proposal publication date: August 30, 2019

For further information, please call: (512) 305-6822



## TITLE 25. HEALTH SERVICES

### PART 4. ANATOMICAL BOARD OF THE STATE OF TEXAS

#### CHAPTER 475. MEETINGS

##### 25 TAC §475.5

###### INTRODUCTION:

The Anatomical Board of the State of Texas (Board) adopts amendments to 25 TAC §475.5, related to operation of the Board, as well as Willing Body Programs in the State of Texas. The revision of §475.5 is needed in order to allow reimbursement of travel expenses to Board staff as well as Board members.

The Board adopts amendments to §475.5, without changes to the proposed text as published in the May 3, 2019, issue of the *Texas Register* (44 TexReg 2253). The amended rules will not be republished.

###### JUSTIFICATION FOR RULE ACTION

25 TAC §475.5 Reimbursement for Travel to Meetings

The Anatomical Board of the State of Texas amends 25 TAC §475.5 related to reimbursement for travel to meetings. The proposed rule adds staff members to the list of people who may be reimbursed for travel to board meetings. The proposed rule also

requires the staff members to submit travel reimbursement requests that conform to the format and amounts claimed to similar requests of the staff member's employing parent institution.

###### HOW IT WILL FUNCTION:

The amendment is necessary "because, currently, the board reimburses only board members for their travel cost, leaving the member institutions to reimburse their other respective staff members" The board employs no staff designated exclusively to board functions. Instead, the board members, who each represent a Texas health occupations school that participates in the board's Willing Bodies program, will designate a staff person from one or more member institutions to carry out the administrative functions of the board. Among the staff's administrative functions are the coordination and facilitation of the annual board meeting, which duties include setting up and closing out the meeting site, transporting and managing meeting materials at and equipment to the site, and carrying out clerical and administrative duties during the meeting to support the work of the board members.

###### SUMMARY OF COMMENTS:

There were no comments received during the posting period.

###### STATUTORY AUTHORITY:

These amendments are adopted under the authority of Texas Health and Safety Code §691.007, which authorizes the Board to adopt rules for its administration.

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

Filed with the Office of the Secretary of State on October 30, 2019.

TRD-201904040

Stephen Luk

Secretary Treasurer

Anatomical Board of the State of Texas

Effective date: November 19, 2019

Proposal publication date: May 3, 2019

For further information, please call: (214) 648-5470



#### CHAPTER 479. FACILITIES: STANDARDS AND INSPECTIONS

##### 25 TAC §479.3

###### INTRODUCTION:

The Anatomical Board of the State of Texas (Board) adopts amendments to 25 TAC §479.3, concerning the rules related to facility standards. The Board adopts these amendments without changes to the proposed text as published in the May 3, 2019, issue of the *Texas Register* (44 TexReg 2254). The amended rules will not be republished.

###### JUSTIFICATION FOR RULE ACTION:

25 TAC §479.3 Standards for Facilities

The Anatomical Board of the State of Texas amends 25 TAC §479.3 related to standards for facilities. The amendment adds a new subsection (b), which requires member institutions who di-

rectly accept Willd Body Program donations to employ or maintain contracts with a state licensed funeral director and state licensed embalmer. The amendment renumbers the remaining sections of the rule to accommodate the new subsection (b).

#### HOW IT WILL FUNCTION:

The amendments are necessary to ensure that individuals whom a member institution assigns to prepare a body or to embalm a body will comply with Texas law, which requires such activities to be carried out by a Texas licensed funeral director and a Texas licensed embalmer, respectively.

#### SUMMARY OF COMMENTS:

There were no comments received during the posting period.

#### STATUTORY AUTHORITY:

These amendments are adopted under the authority of Texas Health and Safety Code §691.007, which authorizes the Board to adopt rules for its administration; under §691.022(b), which directs the board to adopt rules to ensure that each body and anatomical specimen in the custody of the board or an institution represented by the board is treated with respect; and under §691.031 which requires proper transportation of each body or anatomical specimen received or distributed by the board.

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

Filed with the Office of the Secretary of State on October 30, 2019.

TRD-201904039

Stephen Luk

Secretary Treasurer

Anatomical Board of the State of Texas

Effective date: November 19, 2019

Proposal publication date: May 3, 2019

For further information, please call: (214) 648-5470



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER A. GENERAL RULES

###### 34 TAC §3.9

The Comptroller of Public Accounts adopts amendments to §3.9, concerning electronic filing of returns and reports; electronic transfer of certain payments by certain taxpayers, without changes to the proposed text as published in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5601). The amendments adjust the payment threshold triggering electronic payments described in subsection (b) of this section. The comptroller adds the names of statutory cites throughout the section to conform with comptroller guidelines.

The comptroller amends subsection (b) to incorporate the higher threshold of \$500,000 provided under Government Code, §404.095 (Electronic Transfer of Certain Payments), in lieu of

the lower threshold of \$100,000 found in the current section. Increasing the threshold will benefit taxpayers owing more than \$100,000 but less than \$500,000, many of whom are assessed a 5.0% penalty for not making timely State of Texas Financial Network (TexNet) payments as required under subsection (c) of this section.

The comptroller adopts new subsection (b)(1), to be effective for payments due beginning Jan. 1, 2019. Subsection (b)(1) increases from \$100,000 to \$500,000 the threshold requiring payment using TexNet. See Government Code, §404.095(e). The comptroller also adds an example to make the subsection easier to understand and renumbers subsequent paragraphs accordingly.

The comptroller amends renumbered subsection (b)(2), currently subsection (b)(1), to make conforming changes. The comptroller explains the continuing TexNet electronic payment requirement for taxpayers paying \$100,000 or more and whom the comptroller notified of this requirement for a prior calendar year.

The comptroller adopts new subsection (b)(3) to explain that effective for payments due on or after January 1, 2019, taxpayers paying \$100,000 or more, but less than \$500,000, during the state fiscal year must make electronic payments, although TexNet is not mandatory for these payments. The comptroller also adds an example to make the subsection easier to understand and renumbers the subsequent paragraph.

The comptroller amends renumbered subsection (b)(4), currently subsection (b)(2), to make conforming changes regarding continuing requirements and to make a grammatical correction. The paragraph explains that payment requirements apply during the calendar year that begins on January 1 of the fiscal year during which the comptroller determines taxpayers' payment thresholds.

The comptroller amends subsection (c)(2) to remove the word "combined" to eliminate ambiguity regarding the use of this term. Although the comptroller does not define this term, the intent of the original language was to address the submission of EDI reports in the same "enveloped file," which is a technical comptroller term. The word "combined" is unnecessary for the purpose of this subsection. The comptroller also removes the phrase "central time to meet the 6:00 p.m. central time requirement that is noted in paragraph (1) of this subsection" to remove any confusion that might arise from a reference to the TexNet deadline in subsection (c)(1). The 6:00 p.m. deadline refers to an internal process at the comptroller's office and is unnecessary for the purpose of this subsection.

No comments were received regarding adoption of the amendment.

The amendments are adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §111.0625 (Electronic Transfer of Certain Payments) and Government Code, §404.095.

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

Filed with the Office of the Secretary of State on October 30, 2019.

TRD-201904034

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Effective date: November 19, 2019

Proposal publication date: September 27, 2019

For further information, please call: (512) 475-0387



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

#### CHAPTER 151. GENERAL PROVISIONS

##### 37 TAC §151.4

The Texas Board of Criminal Justice adopts amendments to §151.4, concerning Public Presentations and Comments to the Texas Board of Criminal Justice, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4847).

The adopted amendments are minor wording changes and are not substantive.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.001, 492.013, 551.001-.146; Texas Penal Code §§30.06, 30.07.

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on November 1, 2019.

TRD-201904079

Erik Brown

Director of Legal Affairs

Texas Department of Criminal Justice

Effective date: November 21, 2019

Proposal publication date: September 6, 2019

For further information, please call: (936) 437-6700



##### 37 TAC §151.77

The Texas Board of Criminal Justice adopts amendments to §151.77, concerning Purchasing and Contracting with Historically Underutilized Businesses, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4849); therefore, the rules will not be republished.

The adopted amendments are necessary to update the subchapter because the rules of Comptroller of Public Accounts,

upon which this rule is based, were reorganized. The proposed amendments here reflect that reorganization and minor formatting changes have been made.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.013, 493.012, 2161.003.

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on November 1, 2019.

TRD-201904080

Erik Brown

Director of Legal Affairs

Texas Department of Criminal Justice

Effective date: November 21, 2019

Proposal publication date: September 6, 2019

For further information, please call: (936) 437-6700



## CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

### 37 TAC §163.37

The Texas Board of Criminal Justice adopts amendments to §163.37, concerning Reports and Records, without changes to the proposed text as published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4850). The rule will not be republished.

The adopted amendments reflect the recodification of the Texas Code of Criminal Procedure and otherwise the minor changes make no substantive change.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.013, 509.003.

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on November 1, 2019.

TRD-201904081

Erik Brown

Director of Legal Affairs

Texas Department of Criminal Justice

Effective date: November 21, 2019

Proposal publication date: September 6, 2019

For further information, please call: (936) 437-6700



## PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

### CHAPTER 211. ADMINISTRATION

#### 37 TAC §211.1

The Texas Commission on Law Enforcement (Commission) adopts the amended §211.1, concerning Definitions without changes to the proposed text as published in the May 3, 2019, issue of the *Texas Register* (44 TexReg 2255).

This amendment was necessary to specify who shall do the background investigation.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission, Rulemaking Authority.

No other code, article, or statute is affected by this 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 November 1, 2019.

TRD-201904067

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Effective date: November 21, 2019

Proposal publication date: May 3, 2019

For further information, please call: (512) 936-7771



## PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

### CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES SUBCHAPTER G. GENERAL PROVISIONS DIVISION 3. JUVENILE CORRECTIONAL OFFICERS

#### 37 TAC §380.9955

The Texas Juvenile Justice Department (TJJD) adopts amendments to §380.9955, concerning Staffing Requirements for Youth Development Coaches, without changes to the proposed text as published in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5384). The amended rule will not be republished.

#### JUSTIFICATION FOR CHANGES

The public benefit anticipated as a result of administering the section is to allow healthy and appropriate relationships to be formed between youth and direct care staff. Such relationships can further youth rehabilitation, thereby benefiting the public when youth are released.

#### SUMMARY OF CHANGES

The amended rule replaces the term *juvenile correctional officer (JCO)* with the term *youth development coach*.

The amended rule also removes: (1) the definitions for *extended period of time*, *station*, and *regular interval*; (2) the provision that defined when a wing or pod of a dormitory may be considered a station; and (3) the provision that prohibited a youth development coach from returning to a previously assigned station until that coach has served at least one regular interval at another station or unless given approval by the division director over residential facilities or designee.

In addition, the amended rule adds that the executive director or designee ensures assignments are rotated such that youth development coaches do not supervise the same youth for an extended period of time.

#### PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rule-making action.

#### STATUTORY AUTHORITY

The amended section is adopted under: Section 242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs; and Section 242.009, Human Resources Code, which establishes staffing requirements for juvenile correctional officers and requires TJJD to adopt rules to administer these requirements.

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

Filed with the Office of the Secretary of State on October 28, 2019.

TRD-201904006

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Effective date: December 1, 2019

Proposal publication date: September 20, 2019

For further information, please call: (512) 490-7278



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

##### SUBCHAPTER F. CONTRACTS FOR SCIENTIFIC, REAL ESTATE APPRAISAL, RIGHT OF WAY ACQUISITION, AND LANDSCAPE ARCHITECTURAL SERVICES

#### 43 TAC §9.87

The Texas Department of Transportation (department) adopts amendments to §9.87, concerning indefinite delivery contract selection for scientific, appraisal, right of way acquisition, and landscape architectural services. The amendments to §9.87 are adopted with changes to the proposed text as published in the August 9, 2019, issue of the *Texas Register* (44 TexReg 4179) and will be republished.

#### EXPLANATION OF ADOPTED AMENDMENTS

Government Code, Chapter 2254 (Professional Services Procurement Act), Subchapter A, establishes authority for the department to procure and award professional services contracts and does not cite language nor establish contract limits specific to indefinite delivery contracts. The current contract limits in §9.87 unnecessarily limit the ability to deliver transportation projects in a timely and business-driven manner.

Amendments to §9.87, Selection, make changes related to indefinite delivery contracts to closely align with statewide requirements to meet project letting demands. The amendments in subparagraph (B) remove contract amount thresholds and specify the contract amount, contract period, and work authorization issuance periods are included in the contract. Subparagraph (C) is amended to provide that work authorizations under an indefinite delivery contract are required to be issued within four years of the effective date of the contract rather than two years. These changes provide more flexibility for and help streamline the procurement process.

#### COMMENTS

There were a total of seven comments to the proposed rules, all regarding the negative effect on delivery of scientific contracts when used. One comment each was received from Johnson, Mirmiran and Thompson, Incorporated, and Prewitt and Associates, Incorporated. Two comments were received from Spirit Environmental. Three comments were received from Blanton and Associates, Incorporated. All seven comments regarded the delivery of scientific contracts in §9.87(3)(C).

Comment: The commenters suggested that the elimination of language relevant to scientific contracts would require scientific contract work authorizations to be completed within four years.

Response: The department disagrees with that interpretation. The proposed rules do not create such a restriction. Instead, the proposed change addresses the timeframe in which work authorizations could be issued, but does not limit the term or period of a work authorization. No change is made in response to this comment.

Comment: The commenters suggested that the removal of language relevant to scientific contracts in the proposed rules eliminates the department's ability to issue scientific contract work authorizations for tasks or subtasks beyond the four year period as established in the proposed changes.

Response: The department agrees and acknowledges the need for the ability to issue work authorizations for scientific contract work on the same project beyond the previously proposed time frame of four years. The rules have been changed from the proposal to retain an exception for scientific work authorizations but

revises the language to align with the four-year time frame for initial work authorizations under this section.

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

#### CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, Chapter 2254, Subchapter A.

#### §9.87. Selection.

The department will perform three types of contract selections.

(1) Individual contract selection. One contract will result from the contract notice.

(2) Multiple contract selection. More than one contract, of similar work types and estimated amounts, will result from the contract notice. The notice will indicate the number and type of contracts to result from the advertisement, and specify a range of scores for providers that will be considered qualified to perform the work.

(3) Indefinite delivery contract selection.

(A) This contract selection may be for award of contracts to single or multiple providers to perform work under a general scope of services.

(B) The type of work will be described in the contract. Specific services shall be authorized by individual work authorizations on an as-needed basis. The maximum contract amount, contract period, and work authorization issuance period shall be specified in the contract.

(C) All work authorizations under an indefinite delivery contract shall be issued within four years of the effective date of the contract, except for scientific services. For scientific services, the initial work authorization for any specific project must be issued within four years. The work authorization for tasks or subtasks within the specific project may be issued after the initial four years, provided that the task or subtask does not initiate a new project.

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

Filed with the Office of the Secretary of State on October 31, 2019.

TRD-201904044

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Effective date: November 20, 2019

Proposal publication date: August 9, 2019

For further information, please call: (512) 463-8630





# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Department of Criminal Justice

### Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §163.31, concerning Sanctions, Programs, and Services. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously proposes amendments to §163.31.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register*.

TRD-201904075

Erik Brown

Director of Legal Affairs

Texas Department of Criminal Justice

Filed: November 1, 2019



The Texas Board of Criminal Justice files this notice of intent to review §163.41, concerning Medical and Psychological Information. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously proposes amendments to §163.41.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register*.

TRD-201904077

Erik Brown

Director of Legal Affairs

Texas Department of Criminal Justice

Filed: November 1, 2019



## Adopted Rule Reviews

Credit Union Department

### Title 7, Part 6

The Texas Credit Union Commission (Commission) has completed its review of Chapter 91, Subchapter K (relating to Credit Union Development Districts), of the Texas Administrative Code, Title 7, Part 6, consisting of §§91.2000, 91.2001, 91.2002, 91.2003, 91.2004, 91.2005, and 91.2006.

These rules were reviewed as a result of the Department's quadrennial rule review under Texas Government Code Section 2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapter K, was published in the August 23, 2019, issue of the *Texas Register* (44 TexReg 4520). The Department received one comment on the notice of intention to review.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 91, Subchapter K, §§91.2000, 91.2002, 91.2003, 91.2004, 91.2005 and 91.2006, in their entirety in accordance with the requirements of Texas Government Code, Section 2001.039. However, the Commission has determined certain sections should be amended and will propose changes in a separate section of the *Texas Register*. This concludes the review of 7 TAC, Part 6, Chapter 91, Subchapter K.

The Department hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

TRD-201904089

John J. Kolhoff

Commissioner

Credit Union Department

Filed: November 4, 2019



Texas Department of Criminal Justice

### Title 37, Part 6

Readoption

The Texas Board of Criminal Justice adopts the review of §195.61, concerning the Method of Payment for Parole Supervision and Administrative Fees, in accordance with Texas Government Code §2001.039, which requires rule review every four years.

The proposed rule review was published in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4880).

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201904082

Erik Brown  
Director of Legal Affairs  
Texas Department of Criminal Justice  
Filed: November 1, 2019



# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/11/19 - 11/17/19 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/11/19 - 11/17/19 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and 303.009<sup>3</sup> for the period of 11/01/19 - 11/30/19 is 18% or Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and 303.009 for the period of 11/01/19 - 11/30/19 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

<sup>3</sup> For variable rate commercial transactions only.

TRD-201904110

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 5, 2019

## Texas Education Agency

### Correction of Error

The Texas Education Agency (TEA) adopted an amendment to 19 TAC §61.1051 in the November 1, 2019 issue of the *Texas Register* (44 TexReg 6534). The amendment was effective November 6, 2019.

Due to an error by the Texas Register, incorrect information was published in the signature block at the end of the adoption. The correct information should have been published as follows:

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: November 6, 2019

Proposal publication date: August 23, 2019

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

TRD-201904125

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 18, 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 **December 18, 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: Aqua Utilities, Incorporated; DOCKET NUMBER: 2019-0536-PWS-E; IDENTIFIER: RN102693934; LOCATION: Montgomery, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more wells having a total capacity of 0.6 gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(D)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps that have a total capacity of 2.0 gpm per connection; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(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; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service for Well Number 1; PENALTY: \$1,713; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Citgo Pipeline Company; DOCKET NUMBER: 2018-1499-AIR-E; IDENTIFIER: RN100224088; LOCATION: Sour Lake, Hardin County; TYPE OF FACILITY: crude oil storage facility; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after discovery; and 30 TAC §116.115(c), New Source Review Permit Number 56121, Special Conditions Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$15,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$7,875; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: City of Big Lake; DOCKET NUMBER: 2018-1512-MWD-E; IDENTIFIER: RN101611820; LOCATION: Big Lake, Reagan 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 WQ0010038001, Interim I Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$21,563; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$21,563; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(4) COMPANY: City of Cranfills Gap; DOCKET NUMBER: 2019-0737-MWD-E; IDENTIFIER: RN101916492; LOCATION: Cranfills Gap, Bosque 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 WQ0014169001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$2,875; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,300; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: DOBBIN-PLANTERSVILLE WATER SUPPLY CORPORATION, (A Non-Profit Corporation); DOCKET NUMBER: 2019-0971-PWS-E; IDENTIFIER: RN101437754; LOCATION: Plantersville, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the locational running annual average; PENALTY: \$345; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Duvelsa L. Hernandez dba Lalos Mini Mart; DOCKET NUMBER: 2019-1042-PST-E; IDENTIFIER: RN102013372; LOCATION: Agua Dulce, Nueces County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action, and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; PENALTY: \$852; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(7) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2019-0958-AIR-E; IDENTIFIER: RN102212925; LOCATION:

Baytown, Harris County; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 3452, PAL6, and PS-DTX302M2, Special Conditions Number 1, Federal Operating Permit Number O1553, General Terms and Conditions and Special Terms and Conditions Number 24, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$6,787; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,715; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: J & J CSTORE 3 LLC dba EZ Stop 10; DOCKET NUMBER: 2019-1145-PST-E; IDENTIFIER: RN108923426; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) record keeping requirements are met; 30 TAC §334.50(b)(1)(B) and (2)(A)(i)(III), and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks installed on or after January 1, 2009, and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; PENALTY: \$4,488; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Lazy Oaks Ranch, LP; DOCKET NUMBER: 2019-0343-EAQ-E; IDENTIFIER: RN109281519; LOCATION: San Marcos, Hays County; TYPE OF FACILITY: mixed-use development project; RULES VIOLATED: 30 TAC §213.4(j)(3) and Water Pollution Abatement Plan (WPAP) Number 11000327, Standard Conditions Number 3, by failing to obtain approval of a modification to an approved WPAP prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(10) COMPANY: Luzdaniel Cardenas; DOCKET NUMBER: 2019-0831-WOC-E; IDENTIFIER: RN110191814; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: operator; RULES VIOLATED: 30 TAC §30.5(a) and §30.381(b), TWC, §37.003, and Texas Health and Safety Code, §341.034(b), by failing to have a current, valid water system operator's license prior to performing process control duties in production or distribution of public drinking water; PENALTY: \$863; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: NORTHWEST HIGHWAY VALERO LLC dba Grapevine Valero; DOCKET NUMBER: 2019-0937-PST-E; IDENTIFIER: RN101541936; LOCATION: Grapevine, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: ONEOK Hydrocarbon Southwest, LLC; DOCKET NUMBER: 2019-1030-AIR-E; IDENTIFIER: RN100209949; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: natural gas fractionation plant; RULES VIOLATED: 30 TAC

§116.115(c) and §122.143(4), New Source Review Permit Number 3956B, Special Conditions Number 1, Federal Operating Permit Number O107, General Terms and Conditions and Special Terms and Conditions Number 13, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$5,212; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: PCI Nitrogen, LLC; DOCKET NUMBER: 2019-1158-AIR-E; IDENTIFIER: RN101621944; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: fertilizer manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Federal Operating Permit Number O1252, General Terms and Conditions and Special Terms and Conditions Number 16, and Texas Health and Safety Code, §382.085(b), by failing to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance, and failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: SANR, INCORPORATED dba China Market; DOCKET NUMBER: 2019-1052-PST-E; IDENTIFIER: RN101763282; LOCATION: China, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated underground storage tank (UST) according to the UST registration and self-certification form; 30 TAC §334.42(a), by failing to design, install, and operate all components of the UST system in a manner that will prevent releases of regulated substances due to structural failure or corrosion; and 30 TAC §334.50(d)(1)(B) and (9)(A)(iii), and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days by taking appropriate steps to ensure Statistical Inventory Reconciliation (SIR) analysis report is received from the vendor in no more than 15 calendar days following the last of the 30-day period for which the SIR analysis is performed, and failing to conduct proper inventory control procedures for the USTs at the facility; PENALTY: \$9,625; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: Ticer Properties, LLC; DOCKET NUMBER: 2019-0855-PST-E; IDENTIFIER: RN101818805; LOCATION: Abernathy, Hale County; TYPE OF FACILITY: facility with an out-of-service underground storage tank (UST); RULES VIOLATED: 30 TAC §37.867(a), by failing to ensure that a temporarily out-of-service UST system is emptied no later than the 90th day after the coverage of financial assurance terminates; 30 TAC §334.7(d)(1)(A) and (3), by failing to provide an amended registration for any change or additional information to the agency regarding the USTs within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.49(c)(2)(C) and TWC §26.3475(d), by failing to inspect the impressed current corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly; 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to have the corrosion protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50 and §334.54(c)(1) and TWC, §26.3475(c)(1), by failing to monitor a temporarily out-of-service UST system for releases; 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: \$6,250; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-201904098

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 5, 2019



### Combined Notice of Public Meeting and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater: New Permit No. WQ0015781001

**APPLICATION AND PRELIMINARY DECISION.** Great Escapes Opportunity Zone Fund, LLC, 2539 South Gessner Road, Suite 13, Houston, Texas 77063, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015781001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 48,000 gallons per day. TCEQ received this application on April 5, 2019.

The facility will be located at 14601 Farm-to-Market Road 812, in Travis County, Texas 78617. The treated effluent will be discharged via pipe to Maha Creek, thence to Cedar Creek, thence to Colorado River Above La Grange in Segment No. 1434 of the Colorado River Basin. The unclassified receiving water use is intermediate aquatic life use for Maha Creek. The designated uses for Segment No. 1434 are primary contact recreation, public water supply, and exceptional aquatic life use. In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ's *Procedures to Implement the Texas 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 Maha Creek, which has been identified as having intermediate aquatic life uses. 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.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.63178%2C30.113222&level=12>

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 the Elroy Library, 13512 Farm-to-Market Road 812, Del Valle, 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:**

**Thursday, December 12, 2019, at 6:00 p.m.**

**Del Valle Opportunity Center**

**5301 B Ross Road**

**Del Valle, Texas 78617**

**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/](http://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](http://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 above.

**INFORMATION AVAILABLE ONLINE.** For details about the status of the application, visit the Commissioners' Integrated Database at [www.tceq.texas.gov/goto/cid](http://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 Great Escapes Opportunity Zone Fund, LLC at the address stated above or by calling Mr. Troy Moore, P.E., M3 Engineering, at (512) 820-3265.

Issuance Date: November 01, 2019

TRD-201904127

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 6, 2019



Enforcement Orders

An agreed order was adopted regarding Grand Harbor Water Supply Corporation, Docket No. 2017-1386-MLM-E on November 5, 2019

assessing \$3,077 in administrative penalties with \$615 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Steven M. Moss, Edward M. Moss, and Lourdes Moss, Docket No. 2017-1692-PWS-E on November 5, 2019 assessing \$300 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, 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 E Z STOP, L.L.C. dba City Stop, Docket No. 2018-0727-PST-E on November 5, 2019 assessing \$5,021 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 Westwood Independent School District, Docket No. 2018-0756-PST-E on November 5, 2019 assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mahmood Chughtai, Docket No. 2018-0869-PST-E on November 5, 2019 assessing \$5,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, 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 Ghazala N. Ahmed dba Express Shell, Docket No. 2018-0915-PST-E on November 5, 2019 assessing \$6,177 in administrative penalties with \$1,235 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cameron C-Store Inc. dba Buddy's Valero, Docket No. 2018-0996-PST-E on November 5, 2019 assessing \$6,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, 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 Esmeralda Sanjuan dba Deer Trail Mobile Home Park, Docket No. 2018-1025-PWS-E on November 5, 2019 assessing \$205 in administrative penalties with \$41 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2018-1069-PWS-E on November 5, 2019 assessing \$600 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Logan Harrell, 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 Top of the Hill Properties, LLC, Docket No. 2018-1085-EAQ-E on November 5, 2019 assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contact-

ing Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Joe's Speedy Mart, Inc., Docket No. 2018-1510-PST-E on November 5, 2019 assessing \$5,725 in administrative penalties with \$1,145 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding C-Ray Development Group LLC, Docket No. 2018-1559-EAQ-E on November 5, 2019 assessing \$938 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Logan Harrell, 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 ETC Texas Pipeline, Ltd., Docket No. 2018-1567-AIR-E on November 5, 2019 assessing \$2,813 in administrative penalties with \$562 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding FMC Technologies, Inc., Docket No. 2018-1569-IWD-E on November 5, 2019 assessing \$7,155 in administrative penalties with \$1,431 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Active Deployment Systems, Inc., Docket No. 2018-1613-EAQ-E on November 5, 2019 assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of San Angelo, Docket No. 2018-1642-PWS-E on November 5, 2019 assessing \$342 in administrative penalties with \$68 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JM TRADING INC dba J's Mini Mart, Docket No. 2018-1686-PST-E on November 5, 2019 assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SHORT TRIP, LLC dba Short Trip Food Mart, Docket No. 2018-1691-PST-E on November 5, 2019 assessing \$7,187 in administrative penalties with \$1,437 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tim Smith dba Swisher Tire & Fuel Card Pump, Docket No. 2018-1706-PST-E on November 5, 2019 assessing \$3,600 in administrative penalties with \$720 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bear Springs Trails Water Supply Corporation, Inc., Docket No. 2018-1716-PWS-E on November 5, 2019 assessing \$350 in administrative penalties with \$70 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Apache Corporation, Docket No. 2018-1746-AIR-E on November 5, 2019 assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding East Montgomery County Municipal Utility District No. 4, Docket No. 2018-1755-MWD-E on November 5, 2019 assessing \$2,625 in administrative penalties with \$525 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Fiona Investments, Inc. dba Nicks Mart, Docket No. 2019-0006-PST-E on November 5, 2019 assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding N&J VENTURES LLC dba IN & OUT FOOD MART, Docket No. 2019-0033-PST-E on November 5, 2019 assessing \$7,294 in administrative penalties with \$1,458 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MERISHA INC dba T'S MART, Docket No. 2019-0034-PST-E on November 5, 2019 assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lamb County Hospital dba Lamb Healthcare Center, Docket No. 2019-0048-PST-E on November 5, 2019 assessing \$3,488 in administrative penalties with \$697 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Maharaj Enterprise, LLC dba S.A. Randolph Express, Docket No. 2019-0057-PST-E on November 5, 2019 assessing \$3,563 in administrative penalties with \$712 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding THAMAN ENTERPRISE LLC dba Caddo Stop, Docket No. 2019-0065-PST-E on November 5, 2019 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding VALESKA'S, INC., Docket No. 2019-0069-PWS-E on November 5, 2019 assessing \$2,656 in administrative penalties with \$531 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GREYHOUND LINES, INC. dba Greyhound Bus Terminal, Docket No. 2019-0098-PST-E on November 5, 2019 assessing \$3,000 in administrative penalties with \$600 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Corpus Christi People's Baptist Church, Docket No. 2019-0120-MWD-E on November 5, 2019 assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Stripes LLC, Docket No. 2019-0150-PST-E on November 5, 2019 assessing \$5,636 in administrative penalties with \$1,127 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DCP Operating Company, LP, Docket No. 2019-0152-AIR-E on November 5, 2019 assessing \$2,813 in administrative penalties with \$562 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mario Anthony Gomez dba The Garage Body Shop, Docket No. 2019-0154-AIR-E on November 5, 2019 assessing \$2,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jaime Garcia, 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 SA Enterprises, Inc. dba Luke's Country Mart, Docket No. 2019-0157-PST-E on November 5, 2019 assessing \$6,874 in administrative penalties with \$1,374 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nancy Castillo Gaytan and Jorge Luis Gaytan as Co-Trustees of the Gaytan Family Revocable Trust, Docket No. 2019-0158-MSW-E on November 5, 2019 assessing \$3,937 in administrative penalties with \$787 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Menard, Docket No. 2019-0186-MWD-E on November 5, 2019 assessing \$3,000 in administrative penalties with \$600 deferred. Information concerning any as-



pect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sherry Kaufmann dba Caddo-Mesa Water Supply Corporation, Docket No. 2019-0207-PWS-E on November 5, 2019 assessing \$1,030 in administrative penalties with \$206 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GBW Railcar Services, L.L.C., Docket No. 2019-0216-MWD-E on November 5, 2019 assessing \$7,027 in administrative penalties with \$1,405 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Flexicore of Texas, Ltd., Docket No. 2019-0236-AIR-E on November 5, 2019 assessing \$1,188 in administrative penalties with \$237 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2019-0241-PWS-E on November 5, 2019 assessing \$1,270 in administrative penalties with \$254 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PLEAK REAL PROPERTY, INC., Docket No. 2019-0298-PWS-E on November 5, 2019 assessing \$125 in administrative penalties with \$25 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CHARLIE HILLARD, INC. dba Charlie Hillard Ford, Docket No. 2019-0307-PST-E on November 5, 2019 assessing \$4,425 in administrative penalties with \$885 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Frankston Rural Water Supply Corporation, Docket No. 2019-0329-PWS-E on November 5, 2019 assessing \$130 in administrative penalties with \$26 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Knox Sullivan Co., LLC, Docket No. 2019-0351-AIR-E on November 5, 2019 assessing \$938 in administrative penalties with \$187 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Phuong Kim Huynh dba Bayou City Cleaners, Docket No. 2019-0363-DCL-E on November 5, 2019 assessing \$2,228 in administrative penalties with \$445 deferred. Infor-

mation concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Jourdanton, Docket No. 2019-0415-MWD-E on November 5, 2019 assessing \$1,250 in administrative penalties with \$250 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding THE BITTER CREEK WATER SUPPLY CORPORATION, Docket No. 2019-0424-PWS-E on November 5, 2019 assessing \$291 in administrative penalties with \$58 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Monarch Utilities I L.P., Docket No. 2019-0429-PWS-E on November 5, 2019 assessing \$600 in administrative penalties with \$120 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding UNITED PETROLEUM TRANSPORTS, INC., Docket No. 2019-0435-PST-E on November 5, 2019 assessing \$1,255 in administrative penalties with \$251 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HIGH PRIME ENTERPRISES, LLC dba Prime Corner, Docket No. 2019-0499-PST-E on November 5, 2019 assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding E S Water Utility Consolidators INC, Docket No. 2019-0547-PWS-E on November 5, 2019 assessing \$150 in administrative penalties with \$30 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Southwest Harris County Municipal Utility District 1, Docket No. 2019-0586-PWS-E on November 5, 2019 assessing \$600 in administrative penalties with \$120 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SHIVAPLUS INTERNATIONAL, INC. dba Qwik Cheque, Docket No. 2019-0589-PST-E on November 5, 2019 assessing \$2,487 in administrative penalties with \$497 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Brushy Creek Water Supply Corporation, Docket No. 2019-0664-PWS-E on November 5, 2019 as-

sessing \$720 in administrative penalties with \$144 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AYANNAUR INC dba Mak Mini Mart, Docket No. 2019-0669-PST-E on November 5, 2019 assessing \$2,496 in administrative penalties with \$499 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Froylan Bautista, Docket No. 2019-1056-WOC-E on November 5, 2019 assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Timothy J. Bean, Docket No. 2019-1057-WOC-E on November 5, 2019 assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Robert W. Tweed, Docket No. 2019-1103-WOC-E on November 5, 2019 assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Select Energy Services, LLC, Docket No. 2019-1119-WR-E on November 5, 2019 assessing \$400 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Michael Gerald Barron, Docket No. 2019-1127-WOC-E on November 5, 2019 assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201904129

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 6, 2019



## Enforcement Orders

An agreed order was adopted regarding Motiva Enterprises LLC, Docket No. 2017-0530-AIR-E on November 6, 2019 assessing \$182,314 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TRNLWS, LLC, Docket No. 2017-1426-AIR-E on November 6, 2019 assessing \$57,450 in administrative penalties with \$11,490 deferred. Information concerning any

aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ConocoPhillips Company, Docket No. 2018-0175-AIR-E on November 6, 2019 assessing \$120,014 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding 7 STAR PETROLEUM INC dba 7 Star Food, Docket No. 2018-0209-PST-E on November 6, 2019 assessing \$11,642 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 Woot Services LLC, Docket No. 2018-0300-AIR-E on November 6, 2019 assessing \$303,375 in administrative penalties with \$60,675 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Gas Town Inc dba Mobil Gas Town, Docket No. 2018-0338-PST-E on November 6, 2019 assessing \$8,387 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Mercurief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding PETROL PLUS INC dba 235 Travel Stop, Docket No. 2018-0576-PST-E on November 6, 2019 assessing \$7,624 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Mercurief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding NEW DELTA BUSINESS LLC dba Delta Food Mart 2, Docket No. 2018-0884-PST-E on November 6, 2019 assessing \$4,924 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Mercurief II, 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 Tri-Chem Specialty Chemicals, LLC, Docket No. 2018-1012-AIR-E on November 6, 2019 assessing \$8,800 in administrative penalties with \$1,760 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ACME BRICK COMPANY, Docket No. 2018-1092-AIR-E on November 6, 2019 assessing \$75,000 in administrative penalties with \$15,000 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Paso Del Norte Materials, LLC, Docket No. 2018-1102-AIR-E on November 6, 2019 assessing \$4,375 in administrative penalties with \$875 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ACME BRICK COMPANY, Docket No. 2018-1209-AIR-E on November 6, 2019 assessing \$63,423 in administrative penalties with \$12,684 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Petroleum Group, LLC dba TPG 218 05, Docket No. 2018-1214-PST-E on November 6, 2019 assessing \$48,000 in administrative penalties with \$9,600 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BASF Corporation, Docket No. 2018-1381-AIR-E on November 6, 2019 assessing \$12,566 in administrative penalties with \$2,513 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Mohammad Sultan, Docket No. 2018-1502-PWS-E on November 6, 2019 assessing \$710 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Logan Harrell, 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 HK MIAN BUSINESS, INC. dba El Dorado Food Mart, Docket No. 2018-1679-PST-E on November 6, 2019 assessing \$15,325 in administrative penalties with \$3,065 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BIANCA ENTERPRISES, INC. dba Kwik Pik Food Mart, Docket No. 2018-1697-PST-E on November 6, 2019 assessing \$14,651 in administrative penalties with \$2,930 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CEDAR BAYOU CHURCH OF CHRIST, INC., Docket No. 2019-0059-PWS-E on November 6, 2019 assessing \$500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BEN E. KEITH COMPANY, Docket No. 2019-0096-PST-E on November 6, 2019 assessing \$42,750 in administrative penalties with \$8,550 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nogalus-Centralia Water Supply Corporation, Docket No. 2019-0126-PWS-E on November 6, 2019 assessing \$420 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding NIDA & KIRAN, INC. dba Speedy Express 6, Docket No. 2019-0253-PST-E on November 6, 2019 assessing \$3,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Merculief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201904132

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 6, 2019



### Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 158623

**APPLICATION.** Cactus Readymix, LLC, P.O. Box 271, Sinton, Texas 78387-0271 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 158623 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located at 6193 Highway 188, Taft, San Patricio County, Texas 78390. 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=28.043197&lng=-97.284196&zoom=13&type=r>. This application was submitted to the TCEQ on September 30, 2019. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on October 9, 2019.

**PUBLIC COMMENT / PUBLIC HEARING.** Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at [www14.tceq.texas.gov/epic/eComment/](http://www14.tceq.texas.gov/epic/eComment/). Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

**The Public Hearing is to be held:**

**Thursday, December 5, 2019, at 6:00 p.m.**

**San Patricio County Event Center**

219 West 5th Street

Sinton, Texas 78387

**RESPONSE TO COMMENTS.** A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

**CENTRAL/REGIONAL OFFICE.** The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Corpus Christi Regional Office, located at NRC Bldg Ste 1200, 6300 Ocean Dr, Unit 5839, Corpus Christi, Texas 78412-5839, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

**INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.**

Further information may also be obtained from Cactus Readymix, LLC, P.O. Box 271, Sinton, Texas 78387-0271, or by calling Mr. Daniel Eberhard, Environmental Coordinator, Bradley Concrete & Equipment Services at (409) 289-1466.

Notice Issuance Date: October 22, 2019

TRD-201904133

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 6, 2019



#### Notice of Correction to Agreed Order Number 18

In the May 17, 2019, issue of the *Texas Register* (44 TexReg 2502), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 18, for Raymundo De Leon. The error is as submitted by the commission.

The reference to the Company should be corrected to read: "Raymundo De Leon dba Mundo Grocery N Meat Market."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-201904100

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 5, 2019



#### Notice of Correction to Enforcement Order Docket No. 2018-0175-AIR-E

In the November 1, 2019, issue of the *Texas Register* (44 TexReg 6569), the Texas Commission on Environmental Quality (Commission) published notice of an Enforcement Order for ConocoPhillips Company. The Enforcement Order was not adopted on October 23, 2019 and should not have been submitted by the Commission.

For questions concerning this error, please contact Mehgan Taack at (512) 239-3300.

TRD-201904135

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 6, 2019



#### Notice of Hearing Lake View Management and Development District: SOAH Docket No. 582-20-0883; TCEQ Docket No. 2019-1048-MWD; Permit No. WQ0015631001

##### APPLICATION.

Lake View Management and Development District, 2728 North Harwood Street, Suite 500, Dallas, Texas 75201, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, TCEQ Permit No. WQ0015631001 to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 39,000 gallons per day via surface irrigation of 13.5 acres of non-public access land. This permit will not authorize a discharge of pollutants into water in the state. TCEQ received this application on December 5, 2017.

The wastewater treatment facility and disposal site will be located 700 feet west of the intersection of County Road 1400 and County Road 1410, north of the City of Malakoff, in Henderson County, Texas 75148, and is within the drainage basin of Cedar Creek Reservoir in Segment No. 0818 of the Trinity River Basin. 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: <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bb-ddd360f8168250f&marker=-96.00959%2C32.18981&level=12>. For the exact location, please refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision 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 the Henderson County Court at Law, 100 East Tyler Street, Suite 101, Athens, Texas.

##### CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing at:

10:00 a.m. - January 13, 2020

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, 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 October 10, 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 Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 Texas Administrative Code (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 adversely affected by the application in a way not common to members of 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.

**In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.suah.texas.gov](http://www.suah.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 about the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

Further information may also be obtained from Lake View Management and Development District at the address stated above or by calling Mr. Guymon Phillips at (214) 725-4200.

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.

Issued: November 5, 2019

TRD-201904126

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 6, 2019



Notice of Hearing Soto Ready Mix, Inc.: SOAH Docket No. 582-20-0882; TCEQ Docket No. 2019-0903-AIR; Registration No. 151715

#### APPLICATION.

Soto Ready Mix, Inc., has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration No. 151715, which would authorize construction of a permanent concrete batch plant located at 3411 De Soto Street, Houston, Harris County, Texas 77091. 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: <<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-95.458055%2C29.853611&level=12>>. 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 May 2, 2018. The Executive Director has determined that the application meets all of the requirements of a standard permit authorized by 30 Texas Administrative Code (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 Houston regional office, and the Collier Regional Library, 6200 Pinemont, Houston, Harris County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk St Ste H, Houston, Texas. Visit [www.tceq.texas.gov/goto/cbp](http://www.tceq.texas.gov/goto/cbp) to review the standard permit.

#### CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing at:

**10:00 a.m. - January 23, 2020**

**Houston City Council Chamber**

**City Hall**

**901 Bagby, 2nd Floor**

**Houston, Texas 77002**

Government issued ID is required to enter City Hall. Visitors will receive a security screening.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, 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 October 10, 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](http://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](http://www.tceq.texas.gov)

**In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, 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 Soto Ready Mix, Inc. at the address stated above or by calling Mr. Venkata Godasi, Graduate Engineer, AARC Environmental, Inc. at (713) 974-2272.

Issued: November 1, 2019

TRD-201904128

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 6, 2019



**Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions**

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 18, 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 December 18, 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: Jeffrey H. Brennan dba P & B Water; DOCKET NUMBER: 2018-1217-PWS-E; TCEQ ID NUMBER: RN102953718;

LOCATION: 14271 Natalie Street, Houston, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.272 and §290.274(a) and TCEQ AO Docket Number 2014-1873-PWS-E, Ordering Provision Numbers 2.a.iv. and 2.b.ii., by failing to meet adequacy, availability, and/or content requirements for the Consumer Confidence Report (CCR) for the 2013 calendar year; 30 TAC §290.109(c)(4)(B) (current version at 30 TAC §290.109(d)(4)(B)), by failing to collect within 24 hours notification of the routine distribution total coliform-positive samples on September 8, 2016, and March 6, 2017, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform-positive samples were collected; 30 TAC §290.117(i)(6) and (j), by failing to provide consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director (ED) along with certification that the consumer notification has been distributed for the January 1, 2016 - December 31, 2016 monitoring period; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the CCR to each bill paying customer by July 1st for each year, and failing to submit to the TCEQ by July 1st for each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for calendar years 2014, 2015, and 2016; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2015 - December 31, 2015 monitoring period and regarding the failure to provide the results of Stage 2 Disinfection Byproducts sampling for the January 1, 2014 - December 31, 2014 monitoring period, synthetic organic chemical contaminants (Methods 504, 515, and 531) sampling and metals and minerals sampling for the January 1, 2013 - December 31, 2015 monitoring period, and volatile organic chemical contaminants sampling for the January 1, 2010 - December 31, 2015 monitoring period to the ED; and TWC, §5.702 and 30 TAC §291.76, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding the CCN Number 12021 for calendar years 2015 - 2017; PENALTY: \$1,649; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Juan de Dios Perez dba La Blanca Recycling; DOCKET NUMBER: 2018-0059-MLM-E; TCEQ ID NUMBER: RN106301633; LOCATION: 12307 East Highway 107, La Blanca, Hidalgo County; TYPE OF FACILITY: scrap and waste recycling facility; RULES VIOLATED: Texas Health and Safety Code, §361.112(a) and 30 TAC §328.56(a)(1), by failing to obtain a generator registration number from the executive director (ED) prior to storing more than 500 tires at the facility. Specifically, respondent was storing approximately 963 scrap tires at the facility; 40 Code of Federal Regulations (CFR) §279.22(d) and 30 TAC §324.6, by failing to perform cleanup steps upon detection of a release of used oil; 40 CFR §279.22(c)(1) and 30 TAC §324.6, by failing to mark or clearly label used oil storage containers with the words "Used Oil." Specifically, four five-gallon containers were not labeled; 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste (MSW). Specifically, respondent allowed the disposal of approximately 5,063 cubic yards of MSW consisting of plastics, lumber/wood, wire, insulation, commingled metal, furniture, fiberglass, car seats, polyvinyl chloride piping, and insulation at the facility; and TWC, §26.121, 40 CFR §122.26(c) and 30 TAC §281.25(a)(4), by failing to obtain authorization under a Texas Pollutant Discharge Elimination System Industrial Multi-Sector

General Permit to discharge stormwater associated with industrial activities; PENALTY: \$12,262; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: MISSION INDEV, LLC; DOCKET NUMBER: 2019-0299-PWS-E; TCEQ ID NUMBER: RN101208130; LOCATION: 13916 Aldine Westfield Road, Houston, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's Well Number 1; and Texas Health and Safety Code, §341.0315(c) and 30 TAC §290.45(b)(1)(E)(i), by failing to provide a minimum well capacity of 1.0 gallon per minute (gpm) per connection, specifically, the facility had 24 connections, requiring a well capacity of 24 gpm. However, only 12 gpm were provided, indicating a 50% deficiency; PENALTY: \$112; STAFF ATTORNEY: Jaime Garcia, Litigation Division, MC 175, (512) 239-5807; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: NIROJ CORPORATION dba Cigarette Mart; DOCKET NUMBER: 2018-1581-PST-E; TCEQ ID NUMBER: RN102227071; LOCATION: 1635 Precinct Line Road, Hurst, 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), 30 TAC §334.50(b)(1)(A), and TCEQ AO Docket Number 2016-1351-PST-E, Ordering Provision Number 2.a., by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$31,500; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Skipper Beverage Company, LLC dba Valero Corner Store 2026; DOCKET NUMBER: 2018-1724-PST-E; TCEQ ID NUMBER: RN102366895; LOCATION: 9209 South Zarzamora Street, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for pressurized piping associated with the UST system; PENALTY: \$6,000; STAFF ATTORNEY: Logan Harrell, Litigation Division, MC 175, (512) 239-1439; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: WOODS CREEK WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-1643-PWS-E; TCEQ ID NUMBER: RN101212199; LOCATION: W. A. Holder Road off United States Highway 190 East, 18 miles east of Livingston, Polk County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2017 - June 30, 2017 and July 1, 2017 - December 31, 2017 monitoring periods, and failing to provide public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2017 - June 30, 2017 monitoring period; 30 TAC §290.117(e)(2), (h), and (i)(3) and §290.122(c)(2)(A) and (f), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sampling sites, have the samples analyzed, and report the results to the ED for the January 1, 2017 - June 30, 2017, July 1, 2017 - December 31, 2017,

and January 1, 2018 - June 30, 2018 monitoring periods, and failing to provide public notification accompanied with a signed Certificate of Delivery, to the ED regarding the failure to conduct water quality parameter sampling for the January 1, 2017 - June 30, 2017 monitoring period; 30 TAC §290.117(i)(6) and (j) and §290.122(c)(2)(A) and (f), by failing to provide consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed for the January 1, 2016 - December 31, 2016 monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2013 - December 31, 2015 monitoring period; PENALTY: \$1,079; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201904104

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 5, 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 **December 18, 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 December 18, 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: BZSTAR'S 2, INC. dba EZ Trip 2; DOCKET NUMBER: 2018-0897-PST-E; TCEQ ID NUMBER: RN102130531; LOCATION: 2944 North Buckner Boulevard, Dallas, 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); PENALTY: \$4,500; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: DEL RIO MANAGEMENT CO., LLC; DOCKET NUMBER: 2017-1250-PWS-E; TCEQ ID NUMBER: RN101657872; LOCATION: 3 Miller Drive, Del Rio, Val Verde County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(f)(4), 290.106(e), and 290.122(c)(2)(A) and (f), by failing to provide the results of annual nitrate sampling to the executive director (ED) for the January 1, 2015 - December 31, 2015 and January 1, 2016 - December 31, 2016 monitoring periods, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to provide the results of annual nitrate sampling for the January 1, 2015 - December 31, 2015 monitoring period; 30 TAC §290.46(f)(4) and §290.118(e), by failing to provide the results of secondary constituents sampling to the ED for the January 1, 2013 - December 31, 2015 monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to conduct routine coliform monitoring during the month of January 2016; PENALTY: \$234; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: Heidi Fensterbush dba Country View MHP and Michael D. Fensterbush dba Country View MHP; DOCKET NUMBER: 2018-1677-PWS-E; TCEQ ID NUMBER: RN101278190; LOCATION: 7506 North County Road 1540, Unit 23, Shallowater, Lubbock County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.108(f)(1), by failing to comply with the maximum contaminant level (MCL) of 15 milligrams per liter (mg/L) for uranium based on the running annual average; THSC, §341.0315(c) and 30 TAC §290.106(f)(3)(C), by failing to comply with the MCL of 0.010 mg/L for arsenic based on the running annual average; THSC, §341.0315(c) and 30 TAC §290.106(f)(3)(C), by failing to comply with the MCL of 4.0 mg/L for fluoride based on the running annual average; 30 TAC §290.122(b)(2)(A) and (f), by failing to provide a public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to comply with the MCL for uranium for the first quarter of 2018; 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to comply with the MCLs for arsenic and fluoride for the first quarter of 2018; 30 TAC §290.117(i)(6) and (j), by failing to provide consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed for the July 1, 2017 - December 31, 2017 monitoring period; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service Fees and asso-

ciated late fees for TCEQ Financial Administration Account Number 91520247 for Fiscal Years 2009 - 2018; PENALTY: \$989; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(4) COMPANY: LAKESHORE UTILITY COMPANY; DOCKET NUMBER: 2018-1277-PWS-E; TCEQ ID NUMBER: RN102681665, RN102676970, RN101174902, RN102679701, RN101177897, and RN101266039; LOCATION: RN102681665 (Cedarview Estates) Farm-to-Market Road 2329, South of Eustace, Henderson County; RN102676970 (Dixie Isle Water System) Farm-to-Market Road 2329, 3.5 Miles South of Eustace, Henderson County; RN101174902 (East Lake Woods) 14251 East Ridge Circle near ARP, Smith County; RN102679701 (Esquire Estates II) Esquire Estates Road near Mabank, Henderson County; RN101177897 (Hidden Acres) County Road 1429, 0.6 mile south of the intersection of Farm-to-Market Road 2329 and Farm-to-Market Road 3054 near Henderson, Henderson County; and RN101266039 (Point La Vista) 4925 La Prada near Malakoff, Henderson County; TYPE OF FACILITY: six public water supply facilities; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and TCEQ Agreed Order (AO) Docket Number 2014-1469-PWS-E, Order Provision Number 3.c., by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and submit the results to the executive director (ED); 30 TAC §290.117(c)(2)(B), (h), and (i)(1) and TCEQ AO Docket Number 2014-1469-PWS-E, Ordering Provision Number 3.c., by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and submit the results to the ED; 30 TAC §290.271(b) and §290.274(a) and (c) and TCEQ AO Docket Number 2014-1469-PWS-E, Ordering Provision Numbers 2.a.ii and 2.b.ii., by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st for each year, and failing to submit to the TCEQ by July 1st for each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.41(c)(1)(F) and TCEQ AO Docket Number 2015-1744-PWS-E, Ordering Provision Number 2.a., by failing to obtain a sanitary control easement that covers the land within 150 feet of Well Number Three (Pete's Paradise) and Well Number Seven (King's Point); TCEQ AO Docket Number 2015-1552-PWS-E, Ordering Provision Numbers 2.a.iv. and 2.b.ii., 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 has been distributed; TCEQ AO Docket Number 2015-1120-PWS-E, Ordering Provision Numbers 2.a.iv. and 2.b.ii., 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 has been distributed to persons served at the locations that were sampled in a manner consistent with TCEQ requirements; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the ED each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.115(e)(2), by failing to conduct an operation evaluation and submit a written operation evaluation report to the ED within 90 days after being notified of the analytical result that caused the exceedance of the operational evaluation level for total trihalomethanes for Stage 2 Disinfection Byproducts at Site one; 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and TCEQ AO Docket Number 2014-1469-PWS-E, Ordering Provision Number 3.c., by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed,



and submit the results to the ED; 30 TAC §290.271(b) and §290.274(a) and (c), and TCEQ AO Docket Number 2014-1469-PWS-E, Ordering Provision Numbers 2.a.ii and 2.b.ii., by failing to mail or directly deliver one copy of the CCR to each bill paying customer by July 1st for each year, and failing to submit to the TCEQ by July 1st for each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples and regarding the failure to submit a DLQOR; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a DLQOR to the ED by the tenth day of the month following the end of the quarter; 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and submit the results to the ED; 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 has been distributed; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the CCR to each bill paying customer by July 1st for each year, and failing to submit to the TCEQ by July 1st for each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; TCEQ AO Docket Number 2014-1469-PWS-E, Ordering Provision Number 2.a.iii., by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to conduct routine coliform monitoring; 30 TAC §290.122(c)(2)(A) and (f), by failing to timely provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR; 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and TCEQ AO Docket Number 2014-1469-PWS-E, Ordering Provision Number 3.c., by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed, and submit the results to the ED; 30 TAC §290.117(c)(2)(B), (h), and (i)(1) and TCEQ AO Docket Number 2014-1469-PWS-E, Ordering Provision Number 3.c., by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and submit the results to the ED; and TCEQ AO Docket Number 2014-1469-PWS-E, Ordering Provision Numbers 2.a.iii. and 4.a., by failing to collect at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each active source within 24 hours of notification of a distribution total coliform-positive result on a routine sample and failing to provide public notification and submit a copy of the public notification to the ED; PENALTY: \$6,579; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: Superior Advantage GP, LLC; DOCKET NUMBER: 2018-0289-PST-E; TCEQ ID NUMBER: RN102432630; LOCATION: 10.8 miles West of Comstock, off United States Highway 90, Val Verde County; TYPE OF FACILITY: inactive underground storage tank (UST) system; RULES VIOLATED: TWC, §26.3475(c)(2) and 30 TAC §334.51(b)(2)(B)(ii) and §334.54(b)(2), by failing to equip the spill containment device with a liquid-tight lid or cover, and failing to maintain piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized

persons; PENALTY: \$3,937; STAFF ATTORNEY: John S. Merculief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-201904101  
Charmaine Backens  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: November 5, 2019



### Notice of Opportunity to Comment on Shutdown/Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 18, 2019**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 18, 2019**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorney is available to discuss the S/DO and/or the comment procedure at the listed phone number; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: Hugh Espy Howard Jr., Executor of the Estate of Hugh Espy Howard, Deceased; DOCKET NUMBER: 2018-1483-PST-E; TCEQ ID NUMBER: RN104198460; LOCATION: 101 West San Antonio Street, Marfa, Presidio County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES

VIOLATED: 30 TAC §334.602(a)(2), by failing to designate train, and certify at least one named individual for each class of operator - Class A, B, and C for the facility; 30 TAC §334.7(d)(1)(B) and (3), by failing to provide an amended registration for any change or additional information to the agency regarding the USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition; and TWC, §26.3475(d) and 30 TAC §334.49(c)(4)(C), by failing to test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: \$7,141; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-201904099  
Charmaine Backens  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: November 5, 2019



### Notice of Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40304

**Application.** Inmar Rx Solutions, Inc., 635 Vine Street, Winston-Salem, North Carolina 27101, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40304, to construct and operate a medical waste transfer station. The proposed facility will be located at 3845 Grand Lakes Way, Suite 125, Grand Prairie, Texas, which is between Walton Walker Boulevard (State Loop 12) and MacArthur Boulevard, approximately 0.2 miles south of Interstate Highway 30, along Grand Lakes Blvd. (Gifford Street), 75050, in Dallas County. The Applicant is requesting authorization to transfer medical waste (consisting only of unused sharps and unused vaccines), trace chemotherapy waste, non-hazardous pharmaceuticals, and unused medical supplies, all within an enclosed building. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-96.953611%2C32.758333&level=12>. For exact location, refer to application.

**Executive Director Action.** The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

**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 registration application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the registration application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the For-

mal Comment Period on the registration application, members of the public may state their formal comments orally into the official record. All formal comments will be considered before a decision is reached on the registration application. The executive director is not required to file a response to comments.

### The Public Meeting is to be held:

**Monday, November 18, 2019 at 7:00 p.m.**

**Ruthe Jackson Center**

**3113 S. Carrier Parkway**

**Grand Prairie, Texas 75052**

**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 registration application or the registration 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](http://www.tceq.texas.gov).

The registration application is available for viewing and copying at the Tony Shotwell Library, 2750 Graham Street, Grand Prairie, Texas 75050 and may be viewed online at <https://www.whm.com/project/wm-submits-a-medical-waste-transfer-station-registration-applications/>. Further information may also be obtained from Inmar Rx Solutions, Inc. at the address stated above or by calling Ashley Schmidt at (336) 631-2883.

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: October 25, 2019

TRD-201904134  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: November 6, 2019



### Texas Facilities Commission

#### Request for Proposals (RFP) #303-1-20678

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-1-20678. TFC seeks a five (5) or ten (10) year lease of approximately 18,020 square feet of office space in Houston, Texas.

The deadline for questions is November 25, 2019, and the deadline for proposals is December 9, 2019, at 3:00 p.m. The award date is January 16, 2020. 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 [Evelyn.Esquivel@tfc.state.tx.us](mailto:Evelyn.Esquivel@tfc.state.tx.us). A copy of the RFP may be downloaded from the Electronic State Business Daily at <http://www.txsmartbuy.com/sp/303-1-20678>.

TRD-201904066  
Rico Gamino  
Director of Procurement  
Texas Facilities Commission  
Filed: November 1, 2019

◆ ◆ ◆  
**Office of the Governor**

Notice of Available Funding Opportunities

Office of the Governor, Public Safety Office (PSO)

The Child Sex Trafficking Team (CSTT), located in the PSO, is announcing the following funding opportunity for State Fiscal Year 2020. Details for this opportunity, including the open and close date for the solicitation, can be found on the eGrants Calendar (<https://eGrants.gov.texas.gov/fundopp.aspx>).

County Innovations to Prevent Commercial Sexual Exploitation (CSEP) - The purpose of this announcement is to solicit applications from counties for innovative projects that prevent, investigate, and/or prosecute the commercial sexual exploitation of people in Texas. *Note: Applicants seeking to operate a Commercially Sexually Exploited Persons (CSEP) Specialty Court should refer to funding opportunities specific to a specialty court program.*

TRD-201904111  
Aimee Snoddy  
Executive Director, PSO  
Office of the Governor  
Filed: November 5, 2019

◆ ◆ ◆  
**Texas Department of Insurance**

Company Licensing

Application to do business in the state of Texas for American Digital Title Insurance Company, a foreign title company. The home office is in Denver, Colorado.

Application to do business in the state of Texas for Digital Edge Insurance Company, a foreign fire and/or casualty company. The home office is in Dover, Delaware.

Application to do business in the state of Texas for Beazley America Insurance Company, Inc., a foreign fire and/or casualty company. The home office is in Farmington, Connecticut.

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-201904131  
James Person  
General Counsel  
Texas Department of Insurance  
Filed: November 6, 2019

◆ ◆ ◆  
**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) to reflect legislative changes to the Automobile Burglary and Theft Prevention Authority (ABTPA). On

August 19, 2019, TAIPA filed the proposed changes with TDI for Commissioner approval under Insurance Code §2151.151(b). TAIPA proposes to amend Section 50 of the Plan, which addresses the ABTPA pass-through fee.

The 86th Legislature, Regular Session (2019), passed House Bill 2048 and Senate Bill 604, which made changes to the ABTPA.

--**HB 2048** increases the ABTPA fee from \$2 to \$4 per motor vehicle year, effective on September 1, 2019.

--**SB 604** changes the name of the ABTPA to the Motor Vehicle Crime Prevention Authority (MVCPA). It also moves the statutory language for the ABTPA (now MVCPA) to the Transportation Code.

The amended Plan reflects these changes.

On August 16, 2019, the TAIPA governing committee voted in favor of the proposed amendment. You can view the proposed amendment on TDI's website, <http://www.tdi.texas.gov/rules/2019/exrules.html>. The proposed amendment affects Section 50 of the Plan.

**Current Language:**

Sec. 50. AUTOMOBILE THEFT PREVENTION AUTHORITY PASS THROUGH FEE

A. Texas Civil Statutes, Article 4413(37), §10. requires each insurer to pay a fee of \$2 per motor vehicle year to the Automobile Burglary and Theft Prevention Authority. Each insurer is authorized to recoup this fee from the policyholder.

B. Any insurer recouping the fee from the policyholder as authorized by subsection 50.A must include on or with each motor vehicle insurance policy providing primary liability coverage delivered, issued for delivery, or renewed in this state on or after September 1, 2011, a notice conforming with either subsection 50.B. 1 or 2.

1. This notice shall be in no less than 10-point type and shall be attached to or stamped or printed on the Declarations page and shall become part of the policy. The notice shall read as follows:

NOTICE: A fee of \$ \_\_\_\_ is payable in addition to the premium due under this policy. This fee reimburses the insurer, as permitted by 28 TAC §5.205, for the \$2 fee per motor vehicle year required to be paid to the Automobile Burglary and Theft Prevention Fund under Texas Civil Statutes, Article 4413(37), §10.

2. This notice shall be in no less than 10-point type and shall be included as part of the policy. The notice shall read as follows:

NOTICE: The Automobile Burglary and Theft Prevention Authority Fee is payable in addition to the premium due under this policy. This fee reimburses the insurer, as permitted by 28 TAC §5.205, for the \$2 fee per motor vehicle year required to be paid to the Automobile Burglary and Theft Prevention Fund under Texas Civil Statutes, Article 4413(37), §10.

If this notice is provided, the following shall be printed on the Declarations page, renewal certificate, or billing:

Automobile Burglary and Theft Prevention Authority

Fee \$ \_\_\_\_\_

(See enclosed explanation)

C. All automobile insurance policies providing primary liability coverages shall be assessed the \$2 fee per motor vehicle year. For purposes of this Section, the term "motor vehicle year" shall mean one motor vehicle insured for one year.

**Proposed Language:**

Sec. 50. MOTOR VEHICLE CRIME PREVENTION AUTHORITY FEE

Chapter 1006 of the Texas Transportation Code requires each insurer to pay a fee per motor vehicle year to the Motor Vehicle Crime Prevention Authority. An insurer may recoup this fee from the policyholder. Any insurer recouping the fee from the policyholder must provide a notice to the policyholder pursuant to applicable statute, administrative rule, or as may be approved by the Texas Department of Insurance.

TDI will consider written comments on the proposal that TDI receives no later than 5:00 p.m., central time, on December 16, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on December 16, 2019. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

TRD-201904113  
James Person  
General Counsel  
Texas Department of Insurance  
Filed: November 5, 2019

◆ ◆ ◆  
**Texas Lottery Commission**

**Correction of Error**

The Texas Lottery Commission published notice of the procedures for Scratch Ticket Game Number 2188 "ICY HOT 7s" in the November

1, 2019 issue of the *Texas Register* (44 TexReg 6603). Due to an error by the Texas Register, the notice was formatted incorrectly. The notice should have been formatted as follows:

Scratch Ticket Game Number 2188 "ICY HOT 7s"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2188 is "ICY HOT 7s". The play style is "find symbol".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2188 shall be \$1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2188.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 7 SYMBOL, FLAME SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$30.00, \$100 and \$1,000.

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. 2188 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
7 SYMBOL	WIN\$
FLAME SYMBOL	WINX2
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$30.00	TRTY\$
\$100	ONHN
\$1,000	ONTH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2188), a seven (7) digit Pack

number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2188-0000001-001.

H. Pack - A Pack of the "ICY HOT 7s" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does

not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "ICY HOT 7s" Scratch Ticket Game No. 2188.

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 "ICY HOT 7s" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twelve (12) Play Symbols. If a player reveals a "7" Play Symbol, the player wins the prize for that symbol. If the player reveals a "FLAME" Play Symbol, the player wins DOUBLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

### 2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twelve (12) 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 twelve (12) 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 twelve (12) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twelve (12) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

### 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

C. A Ticket may have up to two (2) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

D. The "FLAME" (WINX2) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

E. No matching non-winning Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

F. A non-winning Prize Symbol will never match a winning Prize Symbol, unless restricted by other parameters, play action or prize structure.

G. The "7" (WINS) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

H. No prize amount in a non-winning spot will correspond with the Play Symbol (i.e., 01 and \$1).

### 2.3 Procedure for Claiming Prizes.

A. To claim a "ICY HOT 7s" Scratch Ticket Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$30.00 or \$100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not

required, to pay a \$30.00 or \$100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "ICY HOT 7s" Scratch Ticket Game prize of \$1,000, 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 "ICY HOT 7s" 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 "ICY HOT 7s" 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 "ICY HOT 7s" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,120,000 Scratch Tickets in Scratch Ticket Game No. 2188. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2188 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1.00	912,000	10.00
\$2.00	486,400	18.75
\$4.00	182,400	50.00
\$5.00	152,000	60.00
\$10.00	91,200	100.00
\$15.00	45,600	200.00
\$30.00	7,600	1,200.00
\$100	2,394	3,809.52
\$1,000	38	240,000.00

\*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 4.85. 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. 2188 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. 2188, 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-201904108



Scratch Ticket Game Number 2204 "SIZZLING HOT 7s"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2204 is "SIZZLING HOT 7s". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2204 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2204.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 7 SYMBOL, FLAME SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$200, \$1,000 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 2204 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
28	TWET
29	TWNI
30	TRTY
7 SYMBOL	WINX5
FLAME SYMBOL	WINALL
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN

\$1,000	ONTH
\$30,000	30 <sup>TH</sup>

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 (2204), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2204-0000001-001.

H. Pack - A Pack of the "SIZZLING HOT 7s" Scratch Ticket Game contains 125 Tickets. One Ticket will be folded over to expose a front and back of one ticket on each pack. Please note the packs will be in an A, B, C, and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "SIZZLING HOT 7s" Scratch Ticket Game No. 2204.

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 "SIZZLING HOT 7s" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-three (23) Play Symbols. If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "7" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If the player reveals a "FLAME" Play Symbol, the player WINS ALL 10 PRIZES INSTANTLY! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-three (23) 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 twenty-three (23) 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 twenty-three (23) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
  17. Each of the twenty-three (23) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
  18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
  19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or

a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. A Ticket can win up to ten (10) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have three (3) different WINNING NUMBERS Play Symbols.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "7" (WINX5) and "FLAME" (WINALL) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "7" (WINX5) and "FLAME" (WINALL) Play Symbols will only appear as dictated by the prize structure.

I. On Tickets that contain the "FLAME" (WINALL) Play Symbol, none of the WINNING NUMBERS Play Symbols will match any of the YOUR NUMBERS Play Symbols and the "7" (WINX5) Play Symbol will not appear.

J. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

K. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 5 and \$5).

## 2.3 Procedure for Claiming Prizes.

A. To claim a "SIZZLING HOT 7s" Scratch Ticket Game prize of \$2.00, \$4.00, \$6.00, \$10.00, \$20.00, \$50.00, \$100 or \$200, 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 \$50.00, \$100 or \$200 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 "SIZZLING HOT 7s" Scratch Ticket Game prize of \$1,000 or \$30,000, 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 "SIZZLING HOT 7s" 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 "SIZZLING HOT 7s" 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 "SIZZLING HOT 7s" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the

Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2204. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2204 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2	691,200	10.42
\$4	633,600	11.36
\$6	172,800	41.67
\$10	57,600	125.00
\$20	57,600	125.00
\$50	28,800	250.00
\$100	6,690	1,076.23
\$200	1,500	4,800.00
\$1,000	90	80,000.00
\$30,000	6	1,200,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.36. 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. 2204 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. 2204, 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-201904102  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: November 5, 2019

◆ ◆ ◆  
**Texas Department of Transportation**

Public Transportation Division - Notice of Call for Projects

The Texas Department of Transportation (department) announces a Call for Projects for:

1. Statewide Planning Assistance - 49 U.S.C. §5304, 43 Texas Administrative Code (TAC) §31.22
2. Rural Transportation Assistance - 49 U.S.C. §5311(b)(3), 43 TAC §31.37
3. Intercity Bus - 49 U.S.C. §5311(f), 43 TAC §31.36
4. Rural Discretionary - 49 U.S.C. §5311 - Discretionary Program, 43 TAC §31.36
5. Fleet Replacement - 49 U.S.C. §5311 - Formula Grants for Rural Areas Program, 43 TAC §31.36\*
6. Fleet Replacement - 49 U.S.C. §5307 - Urbanized Area Formula Program, 43 TAC §31.26\*

\*The inclusion of this program is dependent on availability of funds.

These public transportation projects will be funded through the Federal Transit Administration (FTA) §5304, §5311(b)(3), §5311(f), §5311, and §5307 programs. It is anticipated that multiple projects from multiple funding programs will be selected for State Fiscal Year 2021-2022. Project selection will be administered by the Public Transportation Division. Projects selected for funding under the §5304, §5311(b)(3), §5311(f), and §5311 programs will be awarded in the form of grants with payments made for allowable reimbursable expenses or for defined deliverables. Successful applicants will become subrecipients of the department. Successful applicants of projects selected for funding under §5307 will apply for funds directly with FTA for the approved project.

Information and instructions regarding the call for projects will be posted on the Public Transportation Division website at <https://www.txdot.gov/inside-txdot/division/public-transportation/local-assistance.html>

**Purpose:** The Call for Projects invites applications for services to develop, promote, coordinate, or support public transportation. Applications submitted for funding should reflect projects that will:

- assist small urban and rural transit agencies to develop projects and strategies to further meet the transportation needs of local residents using current program resources;
- design and implement training and technical assistance projects and other support services tailored to meet the specific needs of transit operators in rural areas;
- assist public transportation providers in rural areas to provide passenger transportation services to the general public using the most efficient combination of knowledge, materials, resources, and technology;

- support connections, services, and infrastructure to meet the intercity mobility needs of residents in rural areas; or

- maintain capital assets in a state of good repair.

**Eligible Applicants:** Eligible applicants may include state agencies, local public bodies and agencies thereof, private nonprofit organizations, operators of public transportation services, state transit associations, transit districts, and private for-profit operators, dependent on federal program. Eligible applicants are defined in 43 TAC Chapter 31.

**Key Dates and Deadlines:**

**November 15, 2019:** Opportunity opens in eGrants

**January 3, 2020:** Deadline for submitting written questions

**February 14, 2020:** Deadline for receipt of applications

**June 25, 2020:** Target date for presentation of project selection recommendations to the Texas Transportation Commission for action

**September 1, 2020:** Target date for most project grant agreements to be executed

**Questions:** Individuals with questions relating to the Call for Projects should email [PTN\\_ProgramMgmt@txdot.gov](mailto:PTN_ProgramMgmt@txdot.gov).

TRD-201904043

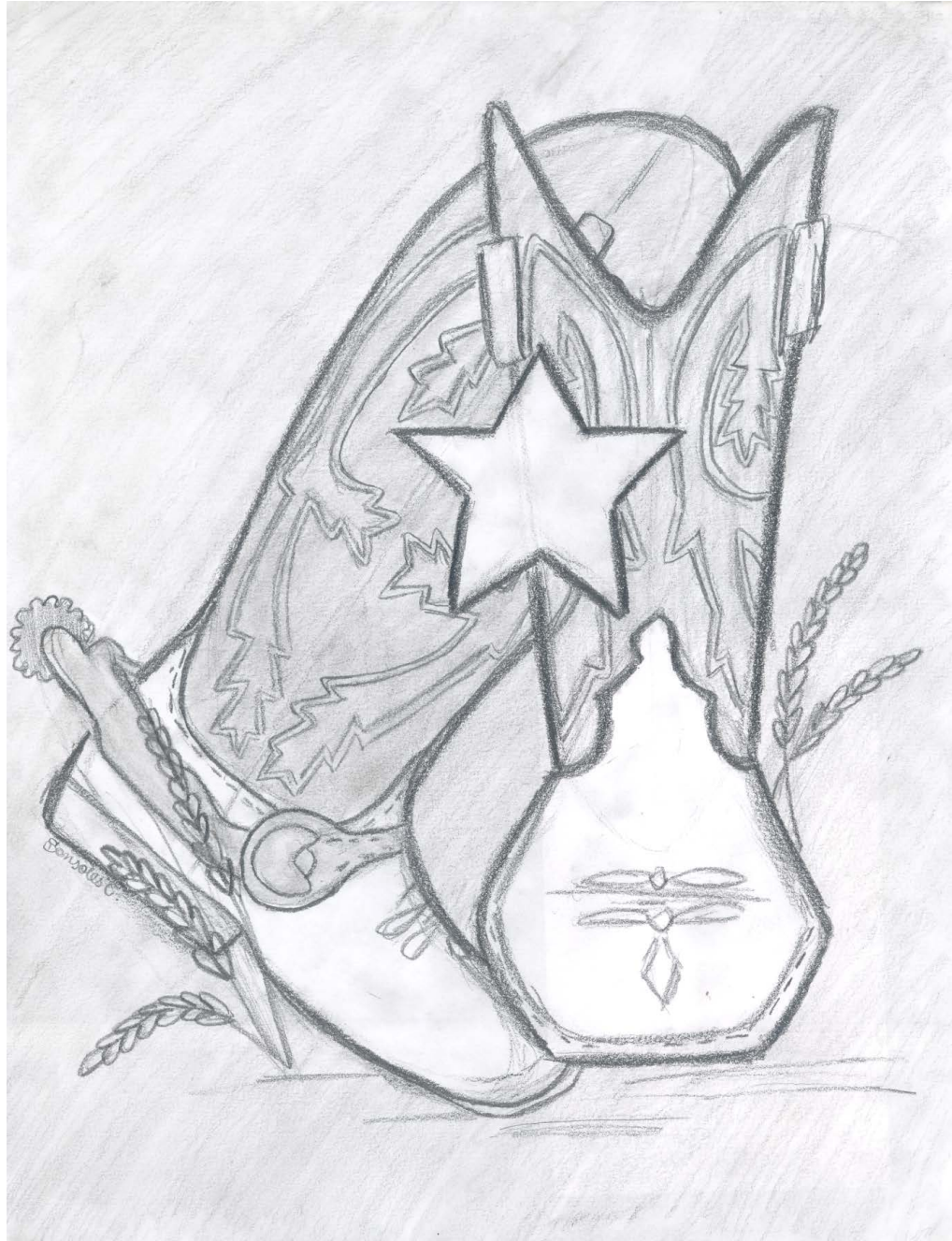
Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Filed: October 31, 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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