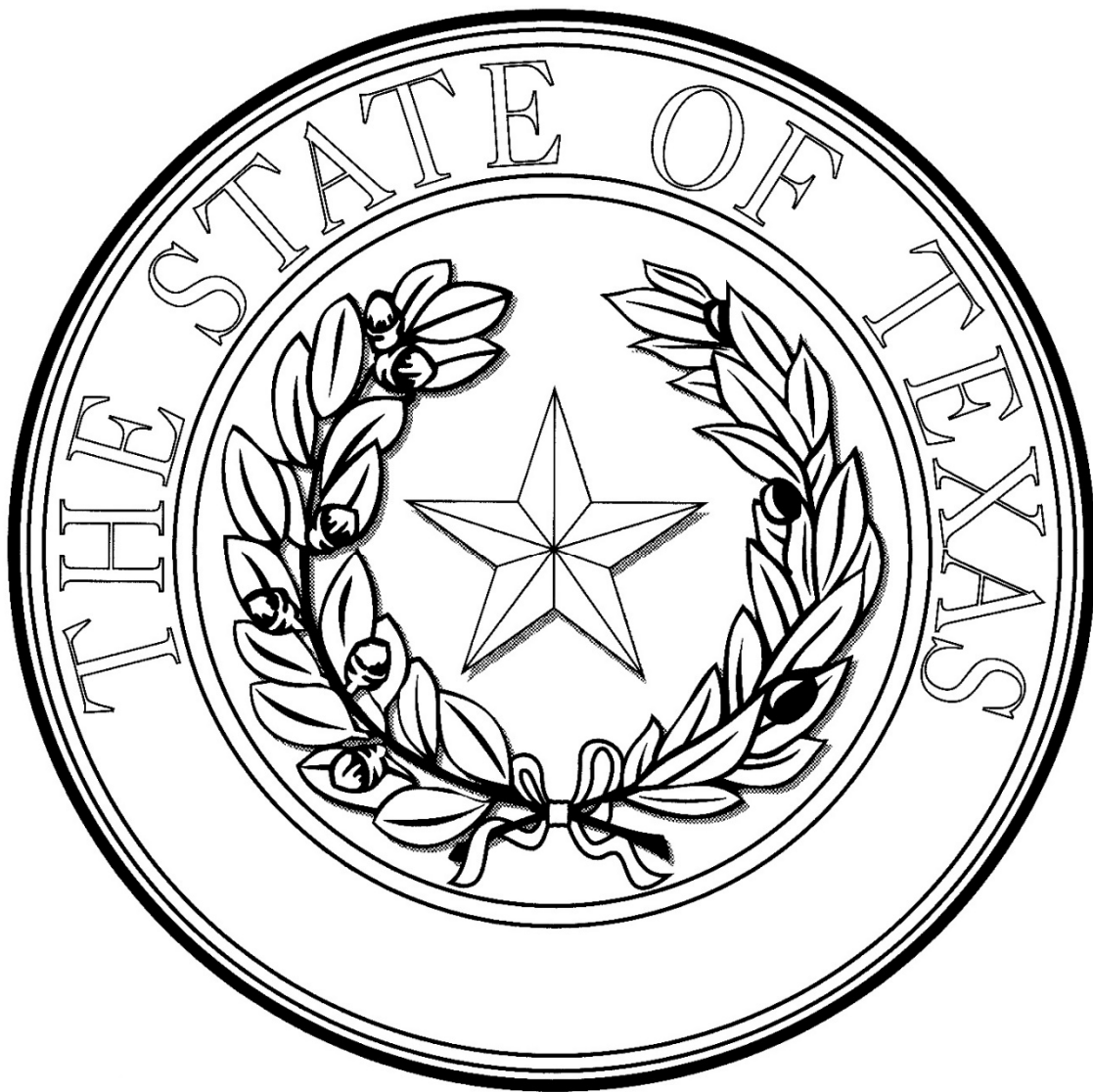

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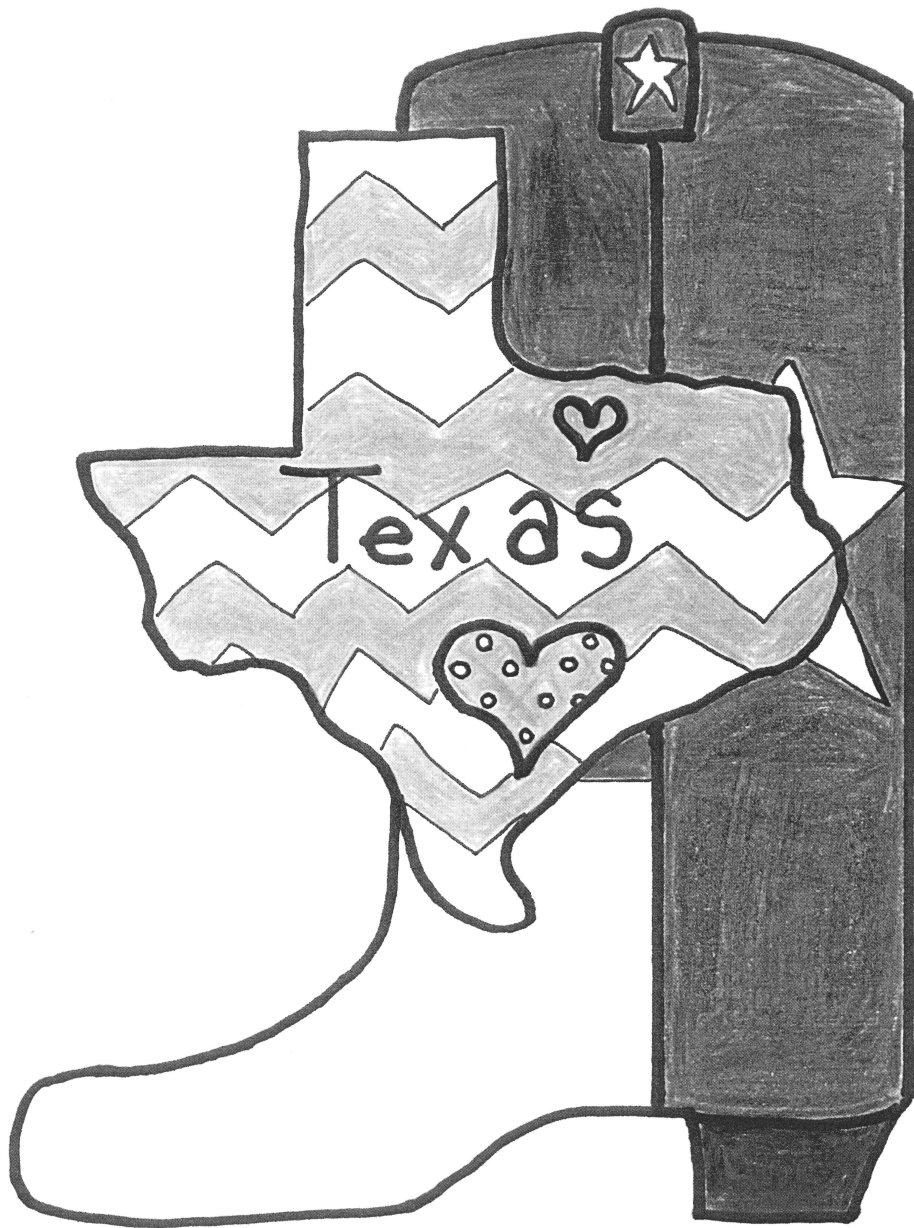
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THE GOVERNOR

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 January 6, 2020

Appointed to the Public Safety Commission, for a term to expire January 1, 2024, Jesse W. "Dale" Wainwright of Austin, Texas (replacing Manuel L. "Manny" Flores, Jr. of Austin, whose term expired).

Appointed to the Public Safety Commission, for a term to expire January 1, 2026, Nelda L. Blair of The Woodlands, Texas (replacing A. Cynthia "Cindy" Leon of Mission, whose term expired).

Appointments for January 7, 2020

Appointed to the Advisory Council on Cultural Affairs, for a term to expire February 1, 2023, Adriana R. Cruz of San Marcos, Texas (replacing Robert B. "Bryan" Daniel of Georgetown, whose term expired).

Designated as Vice Chair of the Advisory Council on Cultural Affairs, for a term to expire at the pleasure of the Governor, Adriana R. Cruz of San Marcos (Ms. Cruz is replacing Steven N. Nguyen, O.D. of Irving).

Appointments for January 8, 2020

Appointed to the Council on Cardiovascular Disease and Stroke, for a term to expire February 1, 2025, Elie R. Balesh, M.D., of Houston, Texas (replacing Michael M Hawkins, M.D., of Temple, whose term expired).

Appointed to the Council on Cardiovascular Disease and Stroke, for a term to expire February 1, 2025, Suzanne S. Hildebrand of Live Oak, Texas (Ms. Hildebrand is being reappointed).

Appointed to the Council on Cardiovascular Disease and Stroke, for a term to expire February 1, 2025, Samantha Kersey of Dickinson, Texas (replacing Vanessa F. Hicks-Callaway of Victoria, whose term expired)

Appointed to the Council on Cardiovascular Disease and Stroke, for a term to expire February 1, 2025, E'Loria Simon-Campbell, Ph.D., of Houston, Texas (Dr. Simon-Campbell is being reappointed).

Designated as presiding officer of the Council on Cardiovascular Disease and Stroke, for a term to expire at the pleasure of the Governor, Suzanne S. Hildebrand of Live Oak (Ms. Hildebrand is replacing John N. "Neal" Rutledge, M.D.).

Appointments for January 9, 2020

Appointed to the Business Advisory Council to the Texas Division of Emergency Management pursuant to SB 799, 86th Legislature, Regular Session, for a term to expire February 1, 2021, Justen R. Noakes of San Antonio, Texas.

Appointed to the Business Advisory Council to the Texas Division of Emergency Management pursuant to SB 799, 86th Legislature, Regular Session, for a term to expire February 1, 2021, Al A. Philippus of Shavano Park, Texas.

Appointed to the Business Advisory Council to the Texas Division of Emergency Management pursuant to SB 799, 86th Legislature, Regular Session, for a term to expire February 1, 2022, Bart A. McKay of Dallas, Texas.

Appointed to the Business Advisory Council to the Texas Division of Emergency Management pursuant to SB 799, 86th Legislature, Regular Session, for a term to expire February 1, 2023, Gina M. Spagnola of Galveston, Texas.

Appointed to the Interstate Commission for Adult Offender Supervision, for a term to expire at the pleasure of the Governor, David G. Gutierrez of Salado, Texas (replacing Brodie V. "Brody" Burks of Austin, who resigned).

Appointed to the Texas State Council for Interstate Adult Offender Supervision, for a term to expire February 1, 2025, Allegra Hill of Austin, Texas (replacing Brodie V. "Brody" Burks of Austin, who resigned).

Designated as chairman of the Texas Board of Criminal Justice, for a term to expire at the pleasure of the Governor, Patrick L. O'Daniel of Austin (Mr. O'Daniel is replacing Jesse W. "Dale" Wainwright of Austin).

Appointed to the Texas Board of Criminal Justice, for a term to expire February 1, 2021, Eric J.R. Nichols of Austin, Texas (replacing Jesse W. "Dale" Wainwright of Austin, who resigned).

Appointments for January 10, 2020

Appointed to the Economic Incentive Oversight Board, for a term to expire at the pleasure of the Governor, Adrian S. Cannady of Belton, Texas (replacing Adriana R. Cruz of Austin).

Appointed to the Governor's Broadband Development Council pursuant to HB 1960, 86th Legislature, Regular Session, for a term to expire August 31, 2024, Juli A. Blanda of Aransas Pass, Texas.

Appointed to the Governor's Broadband Development Council pursuant to HB 1960, 86th Legislature, Regular Session, for a term to expire August 31, 2024, James M. "Mike" Easley of Austin, Texas.

Appointed to the Governor's Broadband Development Council pursuant to HB 1960, 86th Legislature, Regular Session, for a term to expire August 31, 2024, Jennifer K. Harris of Austin, Texas.

Appointed to the Governor's Broadband Development Council pursuant to HB 1960, 86th Legislature, Regular Session, for a term to expire August 31, 2024, Marshall A. Harrison of Sunray, Texas.

Appointed to the Governor's Broadband Development Council pursuant to HB 1960, 86th Legislature, Regular Session, for a term to expire August 31, 2024, Steven E. "Steve" Johnson, Ph.D., of Austin, Texas.

Appointed to the Governor's Broadband Development Council pursuant to HB 1960, 86th Legislature, Regular Session, for a term to expire August 31, 2024, Thomas J. "Tom" Kim, M.D., of Austin, Texas.

Appointed to the Governor's Broadband Development Council pursuant to HB 1960, 86th Legislature, Regular Session, for a term to expire August 31, 2024, Lindsey A. Lee of Edna, Texas.

Appointed to the Governor's Broadband Development Council pursuant to HB 1960, 86th Legislature, Regular Session, for a term to expire August 31, 2024, Marty C. Lucke of Floydada, Texas.

Appointed to the Governor's Broadband Development Council pursuant to HB 1960, 86th Legislature, Regular Session, for a term to expire August 31, 2024, Frank Moreno, Jr. of Crystal City, Texas.

Appointed to the Governor's Broadband Development Council pursuant to HB 1960, 86th Legislature, Regular Session, for a term to expire August 31, 2024, Saurin N. Patel, M.D., Austin, of Texas.

Appointed to the Governor's Broadband Development Council pursuant to HB 1960, 86th Legislature, Regular Session, for a term to expire August 31, 2024, Kirk H. Petty of Vernon, Texas.

Appointed to the Governor's Broadband Development Council pursuant to HB 1960, 86th Legislature, Regular Session, for a term to expire August 31, 2024, Joseph G. "Greg" Pittman of Sherman, Texas.

Appointed to the Governor's Broadband Development Council pursuant to HB 1960, 86th Legislature, Regular Session, for a term to expire August 31, 2024, Edward K. "Kenny" Scudder of Odessa, Texas.

Appointed to the Governor's Broadband Development Council pursuant to HB 1960, 86th Legislature, Regular Session, for a term to expire August 31, 2024, Edward J. "Eddy" Smith of Abilene, Texas.

Appointed to the Governor's Broadband Development Council pursuant to HB 1960, 86th Legislature, Regular Session, for a term to expire August 31, 2024, William C. "Bill" Sproull of Richardson, Texas.

Designated as presiding officer of the Texas Board of Professional Engineers and Land Surveyors, for a term to expire at the pleasure of the Governor, Sina K. Nejad, D.Eng. of Beaumont (Dr. Nejad is replacing Daniel O. Wong, Ph.D. of Houston).

Appointed to the Texas Board of Professional Engineers and Land Surveyors, for a term to expire September 26, 2025, Coleen M. Johnson of Leander, Texas (replacing Daniel O. Wong, Ph.D. of Houston, whose term expired).

Appointed to the Texas Board of Professional Engineers and Land Surveyors, for a term to expire September 26, 2025, Sina K. Nejad, D.Eng., of Beaumont, Texas (Dr. Nejad is being reappointed).

Appointments for January 13, 2020

Appointed to the Education Commission of the States, for a term to expire at the pleasure of the Governor, Harrison Keller of Austin, Texas (replacing Raymond A. Paredes, Ph.D. of Austin).

Appointed to the Education Commission of the States, for a term to expire at the pleasure of the Governor, Morgan Meyer of Dallas, Texas (replacing Dwayne Bohac of Houston)

Appointed to the Red River Boundary Commission, for a term to expire at the pleasure of the Governor, David F. Bristol of Prosper, Texas (replacing Maher Maso of Frisco, whose term expired).

Appointed to the Red River Boundary Commission, for a term to expire at the pleasure of the Governor, William P. "Bill" Douglass of Sherman, Texas (Mr. Douglass is being reappointed).

Appointed to the Red River Boundary Commission, for a term to expire at the pleasure of the Governor, Anthony T. Ricciardelli of Plano, Texas (replacing William B. "Bill" Madden of Dallas, whose term expired).

Appointed to the Red River Boundary Commission, for a term to expire at the pleasure of the Governor, Reginald B. "Reggie" Smith, Jr. of Van Alstyne, Texas (replacing Lawrence A. "Larry" Phillips of Sherman, whose term expired).

Appointed to the Red River Boundary Commission, for a term to expire at the pleasure of the Governor, William G. "Willie" Steele of Sherman, Texas (replacing Thomas "Ryan" Johnson of Sherman, whose term expired).

Designated as presiding officer of the Red River Boundary Commission, for a term to expire at the pleasure of the Governor, Reginald B. "Reggie" Smith, Jr. of Van Alstyne (Representative Smith is replacing Lawrence A. "Larry" Phillips of Sherman).

Appointed to the Risk Management Board, for a term to expire February 1, 2025, Ricardo "Rick" Galindo, III, of San Antonio, Texas (replacing John W. Youngblood of Cameron, whose term expired).

Appointed to the Risk Management Board, for a term to expire February 1, 2025, Lloyd M. Garland, M.D., of Lubbock, Texas (Dr. Garland is being reappointed).

Appointments for January 14, 2020

Appointed to the Southern Regional Education Board for a term to expire June 30, 2021, Harrison Keller of Austin, Texas (replacing Raymond A. Paredes, Ph.D., of Austin who resigned).

Appointed to the Southern Regional Education Board, for a term to expire June 30, 2022, Michael H. "Mike" Morath of Austin, Texas (Commissioner Morath is being reappointed).

Appointed to the Southern Regional Education Board for a term to expire June 30, 2023, Pedro Martinez of San Antonio, Texas (Superintendent Martinez is being reappointed).

Appointed to the Texas Public Finance Authority, for a term to expire February 1, 2025, Shanda G. Perkins of Burseson, Texas (replacing Ruth Corry Schiermeyer of Lubbock, whose term expired).

Appointed to the Texas Public Finance Authority, for a term to expire February 1, 2025, Benjamin E. "Ben" Streusand of Spring, Texas (replacing Gerald B. Alley of Arlington, whose term expired).

Designated as presiding officer of the Texas State Library and Archives Commission, for a term to expire at the pleasure of the Governor, Martha Wong, Ed.D. of Houston, Texas (Dr. Wong is replacing Michael C. "Mike" Waters of Dallas).

Appointed to the Texas State Library and Archives Commission for a term to expire September 28, 2025, David C. Garza of Brownsville, Texas (Mr. Garza is being reappointed).

Appointed to the Texas State Library and Archives Commission for a term to expire September 28, 2025, Bradley S. "Brad" Tegeler of Austin, Texas (replacing Michael C. "Mike" Waters of Dallas, whose term expired).

Greg Abbott, Governor
TRD-202000309



Proclamation 41-3713

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, certified on December 12, 2019, that exceptional drought conditions posed a threat of imminent disaster in Bandera, Blanco, Burnet, Concho, Karnes, Kendall, Kinney, Llano, Maverick, Medina, Real, Uvalde, Val Verde, Zapata, and Zavala counties. I hereby certify that exceptional drought conditions continue to pose a threat of imminent disaster in Bandera, Blanco, Burnet, Karnes, Kendall, Kinney, Llano, Maverick, Medina, Real, Uvalde, Val Verde, Zapata, and Zavala counties, and that such conditions also now pose a threat of imminent disaster in Bell, McCulloch, and Williamson counties.

WHEREAS, significantly low rainfall and prolonged dry conditions continue to increase the threat of wildfire across these portions of the state; and

WHEREAS, these drought conditions pose an imminent threat to public health, property, and the economy;

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in Bandera, Bell, Blanco, Burnet, Karnes, Kendall, Kinney, Llano, Maverick, McCulloch, Medina, Real, Uvalde, Val Verde, Williamson, Zapata, and Zavala counties based on the existence of such threat.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 3rd day of January, 2020.

Greg Abbott, Governor
TRD-202000312



Proclamation 41-3714

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Robbie Ann Hamilton, D.O.B. January 30, 1962, was sentenced for various offenses in Texas; and

WHEREAS, she was sentenced in the County Court at Law of Collin County on June 22, 1984, to one day in jail and a \$50 fine for the offense of Theft by Check over the value of \$20.00 but less than \$200.00, Cause No. I-1205-8-2S; and

WHEREAS, she was sentenced in a Dallas County court on August 28, 1984, to six months of probation and a \$300 fine for Theft \$20, Cause No. M8427519; and

WHEREAS, she was sentenced in County Criminal Court 7 of Dallas County on December 1, 1988, to six months of probation and a \$100 fine for Theft by Check \$20, Cause No. MB8802216; and

WHEREAS, she was sentenced in a Dallas County court on October 12, 1989, to 15 days in jail for Theft \$20, Cause No. MB8630040; and

WHEREAS, she was sentenced in the 271st Judicial District Court of Wise County on May 6, 2002, to three years of deferred adjudication probation and a \$1,500 fine for the offense of Possession of a Controlled Substance, methamphetamine, less than one gram, Cause No. 11,998; and

WHEREAS, she was sentenced in the 203rd Judicial District Court of Dallas County on April 24, 2003, to ten years of deferred adjudication probation for Unlawful Possession with Intent to Deliver a Controlled Substance, to-wit: methamphetamine, Cause No. F-0325626-IP; and

WHEREAS, the Texas Board of Pardons and Paroles has recommended a Full Pardon and Restoration of Full Civil Rights of Citizenship for each of these offenses;

NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, by virtue of the authority vested in me under the Constitution and laws of this State, and acting upon the recommendation of the Texas Board of Pardons and Paroles, do hereby grant unto the said:

ROBBIE ANN HAMILTON

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HER CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. I-1205-8-2S, IN COLLIN COUNTY, TEXAS.

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HER CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. M8427519, IN DALLAS COUNTY, TEXAS.

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HER CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. MB8802216, IN DALLAS COUNTY, TEXAS.

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HER CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. MB8630040, IN DALLAS COUNTY, TEXAS.

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HER CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. 11,998, IN WISE COUNTY, TEXAS.

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HER CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. F-0325626-IP, IN DALLAS COUNTY, TEXAS.

I HEREBY DIRECT that a copy of this proclamation be filed in the office of the Secretary of State.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed hereon, this the 14th day of January, 2020.

Greg Abbott, Governor
TRD-202000314



Proclamation 41-3715

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 14th day of January, 2020.

Greg Abbott, Governor

TRD-202000316



THE ATTORNEY GENERAL

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>.)

Requests for Opinions

RQ-0329-KP

Requestor:

Mr. Harrison Keller

Commissioner of Higher Education

Texas Higher Education Coordinating Board

Post Office Box 12788

Austin, Texas 78711

Re: Whether rider 52 to article III of the General Appropriations Act allows students to qualify for financial assistance through the Program to Encourage Certification to Teach Bilingual Education, English as a Second Language, or Spanish by taking an exam comparable to the State Board for Educator Certification Bilingual Target Language Proficiency Test or by passing a practice exam (RQ-0329-KP)

Briefs requested by February 20, 2020

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

TRD-202000336

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: January 28, 2020



Opinions

Opinion No. KP-0285

The Honorable Jo Anne Bernal

El Paso County Attorney

500 East San Antonio, Room 503

El Paso, Texas 79901

Re: Construction of Transportation Code section 502.010, concerning a county assessor-collector's authority to refuse to register motor vehicles based on certain "scofflaw" information (RQ-0297-KP)

SUMMARY

In a county that does not have an information-sharing contract with the Department of Motor Vehicles, the county assessor-collector may

refuse to register a motor vehicle under subsection 502.010(a) of the Transportation Code upon receipt of information that the owner owes the county a fine, fee, or tax that is past due, or failed to appear in certain criminal matters as specified in the statute. Subsections (c), (d), (e), (f), and the second sentence of subsection (b-1) are not applicable to a county that does not have an information-sharing contract with the Department of Motor Vehicles.

Under subsection 502.010(b-1), information provided to make a determination whether to refuse to register a motor vehicle under subsection 502.010(a)(1) expires on the second anniversary of the date information was provided and applies whether or not the county has an information sharing contract with the Department of Motor Vehicles. Section 502.010 does not provide for the expiration of information about a vehicle owner's failure to appear in the specified criminal matters.

A county's contract with the Department of Public Safety relating to drivers license renewal under section 706.002 of the Transportation Code does not affect its authority or duties with respect to motor vehicle registration under section 502.010.

Opinion No. KP-0286

The Honorable Rob Baiamonte

Goliad County Attorney

Post Office Box 24

Goliad, Texas 77963

Re: Procedure to repeal a special road tax (RQ-0298-KP)

SUMMARY

To initiate an election to repeal a county road tax adopted under section 256.052 of the Transportation Code, a county commissioners court must receive a petition calling for the election signed by 200 registered voters of the county. However, under section 256.053, the commissioners court may grant the petition only if satisfactory proof is presented of (1) great dissatisfaction with the tax; and (2) probable success of the election. What constitutes satisfactory proof is a question of fact for the commissioners court to determine in the first instance, subject to judicial review.

Opinion No. KP-0287

The Honorable Matthew A. Mills

Hood County Attorney

1200 West Pearl Street

Granbury, Texas 76048

Re: Voting entitlement of a taxing unit in the election of an appraisal district's board of directors under Tax Code section 6.03(d) (RQ-0299-KP)

S U M M A R Y

Tax Code section 6.031 authorizes a change to the voting entitlement of taxing units in the appointment of an appraisal district's board of directors. Under the transition provisions of House Bill 1010 from 2007, a court would likely conclude that House Bill 1010 invalidated any previously adopted alternative method for determining that voting entitlement.

The voting entitlement for the appointment of appraisal district directors should be determined by Tax Code section 6.03(d), absent action

taken under Tax Code section 6.031 to change that method subsequent to House Bill 1010.

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

TRD-202000337

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: January 28, 2020



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 4. TEXAS MILITARY PREPAREDNESS COMMISSION

The Texas Military Preparedness Commission (Commission) proposes amendments to 1 TAC §§4.1 - 4.4, 4.7, 4.30, 4.32 - 4.40, concerning the Texas Military Value Revolving Loan Fund and the Defense Economic Adjustment Assistance Grant program under Subchapters D and E, Chapter 436 of the Texas Government Code.

EXPLANATION OF PROPOSED AMENDMENTS

The Texas Military Value Revolving Loan Fund (TMVRLF) offers loans of financial assistance to defense communities for projects that enhance the military or defense value of a military base or defense facility, that minimize the negative effects of a defense base reduction on the defense community, or that accommodate new or expanded military missions assigned to a military base or defense facility, among other purposes. The Defense Economic Adjustment Assistance Grant (DEAAG) program offers grants to eligible local governmental entities that the Commission determines may be adversely or positively affected by an anticipated, planned, announced, or implemented action of the United States Department of Defense to close, reduce, increase, or otherwise realign defense worker jobs or facilities. The primary purpose of the proposed amendments to the rules is to update the Commission's policies and procedures used to issue TMVRLF loans and grants under the DEAAG program, as well as to respond to statutory revisions to the Texas Government Code enacted by the 86th Legislature, Regular Session, in Senate Bill 2131 (SB 2131) and House Bill 2119 (HB 2119).

The Commission proposes to amend 1 TAC §4.1 to remove the description of allowable uses for TMVRLF loans because the eligible uses for such loans are set out in Chapter 436 of the Texas Government Code. The proposed amendments to §4.1 would also remove defined terms related to the Texas Economic Development Bank (Bank), which is no longer involved in the TMVRLF program, and update defined terms to cross-reference their meanings in statute. The Commission further proposes to add definitions for "military installation" and "redevelopment value," to remove language in other definitions in order to provide clearer guidance to potential applicants, and to make other clean-up and updating changes.

The Commission proposes to amend §4.2 to clarify the information required to be submitted by TMVRLF loan applicants based on current practices, to remove references to the Bank, and to make other clean-up edits.

The Commission proposes to amend §4.3 to remove the consideration of certain company-related information that is not relevant to defense communities and to remove references to the Bank, as well as make other clarifying revisions.

The Commission proposes to amend §4.4 to remove the minimum loan application requirements because, due to the statutory revisions enacted in SB 2131 and HB 2119, the Commission is now required to consult with the Texas Public Finance Authority to adopt the loan application form. The proposed amendments to §4.4 would also remove references to involvement by the Bank in the TMVRLF process, remove the application fee, clarify that a successful loan applicant may bear all closing costs of a loan, and make other clean-up revisions.

The Commission proposes to amend §4.7 to make a few clean-up revisions and to clarify that the Director of the Commission may waive a rule on the Commission's behalf.

The Commission proposes to amend §4.30 to remove the description of the goals, eligibility requirements, and criteria for DEAAG funds because DEAAG eligibility requirements and criteria are set out in Chapter 436 of the Texas Government Code, and thus are surplusage in the rule, and because the goals of the program are unnecessary additional background. The proposed amendments to §4.30 would also update the background of the DEAAG program based on current statute; make clean-up revisions to the defined terms, such as to ensure that the terms appear in alphabetical order; revise certain defined terms to cross-reference their meanings in statute; and remove unused terms.

The Commission proposes to amend §4.32 to remove the more narrow eligibility criteria for DEAAG funds set out therein in order to rely on the eligibility criteria set out in Chapter 436 of the Texas Government Code. The proposed amendments to §4.32 would also expand the existing requirement to provide documentation of defense worker job loss to include documentation of defense worker job gain for any positively-affected local governmental entities, as well as to include documentation of actual, anticipated, planned, or announced defense worker job loss or gain, as applicable. The Commission further proposes to amend the rule to eliminate the minimum numeric requirements to be included in such documentation.

The Commission proposes to amend §4.33 to conform such documentation requirements to the requirements proposed under §4.32 and to remove the requirement that applicants obtain approval from the Commission before submitting other sources of documentation with their applications.

The Commission proposes to amend §4.34 to remove the descriptions of possible grant award amounts and matching requirements because the amount of grant awards allowed to be issued by the Commission is set out in Chapter 436 of the Texas Government Code. The proposed amendments to §4.34 would

also remove the involvement of a local governmental entity's Chief Financial Officer in making certifications regarding the entity's financial status and would remove the requirement to provide specific information on sales taxes and bond authority, as well as make certain clean-up revisions.

The Commission proposes to amend §4.35 to adjust cross-references to other rules that are proposed for amendment in this notice and to make other clean-up edits.

The Commission proposes to amend §4.36 to remove the discussion of appointing the DEAAG review panel because such mechanism is set out in Chapter 436 of the Texas Government Code. The proposed amendments to such rule would also clarify the Commission's role in relation to the review and scoring of applications by the DEAAG review panel, as well as make various clean-up revisions.

The Commission proposes to amend §4.37 to eliminate the requirement that DEAAG funding be withdrawn in the event a grant awardee's project is rejected for other funding and instead adds that the Commission may withdraw funding if a project or its financing deviates from the description in the DEAAG application. The proposed amendments to §4.37 would also remove the discussion of availability of funding over a fiscal biennium and would make other clean-up edits.

The Commission proposes to amend §4.38 to remove the list of provisions required to be included in a grant contract between the grantee and the Office of the Governor because such grant contracts already must include provisions required by applicable law and generally include relevant, standard terms and conditions of the Office of the Governor, as well as other terms set out in the Uniform Grant Management Standards or other grant standards.

The Commission proposes to amend §4.39 and §4.40 to make a few clean-up revisions and to clarify that the Director of the Commission may waive a rule on the Commission's behalf under §4.39.

FISCAL NOTE

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

PUBLIC BENEFIT AND COSTS

Mr. Graf has also determined that for each year of the first five years in which the proposed amendments are in effect, the public benefit anticipated as a result of enforcing or administering the proposed amendments will be to implement the statutory provisions of SB 2131 and HB 2119 and to provide clearer guidance to TMVRLF loan applicants and DEAAG applicants regarding the

Commission's policies and process for reviewing such applications. There are no anticipated economic costs to persons required to comply with the proposed amendments; the proposed changes to current §4.4(d) clarify that the existing closing fee associated with a loan includes all closing costs. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

Finally, Mr. Graf has determined that for each year of the first five years in which the proposed amendments are in effect, the amendments will have the following effect on government growth. The proposed amendments will not create or eliminate any government programs or employee positions. Additionally, the proposed amendments will not require an increase or decrease in future legislative appropriations to the Commission. The proposed amendments will eliminate the application fee paid by TMVRLF applicants, and thus could be considered to decrease the fees paid to the Commission. The proposed amendments will not increase the fees paid to the Commission; the proposed changes to current §4.4(d) clarify that the existing closing fee associated with a loan includes all closing costs. Furthermore, the proposed amendments do not create a new regulation and do not limit existing regulations, but could be seen as expanding existing regulations by requiring positively-affected DEAAG applicants to provide documentation of defense worker job gain and to expand the type of job gain or loss to those that are actual, anticipated, planned, or announced. While no rules are repealed in their entirety, the proposed amendments do remove a number of subsections described in the explanation above. Furthermore, the proposed amendments neither increase nor decrease the number of individuals subject to the applicability of the rules. The proposed amendments are not anticipated to affect this state's economy.

SUBMITTAL OF COMMENTS

Written comments regarding the proposed amendments may be submitted to Alexandra Taylor, Office of the Governor, Texas Military Preparedness Commission, P. O. Box 12428, Austin, Texas 78711 or to Alexandra.Taylor@gov.texas.gov with the subject line "TMPC Rules." The deadline for receipt of comments is 5:00 p.m. CST on March 9, 2020. All requests for a public hearing on the proposed amendments, submitted under the Administrative Procedure Act, must be received by the Commission no more than fifteen (15) days after the notice of proposed changes in these sections have been published in the *Texas Register*.

SUBCHAPTER A. TEXAS MILITARY VALUE REVOLVING LOAN FUND PROGRAM

1 TAC §§4.1 - 4.4, 4.7

STATUTORY AUTHORITY

The amendments are proposed under Government Code, §436.101(f), which provides that the Commission shall adopt rules necessary to implement Chapter 436 of the Texas Government Code.

CROSS REFERENCE TO STATUTE

Subchapter D, Chapter 436, Government Code.

§4.1. *Introduction and Purpose.*

(a) The Texas Military Value Revolving Loan Fund provides a low cost source of revenue to eligible communities who meet the application criteria. The minimum amount of a loan is \$1,000,000, while the maximum amount of a loan is determined by the availability of funds and the creditworthiness of the applicant. State funding will be obtained through the sale of general obligation bonds. The State may provide up to 100 percent of the cost of the described project, dependent upon the creditworthiness of the applicant.

~~[(b) The Loan is designed to:]~~

~~[(1) assist defense communities in enhancing the military value of a defense facility based on the criteria established in the United States Department of Defense's (DoD) base realignment and closure process;]~~

~~[(2) provide financial assistance to defense communities for job creation or retention economic development projects that minimize the negative effects of a defense base realignment or closure decision that occurred in 1995 or later; or]~~

~~[(3) provide financial assistance to defense communities for infrastructure projects to accommodate new or expanded military missions resulting from a base realignment and closure decision that occurred in 1995 or later.]~~

(b) ~~[(c)]~~ Definitions. The following words and terms, when used in this subchapter ~~[section]~~, shall have the following meanings unless otherwise indicated.

(1) Applicant--A Defense Community, as defined in paragraph (5) of this subsection, applying for a loan from the ~~[Texas Military Value Revolving Loan]~~ Fund.

(2) Awardee--The Defense Community ~~[community]~~ whose loan application is approved by the Commission.

(3) Chief of Staff--The Chief of Staff of the Office of the Governor.

~~[(3) Bank--The Texas Economic Development Bank within the Office of the Governor, Economic Development and Tourism Office.]~~

(4) Commission--The Texas Military Preparedness Commission. The Commission is attached for administrative purposes to the Office of the Governor.

(5) Defense Community--A "Defense community" as defined in §397.001 of the Local Government Code ~~[political subdivision, including a municipality, county, or special district, that is adjacent to, near, or encompasses any part of a defense base].~~

(6) Defense Facility--A "Defense facility" as defined in §397.001 of the Local Government Code ~~[military base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including leased space, that is controlled by, or primarily supports, DoD activities].~~

~~[(7) Director of the Bank--Director of the Texas Economic Development Bank within the Office of the Governor.]~~

(7) ~~[(8)]~~ Director of the Commission--Director of the Texas Military Preparedness Commission.

(8) ~~[(9)]~~ Economic Redevelopment Value Statement--A statement that illustrates specific ways funds are to be used to promote economic development in the community to include that information as provided for in §397.0021 of the Local Government Code.

~~[(10) Chief of Staff--The Chief of Staff of the Office of the Governor.]~~

~~[(9) [(41)] Financial Partners--Federal and state agencies, private and public nonprofit foundations, local taxing authorities, and private investors who agree to provide money for projects eligible for funding under this program.~~

~~[(10) [(42)] Fund or TMVRLF--The Texas Military Value Revolving Loan Fund or account established under §436.156 of the Government Code [(TMVRLF)].~~

~~[(11) Military Installation--An activity under the jurisdiction of the Department of Defense, including leased space, that is controlled by, or primarily supports, Department of Defense activities.~~

~~[(13) Governing Board--Members of the Texas Military Preparedness Commission.]~~

~~[(12) [(44)] Military Value Enhancement Statement--A military base or defense facility value enhancement statement that illustrates specific ways funds are to be used to enhance the military or defense value of the military base or defense facility [installation] to include that information as provided for in §397.002 of the Local Government Code.~~

~~[(13) [(45)] Project--The construction, renovation, or acquisition for which a TMVRLF loan is requested.~~

~~[(14) [(46)] Project Costs--The Defense Community's total costs for completing the project, including any and all costs of financing and administration assessed by the Commission [Bank in accordance with §489.103 of the Texas Government Code].~~

~~[(15) Redevelopment Value--The extent to which an economic development project will minimize the negative effects of a defense base reduction, or an infrastructure project will assist the defense community in accommodating the new or expanded military missions that are assigned to the military facility.~~

§4.2. Military Value/Redevelopment Value Review and Pre-Application Assessment for Funds.

(a) The Defense Community shall submit the following information, as applicable, to the Director of the Commission:

(1) with respect to a Defense Community ~~[defense community]~~ applying for a loan under §436.153 of the ~~[Local]~~ Government Code, ~~[shall submit]~~ a Military Value Enhancement Statement; ~~[or]~~

(2) with respect to a Defense Community ~~[defense community]~~ applying for a loan under §436.1531 or §436.1532 of the ~~[Local]~~ Government Code, ~~[shall submit]~~ a Defense Community Economic Redevelopment Value Statement; and ~~[-]~~

(3) with respect to any Defense Community applying for a TMVRLF loan, a ~~[A]~~ pre-application assessment.

(b) The Commission shall review the Military Value Enhancement Statement or Economic Redevelopment Value Statement, as applicable, and perform:

(1) an analysis of the project feasibility; and

(2) an analysis of alternative funding for each project listed.

~~[(3) The Commission, in consultation with the Bank, shall review the applicant's pre-application assessment.]~~

(c) The Commission ~~[Bank]~~ shall review the applicant's pre-application assessment.

(d) The Commission ~~[Governing Board]~~ shall take into consideration the Military or Defense Value or Redevelopment Value, as applicable, and, by a majority vote, make its recommendation to approve or disapprove the Military Value Enhancement Statement or Economic Redevelopment Value Statement, as applicable.

§4.3. *Processing and Review of Applications.*

(a) The Commission~~], in consultation with the Bank,~~ shall conduct its review of the applicant's creditworthiness based on standard due diligence practices and procedures that are consistent with other Office of the Governor [Bank lending] programs including, but not limited to:

- (1) review of project description to assess whether it satisfies program criteria requirements;
- (2) quick assessment project considerations;
- ~~[(3) management assessment and current company news search;]~~
- (3) ~~[(4)]~~ economic/financial analysis;
- (4) ~~[(5)]~~ revenue analysis;
- (5) ~~[(6)]~~ credit rating review; and
- (6) ~~[(7)]~~ financial analysis summary - strengths, weaknesses, exceptions.

(b) In addition, the Commission, in consultation with the Texas Public Finance Authority, shall also be responsible for developing the loan and security structure including:

- (1) the loan term sheet;
- (2) the loan agreement; and
- (3) the bond sale activities.

§4.4. *Application for Funds.*

(a) The Commission, in consultation with the Texas Public Finance Authority [Bank], shall develop and adopt a formal loan application form to be included in the formal application process to assist in the evaluation of a loan submission. The application may require certain attachments and certifications.

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

~~[(1) the full legal name and description of requesting loan Applicant and each participating political subdivision under which debt is being issued;]~~

~~[(2) a description of the governing body and contact information for person authorized to represent the political subdivision. Include name, title, address, phone, fax number, and e-mail address;]~~

~~[(3) the name, address, phone, fax number, e-mail address, and contact person for legal counsel, financial advisor, contract administrator, project engineer, and any other consultant representing the applicant;]~~

~~[(4) the prior three years audited financial statements, as applicable, and projected financial statements, including loan repayment. The financial documents must include the applicant's income statement, balance sheet and cash flow statement;]~~

~~[(5) documentation of attempts to obtain alternative financing, if applicable;]~~

~~[(6) a statement that financing is necessary because full financing is unavailable in traditional capital markets or credit has been offered on terms that would preclude the success of the project;]~~

~~[(7) a financial plan that shows how loan proceeds will generate income to repay the loan;]~~

~~[(8) the number of jobs to be created and/or retained in the state; and]~~

~~[(9) the project budget, including the most current itemized project cost estimates (include all costs, specifically construction, engineering services, legal, and fiscal costs, and funding sources and percentage contribution in a Sources and Uses Statement format). Identify source of these estimates (i.e., engineer, finance director, financial advisor);]~~

~~[(e) Applicant shall also include one (1) certified original of:]~~

~~[(1) a resolution/ordinance requesting financial assistance from the Commission authorizing the submission of the application and designating the official representative(s) for submitting the application, executing any necessary documents and appearing before the Commission;]~~

~~[(2) an affidavit executed by the official representative stating that the facts contained in the application are true and correct to the best of their knowledge and belief;]~~

~~[(3) an affidavit executed by the official representative stating that the application was approved by the governing body of the applicant in an open meeting;]~~

~~[(4) a certificate of compliance executed by an official representative which warrants compliance by the participating political subdivision with all representations in the application; all federal (where applicable), state, and local laws, and all rules/published policies of the Commission and EDT; and]~~

~~[(5) a statement of pending claims or litigation against the applicant that might affect the ability of the applicant to issue debt or that could affect the Commission's ability to recover its investment;]~~

~~[(b) [(d)] [Application and closing fee. Applicants shall pay a fee provided as prescribed by the Bank for all applications, made payable to the Office of the Governor. In addition, successful Successful applicants may be required to pay, upon financing [by the Bank], all [a] closing costs [fee].]~~

§4.7. *Office and Commission Responsibilities.*

(a) In carrying out its duties and responsibilities under this subchapter [the Act], the Commission shall:

- (1) publicize the loan program to potential applicants;
- (2) work closely with loan applicants to ensure the application is complete and all relevant material is provided;
- (3) establish and conduct the evaluation process in a responsive manner to maximize the opportunity to acquire federal and other funding;
- (4) develop contracts with awardees that include sufficient performance measures, audit requirements, and reporting requirements to ensure prudence and due diligence in the expenditure of state funds; and
- (5) minimize reporting requirements that may be repetitive of reporting required by federal grant agencies or that may be unnecessary for the effective monitoring of the program.

(b) ~~[Waiver.]~~ The Director on behalf of the Commission, in consultation with the Chief of Staff or his designee, may waive any provision of this chapter upon a finding that the public interest would be furthered by granting the waiver.

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 January 17, 2020.

TRD-202000234

Keith Graf

Director, Texas Military Preparedness Commission
Office of the Governor

Earliest possible date of adoption: March 8, 2020

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



SUBCHAPTER B. DEFENSE ECONOMIC ADJUSTMENT ASSISTANCE GRANT PROGRAM

1 TAC §§4.30, 4.32 - 4.40

STATUTORY AUTHORITY

The amendments are proposed under Government Code, §436.101(f), which provides that the Commission shall adopt rules necessary to implement Chapter 436 of the Texas Government Code.

CROSS REFERENCE TO STATUTE

Subchapter E, Chapter 436, Government Code.

§4.30. *Introduction and Purpose.*

(a) Background. The Texas Defense Economic Adjustment Assistance Grant Program (DEAAG) provides state funds to assist eligible local governmental entities [~~defense communities~~] that [~~have been or~~] may be adversely or positively impacted by an anticipated, planned, announced, or implemented action of the United States Department of Defense to close, reduce, increase, or otherwise realign defense worker jobs or facilities.

[(b) The goal of the program is to increase and/or retain employment opportunities for dislocated defense workers and residents of adversely affected defense communities and reuse vacated property as efficiently as possible. The goal is to also assist positively affected defense communities that receive new, expanded, or retained military missions as a result of the United States Department of Defense Base Realignment and Closure process.]

[(e) A local government entity is eligible for a grant if it is:]

[(1) a municipality or county that is a defense community:]

[(2) a regional planning commission that has a defense community within its boundaries:]

[(3) a public junior college district all or part of which is located in a defense community:]

[(4) a campus or extension center of the Texas State Technical College system located in a defense community:]

[(5) a defense based development authority created under Chapter 379B, Local Government Code; or]

[(6) a political subdivision having the power of a defense development authority created under Chapter 379B, Local Government Code.]

[(d) Grant Criteria:]

[(1) To meet a matching money or investment requirement in order to receive from the United States Government assistance that is

provided to allow the government entity to respond to or recover from an event listed in §486.003 of the Government Code;]

[(2) Acquiring federal grant assistance or for sharing in the costs of purchases of property from the Department of Defense or its designated agent, new construction, rehabilitation, renovation or demolition of facilities;]

[(3) Construct infrastructure and other projects necessary to accommodate a new, expanded or retained military mission(s) at a military facility located in or near the local government entity;]

[(4) Construct infrastructure and other projects necessary to reduce the impact of an action of the Department of Defense that will adversely impact a defense facility located in or near the local governmental entity;]

[(5) If the grantee is a public junior college or a technical college, grant proceeds may be used to purchase or lease equipment to train defense workers whose jobs have been threatened, lost, gained or retained; or to train workers to support military installations or defense facilities.]

(b) [(e)] Definitions. The following words and terms, when used in this subchapter, shall have the following meanings unless indicated otherwise.

(1) Application Deadline--Not later than 5:00 P.M. Central Time on the closing date indicated in the grant solicitation.

[(1) Awardee--The local governmental entity whose application is approved by the governing board.]

(2) Commission--The Texas Military Preparedness Commission. The Commission is attached to the Office of the Governor for administrative purposes.

(3) Defense Community--A "Defense community" as defined in §397.001 of the Local Government Code.

(4) [(2)] Defense worker--A "Defense worker" as defined in §436.001 of the Government Code.

[(A) An employee of the United States Department of Defense, including a member of the armed forces and government civilian workers;]

[(B) An employee of a government agency or private business, or entity providing a Department of Defense related function, who is employed on a defense facility;]

[(C) An employee of a business that provides direct services or products to the Department of Defense and whose job is directly dependent on defense expenditures; or]

[(D) An employee or private contractor employed by the United States Department of Energy working on a defense or Department of Energy facility in support of a Department of Defense related project.]

(5) [(3)] Defense worker job--A "Defense worker job" as defined in §436.001 of the Government Code [Department of Defense authorized permanent position or a position held or occupied by one or more defense workers for more than 12 months].

[(4) Defense Installation--A military base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including leased space, that is controlled by, or primarily supports, DoD's activities.]

[(5) Defense community--A political subdivision, including a municipality, county, or special district, that is adjacent to, is near, or encompasses any part of a defense base.]

[(6) New direct permanent job--A new employment position created by a qualified business that provides at least 1,820 hours of employment a year after the completion of the project and whose position is within the governmental entity's defense community and can be verified. A new direct permanent job can also include subcontractors to a qualified business so long as those jobs relate directly to the work being performed as defined in the DEAAAG application and who perform no less than 50 percent of the person's service for the qualified business in the government entity's defense community and can be verified.]

[(7) Retained jobs--A defense worker employed within the government entity's defense community before a Department of Defense action and is retained as a qualified employee by a qualified employer after the date on which the project is completed, employed at 1,820 hours annually and is located within the government entity's defense community and can be verified.]

[(8) Office--The Office of the Governor.]

[(9) Commission--Texas Military Preparedness Commission. The Commission is attached to the Office of the Governor for administrative purposes.]

[(6) [(10)] Director--The Director of the Texas Military Preparedness Commission or his designee.

[(7) [(11)] Financial partners--Federal and state agencies, private and public non-profit foundations, local taxing authorities, and private investors who agree to provide money for a project eligible for funding under this grant.

[(12) Fiscal year--The State of Texas fiscal year, September 1st through August 31st.]

[(13) Application Deadline--Not later than 5:00 PM Central Time on the closing date indicated in the grant solicitation.]

[(14) Governing Board--The Commissioners of the Texas Military Preparedness Commission.]

[(8) [(15)] Review Panel--The Defense Economic Adjustment Assistance [Review] Panel established pursuant to §436.205(a) of the Government Code to [; a group of at least three and not more than five professional full-time employees from within the Office of the Governor, who] evaluate grant applications and make grant award recommendations to the Commission [governing board].

[(16) Qualified Business--A business that is engaged in or has provided substantial commitment to initiate the active conduct of a trade or business within the government entity's defense community.]

§4.32. Eligibility for Funds.

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

[(1) The proposed or actual establishment, realignment, or closure of a defense facility;]

[(2) The cancellation or termination of a United States Department of Defense contract or the failure of the Department of Defense to proceed with an approved major weapons system program;]

[(3) A publicly announced planned major reduction in Department of Defense spending that would directly and adversely affect the community;]

[(4) The closure or a significant reduction of the operations of a defense facility as the result of a merger, acquisition, or consolidation of a defense contractor operating the facility.]

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

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

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

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

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

[(4) Average defense worker salaries.]

§4.33. Documentation.

Appropriate documentation required under §4.32 of this title (relating to Eligibility of Funds) verifying actual, anticipated, planned, or announced defense worker job loss or defense worker job gain [defense worker jobs expected to be lost, gained or retained] must be submitted with the application, including documentation from, but not limited to:

(1) Information from Department of Defense manpower or personnel records, socio-economic impact studies and Environmental Impact Statements; or

(2) United States Census Bureau, Department of Labor, or Texas Workforce Commission reports or statistics. [; or]

[(3) Other data provided by the local governmental entity and approved by the Commission may also serve as appropriate documented evidence.]

§4.34. Certification [Maximum and Minimum Awards].

[(a) Amount. The minimum amount of award will be \$50,000. The maximum amount of award will be \$5 million.]

[(b) Percentage. The governing board may provide up to:]

[(1) 50 percent of the amount of matching money or investment that the local governmental entity is required to provide for acquiring federal grants; or]

[(2) 50 percent of the local governmental entity's investment for qualifying redevelopment projects; or]

[(3) 80 percent of the amount of matching money or investment required in cases where the local governmental entity demonstrates to the Commission that resources are not available because of a limited local governmental entity budget; or]

[(4) 100 percent to a public junior college, a campus or extension center as defined in §486.003(a)(3) or (4) of the Government Code.]

[(5) The Commission may make a grant to an eligible local governmental entity without regard to the availability or acquisition of matching money in accordance with §436.202(d) of the Government Code.]

~~[(c) Certification.]~~

~~(a) [(4)] Local governmental entities are encouraged to acquire financial assistance for eligible development projects from a variety of sources including federal, state, local and private/public foundations. The [Chief Financial Officer of the] local governmental entity or the local governing body submitting the application will provide a [adequate] certification that [showing] reasonable local community efforts have been made to acquire funding from other sources when the state is the only other financial partner.~~

~~(b) [(2)] In submitting an application to request a grant amount under §436.202(c) of the Government Code [under subsection (b)(3) of this section], the [Chief Financial Officer of the] local governing body will certify that the local community budget and resources are not adequate or available and shall provide specific information on local efforts to secure adequate funding. [Justification should include an overview of the status of development sales tax efforts and bond authority.]~~

~~[(d) Community Support.]~~

~~[(1) Applicants shall provide a minimum matching money investment of 50 percent of the amount of DEAAAG funding being requested.]~~

~~[(2) The Commission may waive the 50 percent requirement to a 20 percent matching money investment of the amount of DEAAAG funding being requested where the local governmental entity demonstrates to the Commission that resources are not available because of a limited local governmental entity budget.]~~

~~[(3) When submitting an application under paragraph (2) of this subsection, the Chief Financial Officer or the local governing body making application will certify that local community budget and resources are not adequate or available and provide specific information on local efforts to secure adequate funding. Justification should include an overview of the status of development sales tax efforts and bond authority.]~~

§4.35. Application for Funds.

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

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

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

~~(2) An overview of the Department of Defense action [event(s)] that qualifies the local governmental entity [qualify the local government, under the eligibility criteria described in §4.32 of this title (relating to Eligibility for Funds),] to apply for the grant program;~~

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

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

~~(5) A detailed financial plan for the project.~~

§4.36. Processing and Review of Application.

~~(a) The applicant [local governing body] will submit a grant application [applications for the program] to the [Texas Military Preparedness] Commission.~~

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

~~(c) The [Texas Military Preparedness] Commission will:~~

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

~~(2) Evaluate each application for completeness.~~

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

~~[(e) The Director will:]~~

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

~~[(2) Appoint a review panel chairman.]~~

~~(c) [(f)] The Review Panel will:~~

~~(1) Review applications, score, and make recommendations to the Commission [governing board];~~

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

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

~~(B) The significance of the number of jobs lost, gained or retained in relation to the workforce in the local governmental entity's jurisdiction;~~

~~(C) The added military value of the project; and~~

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

~~(f) [(g)] The Commission [Governing Board] will:~~

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

~~(2) Ensure that the Review Panel does not show bias in scoring applications [one defense community is not favored over another in approving or disproving funding];~~

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

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

~~(5) Provide a statement of explanation for the funding round of the [each application] approved applications that are [or disapproved that is] not in agreement with the Review Panel recommendations.~~

§4.37. Availability of Funds.

~~(a) Funds commitment. Once approved by the Commission [governing board] for an award, program money becomes encumbered, [committed to the awardee] subject to the availability of funds.~~

~~(b) [(4)] If the Commission determines that a qualified Defense Economic Adjustment Assistance Grant Program awardee has a deviation from the project scope or other financial commitments set out in the awardee's grant application, [proposal has been rejected by the federal agency or other financial partners,] the commitment of funding previously committed may [will] be withdrawn and the funding amount re-allocated to other applicants. [The awardee will be given 30 days to renegotiate financial arrangements prior to withdrawal of the state program commitment.]~~

{(2) If the Commission has determined that an awardee has secured final approval from federal agencies and other financial partners, program funds will be committed to the awardee, subject to availability of funds.}

{(3) If the only partner in the project is the local governmental entity, funds will be committed to the entity upon final approval and encumbrance of funds by the awardee.}

{(b) Non-availability of funds. The Commission expects that availability of program funds will decrease significantly as the state funding biennium progresses. When all monies appropriated by the Texas Legislature to the Commission for a funding biennium have been committed to qualified awardees, remaining applicants shall be notified that funds are no longer available.}

(c) The Commission may offer less funding than is requested by the applicant.

§4.38. Awardee Responsibilities.

In order to receive reimbursement [disbursement] of grant program funds that have been committed to them, awardees will be required to enter into a grant [by] contract with the Office of the Governor. [to:]

{(1) Have a system established in writing to ensure that appropriate officials provide necessary internal reviews and approvals for the expenditure of funds and for monitoring project performance and adherence to federal award and/or state terms and conditions.}

{(2) Have financial management systems that meet the requirements of the Commission.}

{(3) Retain financial management records, supporting documents, statistical records, and other materials pertinent to the award for a period of three or more years following submission of the final project report and make these records available to the Commission upon request.}

{(4) Be responsible for performing the duties and tasks described under all project grant agreements with federal, state and other financial partners.}

{(5) Provide the Commission with copies of all project documentation required by federal or other financial partners.}

{(6) Provide project demonstrations, site inspections, photo or other additional documentation, including written materials to substantiate benefit to the Texas economy, as requested by the Commission.}

{(7) Honor intellectual property rights of project participants as outlined in any agreements made to facilitate fulfillment of award activities.}

{(8) Agree that the award may be suspended or terminated if the awardee fails to comply with Commission terms and conditions of the award or if the financial partnership is suspended or terminated.}

{(9) Agree that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under the Defense Economic Adjustment Assistance Grant Program based on grounds of race, color, national origin, religious affiliation, handicap, or sex.}

{(10) Agree that the Commission shall not be held liable in the event of damages to persons or property which may occur in the course of activities conducted as a result of the award or its cancellation or withdrawal; and}

{(11) Agree to other such terms and conditions as may be stipulated in the contract.}

§4.39. Commission and Office Responsibilities.

(a) In carrying out its duties and responsibilities under this subchapter [the Act], the Commission shall:

(1) Solicit grant applications and publicize application deadlines;

(2) Establish and conduct the evaluation and award process in a responsive manner to maximize the opportunity to acquire federal and other funding;

(3) Develop contracts with awardees that include sufficient performance measures, audit requirements, and reporting requirements to ensure prudence and due diligence in the expenditure of state funds; and

(4) Minimize reporting requirements that may be repetitive of reporting required by federal grant agencies or that may be unnecessary for the effective monitoring of the program.

(b) [Waivers.] The Director on behalf of the Commission, in consultation with the Chief of Staff or his designee, may waive any provision of this subchapter upon a finding that the public interest would be furthered by granting the waiver.

§4.40. Reporting Responsibilities.

(a) Reimbursement [Disbursement] of funds will be made in accordance with the terms of the contract.

(b) After completion of the project, the awardee will provide the following milestones and updates as required by the contract.

(c) Throughout the project period, the awardee must provide copies of all reports required by federal agencies pursuant to the terms of individual federal grants received, within 30 days of their submission to the granting agencies.

(d) The awardee must provide all reports to the Commission as required by the terms of the grant contract, including, but not limited to, reports on any performance measures, milestone reports, and project completion reports.

(e) Failure to submit reports in a timely and satisfactory manner may result in the withholding of funds due or requested by the awardee. Failure to document post-completion requirements may result in the return of funds to the Commission as set forth in the contract.

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 January 17, 2020.

TRD-202000235

Keith Graf

Director, Texas Military Preparedness Commission

Office of the Governor

Earliest possible date of adoption: March 8, 2020

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



SUBCHAPTER B. DEFENSE ECONOMIC ADJUSTMENT ASSISTANCE GRANT PROGRAM

1 TAC §4.31

The Texas Military Preparedness Commission (Commission) proposes the repeal of 1 TAC §4.31, concerning the time frame in which Defense Economic Adjustment Assistance Grant (DEAAG) funds must be spent.

EXPLANATION OF PROPOSED REPEAL

The Commission's current rule at §4.31 requires DEAAG funds to be spent by the end of the state fiscal biennium in which the grant was awarded. The Commission proposes the repeal of this rule because it may reduce the time period in which DEAAG funds could otherwise be expended under the relevant provisions of the General Appropriations Act and the Texas Government Code that govern when state-appropriated grant funds may be spent.

FISCAL NOTE

Keith Graf, Director of the Texas Military Preparedness Commission, has determined that for each year of the first five years in which the proposed repeal is in effect, there are no expected fiscal implications for the state or local governments as a result of the proposed repeal. The proposed repeal may affect the timing of DEAAG reimbursements made over the first five years in which the proposed repeal is in effect, but the proposed repeal is not expected to affect the overall cost or revenues of the state or local governments. Mr. Graf has further determined that the proposed repeal has no anticipated effect on local employment or a local economy.

PUBLIC BENEFIT AND COSTS

Mr. Graf has also determined that for each year of the first five years in which the proposed repeal is in effect, the public benefit anticipated as a result of the proposed repeal will be to potentially extend the time period in which DEAAG funds may be expended, subject to applicable law. There are no anticipated economic costs to persons that are required to comply with the Commission's rules as a result of the proposed repeal. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

Finally, Mr. Graf has determined that for each year of the first five years in which the proposed repeal is in effect, the proposed repeal will have the following effect on government growth. The proposed repeal will not create or eliminate any government programs or employee positions. Additionally, the proposed repeal will not require an increase or decrease in future legislative appropriations to the Commission or change any fees paid to the Commission. The proposed repeal will not create a new regulation nor will it expand or limit any existing regulation, but it will repeal one existing regulation. Furthermore, the proposed repeal will not increase or decrease the number of individuals subject to the applicability of the Commission's rules. The proposed repeal is not anticipated to affect this state's economy.

SUBMITTAL OF COMMENTS

Written comments regarding the proposed repeal may be submitted to Alexandra Taylor, Office of the Governor, Texas Military Preparedness Commission, P.O. Box 12428, Austin, Texas 78711 or to Alexandra.Taylor@gov.texas.gov with the subject line "TMPC Rule Repeal." The deadline for receipt of comments is 5:00 p.m. CST on March 9, 2020. All requests for a public hearing on the proposed repeal, submitted under the Adminis-

trative Procedure Act, must be received by the Commission no more than fifteen (15) days after the notice of proposed repeal in the sections has been published in the *Texas Register*.

STATUTORY AUTHORITY

The repeal is proposed under Government Code, §436.101(f), which provides that the Commission shall adopt rules necessary to implement Chapter 436 of the Texas Government Code.

CROSS REFERENCE TO STATUTE

Subchapter E, Chapter 436, Government Code.

§4.31. Program Coverage.

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 January 17, 2020.

TRD-202000237

Keith Graf

Director, Texas Military Preparedness Division

Office of the Governor

Earliest possible date of adoption: March 8, 2020

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



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 27. COMMUNITY FIRST CHOICE

1 TAC §354.1369

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §354.1369, concerning Attendant Base Wage.

BACKGROUND AND PURPOSE

The purpose of the proposed rule is to implement Rider 45 of the 2020-21 General Appropriations Act, Article II, Special Provisions, House Bill 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriates funds to HHSC to increase the minimum base wage paid to "personal attendants" from \$8.00 to \$8.11 per hour. Currently, the minimum hourly base wage for a personal attendant is referenced in multiple rules. HHSC is proposing new §355.7051, Base Wage for a Personal Attendant, so that the base wage requirements for all of HHSC's programs and services will be contained in one section. New §354.1369, Attendant Base Wage, requires that providers of Community First Choice (CFC) personal assistance services and CFC Habilitation pay a personal attendant at least the base wage specified in new §355.7051.

SECTION-BY-SECTION SUMMARY

Proposed new §354.1369 requires that providers of CFC personal assistance services and CFC Habilitation pay a personal

attendant at least the base wage specified in §355.7051 and notify the person employed as an attendant of the base wage requirement.

FISCAL NOTE

Liz Prado, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rule as proposed.

Fiscal implications to state government relating to the minimum base wage for personal attendants are addressed in the fiscal note to proposed new 1 TAC §355.7051, which is also being proposed in this issue of the *Texas Register*.

There is no fiscal impact to local government.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Ms. Prado has also determined that there could be an adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule requires some businesses to pay a higher wage to personal attendants than they do currently. HHSC lacks sufficient information to provide an estimate of the economic impact.

However, because Rider 45 appropriated funds to HHSC for the purpose of increasing the payment rate to providers required to comply with the proposed rule, the increased payment rates may offset any adverse economic effect incurred by such providers.

HHSC determined that alternative methods to achieve the purpose of the proposed rule for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of the citizens of Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Liz Prado has determined that for each year of the first five years the rule is in effect, the public benefit will be an improvement in the stability and quality of the attendant workforce as a result of higher wages.

Liz Prado has also determined that for the first five years the rule is in effect, persons who are required to comply with the proposed rule may incur economic costs if they are currently paying an average base wage of less than \$8.11 per hour to attendants providing CFC personal assistance services and CFC Habilitation. However, the increased payment rates may address most, if not all, of the increased wages for attendant services for those providers currently paying less than the required base wage. HHSC lacks sufficient data to estimate the cost to persons required to comply with the proposed rule.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing is scheduled for February 12, 2020, at 9:00 a.m. (central time) in the Public Hearing Room of the Brown-Heatly Building located at 4900 North Lamar Blvd., Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact the HHSC Rate Analysis Department's Customer Information Center at (512) 424-6637.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to the HHSC Rate Analysis Department's Customer Information Center at (512) 424-6637.

Written comments on this proposal may be submitted to the HHSC Rate Analysis Department, Mail Code H-400, P.O. Box 85200, Austin, Texas 78705-5200, by fax to (512) 730-7475, or by email to RAD-LTSS@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 20R032" in the subject line.

STATUTORY AUTHORITY

The new rule is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the Health and Human Services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for

medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The new rule affects Texas Government Code §531.0055, Texas Government Code Chapter 531, and Texas Human Resources Code Chapter 32.

§354.1369. Attendant Base Wage.

A provider, individual, or LAR who employs an attendant to provide CFC personal assistance services or CFC habilitation must:

(1) pay each attendant at least the base wage specified in §355.7051 of this title (relating to Base Wage for a Personal Attendant); and

(2) notify any person employed as an attendant of the requirement that the provider, individual, or LAR who employs an attendant must pay each attendant at least the base wage specified in §355.7051 of this title.

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

Filed with the Office of the Secretary of State on January 22, 2020.

TRD-202000265

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 8, 2020

For further information, please call: (512) 424-6637



CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER H. BASE WAGE REQUIREMENTS FOR PERSONAL ATTENDANTS

1 TAC §355.7051

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §355.7051, concerning Base Wage for a Personal Attendant, in new Subchapter H, Base Wage Requirements for Personal Attendants.

BACKGROUND AND PURPOSE

The purpose of the proposed rule is to implement Rider 45 of the 2020-21 General Appropriations Act, Article II, Special Provisions, House Bill 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriates funds to HHSC to increase the minimum base wage paid to "personal attendants" from \$8.00 to \$8.11 per hour. Currently, the minimum hourly base wage for a personal attendant is referenced in multiple rules. HHSC is proposing new §355.7051 so that the base wage requirements for all of HHSC's programs and services will be contained in one section. As a result of this consolidation, the existing sections are being proposed for amendment in this issue of the *Texas Register* to remove their specific base wage requirements and instead reference the specific requirements of proposed new §355.7051.

SECTION-BY-SECTION SUMMARY

Proposed new §355.7051(a) defines the following terms for use in new subchapter H: "HHSC contractor," "managed care organization or MCO," "provider," and "personal attendant."

Proposed new §355.7051(b) requires that an HHSC contractor, other than an HHSC contractor described in subsection (c) or (d) of the section, pay a base wage of at least \$8.11 per hour to a personal attendant.

Proposed new §355.7051(c) requires that an HHSC contractor that has a contract for financial management services (FMS) ensure that an employer in the consumer directed services (CDS) option, or their designated representative, pay a personal attendant a base wage of at least \$8.11 per hour.

Proposed new §355.7051(d) requires an HHSC contractor with a Consumer Managed Personal Attendant Services contract to pay a personal attendant a base wage of at least \$8.11 per hour in service delivery options in which a personal attendant is an employee or subcontractor of the HHSC contractor. The proposed new rule also requires an HHSC contractor with a Consumer Managed Personal Attendant Services contract to ensure an individual employer, or the individual's representative, pay a personal attendant a base wage of at least \$8.11 per hour in service delivery options in which a personal attendant is an employee of the individual employer.

Proposed new §355.7051(e) requires that a managed care organization (MCO), other than an MCO contractor described in subsection (f) of the section, require an MCO contractor to pay a base wage of at least \$8.11 per hour to a personal attendant.

Proposed new §355.7051(f) requires an MCO contractor that has a contract for FMS to ensure that an employer in the CDS option or a designated representative pays a personal attendant a base wage of at least \$8.11 per hour.

FISCAL NOTE

Liz Prado, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rule as proposed.

The effect on state government for each year of the first five years the proposed rule is in effect is an estimated cost of \$16,666,344 in General Revenue (GR) (\$42,431,342 All Funds (AF)) in fiscal year (FY) 2020, \$16,933,656 GR (\$44,652,067 AF) in FY 2021, \$17,589,584 GR (\$46,968,787 AF) in FY 2022, \$18,501,545 GR (\$49,454,973 AF) in FY 2023, and \$19,489,452 GR (\$52,149,366 AF) in FY 2024.

There is no fiscal impact to local government.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

- (6) the proposed rule will expand existing rules;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Liz Prado has also determined that there could be an adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule requires some businesses to pay a higher wage to personal attendants than they do currently. HHSC lacks sufficient information to provide an estimate of the economic impact.

However, because Rider 45 appropriated funds to HHSC for the purpose of increasing the payment rate to providers required to comply with the proposed rule, the increased payment rates may offset any adverse economic effect incurred by such providers.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of the citizens of Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Liz Prado has determined that for each year of the first five years the rule is in effect, the public benefit will be an improvement in the stability and quality of the attendant workforce as a result of higher wages.

Liz Prado has also determined that for the first five years the rule is in effect, persons who are required to comply with the proposed rule may incur economic costs if they are currently paying an average base wage of less than \$8.11 per hour for a service listed in the proposed rule. However, the increased payment rates may address most, if not all, of the increased wages for attendant services for those providers currently paying less than the required base wage. HHSC lacks sufficient data to estimate the cost to persons required to comply with the proposed rule.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing is scheduled for February 12, 2020, at 9:00 a.m. (central time) in the Public Hearing Room of the Brown-Healty Building located at 4900 North Lamar Blvd., Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact the HHSC Rate Analysis Department's Customer Information Center at (512) 424-6637.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to the HHSC Rate Analysis Department's Customer Information Center at (512) 424-6637.

Written comments on this proposal may be submitted to the HHSC Rate Analysis Department, Mail Code H-400, P.O. Box 85200, Austin, Texas 78705-5200, by fax to (512) 730-7475, or by email to RAD-LTSS@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 20R032" in the subject line.

STATUTORY AUTHORITY

The new rule is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the Health and Human Services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The new rule affects Texas Government Code §531.0055, Texas Government Code Chapter 531, and Texas Human Resources Code Chapter 32.

§355.7051. Base Wage for a Personal Attendant.

(a) The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) HHSC contractor--A person who has a written agreement with the Texas Health and Human Services Commission (HHSC) to provide a service to an individual in exchange for payment from HHSC.

(2) Managed care organization or MCO--Has the meaning assigned in §353.2 of this title (relating to Definitions).

(3) Personal attendant--

(A) An employee or subcontractor of an HHSC contractor, or an employee of an employer in the consumer directed services (CDS) option, who provides the following services, as described in 40 TAC §49.101 (relating to Application):

- (i) services in the Community Attendant Services program;
- (ii) services in the Family Care program;
- (iii) services in the Primary Home Care program;
- (iv) day activity and health services;
- (v) residential care;

(vi) in the Community Living Assistance and Support Services Program:

(I) community first choice personal assistance services/habilitation (CFC PAS/HAB);

(II) habilitation (transportation); or

(III) in-home respite;

(vii) in the Deaf-Blind Multiple Disabilities Program:

(I) CFC PAS/HAB;

(II) residential habilitation (transportation);

(III) in-home respite;

(IV) licensed assisted living;

(V) licensed home health assisted living; or

(VI) day habilitation;

(viii) in the Home and Community-based Services Program:

(I) CFC PAS/HAB;

(II) supported home living (transportation); or

(III) in-home respite; and

(ix) in the Texas Home Living Program:

(I) CFC PAS/HAB;

(II) community support services (transportation); or

(III) in-home respite;

(B) an employee or subcontractor of an HHSC contractor, or an employee of an employer in the CDS option who provides:

(i) personal care services, as described in Chapter 363, Subchapter F of this title (relating to Personal Care Services); or

(ii) CFC habilitation (CFC HAB) or CFC personal assistance services (CFC PAS), as described in Chapter 354, Subchapter A, Division 27 (relating to Community First Choice);

(C) an employee or subcontractor of an HHSC contractor, or an employee of an employer in the CDS option or in the block grant option, who provides consumer managed personal attendant services as described in 40 TAC Chapter 44 (relating to Consumer Managed Personal Attendant Services (CMPAS) Program); or

(D) a provider or an employee of an employer in the CDS option who provides:

(i) in the STAR+PLUS program and STAR+PLUS Home and Community-based Services (HCBS) program:

(I) assisted living;

(II) CFC PAS;

(III) CFC HAB;

(IV) day activity and health services;

(V) in-home respite care;

(VI) personal assistance services; or

(VII) protective supervision;

(ii) in the STAR Health program and Medically Dependent Children Program (MDCP):

(I) day activity and health services;

(II) CFC PAS;

(III) CFC HAB;

(IV) flexible family support;

(V) in-home respite; or

(VI) personal care services; or

(iii) in the STAR Kids program and MDCP:

(I) CFC PAS;

(II) CFC HAB;

(III) personal care services;

(IV) day activity and health services;

(V) flexible family support services; or

(VI) in-home respite.

(4) Provider--Has the meaning assigned in §353.2.

(b) An HHSC contractor, other than an HHSC contractor described in subsection (c) or (d) of this section, must pay a personal attendant a base wage of at least \$8.11 per hour.

(c) An HHSC contractor that has a contract for financial management services (FMS) must ensure that an employer in the CDS option, or designated representative, pays a personal attendant a base wage of at least \$8.11 per hour.

(d) An HHSC contractor that has a CMPAS contract must:

(1) pay a personal attendant who is an employee or subcontractor of the contractor in the traditional service option or block grant option a base wage of at least \$8.11 per hour; and

(2) ensure that an individual employer of a personal attendant under the block grant option or CDS option, or the individual's representative, pays a personal attendant a base wage of at least \$8.11 per hour.

(e) An MCO must require an MCO contractor, other than an MCO contractor described in subsection (f) of this section, to pay a personal attendant a base wage of at least \$8.11 per hour.

(f) An MCO must require that an MCO contractor that has a contract for FMS ensures that an employer in the CDS option or designated representative pays a personal attendant a base wage of at least \$8.11 per hour.

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 January 22, 2020.

TRD-202000267

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 8, 2020

For further information, please call: (512) 424-6637



CHAPTER 363. TEXAS HEALTH STEPS
COMPREHENSIVE CARE PROGRAM
SUBCHAPTER F. PERSONAL CARE
SERVICES

1 TAC §363.603

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §363.603, concerning Provider Participation Requirements.

BACKGROUND AND PURPOSE

The purpose of the proposed amendment is to implement Rider 45 of the 2020-21 General Appropriations Act, Article II, Special Provisions, House Bill 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriates funds to HHSC to increase the minimum base wage paid to "personal attendants" from \$8.00 to \$8.11 per hour. Currently, the minimum hourly base wage for a personal attendant is referenced in multiple rules. HHSC is proposing new §355.7051, Base Wage for a Personal Attendant, so that the base wage requirements for all of HHSC's programs and services will be contained in one section. As a result of this consolidation, §363.603 and other related sections are being proposed for amendment in this issue of the *Texas Register* to remove specific base wage requirements, and to cross reference the specific requirements of proposed new §355.7051.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §363.603(g) replaces the requirement in paragraph (1) that providers pay personal attendants a base wage of at least \$8.00 per hour with the requirement that providers pay personal attendants at least the base wage specified in proposed new §355.7051. The proposed amendment similarly revises the notification requirement in paragraph (2).

FISCAL NOTE

Liz Prado, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rule as proposed.

Fiscal implications to state government relating to the minimum base wage for personal attendants are addressed in the fiscal note to proposed new 1 TAC §355.7051, which is also being proposed in this issue of the *Texas Register*.

There is no fiscal impact to local government.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

Liz Prado has also determined that there could be an adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule requires some businesses to pay a higher wage to personal attendants than they do currently. HHSC lacks sufficient information to provide an estimate of the economic impact.

However, because Rider 45 appropriated funds to HHSC for the purpose of increasing the payment rate to providers required to comply with the proposed rule, the increased payment rates may offset any adverse economic effect incurred by such providers.

HHSC determined that alternative methods to achieve the purpose of the proposed rule for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of the citizens of Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Ms. Prado has determined that for each year of the first five years the rule is in effect, the public benefit will be an improvement in the stability and quality of the attendant workforce as a result of higher wages.

Liz Prado has also determined that for the first five years the rule is in effect, persons who are required to comply with the proposed rule may incur economic costs if they are currently paying an average base wage of less than \$8.11 per hour to attendants providing PCS. However, the increased payment rates may address most, if not all, of the increased wages for attendant services for those providers currently paying less than the required base wage. HHSC lacks sufficient data to estimate the cost to persons require to comply with the proposed rule.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing is scheduled for February 12, 2020, at 9:00 a.m. (central time) in the Public Hearing Room of the Brown-Healty Building located at 4900 North Lamar Blvd., Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact the HHSC Rate Analysis Department's Customer Information Center at (512) 424-6637.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to the HHSC Rate Analysis Department's Customer Information Center at (512) 424-6637.

Written comments on this proposal may be submitted to the HHSC Rate Analysis Department, Mail Code H-400, P.O. Box 85200, Austin, Texas 78705-5200, by fax to (512) 730-7475, or by email to RAD-LTSS@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 20R032" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the Health and Human Services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code §531.0055, Texas Government Code Chapter 531, and Texas Human Resources Code Chapter 32.

§363.603. *Provider Participation Requirements.*

(a) - (f) (No change.)

(g) Provider organizations, recipients, and responsible adults or LARs of recipients who employ attendants for PCS must:

(1) pay each attendant at least the base wage specified in §355.7051 of this title (relating to Base Wage for a Personal Attendant) [a base wage of at least \$8.00 per hour]; and

(2) notify any person employed as an attendant of the requirement that the provider organizations, recipients, and responsible adults or LARs of recipients who employ attendants for PCS must pay each attendant at least the base wage specified in §355.7051 of this title [to pay the wage described in paragraph (1) of this subsection].

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 January 22, 2020.

TRD-202000268

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 8, 2020
For further information, please call: (512) 424-6637

TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER C. HORSE RACETRACKS DIVISION 1. RACETRACKS

16 TAC §309.206

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §309.206, Rails. This section outlines the requirements for rails at horse tracks. The proposed amendments would change the maximum rail height from 42 inches to 50 inches while leaving the minimum height at 38 inches.

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 increased safety by allowing horse racetracks to install higher rails. There is no economic cost to persons required to comply with the amendments, as higher rails are not required.

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 §2023.001, which authorizes the Commission to regulate all aspects of horse racing in the state; §2023.002, which authorizes the commission to regulate each person and thing related to the operation of a race meeting; and §2023.004, which authorizes the Commission to adopt rules to administer the Act.

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

§309.206. *Rails.*

- (a) (No change.)
- (b) The top of the rail must be not less than 38 nor more than 50 [42] inches above the top of the cushion.
- (c) - (e) (No change.)

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

Filed with the Office of the Secretary of State on January 23, 2020.

TRD-202000280

Chuck Trout

Executive Director

Texas Racing Commission

Earliest possible date of adoption: March 8, 2020

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



CHAPTER 311. OTHER LICENSES

SUBCHAPTER A. LICENSING PROVISIONS

DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.1

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §311.1, Occupational Licenses. This section includes provisions common to all occupational license types. The proposed amendments would delete subsection (b)(3), which relates to training facility licenses, not occupational licenses. The duration and expiration of a training facility license is properly addressed in 16 TAC §313.501, Training Facility License, which states that a training facility license expires one year after the last day of the month in which it was issued.

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 clarity and organization of rules relating to training facility licenses. 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.

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

§311.1. Occupational Licenses.

(a) (No change.)

(b) Duration of License.

(1) - (2) (No change.)

[(3) A training facility license expires on December 31 of the year for which it was issued.]

(c) - (d) (No change.)

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

Filed with the Office of the Secretary of State on January 23, 2020.

TRD-202000281

Chuck Trout

Executive Director

Texas Racing Commission

Earliest possible date of adoption: March 8, 2020

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



CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

SUBCHAPTER D. RUNNING OF THE RACE

DIVISION 1. JOCKEYS

16 TAC §313.409

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §313.409, Jockey Mount Fees. This section establishes default mount fees for jockeys in the absence of a written agreement between the jockey and the trainer or owner. The proposed amendments would increase certain mount fees by \$5-10. These changes were requested by the Jockeys Guild with the agreement of the Texas Horsemen's Partnership, which represents trainers and owners of racehorses in Texas.

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 an increase in default mount fees for Texas jockeys, for the first time since 2012, from levels that currently lag behind most other racing jurisdictions. Because a written agreement would override the fees established in the rule, there is minimal if any anticipated 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 are not expected to have an 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 §2023.001, which authorizes the Commission to regulate all aspects of horse racing in Texas.

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

§313.409. Jockey Mount Fees.

(a) - (b) (No change.)

(c) In the absence of a written agreement, the following jockey mount fees apply:

Figure: 16 TAC §313.409(c)

[Figure: 16 TAC §313.409(c)]

(d) - (g) (No change.)

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

Filed with the Office of the Secretary of State on January 23, 2020.

TRD-202000282

Chuck Trout

Executive Director

Texas Racing Commission

Earliest possible date of adoption: March 8, 2020

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



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER J. WORK-STUDY STUDENT MENTORSHIP PROGRAM

19 TAC §§4.191 - 4.196

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of 19 TAC §§4.191 - 4.196, concerning the Work-Study Student Mentorship Program (Mentorship Program). Specifically, §§4.191 - 4.196 are repealed because the information has been integrated into 19 TAC Chapter 22, Subchapter G, Texas College Work-Study, to more clearly represent the Mentorship Program as a subset of the Texas College Work-Study Program.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for the first five years the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Contéro-Puls has also determined that for each year of the first five years that the rule will be in effect, the public benefit will be improved understanding of Mentorship Program rules. There are no anticipated economic costs to persons who are required

to comply with the section as proposed. There is no impact on small businesses, micro businesses, and rural communities.

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 rule will repeal existing rules §§4.191 - 4.196;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.contero-puls@theccb.state.tx.us.

The repeal is proposed under the Texas Education Code, §56.077, which provides the Coordinating Board the authority to adopt rules for the administration of the Mentorship Program.

The proposed repeal affects the Texas Education Code, §56.079.

§4.191. *Purpose.*

§4.192. *Authority.*

§4.193. *Definitions.*

§4.194. *Eligibility and Program Requirements.*

§4.195. *Allocations and Disbursement of Funds.*

§4.196. *Reporting.*

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 January 24, 2020.

TRD-202000304

William Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 8, 2020

For further information, please call: (512) 427-6365



CHAPTER 21. STUDENT SERVICES

SUBCHAPTER C. STUDENT INDEBTEDNESS

19 TAC §21.49

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to 19 TAC Chapter 21, Subchapter C, §21.49, concerning Student Loan Debt Disclosure. The amendments to §21.49 provide clarification for required letters

advising students of their student loan indebtedness, as authorized by Senate Bill 241, 86th Legislative Session. Specifically, the changes clarify that private loan information is not required in the student debt letters.

Ginger Gossman, Ph.D., Senior Director, Innovation and Policy Development, determined that for the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Gossman 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 this proposal will be an increase in student awareness of the education loan debt, and an improvement in their ability to make informed decisions when financing their higher education. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on small businesses, micro businesses, or rural communities.

Government Growth Impact Statement

- (1) the amended rule will not create or eliminate a government program;
- (2) implementation of the amended rule will not require the creation or elimination of employee positions;
- (3) implementation of the amended rule will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the amended rule will not require an increase or decrease in fees paid to the agency;
- (5) the amended rule will not create a new rule;
- (6) the amended rule will limit 19 TAC Chapter 21, Subchapter C, §21.49;
- (7) the amended rule will not change the number of individuals subject to the rule; and
- (8) the amended rule will not affect the state's economy.

Comments on the proposal may be submitted to Ginger Gossman, Ph.D., Senior Director, Innovation and Policy Development, P.O. Box 12788, Austin, Texas 78711, (512) 427-6452, or emailed to Ginger.Gossman@THECB.state.tx.us.

The amendments are proposed under Texas Education Code, §52.335, which provides the Coordinating Board with the authority to adopt rules stating the nature and requirements of all available formal and informal procedures.

The proposed amendments affect Texas Education Code §52.335.

§21.49. *Student Loan Debt Disclosure Required Elements.*

(a) (No change.)

(b) Student loan debt disclosures must include an estimate of the unpaid amount of federal education loans obtained by the student and state education loans obtained by the student at the current institution [state, federal, and other if known and reasonably available to the institution, education loans obtained by the student]. The types of education loans must be identified for each total included.

(c) - (f) (No change.)

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

Filed with the Office of the Secretary of State on January 24, 2020.

TRD-202000305

William Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 8, 2020

For further information, please call: (512) 427-6452



CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER G. TEXAS COLLEGE

WORK-STUDY PROGRAM

19 TAC §§22.127 - 22.132, 22.134

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to 19 TAC Chapter 22, Subchapter G, §§22.127 - 22.132 and the addition of new §22.134, concerning the Texas College Work-Study Program. Specifically, §22.127 is amended to include references to the Work-Study Student Mentorship Program (Mentorship Program), and §22.128 is amended to add definitions related to the Mentorship Program. The amendments to §22.129 define the participation requirements for the Mentorship Program and delete text that duplicates information included in 19 TAC §22.9. The amendments to §22.130 include references to the Mentorship Program. The amendments to §22.131 provide greater clarity regarding off-campus employers, integrate references to the Mentorship Program, and delete the provision requiring a specific level of student participation in off-campus employment, as authorized by House Bill 3808, 86th Legislative Session. The amendments to §22.132 delete text that duplicates information included in 19 TAC §22.11. The addition of §22.134 integrates the Mentorship rule regarding allocations and disbursement of funds, as previously outlined in 19 TAC §4.195.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for the first five years the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Contéro-Puls has also determined that for each year of the first five years that the rule will be in effect, the public benefit will be improved understanding of Texas College Work-Study Program rules. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on small businesses, micro businesses, or rural communities.

Government Growth Impact Statement

- (1) the amended rules and new rule will not create or eliminate a government program;
- (2) implementation of the amended rules and new rule will not require the creation or elimination of employee positions;
- (3) implementation of the amended rules and new rule will not require an increase or decrease in future legislative appropriations to the agency;

(4) the amended rules and new rule will not require an increase or decrease in fees paid to the agency;

(5) the proposed rulemaking will create rule §22.134;

(6) the proposed rulemaking will expand existing rules §§22.127 - 22.131 and will limit existing rule §22.132;

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

(8) the amended rules and new rule will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.contero-puls@theccb.state.tx.us.

The amendments and new rule are proposed under the Texas Education Code, §56.077, which provides the Coordinating Board the authority to adopt rules for the administration of the Texas College Work-Study Program.

The proposed amendment and new rule affect the Texas Education Code, §§56.071 - 56.082.

§22.127. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Chapter 56, Subchapter E. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §§56.071 - ~~56.079~~ [56.078].

(b) Purpose. The purpose of the Texas College Work-Study Program is to provide eligible students with jobs, funded in part by the State of Texas, to enable those students to attend eligible institutions of higher education in Texas and, through a mentorship program, to mentor, tutor, or advise college students at participating eligible institutions of higher education or high school students within local school districts and non-profit organizations [provide assistance to students on academic probation].

§22.128. Definitions.

In addition to the words and terms defined in Texas Administrative Code, §22.1 of this title (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Encumbered funds--Program funds that have been offered to a specific student, which offer the student has accepted, and which may or may not have been disbursed to the student.

(2) Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined in Texas Education Code, §61.003(8) or any private or independent institution of higher education as defined in Texas Education Code, §61.003(15).

(3) Program--The Texas College Work-Study Program.

(4) Mentor--An eligible student employed to:

(A) help students at participating eligible institutions or to help high school students in participating school districts;

(B) counsel high school students at GO Centers or similar high school-based recruiting centers designed to improve access to higher education; or

(C) support student interventions at participating eligible institutions that are focused on increasing completion of degrees or

certificates, such as interventions occurring through advising or supplemental instruction.

(5) Mentorship Program--A work-study student mentorship program under which students enrolled at participating institutions and who met the eligibility requirements for employment in the Texas College Work-Study Program may be employed by participating entities as mentors, tutors, or advisors.

(6) Participating Entity--An eligible institution, a school district, or a nonprofit organization that has filed a memorandum of understanding with the Coordinating Board under this subchapter to participate in the Mentorship Program.

§22.129. *Institutions.*

(a) Eligibility.

(1) - (3) (No change.)

(4) Private or independent institutions of higher education offering only professional or graduate degrees are not eligible to participate in the Mentorship Program.

(b) (No change.)

(c) To participate in the Program, an institution must:

(1) provide part-time employment to an eligible student in nonpartisan and nonsectarian activities;

(2) provide, insofar as is practicable, employment to an eligible student that is related to the student's academic interests;

(3) use Program positions only to supplement and not to supplant positions normally filled by persons not eligible to participate in the work-study program; and

(4) provide not less than 25 percent of an employed student's wages and 100 percent of other employee benefits for the employed student from sources other than federal college work-study program funds. Institutions eligible to receive Title III funds from the U. S. Department of Education are exempted from the Program requirement to provide 25 percent of an employed student's wages, if they provide the Board with a copy of a current Title III eligibility letter from the U. S. Department of Education.

{(e) Responsibilities. }

{(1) Probation Notice. If the institution is placed on public probation by its accrediting agency, it must immediately advise the Board and work-study award recipients of this condition and maintain evidence in each student's file to demonstrate that the student was so informed.}

{(2) Disbursements to Students.}

{(A) Documentation. The institution must maintain records to prove the receipt of program funds by the student or the crediting of such funds to the student's school account.}

{(B) Procedures in Case of Illegal Disbursements. If the Commissioner has reason for concern that an institution has disbursed funds for unauthorized purposes, the Board will notify the Program Officer and financial aid director and offer an opportunity for a hearing pursuant to the procedures outlined in Chapter 1 of this title (relating to Agency Administration). Thereafter, if the Board determines that funds have been improperly disbursed, the institution shall become primarily responsible for restoring the funds to the Board. No further disbursements of work-study funds shall be permitted to students at that institution until the funds have been repaid.}

{(3) Reporting Requirements/Deadlines. All institutions must meet Board reporting requirements in accordance with stated deadlines in the Board's published materials.}

{(4) Program Reviews. If selected for such by the Board, participating institutions must submit to program reviews of activities related to the Program.}

(d) To participate in the Mentorship Program:

(1) an institution must file with the Coordinating Board a memorandum of understanding detailing the roles and responsibilities of each participating entity;

(2) an institution must provide not less than 10 percent of an employed mentor's wages and 100 percent of other employee benefits for the employed student from sources other than federal college work-study program funds. Institutions eligible to receive Title III funds from the U. S. Department of Education are exempted from the Mentorship Program requirement to provide 10 percent of an employed student's wages, if they provide the Board with a copy of a current Title III eligibility letter from the U. S. Department of Education; and

(3) a participating entity, other than an institution of higher education, benefiting from the services of the mentor must provide funding in an amount at least equal to the amount of the institution's contribution. The participating entity's contribution may be satisfied through in-kind contributions, if acceptable by the institution. Participating entities benefiting from the service of mentors enrolled at institutions eligible to receive Title III funds from the U. S. Department of Education are exempted from the Mentorship Program requirement to provide matching funds, if the institution has provided the Board with a copy of a current Title III eligibility letter from the U. S. Department of Education.

(e) Additional criteria for participation and program requirements for the Mentorship Program shall be determined and set forth in Commissioner's policies. The Commissioner's policies shall be reviewed periodically to determine the effectiveness and success of the Program.

(f) [(5)] Publicizing Work-Study Employment Opportunities. Institutions participating in the Program must establish and maintain an online list of work-study employment opportunities available on campus, sorted by department as appropriate, and ensure that the list is easily accessible to the public and prominently displayed on the institution's website.

§22.130. *Eligible Student Employees.*

(a) To be eligible for employment in the Program a person shall:

(1) be a Texas resident as defined by Board rules;

(2) be enrolled for at least the number of hours required of a half-time student, and be seeking a degree or certification in an eligible institution;

(3) establish financial need in accordance with Board procedures; and

(4) have a statement on file with the institution of higher education indicating the student is registered with the Selective Service System as required by federal law or is exempt from Selective Service registration under federal law; and [-]

(5) if participating in the Mentorship Program, receive appropriate training and supervision as determined by the Commissioner or Coordinating Board staff.

(b) (No change.)

§22.131. *Eligible Off-Campus Employers.*

(a) For the Mentorship Program, an eligible institution must file, in conjunction with the participating school district(s) or nonprofit organization(s), a memorandum of understanding with the Coordinating Board.

(b) [(a)] An eligible institution may enter into agreements with off-campus [outside] employers to participate in the Program. To be eligible to participate, an off-campus employer must:

(1) - (5) (No change.)

(c) [(b)] Institutions eligible to receive Title III funds from the U. S. Department of Education are exempted from the Program requirement to provide 25 percent of an employed student's wages, if they provide the Board with a copy of a current Title III eligibility letter from the U. S. Department of Education.

[(e) Beginning with the 2016-2017 academic year, each eligible institution shall ensure that at least 20 percent, but not more than 50 percent of the employment positions provided through the work-study program in an academic year are provided by eligible employers who are providing off-campus employment.]

§22.132. *Award Amounts [and Uses].*

[(a) Funding. Funds awarded through this program may not exceed the amount appropriated by the Legislature for that purpose, plus matching funds provided by the students' employers.]

[(b)] Award Amount. No award amount shall exceed a student's financial need.

[(c) Uses. No funds earned through this program may be used for any purpose other than for meeting the cost of attending an approved institution.]

[(d) Over awards. If, at a time after an award has been offered by the institution and accepted by the student, the student receives assistance that was not taken into account in the student's estimate of financial need, so that the resulting sum of assistance exceeds the student's financial need, the institution is not required to adjust the award under this program unless the sum of the excess resources is greater than \$300.]

§22.134. *Allocation and Disbursement of Mentorship Program Funds.*

(a) Allocations. The Board shall allocate Program funds to participating institutions according to criteria established by the Commissioner. At the beginning of each academic year, the year's full allocation will be provided to each participating institution.

(b) Reallocations. Institutions shall have until a date specified by the Commissioner to encumber all funds allocated. On that date, institutions lose claim to unencumbered funds and the unencumbered funds are available to the Commissioner for reallocation to other institutions. If necessary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are awarded and disbursed.

(c) Program funds may be used during any academic period for which mentorship opportunities are needed by participating entities as long as student mentors meet eligibility requirements as outlined under §4.194(b) of this title (relating to Eligibility and Program Requirements).

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 January 24, 2020.

TRD-202000306

William Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 8, 2020

For further information, please call: (512) 427-6365



19 TAC §22.135

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of 19 TAC §22.135, concerning the Texas College Work-Study Program. Specifically, §22.135 is being repealed since it duplicates the information in 19 TAC §22.11.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for the first five years the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Contéro-Puls has also determined that for each year of the first five years that the rule will be in effect, the public benefit will be improved understanding of Texas College Work-Study Program rules. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on small businesses, micro businesses, and rural communities.

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 rule will repeal existing rule §22.135;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.contero-puls@theccb.state.tx.us.

The repeal is proposed under the Texas Education Code, §56.077, which provides the Coordinating Board the authority to adopt rules for the administration of the Texas College Work-Study Program.

The proposed repeal affects House Bill 1, 86th Legislative Session, III-54, Section 18, Appropriations Transfers.

§22.135. *Authority to Transfer Funds.*

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 January 24, 2020.



SUBCHAPTER I. TEXAS ARMED SERVICES SCHOLARSHIP PROGRAM

19 TAC §§22.163 - 22.168, 22.170 - 22.174

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to 19 TAC §§22.163 - 22.168 and §§22.170 - 22.173 and proposes new rule §22.174, concerning the Texas Armed Services Scholarship Program. Throughout §§22.163 - 22.168 and §§22.170 - 22.173, amendments have been proposed to align text with the terminology defined in §22.164. The amendments to §22.163 provide greater clarity regarding the purpose of the Texas Armed Services Scholarship Program. The amendments to §22.164 delete definitions that duplicate language in §22.1 and clarify current definitions. The amendments to §22.165 incorporate language from §22.169 and clarify eligibility when a recipient is enrolled in a five-year degree program. The amendments to §22.166 delete unnecessary language due to the integration of §§22.167 and 22.169, clarify situations when a replacement nominee may be named by an elected official, and update the appointment requirements to reference the distinguished level of achievement created through House Bill 5, 83rd Legislative Session. The amendments to §22.167 delete language that has been integrated into §22.168. The amendments to §22.167 also revise the Coordinating Board's determination of satisfactory academic progress to allow greater opportunity for recipients to successfully complete all program requirements. The amendments to §22.168 integrate language that has been deleted from §22.167 to provide greater clarity regarding the promissory note. The amendments to §22.170 clarify situations where a scholarship converts to a loan. The amendments to §22.171 integrate language regarding prepayments and the application of payments. The amendment to §22.172 eliminates institutional holds on student records and registration for individuals who are delinquent on a Texas Armed Services Scholarship that has converted to a loan. These institutional holds create a barrier to student completion of a certificate or degree. Eliminating this barrier supports the agency's 60x30TX educated population and completion goals. The proposed new rule §22.174 outlines the provisions for death and disability.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for the first five years the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Contéro-Puls has also determined that for each year of the first five years that the rule will be in effect, the public benefit will be improved understanding of Texas College Work-Study Program rules. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on small businesses, micro businesses, and rural communities.

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 create rule §22.174;
- (6) the rule will expand rules §§22.163 - 22.168 and 22.170 - 22.173;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.contero-puls@theccb.state.tx.us.

The amendments and new rule are proposed under the Texas Education Code, §61.9774, which provides the Coordinating Board the authority to adopt rules for the administration of the Texas Armed Services Scholarship Program.

The proposed amendments and new rule affect the Texas Education Code, §§61.9771 - 61.9776.

§22.163. *Authority and Purpose.*

(a) (No change.)

(b) Purpose. The purpose of the Texas Armed Services Scholarship Program is to encourage students to complete a baccalaureate degree and become members of the Texas Army National Guard, the Texas Air National Guard, the Texas State Guard, the United States Coast Guard, or the United States Merchant Marine, or to become commissioned officers in any branch of the armed services of the United States.

§22.164. *Definitions.*

In addition to the words and terms defined in Texas Administrative Code, §22.1, the [The] following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Award--the amount of a scholarship in an academic year, which may be comprised of multiple disbursements.

~~[(2) Board--The Texas Higher Education Coordinating Board.]~~

(2) ~~[(3)]~~ Institution of Higher Education--As defined in Texas Education Code, §61.003(8), and which includes, for purposes of this subchapter, private or independent institutions of higher education as defined in Texas Education Code, §61.003(15).

~~[(4) Commissioner--The Commissioner of Higher Education.]~~

(3) ~~[(5)]~~ Contract to serve--a legally-binding agreement between the recipient and the armed services of the United States, prescribing the terms of the military commitment to which the recipient is obligated to serve.

(4) ~~[(6)]~~ Loan--A Texas Armed Services Scholarship that has become a loan as outlined in §22.170 of this subchapter (relating to Conversion of the Scholarship to a Loan) [because the conditions of the scholarship agreement have not been met].

(5) [(7)] Recipient--A person who has received a Texas Armed Services Scholarship.

(6) Scholarship--A conditional scholarship through the Texas Armed Services Scholarship Program.

§22.165. *Award Amount and Limitations.*

(a) The amount of a scholarship [conditional Texas Armed Services Scholarship] in an academic year shall not exceed \$15,000.

(b) A scholarship awarded to a student under this subchapter shall be reduced for an academic year by the amount by which the full amount of the scholarship plus the total amount to be paid to the student for being under contract with one of the branches of the armed services of the United States exceeds the student's total cost of attendance for that academic year at the [public or private] institution of higher education in which the student is enrolled.

(c) A student may receive a scholarship for four of the six years allowed for graduation, if the student is enrolled in a degree program of four years or less, or for five of the six years allowed for graduation, if enrolled in a degree program of more than four years.

(d) A student may not receive a scholarship after having earned a baccalaureate degree or a cumulative total of 150 credit hours, including transferred hours, as verified by the student's institution of higher education.

§22.166. *Requirements for Appointment by Elected Officials.*

(a) Each year the governor and the lieutenant governor may each appoint two students and two alternates, and each state senator and each state representative may appoint one student and one alternate to receive an initial scholarship [conditional Texas Armed Services Scholarship].

(b) (No change.)

(c) A selected student must meet two of the following four academic criteria at the time of application:

(1) Is on track to graduate high school or graduated with the Distinguished Achievement Program (DAP), the distinguished level of achievement under the Foundation High School program, or the International Baccalaureate Program (IB);

(2) - (4) (No change.)

[(d) A non-freshman student applying for an initial award must meet the requirements set forth in §22.169(1) and (3) of this title (relating to Eligibility for Continued Awards).]

(d) [(e)] If a student appointed to receive a scholarship fails to initially meet eligibility or fails to meet the requirements to initially receive the scholarship, the Board must notify the alternate on file of his or her nomination.

(e) [(f)] If a recipient's scholarship converts to a loan prior to graduation[Effective September 1, 2018, if a student appointed to receive a scholarship fails to maintain eligibility or otherwise meet the requirements for a continuing award under §22.169 of this title (relating to Eligibility for Continued Awards)], beginning with the academic year following the determination, the appointing official may appoint another eligible student to receive any available funds designated for the recipient [student] who no longer meets the requirements for the scholarship.

§22.167. *[Initial] Award Eligibility [and Agreement Requirements].* To receive a [an initial conditional] scholarship [awarded through the Texas Armed Services Scholarship Program], a selected student must:

(1) Be enrolled in an [a Texas public or private] institution of higher education, as certified by that [the] institution;

(2) Enroll in and be a member in good standing of a Reserve Officers' Training Corps (ROTC) program or another undergraduate officer commissioning program while enrolled in the institution of higher education, as certified by that [the] institution; [and]

(3) Enter into a written agreement with the Board, set forth in §22.168 of this subchapter (relating to Promissory Note); [agreeing to:

[(A) Complete four years of ROTC training, or the equivalent of four years of ROTC training if the institution awards ROTC credit for prior service in any branch of the U.S. Armed Services or the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine, or another undergraduate officer commissioning program;

[(B) Graduate no later than six years after the date the student first enrolls in a Texas public or private institution of higher education after having received a high school diploma or a General Educational Diploma or its equivalent;

[(C) No later than six months after graduation, enter into and provide the Board with verification of:

[(i) A four-year commitment to be a member of the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine; or]

[(ii) A contract to serve as a commissioned officer in any branch of the armed services of the United States;]

[(D) Meet the physical examination requirements and all other prescreening requirements of the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine, or the branch of the armed services with which the student enters into a contract; and

[(E) Repay the scholarship according to the terms of the promissory note if the student fails to meet the requirements described in §22.170 of this title (relating to Conversion of the Scholarship to a Loan).]

(4) Be appointed to receive a scholarship by the governor, lieutenant governor, a state senator, or a state representative; and

(5) Maintain the satisfactory academic progress requirements as indicated by the financial aid office at the recipient's institution of higher education.

§22.168. *Promissory Note.*

(a) The Board shall require a recipient [person who receives a scholarship] to sign a promissory note acknowledging the conditional nature of the scholarship and promising to repay the amount of the scholarship plus applicable interest, late charges, and any collection costs, including attorneys' fees, if the recipient [person] fails to meet certain [the] conditions of the scholarship, set forth in §22.170 of this subchapter (Conversion of the Scholarship to a Loan).

(b) Recipients agree to:

(1) Complete four years of ROTC training, or the equivalent of four years of ROTC training if the institution of higher education awards ROTC credit for prior service in any branch of the U.S. Armed Services or the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine, or another undergraduate officer commissioning program;

(2) Graduate no later than six years after the date the student first enrolls in an institution of higher education after having re-

ceived a high school diploma or a General Educational Diploma or its equivalent;

(3) After graduation, enter into and provide the Board with verification of:

(A) A four-year commitment to be a member of the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine; or

(B) A contract to serve as a commissioned officer in any branch of the armed services of the United States;

(4) Meet the physical examination requirements and all other prescreening requirements of the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine, or the branch of the armed services with which the student enters into a contract; and

(5) Repay the scholarship according to the terms of the promissory note if the student fails to meet the requirements described in §22.170 of this subchapter (relating to Conversion of the Scholarship to a Loan).

§22.170. *Conversion of the Scholarship to a Loan.*

(a) A scholarship will become a loan if the recipient:

(1) Fails to maintain satisfactory academic progress as described in §22.167 [§22.169] of this subchapter (relating to Award Eligibility) [; or as required by the institution's ROTC or another undergraduate officer commissioning program for continued participation in that program];

(2) Withdraws from the scholarship program, as indicated through withdrawal or removal from the institution of higher education or that institution's ROTC program or other undergraduate officer commissioning program, without subsequent enrollment in another institution of higher education and that subsequent institution's ROTC program or other undergraduate officer commissioning program [Fails to fulfill any of the terms of the Texas Armed Services Scholarship agreement as described in §22.167(3) of this subchapter (relating to Initial Award Eligibility and Agreement Requirements)]; or

(3) Fails to fulfill one of the following:

(A) (No change.)

(B) the minimum active service requirement included in a contract to serve as a commissioned officer in any branch of the armed services of the United States; honorable discharge is considered demonstration of fulfilling the minimum active service requirement.

(b) A scholarship converts to a loan if documentation of the contract or commitment outlined in subsection (3) is not submitted to the Coordinating Board within twelve months of graduation with a baccalaureate degree. Subsequent filing of this documentation will revert the loan back to a scholarship.

(c) [(b)] If a recipient's scholarship converts to a loan [recipient fails to meet any of the conditions for continued eligibility], the recipient:

(1) cannot regain award eligibility in a subsequent academic year; and

(2) loses eligibility to receive any future awards [; and

[(3)] [loses eligibility to have his or her existing loans forgiven].

(d) [(e)] If a [scholarship] recipient requires a temporary leave of absence from the institution of higher education and/or the ROTC

program or another undergraduate officer commissioning program for personal reasons or to provide service for the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine for fewer than twelve months, the Board may agree to not convert the scholarship to a loan during that time.

(e) [(d)] If a recipient is required to provide more than twelve months of service in the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine as a result of a national emergency, the Board shall grant that recipient additional time to meet the graduation and service requirements specified in the scholarship [Texas Armed Services Scholarship] agreement.

§22.171. *Repayment of Loans.*

(a) A scholarship [Texas Armed Services Scholarship] is considered a loan on the date the recipient fails to meet the conditions of the scholarship as described in [§22.169 of this subchapter (relating to Eligibility for Continued Awards) and] §22.170 of this subchapter (relating to Conversion of the Scholarship to a Loan); the loan amount must be repaid, plus interest accrued.

(b) Loan interest. The interest rate charged on the loans [Texas Armed Services Loans] shall be the same rate charged for a College Access Loan at the time the funds were disbursed. Interest shall begin to accrue on the date the scholarship is converted to a loan.

(c) Period of loan repayment. The total amount of principal, interest, late charges, and any costs of collection that accrue over the life of the loans are to be repaid in installments over a period of not more than 15 years after the date the scholarship becomes a loan.

(d) Grace period. A recipient shall begin making payments six months after the date the scholarship becomes a loan.

(e) Minimum repayment amount. The minimum monthly payment amount required by any repayment plan is \$100, or an amount required to repay the loan within 15 years, whichever is greater.

(f) Late charges. A charge of 5 percent of the scheduled monthly payment amount or five dollars (\$5), whichever is less, shall be assessed if the past due amount is not received within 20 days of the scheduled due date. These charges shall be collected for late payment of all sums due and payable and shall be taken out of the next payment received by the Board.

(g) Collection charges. In the case of delinquent accounts, the Commissioner may authorize the assessment of charges to cover costs necessary to collect the loan.

(h) Deferments. An education deferment is available to any recipient whose loan is not in a default status and who provides the Board documentation of enrollment as at least a half-time student.

(i) Forbearance. Board staff [The Commissioner] may grant periods of forbearance in the form of postponed or reduced payments for unusual financial hardship if the Board receives a written or verbal request stating the circumstances that merit such consideration.

(j) Prepayment. Any loans made through the program may be prepaid without penalty.

(k) Application of payments. In accordance with the terms of the promissory note, Board staff shall determine the priority order in which payments shall be applied to interest, late charges, principal, collections costs and any other charges.

§22.172. *Enforcement of Collection.*

(a) - (b) (No change.)

(c) The institution of higher education may not release an official certified copy of the official records of a scholarship recipient, nor may any recipient re-register for classes at the institution if Board reports made available to the institution state that the loan is in a delinquent status. The Commissioner must approve exceptions to this requirement in advance of the institution's release of an official certified copy of the records or of the recipient's re-registration.]

(c) [(d) The] Board staff shall notify the Comptroller of Public Accounts when a recipient's loan has become 90 days or more past due, resulting in the non-issuance of certain state warrants.

§22.173. *Exemption and Cancellation.*

(a) The recipient shall be exempt from the requirement to repay the scholarship [Texas Armed Services loan] if the person is unable to meet the obligations of the agreement solely as a result of physical inability and provides a physician's certification and/or other appropriate documentation to the satisfaction of the Board.

(b) [The] Board staff shall cancel a recipient's loan upon the death of the recipient unless the debt was reduced to judgment before the death occurred.

(c) [The] Board staff may cancel a recipient's service and/or repayment obligation if funding for the Texas Armed Services Scholarship Program [program] is discontinued while the recipient continues to meet eligibility requirements.

§22.174. *Provisions for Death and Disability.*

(a) All loans through the Texas Armed Services Scholarship Program are discharged in the event of the borrower's death or permanent and total disability.

(b) Verification of death, and determination of permanent and total disability of a borrower through the Texas Armed Services Scholarship Program, shall be made in accordance with student loan industry standards.

(c) The final determination of permanent and total disability of a borrower shall be made by the Commissioner, or his/her designee.

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 January 24, 2020.

TRD-20200308
William Franz
General Counsel

Texas Higher Education Coordinating Board
Earliest possible date of adoption: March 8, 2020
For further information, please call: (512) 427-6365



19 TAC §22.169, §22.174

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of 19 TAC §22.169 and §22.174, in Subchapter I, concerning the Texas Armed Services Scholarship Program. Specifically, §22.169 is repealed due to the integration of its contents into §22.167, and §22.174 is repealed because it is no longer necessary due to proposed changes to §22.170, concerning Conversion of the Scholarship to a Loan.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for the

first five years the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeals.

Dr. Contéro-Puls has also determined that for each year of the first five years that the repeal will be in effect, the public benefit will be improved understanding of Texas Armed Services Scholarship Program rules. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on small businesses, micro businesses, or rural communities.

Government Growth Impact Statement

- (1) the rulemaking will not create or eliminate a government program;
- (2) implementation of the rulemaking will not require the creation or elimination of employee positions;
- (3) implementation of the rulemaking will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rulemaking will not require an increase or decrease in fees paid to the agency;
- (5) the rulemaking will not create a rule;
- (6) the rulemaking will repeal existing rules §22.169 and §22.174;
- (7) the rulemaking will not change the number of individuals subject to the rule; and
- (8) the rulemaking will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.contero-puls@theccb.state.tx.us.

The repeal is proposed under the Texas Education Code, §61.9774, which provides the Coordinating Board the authority to adopt rules for the administration of the Texas Armed Services Scholarship Program.

The proposed repeal affects the Texas Education Code, §§61.9771 - 61.9776.

§22.169. *Eligibility for Continued Awards.*

§22.174. *Hardship Provisions.*

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 January 24, 2020.

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William Franz
General Counsel

Texas Higher Education Coordinating Board
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SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §§22.253 - 22.261

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules under Chapter 22, Subchapter M, §§22.257 - 22.261, and amendments to §§22.253 - 22.256 of Board rules, concerning the Texas Educational Opportunity Grant Program.

New §22.257 is added to consolidate satisfactory academic progress information under one section of the subchapter. Section 22.258 is added to consolidate discontinuation of eligibility or non-eligibility under one section of the subchapter. Section 22.259 is added to consolidate hardship provisions under one section of the subchapter and to add an additional circumstance for hardship consideration to align the hardships applicable to the Texas Educational Opportunity Grant Program with those described in the Toward EXcellence, Access and Success Grant Program. Section 22.260 is added to consolidate priorities in awarding under one section of the subchapter. Section 22.261 is added to consolidate grant amounts and adjustments under one section of the subchapter.

The proposed amendments eliminate redundancy between Subchapter M and Subchapter A (relating to General Provisions), apply consistent terminology throughout the rules, and remove outdated references. Section 22.253 is amended to clarify references in the text. Section 22.254 is amended to remove sixteen definitions that are either not used in the subchapter or are already defined in Subchapter A, §22.1. In addition, the definition for "Initial Year Award" is amended to allow for summer grants, and the terms "Continuation Award" and "Grant" are added and defined to provide further clarification to this rule. Section 22.255(a) is amended to align with statute, §22.255(b) is amended to align with changes in the timing of the allocation process, and §22.255(c) is amended to remove material that appears in subchapter A (relating to General Provisions). Section 22.256 is amended to provide greater clarity and to remove items that have been consolidated into other sections of the subchapter or that appear in Subchapter A (relating to General Provisions).

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Contéro-Puls 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 a clearer understanding of the requirements of the program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on small businesses, micro businesses, and rural communities.

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 position;
- (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 create new rules §§22.257 - 22.261;
- (6) the rules will limit §§22.257 - 22.261;

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

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

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, Charles.Contero-Puls@THECB.state.tx.us.

The amendments and new rules are proposed under the Texas Education Code, Section 56.403, which provides the Coordinating Board with the authority to adopt rules for the administration of the Texas Educational Opportunity Grant Program.

This proposal affects Texas Education Code, Chapter 56, Subchapter P.

§22.253. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Chapter 56, Subchapter P [§§56.401 - 56.4075], Texas Educational Opportunity Grant Program. This subchapter establishes [These rules establish] procedures to administer Texas Education Code §§56.401 - 56.4075 [this grant program].

(b) Purpose. The purpose of this program is to provide need-based grants [of money] to enable eligible students to attend public two-year institutions of higher education in this state.

§22.254. Definitions.

In addition to the words and terms defined in §22.1 of this chapter (relating to Definitions), the [The] following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Continuation Award--A grant awarded to a person who has previously received an initial year award.

[(1) Attempted Hours--Every course in every semester for which a student has been registered as of the official Census Date, including but not limited to, repeated courses and courses the student drops and from which the student withdraws. Transfer hours and hours for optional internship and cooperative education courses are also included if they are accepted by the receiving institution towards the student's current program of study.]

[(2) Average statewide amount of tuition and required fees--In determining the maximum award amount, the average amount of tuition and required fees by institution type (public junior colleges, public state colleges, and public technical institutes) for a resident student enrolled full-time in an associate degree or certificate program, as reported in the most recent Integrated Federal Reporting System report.]

[(3) Awarded--Offered to a student.]

[(4) Board--The Texas Higher Education Coordinating Board.]

[(5) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.]

[(6) Cost of attendance--An estimate of the expenses incurred by a typical financial aid student in attending a particular college. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).]

[(7) Encumbered funds--Program funds that have been offered to a specific student, which offer the student has accepted, and which may or may not have been disbursed to the student.]

[(8) Enrolled on at least a half-time basis--Enrolled for the equivalent of six semester credit hours in a regular semester.]

[(9) Entering student--A student enrolled in the first 30 semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and courses for which the student received credit through examination.]

[(10) Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.]

[(11) Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines. Federal and state veterans' educational and special combat pay benefits are not to be considered in determining a student's financial need.]

(2) [(12)] Forecast--The FORECAST function in Microsoft Excel.

(3) Grant--Funds awarded to a student through the Texas Educational Opportunity Grant Program.

(4) [(13)] Initial year award--The grant award made in the student's first year in the [Texas Educational Opportunity Grant] Program [, typically made up of a fall and spring disbursement].

[(14) Institution--A public junior college as defined in Texas Education Code, §61.003(2); a public technical institute as defined in Texas Education Code, §61.003(7); and a public state college as defined in Texas Education Code, §61.003(16).]

[(15) Period of enrollment--The term or terms within the current state fiscal year (September 1-August 31) for which the student was enrolled in an approved institution and met all the eligibility requirements for an award through this program.]

(5) [(16)] Program--The Texas Educational Opportunity Grant Program.

[(17) Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.]

[(18) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.]

[(19) State-wide total cost of attendance--For allocation purposes, the aggregate sum of costs of attendance reported by participating eligible institutions in the most recent Financial Aid Database Report for each first-time-in-college student who meets the eligibility requirements listed in §22.262(b)(1) of this title.]

§22.255. *Eligible Institutions.*

(a) Eligibility.

(1) Any public junior college as defined in Texas Education Code, §61.003(2); public technical institute as defined in Texas Education Code, §61.003(7); and public state college as defined in Texas Education Code, §61.003(16) is [Each institution as defined in §22.254 of this title (relating to Definitions) are] eligible to participate in the program.

(2) No participating institution may, on the grounds of race, color, national origin, gender, religion, age, or disability exclude an individual from participation in, or deny the benefits of the program described in this subchapter.

(3) Each participating [eligible] institution must follow the Civil Rights Act of 1964, Title VI (Public Law 88-352 [88-353]) in avoiding discrimination in admissions or employment.

(b) Approval.

(1) Agreement. Each eligible institution must enter into an agreement with the Board, the terms of which shall be prescribed by the Commissioner or his/her designee, prior to being approved to participate in the program.

(2) Approval Deadline. An institution must indicate an intent to participate in the program [be approved] by June 1 [April 1] and enter into an agreement with the Board by August 31 in order for qualified students enrolled in that institution to be eligible to receive grants in the following biennium [fiscal year].

(c) Responsibilities. Participating institutions are required to abide by the General Provisions outlined in subchapter A of this chapter.

[(1) Probation Notice. If the institution is placed on probation by its accrediting agency, it must immediately advise the Board and grant recipients of this condition and maintain evidence in each student's file to demonstrate that the student was so informed.]

[(2) Disbursements to Students.]

[(A) Documentation. The institution must maintain records to prove the receipt of program funds by the student or the crediting of such funds to the student's school account.]

[(B) Procedures in Case of Illegal Disbursements. If the Commissioner has reason for concern that an institution has disbursed funds for unauthorized purposes, the Board will notify the Program Officer and financial aid officer and offer an opportunity for a hearing pursuant to the procedures outlined in Chapter 1 of this title (relating to Agency Administration). Thereafter, if the Board determines that funds have been improperly disbursed, the institution shall become primarily responsible for restoring the funds to the Board. No further disbursements of grants or scholarships shall be permitted to students at that institution until the funds have been repaid.]

[(3) Reporting Requirements/Deadlines. All institutions must meet Board reporting requirements in a timely fashion. Such reporting requirements shall include reports specific to allocation and reallocation of grant funds (including the Financial Aid Database Report) as well as progress and year-end reports of program activities.]

[(4) Program Reviews. If selected for such by the Board, participating institutions must submit to program reviews of activities related to the Program.]

§22.256. *Eligible Students.*

(a) To receive an initial year award through the [Texas Educational Opportunity Grant] Program, a student must:

- (1) be a resident of Texas;
- (2) show financial need;
- (3) have applied for any available financial aid assistance;
- (4) be enrolled at a participating institution [as an entering student] on at least a half-time basis as an entering student, which is a student enrolled in the first 30 semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and

courses for which the student received credit through examination; and [in an associate's degree or certificate program at an eligible institution;]

(5) be enrolled in an associate degree or certificate program at a participating institution [not be concurrently receiving a TEXAS Grant];

[(6) not have been granted an associate's or baccalaureate degree; and]

[(7) have a statement on file with the institution of higher education indicating the student is registered with the Selective Service System as required by federal law or is exempt from Selective Service registration under federal law.]

[(8) In determining initial student eligibility for Texas Educational Opportunity grant awards pursuant to subsections (a), (b) and (c) of this section, priority shall be given to those students who have an expected family contribution that does not exceed the lesser of the limit set by the Board for the relevant fiscal year or 60 percent of the average statewide amount of tuition and fees for general academic teaching institutions for the relevant academic year.]

(b) To receive a continuation award through the [Texas Educational Opportunity Grant] Program, a student must:

(1) have previously received an initial year award through this program;

(2) show financial need;

(3) be enrolled on at least a half-time basis;

(4) be enrolled in an associate [associate's] degree or certificate program at an eligible institution; and

[(5) not have been granted an associate or baccalaureate degree;]

[(6) not be concurrently receiving a TEXAS Grant;]

[(7) have a statement on file with the institution of higher education indicating the student is registered with the Selective Service System as required by federal law or is exempt from Selective Service registration under federal law; and]

(5) [(8)] make satisfactory academic progress towards an associate degree or certificate, as defined in §22.257 of this subchapter (relating to Satisfactory Academic Progress). [which requires:

[(A) for persons receiving their first awards prior to fall semester, 2005, completion of at least 75% of the hours attempted in the student's most recent academic year, and maintenance of an overall grade point average of at least 2.5 on a four point scale or its equivalent.]

[(B) for persons receiving their first awards for fall 2005 or later:]

[(i) compliance with the academic progress requirements of the institution as of the end of the first academic year; and]

[(ii) in subsequent academic years, completion of at least 75% of the hours attempted in the student's most recent academic year, and maintenance of an overall grade point average of at least 2.5 on a four point scale or its equivalent.]

[(C) The completion rate calculations may be made in keeping with institutional policies.]

[(D) Grade point average calculations may be made in keeping with institutional policies except that if a grant recipient's grade

point average falls below program requirements and the student transfers to another institution, the receiving institution cannot make a continuation award to the transfer student until he/she provides official transcripts of previous coursework to the new institution's financial aid office and that office re-calculates an overall grade point average, including hours and grade points for courses taken at the old and new institutions that proves the student's overall grade point average now meets or exceeds program requirements.]

[(c) Discontinuation of Eligibility or Non-Eligibility.]

[(1) A student may not receive a Texas Educational Opportunity Grant for more than 75 semester credit hours or its equivalent. Beginning with awards for the 2015-2016 academic year, a student's eligibility for a Texas Educational Opportunity Grant ends once he or she has attempted 75 semester credit hours or the equivalent unless the student is granted a hardship extension in accordance with §22.257(b) of this chapter.]

[(2) A student's eligibility for a Texas Educational Opportunity Grant award ends four years from the start of the semester or term in which the student received his or her initial award.]

[(3) A person is not eligible to receive an initial or continuation Texas Educational Opportunity Grant award if the person has been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of any other jurisdiction involving a controlled substance as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this subchapter and has:]

[(A) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or]

[(B) been pardoned, had the record of the offense expunged from the person's record, or otherwise been released from the resulting ineligibility to receive a grant.]

[(4) Unless granted a hardship extension in accordance with §22.257 of this title (relating to Hardship Provisions), if a person fails to meet any of the requirements for receiving a continuation award as outlined in subsection (b) of this section after completion of any year, the person may not receive a Texas Educational Opportunity Grant award until he or she completes courses while not receiving a Texas Educational Opportunity Grant and meets all the requirements of subsection (b) of this section as of the end of that period of enrollment.]

§22.257. Satisfactory Academic Progress.

(a) Eligibility at End of Initial Year Award. Students who complete their first year receiving a grant in compliance with their institutions' financial aid academic progress requirements are eligible to receive continuation awards in the following year if they meet the other requirements listed in §22.256 of this subchapter (relating to Eligible Students).

(b) Eligibility at End of a Continuation Award. Students shall, unless granted a hardship provision in accordance with §22.259 of this subchapter (relating to Hardship Provisions), as of the end of an academic year in which the student receives a continuation award:

(1) complete at least 75% of the semester credit hours attempted in the student's most recent academic year; and

(2) maintain an overall cumulative grade point average of at least 2.5 on a four-point scale or its equivalent.

(c) The calculation of a student's GPA is to be completed in accordance with Subchapter A of this chapter (relating to General Provisions).

(d) The completion rate calculations may be made in keeping with institutional policies.

§22.258. Discontinuation of Eligibility or Non-Eligibility.

(a) A student may not receive a grant while concurrently receiving a TEXAS Grant.

(b) A student may not receive a grant after having been granted an associate or baccalaureate degree.

(c) A student's eligibility for the program ends once a student has attempted 75 semester credit hours or the equivalent, unless the student is granted a hardship extension in accordance with §22.259 of this subchapter (relating to Hardship Provisions).

(d) A student's eligibility for the program ends four years from the start of the semester in which the student received an initial year award, unless the student is granted a hardship extension in accordance with §22.259 of this subchapter.

(e) A person is not eligible to receive a grant if the person has been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of any other jurisdiction involving a controlled substance as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this subchapter and has:

(1) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or

(2) been pardoned, had the record of the offense expunged from the person's record, or otherwise been released from the resulting ineligibility to receive a grant.

(f) Other than as described in §22.259 of this subchapter, if a person fails to meet any of the requirements for receiving a continuation award as outlined in §22.256 of this subchapter (relating to Eligible Students) after completion of any year, the person may not receive a grant until after completing a semester of at least half-time coursework while not receiving a grant and meets all the requirements of §22.256 of this subchapter as of the end of that semester.

§22.259. Hardship Provisions.

(a) In the event of a hardship or for other good cause, the Program Officer at a participating institution may allow an otherwise eligible student to receive a grant;

(1) while maintaining a grade point average below the required level, as defined in §22.257 of this subchapter (relating to Satisfactory Academic Progress);

(2) while maintaining a completion rate below the required level, as defined in §22.257 of this subchapter;

(3) while enrolled less than half time;

(4) while enrolled in semester credit hours in excess of the attempted hour limit, as defined in §22.258(c) of this subchapter (relating to Discontinuation of Eligibility and Non-Eligibility), though the total number of semester credit hours paid for, at least in part, with program funding may not exceed 75 or its equivalent; or

(5) while enrolled beyond the time limit restrictions, as defined in §22.258(d) of this subchapter.

(b) Hardship conditions may include, but are not limited to:

(1) a showing of a severe illness or other debilitating condition that may affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance; or

(3) the requirement of fewer than six semester credit hours to complete one's degree plan.

(c) Documentation of the hardship circumstances approved for a student to receive a grant must be kept in the student's files, and the institution must identify students approved for a grant based on a hardship to the Coordinating Board, so that it may appropriately monitor each student's period of eligibility.

(d) Each institution shall adopt a hardship policy under this section and have the policy available in writing in the financial aid office for public review upon request.

§22.260. Priorities in Grants to Students.

(a) If appropriations for the program are insufficient to allow grants to all eligible students, continuation awards will be given priority.

(b) In determining who should receive an initial year award, an institution shall give priority to those students who have an expected family contribution that does not exceed 60 percent of the average statewide amount of tuition and fees for general academic teaching institutions for the relevant academic year.

(c) In determining who should receive an initial year award, an institution shall give highest priority to students who demonstrate the greatest financial need at the time the grant is made.

§22.261. Grant Amounts and Adjustments.

(a) Funding. Funds awarded through this program may not exceed the amount of appropriations, grants, and other funds that are available for this use.

(b) Grant Amounts.

(1) The amount of a grant may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any gift aid received exceeds the student's cost of attendance. However, no student's grant shall be greater than the amount of the student's financial need.

(2) The Board shall determine and announce the maximum grant amount in a given state fiscal year by January 31 of the prior fiscal year. The calculation of the maximum amount will be based on the average statewide amount of tuition and required fees at eligible institutions that an in-district resident student enrolled full-time in an associate degree or certificate program would be charged for that semester (Texas Education Code, §56.407). In determining the maximum grant amount, the average amount of tuition and required fees is determined by institution type (public junior colleges, public state colleges, and public technical institutes) for an in-district resident student enrolled full-time in an associate degree or certificate program, utilizing the most recent Integrated Fiscal Reporting System reports to project the value.

(3) The value of an individual's grant in a given semester is to be based on the share of a full-time course load in which the student is enrolled as of the census date of the semester, in accordance with the following table:

(A) 12 or more semester credit hours--100% of the semester's maximum grant for a full-time student;

(B) at least 9 but fewer than 12 semester credit hours--75 percent of the semester's maximum grant for a full-time student;

(C) at least 6 but less than 9 semester credit hours--50 percent of the semester's maximum grant for a full-time student; and

(D) less than 6 semester credit hours--zero percent of the semester's maximum grant for a full-time student, unless approved for a grant under hardship conditions in accordance with subsection (c) of this section.

(c) If an otherwise eligible student, due to hardship, enrolls for less than a half-time course load, the grant is to be prorated. The amount that can be awarded is equal to the semester's maximum grant for the relevant type of institution, divided by 12 and multiplied by the actual number of semester credit hours for which the student is enrolled.

(d) An approved institution may not charge a person receiving a grant through that institution an amount of tuition and required fees in excess of the grant received by the person. Nor may it deny admission to or enrollment in the institution based on a person's eligibility to receive or actual receipt of a grant. If an institution's tuition and fee charges exceed the grant, it may address the shortfall in one of two ways:

(1) it may use other available sources of financial aid, other than a loan or Pell grant to cover any difference in the amount of the grant and the student's actual amount of tuition and required fees at the institution; or

(2) it may waive the excess charges for the student. However, if a waiver is used, the institution may not report the recipient's tuition and fees in a way that would increase the general revenue appropriations to the institution.

(e) Adjustments to grants and late disbursements are to be completed in accordance with Subchapter A of this chapter (relating to General Provisions).

(f) Prorated Grants in Case of Low Balance of Eligible Semester Credit Hours or Attempted Semester Credit Hours. If the student's balance of eligible semester credit hours or attempted semester credit hours is less than the number of semester credit hours the student is taking in a given semester, the student's grant for that semester should be prorated using the following schedule:

(1) if balance of hours is 12 or more semester credit hours--100% of the semester's maximum grant for a full-time student;

(2) if balance of hours is at least 9 but fewer than 12 semester credit hours--75% the semester's maximum grant for a full-time student;

(3) if balance of hours is at least 6 but fewer than 9 semester credit hours--50% the semester's maximum grant for a full-time student; and

(4) if balance of hours is fewer than 6 semester credit hours--25% the semester's maximum grant for a full-time student.

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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William Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 8, 2020

For further information, please call: (512) 427-6365



19 TAC §§22.257 - 22.261, 22.263

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Chapter 22, Subchapter M, §§22.257 - 22.261 and §22.263, concerning Texas Educational Opportunity Grant. Sections 22.257 - 22.260 are repealed to remove information that is being consolidated in new sections. Specifically, §22.261 and §22.263 are repealed to remove material that appears in Subchapter A (relating to General Provisions).

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

Dr. Contéro-Puls has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be a clearer understanding of the requirements of the program. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on small businesses, micro businesses, and rural communities.

Government Growth Impact Statement

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

(2) implementation of the repeal will not require the creation or elimination of employee positions;

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

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

(5) the rulemaking will not create a rule;

(6) the rulemaking will repeal §§22.257-22.261 and §22.263;

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

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

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, Charles.Contero-Puls@THECB.state.tx.us.

The repeal is proposed under the Texas Education Code, §56.403, which provides the Coordinating Board the authority to adopt rules for the administration of the Texas Educational Opportunity Grant Program.

The repeal affects Texas Education Code, Chapter 56, Subchapter P.

§22.257. *Hardship Provisions.*

§22.258. *Priorities in Funding.*

§22.259. *Priority in Awards to Students.*

§22.260. *Award Amounts and Adjustments.*

§22.261. *Late Disbursements.*

§22.263. *Dissemination of Information and Rules.*

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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William Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6365



SUBCHAPTER X. TEACH FOR TEXAS CONDITIONAL GRANT PROGRAM

19 TAC §§22.625, 22.626, 22.631

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Chapter 22, Subchapter X, §§22.625, 22.626, and 22.631, concerning the Teach for Texas Conditional Grant Program. The amendment to §22.625 updates the legislative reference to reflect the specific citation of the Texas Education Code section regarding the authority for these provisions and removes unnecessary language. The amendment to §22.626 concerning "Definitions" strikes the terms "Academic period," "Board," "Commissioner," "Eligible Institution," "Enrolled for at least a three-quarter time," "Enrolled at least half time," and "Satisfactory Academic Progress" from the rule. These terms are either not used in the subchapter or are already defined in Subchapter A, §22.1. Section 22.631 of the rule is amended to reflect the hardship provisions that are applicable to fulfillment of the service obligation.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Contéro-Puls 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 a clearer understanding of the requirements of the program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on small businesses, micro businesses, and rural communities.

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 limit §§22.625, 22.626, and 22.631;

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

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

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, Charles.Contero-Puls@THECB.state.tx.us.

The amendments are proposed under the Texas Education Code, §56.359, which provides direction regarding the treatment of grant recipients who entered the conditional grant program before it was converted to a loan repayment assistance program, and §56.3575, which provides the Coordinating Board with the authority to adopt rules for administration of Texas Education Code, Chapter 56, Subchapter O.

The amendment affects Texas Education Code, §56.359.

§22.625. *Authority[, Scope, and Purpose].*

~~[(a)] Authority. Authority for this subchapter is provided in the Texas Education Code, §56.359. [Subchapter O, Teach for Texas Financial Assistance Program. These rules establish procedures to administer the subchapter as prescribed in §§56.351 through 56.356.]~~

~~[(b) Scope. The rules set forth in this subchapter are applicable to the persons with financial need who are seeking educator certification.]~~

~~[(c) Purpose. The purpose of the Teach for Texas Conditional Grant Program is to encourage students to become teachers and to encourage these newly certified teachers to teach in fields having a critical shortage of teachers or in communities having a critical shortage of teachers.]~~

§22.626. *Definitions.*

In addition to the words and terms defined in §22.1 of this chapter, the [The] following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

~~[(1) Academic period--A twelve-month period designated by an eligible institution.]~~

~~[(2) Board--The Texas Higher Education Coordinating Board.]~~

~~[(3) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.]~~

~~[(4)] [(4)] Community experiencing a critical shortage of teachers--As defined by the Commissioner of Education.~~

~~[(5) Eligible Institution--Institutions of higher education and private or independent institutions of higher education, as defined in the Texas Education Code, Chapter 61.003, that offer an educator certification program (not applicable in the case of alternative educator certification programs).]~~

~~[(6) Enrolled for at least a three-quarter time--For undergraduates, enrolled for the equivalent of nine semester credit hours in a regular semester.]~~

~~[(7) Enrolled at least half time--For undergraduates, enrolled for the equivalent of six semester credit hours in a regular semester.]~~

~~[(2) [(8)] Program--The Teach for Texas Conditional Grant Program.~~

~~[(3) [(9)] Recipient--A person who has received a Teach for Texas Conditional Grant.~~

(4) [(40)] Program Completion Date--The date the recipient is considered to have completed the requirements of the educator certification program and is eligible to take the appropriate ExCET exam.

~~[(11) Satisfactory Academic Progress--A student makes satisfactory academic progress toward completion of an educator certification program if he/she completes at least 75% of the semester credit hours attempted in the student's most recent academic year and earns an overall grade point average of at least 2.5 on a four-point scale on coursework previously attempted at institutions of higher education.]~~

§22.631. *Hardship and Other Good Cause.*

Hardship and other good cause may be determined by the Board based upon documented circumstances. The Board may request assistance from the program officer at an eligible institution in determining whether or not these circumstances warrant exception to ~~[the 90-hour grant eligibility limitation, the satisfactory academic progress requirements, the requirement to be enrolled at least three-quarter time, the requirement to complete the educator certification program within the three-year grant eligibility period,]~~ the requirement to begin fulfilling the service obligation not later than 18 months after the certification program completion date, and the requirement to fulfill the five-year service obligation within a six-year period. Such situations include, but are not limited to, a severe illness or other debilitating condition or responsibility for the care of a temporarily disabled dependent or other similar circumstances preventing the recipient from completing the five-year teaching obligation within six years after the date the person began to fulfill the teaching obligation. ~~[the following:~~

~~[(1) a severe illness or other debilitating condition that may affect the recipient's ability to make satisfactory academic progress in the baccalaureate or educator certification program;~~

~~[(2) responsibility for the care of a temporarily disabled dependent that may affect the recipient's ability to make satisfactory academic progress in the baccalaureate or educator certification program; or~~

~~[(3) similar circumstances preventing the recipient from completing the five-year teaching obligation within six years after the date the person began to fulfill the teaching obligation.]~~

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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William Franz
General Counsel
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19 TAC §§22.627 - 22.630, 22.632, 22.642, 22.643

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Chapter 22, Subchapter X, §§22.627-22.630, 22.632, 22.642, and 22.643 of Board rules, concerning Teach for Texas Conditional Grant Program. Specifically, since the Board is no longer issuing new conditional grants under the Teach for Texas Conditional Grant Program,

§§22.627-22.630, 22.632, and, §22.642 and §22.643 are no longer required and are obsolete.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Contéro-Puls 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 this proposal will be a clearer understanding of the scope of the program. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on small businesses, micro businesses, and rural communities.

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 repeal §§22.627 - 22.630, §22.632, §22.642, and §22.643.
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, Charles.Contero-Puls@THECB.state.tx.us.

The repeal is proposed under the Texas Education Code, §56.359, which provides direction regarding the treatment of grant recipients who entered the conditional grant program before it was converted to a loan repayment assistance program, and §56.3575, which provides the Coordinating Board with the authority to adopt rules for administration of Texas Education Code, Chapter 56, Subchapter O.

The proposed repeal affects Texas Education Code, §56.359.

- §22.627. *Priorities of Application Approval.*
§22.628. *Requirements for Eligible Institution.*
§22.629. *Eligible Students.*
§22.630. *Three-Year Grant Eligibility Period.*
§22.632. *Amount of Grant.*
§22.642. *Advisory Committee.*
§22.643. *Dissemination of Information.*

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

Filed with the Office of the Secretary of State on January 24, 2020.



SUBCHAPTER Y. TEACH FOR TEXAS ALTERNATIVE CERTIFICATION CONDITIONAL GRANT PROGRAM

19 TAC §§22.663, 22.664, 22.668

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Chapter 22, Subchapter Y, §§22.663, 22.664, and §22.668 of Board rules, concerning the Teach for Texas Alternative Certification Conditional Grant Program. The amendment to §22.663 updates the legislative reference to reflect the specific citation of the Texas Education Code section regarding the authority for these provisions and removes unnecessary language. The amendment to §22.664 concerning "Definitions" strikes the terms "Board," "Certification officer," "Commissioner," and "Program officer" from the rule. These terms are either not used in the subchapter or are already defined in Subchapter A, §22.1. Section 22.664(4) is amended to reflect the correct citation for the definition of the term "Good cause," which is defined within Chapter 22, Subchapter X, Teach for Texas Conditional Grant Program. Section 22.668 of the rule is amended to reflect the hardship provisions that are applicable to the service obligation requirements.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Contéro-Puls 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 a clearer understanding of the requirements of the program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on small businesses, micro businesses, and rural communities.

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 limit §§22.663, 22.664, and 22.668;
- (7) the rules will not change the number of individuals subject to the rule; and

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

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, Charles.Contero-Puls@THECB.state.tx.us.

The amendments are proposed under the Texas Education Code, §56.359, which provides direction regarding the treatment of grant recipients who entered the conditional grant program before it was converted to a loan repayment assistance program, and §56.3575, which provides the Coordinating Board with the authority to adopt rules for administration of Texas Education Code, Chapter 56, Subchapter O.

The amendment affects Texas Education Code, §56.359.

§22.663. *Authority[, Scope, and Purpose].*

[(a)] Authority. Authority for this subchapter is provided in the Texas Education Code, §56.359. [Subchapter O, Teach for Texas Financial Assistance Program. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code §§56.357 through 56.358.]

[(b)] Scope. The rules set forth in this subchapter are applicable to persons who show financial need and who enroll in an alternative certification program approved by the State Board for Educator Certification.]

[(c)] Purpose. The purpose of the Teach for Texas Alternative Certification Conditional Grant Program is to attract to the teaching profession persons with undergraduate degrees who have expressed an interest in teaching; to support the certification of those persons as classroom teachers; and to encourage these newly certified teachers to teach in fields having a critical shortage of teachers or to teach in communities having a critical shortage of teachers.]

§22.664. *Definitions.*

In addition to the words and terms defined in §22.1 of this chapter, the [The] following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Alternative Certification Program--an alternative certification educator preparation program approved by the State Board for Educator Certification (SBEC).

[(2)] Board--The Texas Higher Education Coordinating Board.

[(3)] Certification officer--The individual designated by the State Board for Educator Certification as the "Certification Officer" at an approved certification program.]

(2) [(4)] Certified Teacher--A person who has passed the appropriate certification exams and has been fully certified by the Texas State Board for Educator Certification (SBEC).

[(5)] Commissioner--The Commissioner of Higher Education.]

(3) [(6)] Community Experiencing a Critical Shortage of Teachers--As defined by the Texas Commissioner of Education.

(4) [(7)] Good cause--See §22.631 [§21.436] of this title (relating to Teach for Texas Conditional Grant Program), "Hardship and Other Good Cause."

(5) [(8)] Loan--A Teach for Texas Alternative Certification Conditional Grant that has become a loan because the grant conditions have not been fulfilled.

(6) [(9)] Program Completion Date--The date the recipient is considered to have completed the requirements of the educator certification program and is eligible to take the appropriate ExCET exam.

[(10) Program officer--The individual designated by the State Board for Educator Certification as the "Program Director" at an approved certification program.]

(7) [(11)] Recipient--A person who has received a Teach for Texas Alternative Certification Conditional Grant.

(8) [(12)] Steady Progress--As defined by the individual program officer midway through the alternative certification program.

(9) [(13)] Shortage Field--Subject or area of study designated by the Texas Commissioner of Education as having a critical shortage of teachers.

§22.668. *Hardship and Other Good Cause.*

Hardship and other good cause may be determined by the Board based upon documented circumstances. The Board may request assistance from the program officer at an approved institution in determining whether or not circumstances warrant exception [to the steady progress requirement and also the requirement] to fulfill the five-year teaching obligation within a six-year period. Such situations include, but are not limited to, a severe illness or other debilitating condition or the responsibility of the recipient for the care of a temporarily disabled dependent that may affect the recipient's ability in completing the five-year teaching obligation. [the following:]

[(1) a severe illness or other debilitating condition that may affect the recipient's ability to make steady progress in the alternative educator certification program or in completing the five-year teaching obligation; or]

[(2) responsibility of the recipient for the care of a temporarily disabled dependent that may affect the recipient's ability to make steady progress in the alternative educator certification program or in completing the five-year teaching obligation.]

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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William Franz
General Counsel
Texas Higher Education Coordinating Board
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19 TAC §§22.665 - 22.667, 22.669, 22.678, 22.679

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Chapter 22, Subchapter Y, §§22.665 - 22.667, 22.669, 22.678, and 22.679, concerning Teach for Texas Alternative Certification Conditional Grant Program. Specifically, since the Board is no longer issuing new conditional grants under the Teach for Texas Alternative Certification Conditional Grant Program, §§22.665 - 22.667, 22.669, 22.678, and 22.679 are no longer required and are obsolete.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeals.

Dr. Contéro-Puls 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 this proposal will be a clearer understanding of the scope of the program. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on small businesses, micro businesses, and rural communities.

Government Growth Impact Statement

- (1) the rulemaking will not create or eliminate a government program;
- (2) implementation of the repeals will not require the creation or elimination of employee positions;
- (3) implementation of the repeals will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the repeals will not require an increase or decrease in fees paid to the agency;
- (5) the repeals will not create a new rule;
- (6) the rulemaking will repeal §§22.665 - 22.667, 22.669, 22.678, and 22.679;
- (7) the repeals will not change the number of individuals subject to the rule; and
- (8) the repeals will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, Charles.Contero-Puls@THECB.state.tx.us.

The repeal is proposed under the Texas Education Code, §56.359, which provides direction regarding the treatment of grant recipients who entered the conditional grant program before it was converted to a loan repayment assistance program, and §56.3575, which provides the Coordinating Board with the authority to adopt rules for administration of Texas Education Code, Chapter 56, Subchapter O.

The repeal affects Texas Education Code, §56.359.

- §22.665. *Application Acceptance and Selection Criteria Priorities.*
- §22.666. *Agreement to Program Requirements.*
- §22.667. *Eligible Recipient.*
- §22.669. *Amount of Award.*
- §22.678. *Advisory Committee.*
- §22.679. *Dissemination of Information.*

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

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TRD-20200319



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1011

The Texas Education Agency (TEA) proposes new §61.1011, concerning formula transition grant. The proposed new rule would implement changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by explaining how TEA will calculate additional funding available to certain school districts.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, enacted Texas Education Code (TEC), §48.277, Formula Transition Grant, which created an additional entitlement through the Foundation School Program (FSP) for school districts that did not exceed certain thresholds related to funding under the law as it existed on January 1, 2019. TEC, §48.277, directs the commissioner to use calculations that ensure that eligible districts receive the lesser of 103% of the district's total maintenance and operations revenue per student in average daily attendance under prior law, or 128% of the statewide average amount of maintenance and operations revenue per student in average daily attendance under prior law.

Proposed new 19 TAC §61.1011, Formula Transition Grant, would implement HB 3, 86th Texas Legislature, 2019, by establishing definitions and providing detail regarding the data sources that TEA will use to calculate the funding available to a school district under the law as it existed on January 1, 2019.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal beyond what the authorizing statute requires.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation because it imposes the requirements of a recently enacted statute.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lopez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be clarification of the calculation of the additional funding to which districts would be entitled. The proposal would implement new TEC, §48.277, which provides additional funding to ensure that districts are not adversely affected by the passage of the new school finance law. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact. School districts and open-enrollment charter schools would continue to follow current reporting requirements. An option would be provided for districts to continue to report alternative reporting of students eligible for the National School Lunch program through the TEA online FSP System.

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

PUBLIC COMMENTS: The public comment period on the proposal begins February 7, 2020, and ends March 9, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 7, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §48.004, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which specifies that the commissioner of education shall adopt rules that are necessary to implement and administer the Foundation School Program; and TEC, §48.277, as added by HB 3, 86th Texas Legislature, 2019, which details the calculation of the formula transition grant for school districts and open-enrollment charter schools. This grant is provided to eligible school districts and open-enrollment charter schools on the basis of a comparison of funding under HB 3 and funding under prior law.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §48.004, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legisla-

ture, 2019, and §48.277, as added by HB 3, 86th Texas Legislature, 2019.

§61.1011. Formula Transition Grant.

(a) General provisions. This section implements Texas Education Code (TEC), §48.277 (Formula Transition Grant), which provides for additional funding for school districts with new funding levels that did not exceed certain thresholds as a result of the passage of House Bill (HB) 3, 86th Texas Legislature, 2019. In accordance with TEC, §48.277, this section defines the data sources that Texas Education Agency (TEA) will use in calculating the prior law funding available to school districts.

(b) Definitions. The following terms have the following meanings when used in this section.

(1) Average daily attendance (ADA)--Average daily attendance as defined by TEC, §48.005(a).

(2) Foundation School Program (FSP)--The program established under TEC, Chapters 46, 48, and 49, or any successor program of state-appropriated funding for school districts in this state.

(3) Local maintenance and operations (M&O) tax collections--The amount of local M&O taxes collected by a school district.

(4) Maintenance and operations revenue--The total M&O revenue available to a school district for maintenance and operations under the FSP, including state aid and M&O tax collections net of any required recapture payments.

(5) Public Education Information Management System (PEIMS)--The system that encompasses all data requested and received by TEA about public education, also known as the Texas Student Data System (TSDS) or TSDS PEIMS.

(c) Data sources for calculating M&O revenue under TEC, Chapters 41 and 42, as those chapters existed on January 1, 2019.

(1) M&O tax rate. TEA will use a district's tax year 2018 adopted M&O tax rate, minus any pennies of tax effort adopted in response to a disaster under Texas Tax Code, §26.08(a-1).

(2) M&O tax collections. For the 2019-2020 and 2020-2021 school years, the M&O tax collections under prior law are equal to the product of:

(A) the quotient of:

(i) the actual M&O tax collections for the school year submitted to TEA for FSP purposes; and

(ii) the actual adopted M&O tax rate for the school year; and

(B) the adopted M&O tax rate for the 2018 tax year.

(3) Total tax levy. For purposes of calculating a district's support of students enrolled in the Texas School for the Blind and Visually Impaired and Texas School for the Deaf under TEC, §30.003, TEA will calculate the total tax levy by adding the district's interest and sinking (I&S) tax collections to the M&O tax collections calculated in paragraph (2) of this subsection.

(4) Average daily attendance. In calculating the ADA of a school district under former TEC, §42.005, TEA will exclude any attendance submitted to TEA under TEC, §48.0051 (Incentive for Additional Instructional Days).

(5) State compensatory education full-time equivalent (FTE) student counts. To calculate the number of students eligible for the compensatory education allotment under former TEC, §42.152, TEA will continue to average the best six months number of students

eligible for enrollment in the National School Lunch Program from the preceding federal fiscal year submitted to TEA from the Texas Department of Agriculture. Districts that used alternative reporting of these students through the FSP will be able to continue to submit alternative reporting data through the FSP system for purposes of calculating prior law revenue under the formula transition grant.

(6) Career and technical education (CTE) FTE student counts. To calculate the number of student FTEs eligible for the career and technology education allotment under former TEC, §42.153, TEA will use CTE FTEs submitted to TEA in the summer PEIMS submission for each year and exclude any CTE FTEs in Grade 7 or 8 that were authorized for FSP funding starting with the 2019-2020 school year under TEC, §48.106 (Career and Technology Education Allotment). TEA will also exclude any new CTE funding related to Pathways in Technology Early College High School (P-TECH) schools and the New Tech Network.

(7) Bilingual education. To calculate the bilingual education allotment under former TEC, §42.153, TEA will use data submitted to PEIMS for students with limited English proficiency in bilingual or special language programs under TEC, Chapter 29, Subchapter B (Bilingual Education and Special Language Programs).

(8) High school allotment. To calculate the high school allotment under former TEC, §42.260, TEA will continue to use PEIMS ADA for students in Grades 9-12.

(9) Staff salary allotment. To calculate the additional state aid for staff salary increases under former TEC, §42.2513, TEA will use the numbers of full-time and part-time employees other than administrators or employees subject to the minimum salary schedule submitted to TEA through the FSP system for the 2018-2019 school year.

(10) Additional state aid for homestead exemption. To calculate the additional state aid for homestead exemption under former TEC, §42.2518, TEA will use the values calculated for districts for the 2018-2019 school year.

(11) Guaranteed yield. To calculate the guaranteed yield allotment under former TEC, §42.302(a-1)(1), TEA will use the amounts per student in weighted average daily attendance (WADA) per penny of tax effort established in the General Appropriations Act, Rider 3, Article III, 86th Texas Legislature, 2019, of \$126.88 for the 2019-2020 school year and \$135.92 for the 2020-2021 school year.

(12) Chapter 41 status. For purposes of determining a district's status under former TEC, Chapter 41, TEA will calculate districts' recapture costs under the law as it existed on January 1, 2019, by assuming all districts with a final wealth per WADA in excess of the equalized wealth level(s) were notified of the requirement to pay recapture and that all districts would have exercised the option to purchase ADA credits under former TEC, Chapter 41, Subchapter D. TEA will further assume that all affected districts would have qualified for the early agreement credit as it existed under former TEC, §41.098.

(13) School district entitlement for certain students. TEA will exclude calculations of state aid under former TEC, §42.2511, and TEC, §48.252 (School District Entitlement for Certain Students) in calculations for the formula transition grant.

(14) Limitation on old law calculations.

(A) TEA will stop running prior law calculations for the 2020-2021 school year after June 30, 2021, and the amounts that a district would have received for the 2020-2021 school year under TEC, §48.277(a) and (d-1), will not be changed after that date.

(B) TEA will stop running prior law calculations for the 2021-2022 school year after June 30, 2022, and the amounts that a

district would have received for the 2021-2022 school year under TEC, §48.277(a) and (d-1), will not be changed after that date.

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 January 27, 2020.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 129. STUDENT ATTENDANCE

SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1025

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning student attendance. The amendment would adopt by reference the *2019-2020 Student Attendance Accounting Handbook: Version 2* that includes amendments to incorporate changes made by recent legislation, including House Bill (HB) 3, 86th Texas Legislature, 2019. The handbook provides student attendance accounting rules for school districts and charter schools.

BACKGROUND INFORMATION AND JUSTIFICATION: The TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update 19 TAC §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The proposed amendment to 19 TAC §129.1025 would adopt by reference version 2 of the student attendance accounting handbook for the 2019-2020 school year. The proposed version of the handbook would provide additional guidance to implement legislation from the 86th Texas Legislature, 2019.

Significant changes to the *2019-2020 Student Attendance Accounting Handbook: Version 2* would include the following.

Section 3, General Attendance Requirements

TEC, §25.081, and Chapter 48, specifically §48.005, establish the general parameters for attendance and school operation.

The following changes would implement reporting requirements for attendance and funding.

Language would be revised to clarify that districts providing a full-day prekindergarten program to eligible four-year olds would need to provide 75,600 operational minutes unless they have received a waiver from TEA.

Language would be added to include that a charter school is only approved to serve students in the geographic boundary authorized in the charter school's charter agreement, unless the student is a child of an employee of the school and regardless of whether the child resides in the geographic boundary served by the school.

Language would be added to include that a student whose parent or guardian is an active duty member of the armed forces of the United States may establish residency for the purposes of being enrolled in a school district by providing required documentation within ten days of arrival date.

Language would be added to include that a student is entitled to attend school in a particular district if the student or a parent of the student resides in a residence that is located on a parcel of property located on any part of two or more districts.

Language would be revised to clarify that a district must not excuse more than six days in the junior or senior year of a student who wants to visit an institution of higher learning to determine the student's interest in attending that institution.

The calendar chart would be updated to indicate that a full-day prekindergarten program for eligible four-year-olds will provide 75,600 minutes of operational minutes along with any applicable waivers and a half-day prekindergarten program for eligible three-year-olds and ineligible students will provide 32,400 minutes of instruction along with applicable waivers.

Language would be added to specify that beginning in the 2020-2021 school year, an additional instructional days incentive will be available to district or charter school campuses that offer up to an additional 30 days of half-day instruction for students enrolled in prekindergarten through fifth grade, provided that the regular year minimum operation and instructional minutes are met.

Language would be added to specify that no public school will be funded in excess of a 180-day calendar except for the schools that meet all the criteria for the additional days incentive funding that becomes available starting in the 2020-2021 school year.

Section 4, Special Education

TEC, Chapter 48, specifically §48.102, authorizes funding for special education in certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for special education to account for attendance and funding.

Language would be revised to clarify that to be eligible to receive special education services, a student must be a child with a disability who, by reason thereof, requires specially designed instruction.

Language would be revised to clarify that the admission, review, and dismissal (ARD) committee must determine the instructional setting code and speech therapy indicator code according to the committee's interim placement for the student or final placement as determined by the newly implemented individualized education program (IEP).

Language would be revised to clarify that, if services are provided on a local district campus, the student's instructional setting should be coded as a residential care and treatment facility.

Language would be revised to clarify that references to preschool programs for children with disabilities (PPCD) will be replaced and children aged three through five qualifying for special education and related services will receive services through early childhood special education (ECSE).

Section 5, Career and Technical Education (CTE)

TEC, Chapter 48, including §48.106, authorizes funding for career and technical education (CTE) in certain circumstances. TEC, Chapter 29, Subchapter F, establishes general parameters for CTE programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following change would implement reporting for CTE to account for attendance and funding.

Language would be added to specify that when districts partner with technical or community colleges to offer dual credit, including locally articulated CTE courses, the postsecondary faculty must meet Southern Association of Colleges and Schools teacher requirements.

Language would be added to specify that students in Grades 7 and 8 are eligible for weighted funding if they are enrolled in middle school career and technical education for the disabled courses.

Language would be added to include students enrolled in a Pathways in Technology Early College High School (P-TECH) and New Tech Network (NTN) school as FSP funding eligible.

Language would be added to specify that TEA-designated P-TECH campuses will generate funding in the amount of \$50.00 per student in ADA (Grades 9-12 only).

Language would be added to specify that campuses that have an active agreement with the NTN will generate funding in the amount of \$50.00 per student in ADA (Grades 7-12 only).

Language would be revised to clarify that for students who are enrolled in more than one CTE course, CTE codes are combined to determine the correct code assigned to each student. A code of V1 will be applicable for a course that averages 45 minutes per day.

Section 6, Bilingual/English as a Second Language (ESL)

TEC, Chapter 48, specifically §48.105, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes would implement reporting for bilingual and special language programs to account for attendance and funding.

Language would be revised that a student who is English proficient or a reclassified English learner (EL) participating in a two-way dual language program permits a district to claim eligible days present for bilingual education program funding fee for such a student.

Language would be added to clarify the procedures for identifying a student as an EL and enrolling the EL in the bilingual or ESL education program for the first time in a Texas public school.

Section 7, Prekindergarten (Pre-K)

TEC, Chapter 29, Subchapter E, establishes special general parameters for prekindergarten programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for prekindergarten to account for attendance and funding.

Language would be revised to specify that a child who is eligible and enrolls in a prekindergarten class at the age of three remains eligible for enrollment in a prekindergarten class for the following year.

Language would be revised to clarify that prekindergarten classes for eligible four-year-olds must operate on a full-day basis unless a waiver has been granted.

Section 8, Gifted/Talented

TEC, Chapter 29, Subchapter A, establishes parameters for non-traditional programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for gifted/talented to account for attendance and funding.

Language would be added to clarify the requirements for selecting students to be served in the gifted/talented program.

Section 13, Appendix: Average Daily Attendance (ADA) and Funding

Language would be revised to clarify that the weight assigned to special education is 1.15 to 5.0.

Language would be revised to clarify that dyslexia has a weight of 0.1 per student and that funding is based on actual counts of students receiving services for dyslexia or related disorders.

Language would be revised to clarify that state compensatory education funding is based on a student who is educationally disadvantaged and resides in an economically disadvantaged census block group, and, if insufficient data is available for any school year to evaluate the level of economically disadvantaged in a census block group, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.225 for each student who is economically disadvantaged and resides in that census block group.

Language for eligible funding weight of 1.35 would be added for CTE.

Language for eligible funding weight of 0.1 or 0.15 would be added for Bilingual/EL.

Language for eligible funding weight of 0.1 would be added for Early Education.

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

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

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand and limit an existing regulation. The proposed changes to the *2019-2020 Student Attendance Accounting Handbook: Version 2* would amend requirements and provide clarity regarding student attendance accounting procedures. In some instances, the proposed changes would add information, and in some instances, information would be removed.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lopez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be informing the public of the existence of annual publications specifying attendance accounting procedures for school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins February 7, 2020, and ends March 9, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 7, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.055(b)(35), which states that the commissioner shall perform duties in connection with the

Foundation School Program (FSP) as prescribed by the TEC, Chapter 48; TEC, §25.081, as amended by HB 3, 86th Texas Legislature, 2019, which states that for each school year, each school district must operate so that the district provides for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students. TEC, §25.081(d), authorizes the commissioner to adopt rules to implement the section. TEC, §25.081(g), states that a school district may not provide student instruction on Memorial Day but that if a school district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts may not schedule the last day of school for students before May 15; TEC, §25.087, which requires that a school district excuse a student who is 17 years of age or older from attending school to pursue enlistment in a branch of the armed services of the United States or the Texas National Guard, provided that (1) the district may not excuse for this purpose more than four days of school during the period the student is enrolled in high school; and (2) the district verifies the student's activities related to pursuing enlistment in a branch of the armed services or the Texas National Guard. The statute requires each school district to adopt procedures to verify a student's activities as described by TEC, §25.087(b-5); TEC, §29.0822, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online. TEC, §29.0822, authorizes the commissioner to adopt rules for the administration of the section; TEC, §30A.153, as amended by HB 3, 86th Texas Legislature, 2019, which states that, subject to the limitation imposed under the TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under the TEC, Chapter 48, or in accordance with the terms of a charter granted under the TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course. TEC, §30A.153(d), authorizes the commissioner to adopt rules necessary to implement the section, including rules regarding student attendance accounting; TEC, §48.004, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that the commissioner shall adopt rules, take action, and require reports consistent with the TEC, Chapter 48, as necessary to implement and administer the FSP; TEC, §48.005, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that average daily attendance (ADA) is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under the TEC, §25.081(a), divided by the minimum number of days of instruction. TEC, §48.005(m), authorizes the commissioner to adopt rules necessary to implement the section; TEC, §48.102, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each student in average daily attendance in a special education program under the TEC, Chapter 29, Subchapter A, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic al-

lotment multiplied by 1.15. For each full-time equivalent student in average daily attendance in a special education program under the TEC, Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §48.103, as added by HB 3, 86th Texas Legislature, 2019, which states that for each student that a district serves who has been identified as having dyslexia or a related disorder, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 or a greater amount provided by appropriation; TEC, §48.104, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.2 or, if the student is educationally disadvantaged, 0.275. For each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant, a district is entitled to an annual allotment equal to the basic allotment multiplied 2.41; TEC, §48.105, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each student in average daily attendance in a bilingual education or special language program under the TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1 or 0.15 if the student is in a bilingual education program using a dual language immersion/one-way or two-way program model, and for students not described in subdivision (1), 0.05 if the student is in bilingual education program using a dual language immersion/two-way program model; TEC, §48.106, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each full-time equivalent student in average daily attendance in an approved career and technology education program in Grades 7-12 or in career and technology education programs, a district is entitled to an annual allotment equal to the basic allotment multiplied by a weight of 1.35 and \$50 for each student that is enrolled in two or more advanced career and technology classes for a total of three or more credits; a campus designated as a P-TECH school under TEC, §29.556; or a campus that is a member of the New Tech Network and that focuses on project-based learning and work-based education; and TEC, §48.108, as added by HB 3, 86th Texas Legislature, 2019, which states that for each student in average daily attendance in kindergarten through third grade, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 if the student is educationally disadvantaged or a student of limited English proficiency, as defined by TEC, §29.052, and in bilingual education or special language program under TEC, Chapter 29, Subchapter B.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.055(b)(35); 25.081, as amended by HB 3, 86th Texas Legislature, 2019; 25.0812; 25.087; 29.0822; and 30A.153, 48.004, 48.005, 48.102, 48.103, 48.104, 48.105, 48.106, and 48.108, as added or transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019.

§129.1025. *Adoption by Reference: Student Attendance Accounting Handbook.*

(a) The student attendance accounting guidelines and procedures established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting

for State Funding Purposes) and the Texas Education Code, §48.004 [§42.004], to be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs will be published annually.

(b) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2019-2020 are described in the official Texas Education Agency (TEA) publication 2019-2020 Student Attendance Accounting Handbook: Version 2, dated January 2020 [~~September 2019~~], which is adopted by this reference as the agency's official rule. A copy of the 2019-2020 Student Attendance Accounting Handbook: Version 2, dated January 2020 [~~September 2019~~], is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website. The commissioner will amend the 2019-2020 Student Attendance Accounting Handbook: Version 2, dated January 2020 [~~September 2019~~], and this subsection adopting it by reference, as needed.

(c) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

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

Filed with the Office of the Secretary of State on January 27, 2020.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 19. OIL SPILL PREVENTION AND RESPONSE

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §19.2

The General Land Office (GLO) proposes amendments to Title 31, Part 1, Subchapter A, §19.2, relating to authority of the Oil Spill Prevention and Response Act of 1981, Chapter 40 of the Texas Natural Resources Code (OSPR) to clarify secondary containment requirements and certification requirements.

Proposed amendments include the addition of a definition for "secondary containment" that is consistent with federal standards and existing business practices.

Section 19.2

A proposed definition of "secondary containment" has been added to §19.2 as item 16. This term is used in the rules but

has not been defined. This is an effort to provide clarification for regulated entities as to what is required for purposes of secondary containment. It is similar to the EPA rule in 40 CFR §112.7. The remaining definitions have been renumbered.

BACKGROUND AND ANALYSIS OF PROPOSED RULES

Changes to the section are being done in response to modifications being done in Subchapter B, which has always used the term "secondary containment". The definition is being added to help clarify what is required under Subchapter B. The definition will provide a scope for the Subchapter's existing requirements to have secondary containment. In addition, changes to §19.13 will enhance the Application requirements for providing information about a site's secondary containment. The definition is consistent with federal standards and existing business practices.

This change is coupled with changes to Subchapter B which are being made to conform the rules to statutory changes, to reflect existing practices, and to modify requirements in the rules as necessary to ensure clarity and enforceability.

FISCAL AND EMPLOYMENT IMPACTS

Mr. Jimmy A. Martinez, Deputy Director of GLO's Oil Spill Prevention and Response Division, has determined that for each year of the first five years the section as proposed is in effect there will be no fiscal implications for state government as a result of enforcing or administering the amended section because the definition is consistent with existing federal standards. There are no notable costs for the agency to comply with or enforce the amendment. No changes in employment will be required for the GLO. There will be no fiscal impact on local governments for each of the first five years amendments as proposed are in effect as a result of complying with the rules because local governments do not have a role in the implementation or oversight of these rules. To the extent that local governments are regulated under these rules, there may be minimal fiscal impacts associated with the substantive changes, but those changes are not sufficient to result in a material cost to them as a regulated entity.

Mr. Martinez has determined that the proposed rule will minimally increase the costs of compliance for small or large businesses or individuals required to comply with the rule. Current law establishes basic requirements for oil spill prevention and response planning. The amendment incorporates how GLO and regulated entities currently perform business and is consistent with the existing federal requirements.

The GLO has determined that a local employment impact statement on these proposed regulations is not required because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect. The GLO has also determined that an economic impact statement and regulatory flexibility analysis on these proposed regulations is not required, because the proposed regulations do not have a material adverse economic effect on small businesses.

PUBLIC BENEFIT

Mr. Martinez has determined that the public will benefit from the proposed regulations because the changes reflect how the GLO is currently doing business and to reflect existing federal rules. These changes will make clearer what the rules mean when they refer to secondary containment so the regulated community has a better understanding of what is required and incorporates existing requirements. This definition enhances the understanding between regulated facilities and the GLO and, in some cases,

the emergency responders about important information necessary for efficient and effective response to the release of spills. This change enhances the enforceability of OSPRA and its regulations.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriations to the agency, and will not require the creation of new employee positions nor eliminate current employee positions. This rulemaking does decrease the fees paid to the agency. The proposed rulemaking does not create, limit, or repeal existing regulations. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rule would be in effect it is not anticipated that there will be an adverse impact on the state's economy. The proposed amendments are expected to improve environmental protection and safety.

CONSISTENCY WITH CMP

The proposed amended rules concerning procedures for spill prevention and response planning and enforcement reflect amendments to §§40.110 and 40.112 of OSPRA, as amended by 85th Leg., H.B. 1481, and is not subject to the Coastal Management Program (CMP), 31 TAC §505.11(c), relating to the Actions and Rules subject to the CMP. Therefore, consistency review is not required.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the rule to determine whether Texas Government Code, Chapter 2007 (Private Real Property Rights Preservation Act), is applicable and a detailed takings assessment is required. The GLO has determined that the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Therefore, a detailed takings assessment is not required.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not exceed express requirements of state law and does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed new rule is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code, §§40.109 - 40.113 and 40.251 - 40.254. The Texas Natural Resources Code provides the GLO with the authority to adopt requirements for discharge prevention and response capabilities, equipment, methods and reporting, plan criteria and penalties, hearings, and orders.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendment is proposed under OSPRA, Texas Natural Resources Code, §40.007(a), which gives the Commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA, and §40.117(a)(1)-(a)(4), which provides the GLO with the authority to adopt requirements for discharge prevention and response capabilities, equipment, methods, and reporting, criteria for spill response planning and penalties, hearings, and orders.

Texas Natural Resources Code §§40.109 - 40.117 and 40.251 - 40.258 are affected and implemented by the proposed amendment to the rule.

§19.2. Definitions.

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

(1) - (15) (No change.)

(16) Secondary Containment--appropriate and functioning impervious containment or diversionary structures or equipment, including walls and floors, that must capture and contain oil and are constructed to hold the full capacity of any discharge from the associated structure, or hold the full capacity of the largest primary containment structure in a system, so that the discharge will not escape the containment system before cleanup is complete. Secondary containment may include:

(A) For onshore facilities:

- (i) Dikes, berms, retaining walls, and weirs;
- (ii) Culverts, gutters, and other draining systems;
- (iii) Curbing and drip pans;
- (iv) Sumps, retention ponds, and other collection

systems; and

(v) Double-walled tanks.

(B) For offshore facilities:

- (i) Curbing and drip pans;
- (ii) Sumps, retention ponds, and collection systems;

and

(iii) Double-walled tanks.

(17) [(16)] Unauthorized discharge--Discharges; excluding those authorized by and in compliance with a government permit, seepage from the earth solely from natural causes, and unavoidable, minute discharges of oil from a properly functioning engine, of a harmful quantity of oil:

(A) into coastal waters; or

(B) on any waters or land adjacent to coastal waters where harmful quantities of oil may enter coastal waters or threaten

to enter coastal waters if the discharge is not abated nor contained and the oil is not removed.

(18) [(17)] Underground storage tank--Any tank or container used for storing oil which is located completely under the surface of the earth. Tanks which are partially buried, or which are contained in aboveground vaults or other aboveground containment structures are not considered underground tanks for the purpose of certification requirements under these sections.

(19) [(18)] Underwriter--An insurer, a surety company, a guarantor, or any other person, other than an owner or operator of a vessel or facility, that undertakes to pay all or part of the liability of an owner or operator.

(20) [(19)] Waste--Oil or contaminated soil, debris, and other substances removed from coastal waters and adjacent waters, shorelines, estuaries, tidal flats, beaches, or marshes in response to an unauthorized discharge. Waste means any solid, liquid, or other material intended to be disposed of or discarded and generated as a result of an unauthorized discharge of oil. Waste does not include substances intended to be recycled if they are in fact recycled within 90 days of their generation or if they are brought to a recycling facility within that time.

(21) [(20)] Worst case unauthorized discharge--The largest foreseeable unauthorized discharge under adverse weather conditions. For facilities located above the high water line of coastal waters, a worst case discharge includes those occurring in weather conditions most likely to cause oil discharged from the facility to enter coastal waters.

(22) [(21)] Coastal Facility Designation Line--The Coastal Facility Designation Line delineates the area within which a facility may be subject to the certification requirements of §19.12 of this title (relating to Facility Certification). The line does not delineate OSPRA's response or notification requirements; rather, it gives notice to facilities located coastward of the line that they may be subject to facility certification requirements. A description of the coastal facility designation line and a map can be found in Appendix 1.

(23) [(22)] Offshore--Located on submerged lands below mean high tide in coastal waters.

(24) [(23)] Waterfront--Located within 100 yards of coastal waters.

(b) (No change.)

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

Filed with the Office of the Secretary of State on January 23, 2020.

TRD-202000283

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Earliest possible date of adoption: March 8, 2020

For further information, please call: (512) 475-1859



SUBCHAPTER B. SPILL PREVENTION AND PREPAREDNESS

31 TAC §§19.12 - 19.14, 19.16, 19.18

The General Land Office (GLO) proposes amendments to Title 31, Part 1, Subchapter B, §§19.12 - 9.14, 19.16 and 19.18, relating to authority of the Oil Spill Prevention and Response Act of 1981, Chapter 40 of the Texas Natural Resources Code (OSPR) to conform with statutory revisions, clarify secondary containment requirements and certification requirements, and to make non-substantive edits.

These amendments are proposed to conform with statutory revisions in House Bill 1481 Acts 2017, 85th Legislature, Chapter 1014, effective September 1, 2017 and to make changes to the use of the term "material safety data sheet." Proposed amendments include references to secondary containment, which is being added to the definitions in Subchapter A, enhancements to application requirements including the requirement to have a 24-hour emergency contact number, and the obligation to have legible spill response contact signage at a facility. Other changes have been made to conform the rules to existing practices, and to modify requirements in the rules as necessary to ensure clarity and enforceability.

BACKGROUND AND ANALYSIS OF PROPOSED RULES

Changes under House Bill 1481 include modifications to 31 TAC §19.12 (i) and §19.14(b), to delete reference to the certification fee. Additional amendments include editorial changes.

Editorial changes proposed in this rule amendment include changes to references to the GLO to make them internally consistent, a change to delete the term "material" from references in the rules to material safety data sheet, and to remove the "M" from the associated acronyms. These changes are necessary for consistency with the terminology used by the Globally Harmonized System of Classification and Labelling of Chemicals. Reference to the GLO website has also been corrected to reflect the current website naming convention and added as a resource in obtaining information about the agency.

Some language has been changed in order to clarify the required implementation of discharge prevention and response plans. Modifications were made to §19.12(b), (d)(3), (e), (g), and (j)(2) in an effort to make it clear the facilities are required to implement the discharge plan, not just have one, and modifications were made to §19.13(b) and §19.14(b)(2) and (d) to ensure that it is clear that facilities must maintain compliance with their plans. This is not intended to be a substantive change but to clarify existing requirements.

Additional changes have been made in several sections to clarify the distinction between an inspection and an audit, which are terms that are defined in §19.18. These terms are in several sections, including §§19.12(e), (f), and (j), 19.14(b)(2), and 19.18, and changes are proposed to make it clear that when the term "inspection" is used, it is a discrete and specific review of issues at a facility, and that when the term "audit" is being used that it is a broader review of a facility. The rules currently use the term inspection in some places in reference to a review of the implementation of the spill prevention and response plan. Staff believes that following an application for certification such a review falls more accurately into the definition of an audit because the activity can entail a review of the entire facility to ensure that the plan has been adequately implemented. The distinction is important because notice, consent, and limitations differ for each.

Section 19.12

Proposed amendments to 19.12 are largely corrections and clarification. In subsection (a) the addition of the words "or stored" is

proposed to ensure that it is clear that the GLO has authority to enter any facility or vessel where oil is handled or stored at the facility.

Subsection (b) has been modified to include implementation of the plan as part of the requirement to operate. Although this has always been part of the requirement, the inclusion of this language more directly addresses the ongoing obligation to maintain the implementation of the discharge prevention and response plan. Proposed amendment to subsection (b) also includes a modification to the title of the subsection.

Proposed amendment to subsection (c) refers the reader to the section that addresses applying for a new certificate.

Proposed amendments to subsection (d) include modification to the title of the subsection. The phrase "application forms" is deleted, and the section is modified to add the phrase "a discharge prevention and response certificate." The changes make it clear that this subsection is about obtaining the certificate, not just obtaining the form. Modifications have also been made to the section to update information and provide more detail about the process of obtaining a certificate. Subsection (d)(1) is being modified to correct the website address.

Subsection (e) is being included in the subsection (d) as subsection (d)(2) and the subsections (f)-(l) are being reordered. Amended subsection (d)(2) deletes the title "signature requirements" from the original language in (e) that has been used to create this subsection. A new subsection (d)(3) has been added to note that the GLO may be consulted as part of the application process, and to specify the requirement to prepare and implement a discharge prevention and response plan and the obligation to make the plan available as part of obtaining a certificate.

Proposed amendment of the original subsection (f) makes a new subsection (e). All references to "inspection" in this section have been modified to say "audit" so that the language reflects the technical difference between an audit and inspection. After an application has been determined administratively complete, a full audit of the entire facility will be performed to evaluate the discharge prevention and response plan. This section also adds language that reflects that possible discussion between the applicant and the GLO about the facility's classification and the plan may be required. Additional language has been added to clarify that evaluation of the plan will include a review of the plan's implementation at the facility. Proposed amendment to (e)(2) adds the term "applicable" in recognition that some parts of the rule apply to different types of facilities, and an applicant is only responsible for complying with the requirements that are actually applicable to their facility. Proposed amendments to (e)(3) add the phrase "if the facility is an intermediate or large facility" and deletes the descriptive language at the end of the sentence substituting a reference to the regulatory provisions applicable to those types of facilities. Additional language has been proposed in subsection (e)(4) to acknowledge that a new facility may not be able to fully implement a plan prior to starting operations and provides that such an operator must have taken adequate steps to implement the plan to pass an audit.

A proposed amendment renumbers the original subsection (g) to make subsection (f). The term "inspection" in this section has been modified to say "audit" so the language reflects the technical difference between an audit and inspection. In the case of an application for certificate, a facility must undergo a full audit of the facility.

A proposed amendment changes the original subsection (h) to make a new subsection (g). This proposed amendment also deletes the language "adequately addressed its discharge prevention and response requirements" and "verified the accuracy of the information provided" and added language that provides more specificity and clarity as to what will be considered in evaluating whether certification requirements have been met. Specifically, the GLO requires more than a capability to implement the plan but that the plan has actually been implemented. The modifications reflect that the information provided must be sufficient and accurate and that the plan has been made available to the GLO and been implemented. The last sentence has been deleted because the status of the facility classification is adequately addressed in new §19.12(e).

Proposed amendments change the original subsection (i) to make a new subsection (h). The certification fee has also been eliminated in HB 1481 and has been deleted in this subsection. Additional language has been added to address material changes at a facility. General reference is made in §19.14 to material changes. Language relating to the requirement to apply for certification if there is a change in facility classification has been moved from §19.14(a) to this section. The proposed amendment also requires a facility to notify the GLO of any material changes at a facility within 15 days so that the GLO can make a determination of whether a new certificate is required. Language from §19.15(b) has been moved to this subsection to address the specific requirement to apply for new certification within 15 days of notice from the GLO if the change results in a classification that is higher than the facility's original classification.

Subsection (j) is renumbered as subsection (i). Proposed changes include a modification to the requirement to delete the language "which will allow the facility" and "to" and insert the phrase "will regularly." "The facility" has also been added to the beginning of the sentence. These changes clarify the obligation of the facility to regularly review and update the information on the interactive website. "As appropriate" is added to note that updates must be made as changes occur, not just annual or for a renewal. The last sentence is modified to make clear that this update must be made on the website. This change is necessary to reflect changes in the GLO's use of technology as the primary source of accessing information about a facility for purposes of auditing, inspecting, or responding to a spill.

Proposed amendments renumber the original subsection (k) to subsection (j). The proposed amendments delete the phrase "discretionary submittal" and substitute the term "Review" to more accurately reflect that this section is focused on the review and evaluation of compliance with the facility plan and these rules. The proposed amendments add reference to audits and inspection as the means by which compliance will be reviewed. Subsection (j)(1) has been created and includes language that was at the end of this subsection. The proposed amendments delete reference to the submittal of the plan in this new subsection because the focus on this section is on the review of the plan. Submission of the plan is adequately addressed in §19.12(d) and §19.13. Additional proposed language makes clear that a review of the plan is not limited to a desk top review and that, in addition to when there is a failure to implement a plan, the GLO can inspect or audit a facility if there has been a complaint, a spill, or a change in the operation of a facility. Subsection (j)(2) has been created to make clear that a review of the plan and an inspection or audit may be required during the renewal process. In addition, subsection (j)(3) has been added

to make clear that an inspection or audit will be performed annually. This is not a substantive change but a clarification that reflects the current practice of the GLO.

There are also proposed amendments to renumber the original subsection (l) to subsection (k) and to renumber the original subsection (m) to (l).

Section 19.13

Proposed amendments to subsection (a) delete the phrase "This section applies to" as the language is unnecessary. The language change is intended to emphasize the obligation of the operators of waterfront or offshore facilities to comply with the rules. The addition of "prior to operation" clarifies that the operation cannot begin until a certificate has been obtained.

Proposed amendments to subsection (b) add a sentence at the end of the subsection that provides for an affirmative obligation on the part of waterfront operators or offshore facilities to maintain compliance with their plan.

The proposed amendment to subsection (c) adds a reference to the statutory provision that establishes minimum standards for the plan. Proposed amendments to (c)(2) add the requirement for a plan to have a current emergency contact phone number for the person or persons in charge of the facility.

Proposed amendments to subsection (c)(4)(C) delete the term "material" from references in the rules to material safety data sheet and removes the "M" from the associated acronyms.

Proposed amendments to subsection (c)(5) add the obligation to ensure that signs or placards are legible and inserts the term "must" before the requirement to provide contact information on the signs to make clear it is mandatory. This is intended to ensure that facilities create signage that is readable by anyone who may need to report a spill and establishes an obligation to maintain the legibility of those signs. The GLO also finds it necessary to know the condition of the signs (their size, shape and other relevant factors, and where the signs are located) to ensure that they are visible to people on site that might witness a spill. Therefore, "and a description and specific location of all signs" has been added to the end of the sentence.

Proposed amendments to subsection (c)(7) delete the word "keeping" and replaces it with the terms "maintenance of" to reflect that a log of such drills must be maintained.

Proposed amendments to subsection (c)(11) add language to clarify that the provision applies to any type of secondary containment system and adds the language "that are in place" for clarification. In addition, the language "at a minimum" is added to make clear that additional information may be provided by the Applicant to the extent that it will help provide for a more effective plan and can be requested by GLO personnel, if it is necessary to adequately understand the secondary containment structures or systems that are on the site. Proposed Amendments to subparagraphs (A) and (B) modify requirements for a plan's description of structures holding material requiring containment and documenting the methodology for determining the adequacy of the secondary containment. These changes incorporate the requirement for secondary containment in the context of the modification to the definitions section of the term "secondary containment."

Proposed amendments to subsection (e)(2)(C) make it mandatory for the plan to have a site plan or maps that show the drainage and diversion systems at the facilities. The previous

language made providing this information discretionary. The new language makes it clear that this information must be provided to the GLO.

Section 19.14

Proposed amendments to subsection (a) modify its title to delete the terms "Annual" and "review." The term "Annual" is no longer accurate, as specified in changes to new subsection 19.12(i). In addition, the subsection focuses on the obligation to provide updated information to the GLO, not only on the GLO's review of the application or renewal, so the term "Update" is being added to the title of the subsection (a). Subsection (a) has been modified to focus on the updating of information, deleting reference to an annual update, and providing that updates must be entered directly into the interactive website as provided for in new subsection 19.12(i). A new sentence stating "Facility operators must ensure that the information in the interactive website is regularly updated to reflect any changes" has been added. The GLO is adding new language to reflect the fact that facility operators are required to report any material changes. This does not provide a new obligation but emphasizes the obligations found in new 19.12(h). Other modifications are made to the second sentence of the subsection to facilitate readability of the amended section. New language also clarifies that reporting is required no later than on the anniversary date of the certificate if reclassification is not required. Language that relates to encouraging updates more frequently is being deleted, as new subsection 19.12(i) has been changed to require updates as appropriate. Language regarding when operators must re-apply for reclassification after a change has been made to a facility has been deleted from this section and moved to new subsection 19.12(h), which addresses material changes to a facility.

Proposed amendments to subsection (a)(2) modify the title to take out reference to facsimile. Because updating and maintaining information on websites is common, easily accessible, and reliable, the GLO has decided that the need for a fax number is not required. Language in the first sentence has been added to provide that updated information can also be provided by standard mail or email and has provided contact information so a facility can use alternative methods of updating information if the internet is not available.

Proposed amendments to subsection (b) simplify and make more direct the first sentence by deleting "are responsible for ensuring that certificates are renewed" and adding language so that the sentence reads, "Operators must renew their certificates by their expiration dates." Additional language that was located in subsection (b)(1) has been moved from existing (b)(1) and has been added to subsection (b), the renewal section, to make it clear that a new application must be submitted for renewal and that the GLO requires the application be provided at least 15 days before the expiration date so that the GLO will have sufficient time to renew the application by the expiration date. Locating the language here is more consistent with the subject matter of this subsection, which relates to the timing of the renewal of a certificate. The second to the last two sentences have been deleted from this section and moved to the preceding section, which addresses the process and timing of the renewal obligation.

Proposed amendments to subsection (b)(2) delete the phrase "In reviewing" and substitute "To process" and add at the end of the sentence the language "a review of the discharge, prevention and response plan." This makes the language clearer and affirms that the renewal includes a possible review of the plan.

The term "review" is deleted later in the sentence and replaced with "audit or inspection." This makes clear that during the renewal of a certificate, the GLO will be doing either an audit or an inspection. The term "implementation of the" has been added later in this modified sentence to make clear that the inspection may include a review of the plan and a review of the implementation of the plan. The term "may" has been deleted and the term "will" has been added to reflect the fact that if a plan does not adequately address the elements of 19.13, the applicant will be required to amend their plan to make it consistent with those requirements.

Subsection (b)(3) has been deleted to be consistent with HB 1481, which eliminates the certification fee.

Subsection (c) has been modified to add the phrase "is sold" to make it clear that if a facility is sold, the GLO must be notified.

Proposed amendments to subsection (d) clarify when a certificate may be suspended. The GLO believes that suspension is appropriate only if a facility fails to implement its plan and finds that a lesser penalty is more appropriate if a facility does not adequately implement a portion of its plan. Therefore, the GLO has modified the language to make it clear that suspension may only happen if the facility has failed to implement its plan. If a portion of a plan is inadequately implemented or there are other minor problems with how the plan is being implemented, the GLO can always pursue enforcement through the penalty process. GLO wants to make clear the suspension is reserved for ineffective implementation of plans that are so egregious as to constitute a failure to implement the plan. The phrase "may request and" is being deleted and the term "request" is being added after "entitled to" to make clear that a facility owner is entitled to a hearing, as provided in statute.

Proposed amendments to add a subsection (e) separate out the penalty language found in subsection (d) to make a new subsection (e). The language is largely the same with a few corrections for citations. In addition, the citations to the statutory provisions underlying these rules have been modified to reflect the proper citation format. Additional language has also been added that specifies the statutory obligations that the GLO will follow in assessing penalties. The language specifies the authorized penalty range and identifies some of the factors that will be considered by the GLO when determining a penalty amount. None of the changes are intended to be substantive but to provide more information in the rules as to the means of assessing a penalty.

Section 19.16

Proposed amendment to subsection (b) adds the term "immediately" to the requirement that the person in charge be able to travel immediately. During a spill, time is of the essence and whoever is designated as the person in charge must be available to respond in a timely manner to a release. Proposed amendments to (c) eliminate duplicative references to the person in charge.

Section 19.18

Proposed amendments to subsection (a) modify the reference to the GLO to use the acronym and delete the term "material" from references in the rules to material safety data sheet and to remove the "M" from the associated acronyms. The addition of the words "or stored" is proposed to ensure that it is clear that the GLO has authority to enter any facility or vessel where oil is handled or stored. Proposed amendments to subsection (e)

change the word "drill" to spill and add the word "required." This is intended to clarify that the priority for GLO sponsored drills will be focused on facilities near environmentally sensitive areas that are involved in a greater number of spills or that present a higher level of complexity of review.

FISCAL AND EMPLOYMENT IMPACTS

Mr. Jimmy A. Martinez, Deputy Director of GLO's Oil Spill Prevention and Response Division, has determined that for each year of the first five years the new sections as proposed are in effect there will be no fiscal implications for state government as a result of enforcing or administering the amended sections because the majority of the changes are non-substantive changes necessary to reflect how the GLO is currently doing business and to clarify existing rules.

The changes that are substantive, such as the definition of secondary containment and enhancements of application requirements, present no notable cost to the agency to comply with or enforce the amendments to these rules. No changes in employment will be required for the GLO. There will be no fiscal impact on local governments for each of the first five years amendments as proposed are in effect as a result of complying with the rules because local governments do not have a role in the implementation or oversight of these rules. To the extent that local governments are regulated under these rules, there may be minimal fiscal impacts associated with the substantive changes, but those changes are not sufficient to result in a material cost to them as a regulated entity.

Mr. Martinez has determined that the proposed new rules will minimally increase the costs of compliance for small or large businesses or individuals required to comply with the new rules. Current law establishes basic requirements for oil spill prevention and response planning. The amendments acknowledge changes to how the GLO performs business, clarifies the existing requirements with no intent to add substantive requirements, and, where there are changes to substantive requirements, the enhanced standards have minimal costs associated with implementation.

The GLO has determined that a local employment impact statement on these proposed regulations is not required, because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect. The GLO has also determined that an economic impact statement and a regulatory flexibility analysis on these proposed regulations are not required, because the proposed regulations do not have a material adverse economic effect on small businesses.

PUBLIC BENEFIT

Mr. Martinez has determined that the public will benefit from the proposed regulations because the majority of the changes are non-substantive changes necessary to reflect how the GLO is currently doing business and to clarify existing rules. Some non-substantive changes that benefit the public include updating GLO's website address, adding cross references to related subsections, and clarifying where audits and inspections can or will be performed and the process for updating spill response information. These changes will make procedural aspects clearer for the regulated community and clarify existing requirements so that the regulated community has a better understanding of what is required. Clarity of the rules also enhances the ability of the GLO to implement and enforce these regulations.

The changes that are substantive, such as the definition of secondary containment, the addition to the spill response plan of a description of secondary containment on a site, and the requirement to have a 24-hour emergency contact number and to have legible signage at a facility, enhance communication between regulated facilities and the GLO and, in some cases, the public about important information necessary for efficient and effective response to the release of spills. Another substantive change includes the modification to standards applicable to certificate suspension and the ability to pursue penalties, instead of suspension, against a facility. This change enhances the enforceability of OSPRA and its regulations.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriations to the agency, and will not require the creation of new employee positions nor eliminate current employee positions. This rulemaking does decrease the fees paid to the agency. The proposed rulemaking does not create, limit, or repeal existing regulations but does reflect statutory amendments passed in the 2017 legislative session. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rules would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. The proposed amendments are expected to improve environmental protection and safety.

CONSISTENCY WITH CMP

The proposed amended rules concerning procedures for spill prevention and response planning and enforcement reflect amendments to §§40.110 and 40.112 of OSPRA, as amended by 85th Leg., H.B. 1481, and are not subject to the Coastal Management Program (CMP), 31 TAC §505.11(c), relating to the Actions and Rules subject to the CMP. Therefore, consistency review is not required.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the new rules to determine whether Texas Government Code, Chapter 2007 (Private Real Property Rights Preservation Act), is applicable and a detailed takings assessment is required. The GLO has determined that the proposed amendments and new rules do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Therefore, a detailed takings assessment is not required.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not exceed express requirements of state law and does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The

proposed new rules are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code, §§40.109 - 40.113 and 40.251 - 40.254. The Texas Natural Resources Code provides the GLO with the authority to adopt requirements for discharge prevention and response capabilities, equipment, methods and reporting, plan criteria and penalties, hearings, and orders.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send a written comment to Mr. Walter Talley, *Texas Register* Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under HB 1481 and OSPRA, Texas Natural Resources Code, §40.007(a), which give the Commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA, and §40.117(a)(1)-(a)(4), which provides the GLO with the authority to adopt requirements for discharge prevention and response capabilities, equipment, methods, and reporting, criteria for spill response planning and penalties, hearings, and orders.

Texas Natural Resources Code §§40.109 - 40.117 and 40.251 - 40.258 are affected and implemented by the proposed amendment to the rules.

§19.12. Facility Certification Requirements.

(a) **Applicability.** This section applies to any person who operates a waterfront or offshore facility. If an operator controls part of a facility which is waterfront or offshore, the entire facility in which oil is handled or stored under the control of that operator must be covered by the discharge prevention and response certificate. Pipelines, flowlines, gathering lines, or transmission lines that transfer oil across an area of coastal waters are considered facilities. A combination of interrelated or adjacent tanks, impoundments, pipelines, gathering lines, flow lines, separator or treatment facilities, and other structures, equipment, or devices under common ownership or operation will be considered a single facility under OSPRA. Interrelated means the devices are all an integral part of one commercial or industrial operation or are managed and controlled by a single entity. The term includes facilities owned by units of federal, state, or local government, as well as privately owned facilities.

(b) **Current certificate and implementation of certified plan required to operate.** No entity may operate a waterfront or offshore facility without implementing a current discharge prevention and response plan that has been certified [~~certificated issued~~] by the GLO. This requirement does not apply, however, to an entity that operates a facility and has obtained a waiver from the facility certification requirement pursuant to §19.4 of this title (relating to Waiver) or if an exemption applies to the facility.

(c) **Certificate void when operator changes or facility classification level increases.** A discharge prevention and response certificate is issued to a specific operator and for a particular facility classification level. When the operator of a facility changes, the discharge prevention and response certificate is void. The new operator of the facility will need to submit an application for a certificate to the GLO before begin-

ning to operate the facility. A certificate is also void when the facility changes its operations in a manner that increases its facility classification level. If an operator increases storage capacity or installs new oil transfer lines at a facility, causing the facility classification to change from small to intermediate or large or from intermediate to large, the operator will need to apply for a new certificate in accordance with 31 TAC §19.12(d).

(d) **Obtaining a discharge prevention and response certificate [application forms].**

(1) The operator of a facility must apply for a discharge prevention and response certificate by submitting a completed application form to the GLO. Application forms are available from the General Land Office, Oil Spill Prevention and Response Program, 1700 North Congress Avenue, Austin, Texas 78701-1495 or from any regional office of the GLO. The application form can also be downloaded from the GLO's Oil Spill Prevention and Response Program website, www.glo.texas.gov/ [www.glo.state.tx.us/oilspill].

(2) [~~(e)~~ **Signature requirements.**] The certificate application must be signed by a representative of the facility operator who has approved the facility's discharge prevention and response plan and has the authority to commit the necessary resources to implement the plan.

(3) After consultation with the GLO, the applicant must prepare and implement a discharge prevention and response plan that meets the requirements of §19.13 of this title (relating to Requirements for Discharge Prevention and Response Plans) and make the plan available to the GLO for review.

(e) [~~(f)~~ **Facility audits [inspections].**] After the GLO determines the application is administratively complete, the GLO may [will] contact the facility operator to discuss the classification of the facility and the discharge prevention and response plan. The GLO will schedule an on-site audit [inspection] and review of the facility's discharge prevention and response plan and its implementation. The audit [inspection and plan review] will cover the following elements:

(1) (No change.)

(2) whether the discharge prevention and response plan adequately addresses all the applicable elements required by §19.13;

(3) if the facility is an intermediate or large facility, whether the discharge prevention and response plan specifically addresses the requirements of §19.13(d) and (e); [worst case unauthorized discharge and demonstrates the facility can adequately respond to the worst case unauthorized discharge from the facility;] and

(4) whether the discharge prevention and response plan has been implemented, or, if the facility is new, adequate steps have been taken to implement the discharge prevention and response plan.

(f) [~~(g)~~ **Additional information.**] After the on-site audit [inspection], the GLO may require an applicant to submit additional information to resolve any issues related to the applicant's discharge prevention and response preparedness. The GLO may also require an applicant to develop and implement additional measures to prevent and respond to unauthorized discharges of oil.

(g) [~~(h)~~ **Notification that certification requirements have been met.**] When the GLO determines the facility has [adequately addressed its discharge prevention and response requirements and has] submitted sufficient and accurate information in its application, has made available a discharge and prevention response plan, and has implemented the plan, the GLO will notify the facility operator that the certification requirements have been met and confirm the facility classification. [The operator will then be informed of the facility classification level (small, intermediate, or large).]

(h) [(i)] Change at facility. If there is a change at the facility, the GLO must be notified in writing of the change within 15 days so that a determination of whether a new certificate is required can be made. Facility operators must re-apply for certification if the changes result in higher classification within 15 days of notice from the GLO that the facility classification has changed. [Certification fee. A fee of \$25 will be assessed for every facility to be certified, but the fee should not be submitted with the completed application form. The facility operator will be instructed to submit the fee to the GLO after the GLO determines a certificate will be issued to the operator.]

(i) [(j)] Term for certificates. The GLO will issue certificates with a term of five years from the date of issuance. Each certificate will be assigned an identification number. [number,] The facility [which will allow the facility] operator will regularly [to] review and amend the facility information on the GLO's Oil Spill Prevention and Response Program interactive website, as appropriate. The identification number will be sent to the person who signed the application form, [along] with instructions on how to update data on the website [and renew the certificate].

(j) [(k)] Review [Discretionary submittal] of discharge prevention and response plan and inspection or audit of a facility. After a certificate is issued to a facility, the GLO can [may] require the facility operator to submit to the GLO a complete copy of its discharge prevention and response plan for review. [Submittal of the plan for review may be required if the GLO determines the facility may not be adequately implementing its plan to prevent and respond to unauthorized discharges of oil.]

(1) A review of the plan and an inspection or audit of the facility can be required if the GLO determines that there has been a complaint, a spill, a change in ownership or operation at the facility, or the facility is not compliant with these rules or may not be adequately implementing its plan to prevent and respond to unauthorized discharges of oil.

(2) The GLO can also review a plan and perform on-site inspections or audits to review a facility's implementation of the discharge prevention and response plan as part of the renewal process.

(3) Inspections or audits will be performed annually.

(k) [(4)] Exemptions. The following facilities that handle oil do not need to apply to the GLO for a discharge prevention and response certificate:

(1) Mobile or portable oil-handling equipment, such as a mobile offshore drilling unit, when it is fixed in place for less than 90 days.

(2) A farm, ranch, or residential property that stores up to and including 1,320 gallons of oil for farming, ranching, or residential purposes.

(3) A facility that stores oil exclusively in underground tanks and does not transfer oil to vessels in the water.

(4) A facility that stores or transfers oil only in containers with a volume of 55 gallons or less.

(l) [(m)] Effect of certificate on other violations. Issuance of a certificate does not estop the state in an action brought under OSPRA, or any other law, from alleging a violation of any such law, other than failure to have a certificate.

§19.13. Requirements for Discharge Prevention and Response Plans.

(a) Applicability. [This section applies to any] Any person who operates a waterfront or offshore facility and must obtain a discharge prevention and response certificate prior to operation.

(b) Implementation of plans. An operator of any facility that requires certification must develop and implement a written discharge prevention and response plan. Before issuing a certificate, the GLO will conduct an on-site review of the plan. The GLO will determine whether the facility's plan contains all the information required by this section and has been fully implemented. Any person who operates a waterfront or offshore facility must maintain compliance with the plan requirements.

(c) Required elements of discharge prevention and response plans for all facility classifications. Operators of all facilities that require certification must prepare discharge prevention and response plans which meet the requirements of TNRC §40.111 and include the following information:

(1) (No change)

(2) the person or persons in charge of the facility, as required by §19.16 of this title (relating to Person in Charge), and a current emergency contact phone number that will be answered 24 hours a day;

(3) (No change.)

(4) a description of the facility, including:

(A) the location of the facility by latitude and longitude;

(B) the facility's primary activity;

(C) the types of oil handled, whether [material] safety data sheets (SDS) [(MSDS)] have been prepared for them, and the location where the (SDS) [(MSDS)] are maintained;

(D) the storage capacity of each tank used for storing oil;

(E) the diameter of all lines through which oil is transferred;

(F) the average daily throughput of oil at the facility; and

(G) the dimensions and capacity in barrels of the largest oil-handling vessel which docks at the facility.

(5) for a facility which normally does not have personnel on-site, a commitment to maintain in a prominent location a legible sign or placard, which must state [states] that the GLO and National Response Center are to be notified of an oil spill and give the 24-hour phone numbers for notifying the GLO and National Response Center, and a description and specific location of all signs;

(6) (No change.)

(7) a plan to conduct an annual oil spill drill that entails notifying the GLO and National Response Center and [keeping] maintenance of a log at the facility which documents when the notification drill was conducted and facility personnel who participated in it;

(8) - (10) (No change.)

(11) a description of any secondary containment or diversionary structures, [structures or] equipment, or systems at the facility that operate to prevent discharged oil from reaching coastal waters, including, at minimum: [including the methodology for determining that the structures or equipment are adequate to prevent oil from reaching coastal waters.]

(A) a description of all secondary containment at the site; and

(B) the methodology for determining that the containment structures or equipment are adequate to prevent oil from reaching coastal waters.

(d) (No Change.)

(e) Additional requirements for facilities classified as large. In addition to the requirements in §19.13(c), operators of large facilities must prepare written discharge prevention and response plans which include the following information:

(1) maps showing vehicular access to the facility, pipelines to and from the facility, and nearby residential or other populous areas;

(2) a site plan of the facility showing:

(A) the location of all structures in which oil is stored;

(B) the location of all areas where oil is transferred at the facility; and

(C) drainage and diversion systems at the facility, such as sewers, outfalls, catchment or containment systems or basins, sumps, and all watercourses into which surface runoff from the facility drains (all of which will [may] be shown on the site plan or maps);

(3) - (4) (No change.)

§19.14. [Annual] Updating of [Application] Information; Renewal and Suspension of Certificates; Enforcement.

(a) Update [Annual review] of application information. Facility operators are required to report any material changes as provided for in §19.12(h) [annually any changes in the information submitted to the GLO in their application for certificates]. Facility operators must ensure that the information in the interactive website is regularly updated to reflect any changes as provided in §19.12(i). Changes that do not require a re-classification must be reported [by] no later than the anniversary of the date the certificate was issued [; but operators are encouraged to update the information more frequently]. Facility operators can update information on file with the GLO in the following ways:

(1) (No change.)

(2) Mail [or facsimile]. If a facility operator cannot update application information over the Internet, updated information can be sent by standard mail or email [facsimile] to the appropriate GLO regional office. Contact information [Addresses and facsimile numbers] for the regional office covering a particular facility can be obtained by calling the main oil spill program office in Austin at (512) 475-1575 or by visiting www.glo.texas.gov.

(b) Renewing certificates. Operators must [are responsible for ensuring that certificates are renewed] renew their certificates by their expiration dates. The GLO will not send expiration notices to operators. To renew a certificate, certificate holders must complete and submit to the GLO a new application form. To give the GLO sufficient time to review the application, it must be submitted to the GLO at least 15 days before the expiration date.

(1) All certificates, which will be issued for a period of five years, will specify the date of expiration. [To renew a certificate, certificate holders must complete and submit to the GLO a new application form. To give the GLO sufficient time to review the application, it must be submitted to the GLO at least 15 days before the expiration date.]

(2) To process [In reviewing] the application to renew a certificate, the GLO may conduct a review of the discharge prevention and response plan and perform an on-site audit or inspection [review] of the facility's implementation of the discharge prevention and response plan. The GLO will [may] require the applicant to amend its plan if

the GLO determines the plan does not adequately address the elements required by §19.13.

~~[(3) A fee of \$25 will be assessed for renewal of a certificate. The GLO will inform the certificate holder that the fee is being assessed after the application is reviewed and a determination has been made that the certificate will be renewed.]~~

(c) Notification to GLO when facility closes, is sold, or is shut-in. A facility operator is required to notify the GLO when the facility closes, is sold, or when the facility is shut-in and no longer handling oil.

(d) Certificate suspension. Suspension of a certificate requires the facility owner or operator to apply for a new certificate. The GLO may suspend a certificate if the facility operator violates a provision of OSPRA or rules or orders adopted under authority of OSPRA. A certificate may also be suspended if the GLO determines the facility has failed to [not adequately implemented] implement its discharge prevention and response plan or the facility's response to an unauthorized discharge of oil was inadequate. Before suspending a certificate, the GLO will inform the certificate holder in writing that suspension is being considered. The reasons for the proposed suspension will be specified, and the certificate holder will be afforded an opportunity to address the problems. If the GLO ultimately determines the certificate holder has not adequately addressed the facility's problems and suspension of the certificate is appropriate, the facility operator [may request and] is entitled to request a hearing on the suspension in the same manner provided under Chapter 2 of this title [Title,] (relating to Rules of Practice and Procedure) for contested case hearings before the GLO.

(e) Penalties. GLO may pursue administrative penalties under TNRC §40.252 and civil penalties under TNRC §40.251(f) if the facility operator violates a provision of TNRC §40.1-304 or rules, authorizations, or orders adopted under authority of OSPRA, including the failure to obtain or renew a certificate or to implement a discharge prevention and response plan.

(1) Any person who violates the OSPRA or this subchapter or any authorization or order issued under this subchapter is subject to administrative penalties of not less than \$100 or more than \$10,000 per violation for each day of violation, not to exceed a maximum of \$125,000.

(2) When determining the amount of the penalty, the commissioner must take into consideration the factors identified in TNRC §40.252 and other relevant factors.

§19.16. Person in Charge.

(a) (No Change.)

(b) A facility must have a person in charge at the facility at all times the facility is normally attended by personnel. For those facilities or at those times at which personnel are not normally present, the facility must at all times have a person in charge on call and capable of travelling immediately to the facility to respond to an actual or threatened unauthorized discharge. The person in charge must have the independent authority to deploy response equipment and personnel and to expend funds for response actions.

(c) It is the duty of the owner and the operator of the facility to inform the person in charge of the duties established under OSPRA and this chapter [for persons in charge] with respect to unauthorized discharge prevention and response.

§19.18. Audits, Drills, and Inspections to [To] Determine Prevention and Response Capability.

(a) An audit is a full review of a facility's or vessel's compliance with the requirements of OSPRA and regulations adopted pur-

suant thereto. An audit may be announced or unannounced. Audits will be commenced between the hours of 7:00 a.m. and 6:00 p.m. The owner and/or operator of the facility or vessel subject to audit must produce records related to unauthorized discharges of oil into coastal waters, discharge prevention and response plans, equipment inventory, maintenance and repair, [material] safety data sheets for oil handled, oil storage and throughput, financial responsibility, personnel certification and training, and daily records and other documents and records containing information relevant to compliance with OSPRA. The representative of the GLO [~~General Land Office (GLO)~~] is authorized to view all equipment at the facility that is available for responding to unauthorized discharges of oil. The GLO representative is authorized to enter any portion of the facility and vessel where oil is handled or stored, where discharge prevention and response equipment and supplies are stored and maintained or where oil transfer operations are being performed. Although the audit may be unannounced, prior to entering the facility, the GLO representative will make a reasonable effort, as defined in §19.3(a) of this title (relating to Inspections and Access to Property), to obtain the consent of the owner or operator or his representative.

(b) - (c) (No change.)

(d) A vessel or facility will not be subjected to more than a total of two audits and/or GLO conducted drills in one 12-month period. This limitation will not apply to any vessel or facility that has violated OSPRA, any regulation promulgated thereunder, or any order of the commissioner.

(e) The owner or operator of the vessel or facility must bear its own costs of the audit, drill, or inspection and may not be reimbursed its costs from the fund. The GLO may, however, pay all or part of the cost of an oil spill drill under limited circumstances. The GLO's decision to pay for a drill will be based on a determination that the facility is located in an environmentally sensitive area and has been involved in a greater number of spills [~~drills~~] or requires more complex audits or drills because of its location. If the GLO pays for any part of the cost of the drill, the GLO will invite other facility operators in the vicinity to observe or participate in the drill for training purposes.

(f) (No change.)

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

Filed with the Office of the Secretary of State on January 23, 2020.

TRD-202000285

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Earliest possible date of adoption: March 8, 2020

For further information, please call: (512) 475-1859



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER DD. OIL FIELD CLEANUP REGULATORY FEE

34 TAC §3.731

The Comptroller of Public Accounts proposes amendments to §3.731, concerning imposition and collection of the oil fee. The amendments incorporate legislative changes made under House Bill 2675, 86th Legislature, 2019 and Senate Bill 757, 84th Legislature, 2015. Also, the amendments add two references to the Tax Code, stating that purchasers and producers liable for the oil production tax must report the fee. The amendments delete a reference to the rate of the fee prior to September 1, 2001. The comptroller renames this section to include the name of the fee; the proposed new title is "Oil-Field Cleanup Regulatory Fee on Oil."

In subsection (a), the comptroller identifies the taxpayers liable for the fee and the types of oil subject to the fee. The comptroller also removes the reference to the rate of the fee prior to September 1, 1991, as this information is no longer necessary due to the passage of time.

The comptroller amends subsection (b) to remove the reference to Natural Resources Code, §81.111 (Tax Levy), repealed under Senate Bill 757, 84th Legislature, 2015; includes the title of Chapter 202; and explains that taxpayers report the fee on the crude oil tax report forms.

In subsection (c), the comptroller deletes the reference to the rate of the fee for crude oil produced prior to September 1, 2001, as this information is no longer necessary due to the passage of time. The comptroller deletes the word "taxable" as all barrels of oil are subject to this fee, except certain royalty interests exempt from oil occupation taxes and regulation pipeline taxes as stated in §3.34 of this title (Exemption of Certain Royalty Interest from Oil Occupation Taxes and Regulation Pipeline Taxes). The comptroller adds the words "each standard 42-gallon" as a measurement as stated in Natural Resources Code, §81.116 (Oil-Field Cleanup Regulatory Fee on Oil).

The comptroller deletes subsections (c)(2) and (3) due to House Bill 2675, which removes the suspension of the oil-field cleanup regulatory fees on oil when the balance of the fund exceeds a specific amount.

The comptroller renumbers subsection (c)(4) as new subsection (c)(2), includes a more descriptive title and makes minor edits to improve readability.

The comptroller adds language concerning assessment of penalty and interest in new subsection (d).

The comptroller adds subsection (e) concerning exemptions and reductions. The comptroller also adds language from Natural Resources Code, §81.116(d), to reflect that the exemptions and reductions set out in sections of the Tax Code do not affect the applicability of the fee on certain types of production listed under Natural Resources Code, §81.116(d).

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the rules: 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 amendments 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 amendments 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 Natural Resources Code, §81.067 (Oil and Gas Regulation and Cleanup Fund) and §81.116 (Oil-Field Cleanup Regulatory Fee on Oil).

§3.731. Oil-Field Cleanup Regulatory Fee on Oil~~[Imposition and Collection of the Oil Fee].~~

(a) Imposition. The oil-field cleanup regulatory fee on oil is imposed upon taxpayers who are liable for the oil production tax under Tax Code, §202.153 (First Purchaser to Pay Tax) or §202.154 (Producer to Pay Tax on Oil Not Sold) [effective with reports for the production month of September 1991].

(b) Reports. The fee is [to be] reported and paid on the crude oil tax report forms in the same manner as the oil production [regulatory tax imposed by the Natural Resources Code, §81.111, and the occupation] tax imposed by Tax Code, Chapter 202 (Oil Production Tax).

(c) Amount of fee.

(1) The [Except as provided in paragraph (2) of this subsection; the] rate of the fee is [for crude oil produced prior to September 1, 2001 shall be five-sixteenths of \$.01 (\$.003125) per taxable barrel of crude oil and the rate of the fee for crude oil produced September 1, 2001 and later shall be] five-eighths of \$.01 (\$.00625) per each standard 42-gallon [taxable] barrel of crude oil produced.

[(2) The fee shall not be collected or required to be paid for the production month that begins on the first day of the second month following the Texas Railroad Commission's certification to the comptroller that the fund balance has reached \$20 million. The comptroller shall publish notification in the *Texas Register* that the fee shall no longer be collected 15 days prior to the beginning of the production month for which the fee shall no longer be collected.]

[(3) If the Railroad Commission certifies to the comptroller that the balance of the fund has fallen below \$10 million, the fee shall again be due, beginning the first day of the second month following the commission's certification to the comptroller. The comptroller shall publish notification in the *Texas Register* that the fee shall be required to be collected 15 days prior to the beginning of the production month for which the fee shall be collected.]

(2) [(4)] Volume subject to the fee. The fee is due [will be collected] on all barrels of oil produced, except an interest owned by a governmental entity as defined in §3.34 of this title (relating to Exemption of Certain Royalty Interests from Oil Occupation Taxes and Regulation Pipeline Taxes).

(d) Penalty and interest. Tax Code, Chapter 202 (Oil Production Tax) applies to the administration and collection of the fee, and the penalty and interest provisions of that chapter apply to any person who fails to pay or report the fee.

(e) Exemptions and reductions. The exemptions and reductions set out in Tax Code, §§202.052 (Rate of Tax), 202.054 (Qualification of Oil from New or Expanded Enhanced Recovery Project for Special Tax Rate), 202.056 (Exemption for Oil and Gas from Wells Previously Inactive), 202.057 (Tax Credit for Incremental Production Techniques), 202.059 (Exemption for Hydrocarbons from Terra Wells), and 202.060 (Exemption for Oil and Gas from Reactivated Orphaned Wells), do not affect the fee imposed by this section.

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

Filed with the Office of the Secretary of State on January 27, 2020.

TRD-202000324

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: March 8, 2020

For further information, please call: (512) 475-2220



34 TAC §3.732

The Comptroller of Public Accounts proposes amendments to §3.732, concerning reporting requirements for the oil-field cleanup regulatory fee on natural gas, which is imposed by Natural Resources Code, § 81.117. The amendments incorporate statutory changes made by House Bill 2675, 86th Legislature, 2019. Also, the comptroller proposes renaming this section to include the name of the fee; the proposed new title is "Oil-Field Cleanup Regulatory Fee on Natural Gas."

The comptroller makes minor grammatical and wording changes throughout the section to improve readability.

The comptroller amends subsection (a) to identify the entities who must pay the fee. The comptroller also removes the reference to the rate of the fee prior to September 1, 1991, as this information is no longer necessary due to the passage of time.

The comptroller amends subsection (b) by making minor grammatical changes to improve the readability of the subsection, adding the title to the Tax Code cited, and identifying the tax form.

The comptroller amends subsection (c) to remove the reference to the rate of the fee prior to September 1, 1991, as this information is no longer necessary due to the passage of time.

The comptroller deletes subsections (c)(2) and (3) due to House Bill 2675, 86th Legislature, 2019. House Bill 2675 removes the suspension of the oil-field cleanup regulatory fees on gas when the balance of the fund exceeds a specific amount.

The comptroller adds language concerning penalty and interest into new subsection (e).

The comptroller adds subsection (f), concerning exemptions and reductions. The comptroller also adds language from Natural Resources Code, §81.117(d)(Oil-Field Cleanup Regulatory Fee on Gas), to reflect that the exemptions and reductions set out in sections of the Tax Code do not affect the applicability of the fee on certain types of production listed under Natural Resources Code, §81.117(d).

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the rules: 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 amendments 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 amendments 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 amendment implements Natural Resources Code, §81.067 (Oil and Gas Regulation and Cleanup Fund) and §81.117 (Oil-Field Cleanup Regulatory Fee on Gas).

§3.732. Oil-Field Cleanup Regulatory Fee on Natural Gas [Reporting Requirements for the Gas Fee].

(a) Imposition. The oil-field [Except as provided by subsection (e)(2) of this section, the oil field] cleanup regulatory fee on natural gas is imposed upon the first purchaser or producer of natural gas who is liable for the gas production tax under Tax Code, §201.204 (First Purchaser to Pay Tax) or §201.2041 (Producer to Pay Tax on Certain Gas) [due for the production month of September 1991 and all subsequent months].

(b) Reports. The fee is [to be] reported and paid on the natural gas tax report forms in the same manner as the gas production [occupation] tax is imposed by Tax Code, Chapter 201 (Gas Production Tax).

(c) Amount of fee. The

[1] Except as provided in paragraph (2) of this subsection; the] rate of the fee for gas produced and saved is [prior to September

1, 2001, shall be one-thirtieth of \$.01 (\$.000333) per 1,000 cubic feet (MCF) of gas and the rate of the fee for gas produced September 1, 2001, and later shall be] one-fifteenth of \$.01 (\$.000667) per 1,000 cubic feet (MCF) of gas.

[(2) The fee shall not be collected, or required to be paid for the production month that begins on the first day of the second month following the Texas Railroad Commission's certification to the comptroller that the fund balance equals or exceeds \$20 million. The comptroller shall publish notification in the Texas Register that the fee shall no longer be collected 15 days prior to the beginning of the production month for which the fee shall no longer be collected.]

[(3) If the Texas Railroad Commission certifies to the comptroller that the balance of the fund has fallen below \$10 million, the fee shall again be due beginning the first day of the second month following the commission's certification to the comptroller. The comptroller shall publish notification in the Texas Register that the fee shall be required to be collected 15 days prior to the beginning of the production month for which the fee shall be collected.]

(d) Volume subject to fee. The fee is due [will be collected] on all gas produced and saved, except an interest owned by a governmental entity as defined in §3.27 of this title (relating to Exemption of Certain Interest Owners from Gas Occupation Taxes).

(e) Penalty and interest. Tax Code, Chapter 201 applies to the administration and collection of the fee, and penalty and interest provided by that chapter apply to any person who fails to pay or report the fee.

(f) Exemptions and Reductions. The exemptions and reductions set out in Tax Code, §§ 201.053 (Gas Not Taxed), 201.057 (Temporary Exemption or Tax Reduction for Certain High-Cost Gas), 201.058 (Tax Exemptions), and 202.060 (Exemption for Oil and Gas from Reactivated Orphaned Wells), do not affect the fee imposed by 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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William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

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For further information, please call: (512) 475-2220

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CHAPTER 10. TRANSPARENCY
SUBCHAPTER A. ANNUAL REPORT OF
FINANCIAL INFORMATION BY POLITICAL
SUBDIVISION

34 TAC §§10.1 - 10.6

The Comptroller of Public Accounts proposes amendments to §§10.1 - 10.6, concerning definitions; annual local debt report; annual local debt report form; reporting requirements; water district alternative; and comptroller procedures. These rules are set forth under Title 34, Part 1, Chapter 10, Transparency, Subchapter A, Annual Report of Financial Information by Political Subdivi-

sion, and concern the comptroller's administration of a program to collect and publish financial and debt obligation information reported by political subdivisions pursuant to Local Government Code, §140.008. Section 140.008 governs the reporting of certain types of financial information by political subdivisions to the comptroller and the publication of that information by the comptroller on the comptroller's Internet website. The comptroller proposes these rule amendments to implement changes made to the law by the enactment of House Bill 3001, 86th Legislature, 2019 (amending Government Code, §403.0241 and Local Government Code, §140.008), relating to the fiscal transparency of special purpose districts and other political subdivisions. The comptroller intends for these amendments to streamline the reporting process and describe more options available to reporting entities for complying with reporting requirements.

To a large extent, these rule amendments implement statutory changes that eliminate a duplicative reporting requirement which resulted in some local governmental entities being required to report the same debt obligation data to the comptroller twice in one reporting year, in order to comply with two separate sets of statutory reporting requirements. This duplication occurred whenever the reporting entity met the relevant statutory criteria to be considered both a "political subdivision" subject to the local debt reporting requirements of Local Government Code, §140.008, as well as a "special purpose district" required to comply with the reporting requirements of Local Government Code, §203.062. With the enactment of House Bill 3001, and as described in these proposed amendments to Chapter 10, entities required to report under Local Government Code, §203.062 (i.e., the more comprehensive of the two reporting schemes) no longer need to submit a certain portion of that information in a second (redundant) report to the comptroller. In other words, if an entity satisfies the threshold financial criteria described under Government Code, §403.0241(b) such that it must report the information required to be included in the Comptroller's Special Purpose District Public Information Database, under the proposed rules as amended it is no longer required to also separately submit the information referenced in Government Code, §403.0241(c)(8) for the purposes of complying with Local Government Code, §140.008.

The proposed rule amendments also implement certain other provisions of House Bill 3001 by describing newly authorized alternative reporting options, updating comptroller requirements prescribing the form and manner in which information and reports are submitted; posting reported information, electronic links to information, and other relevant or necessary information on the comptroller's Internet website; and facilitating compliance with applicable technical accessibility standards and specifications established in the electronic and information resources accessibility policy adopted by the comptroller under other law. The proposed rule amendments more closely conform the language used in the rules to corresponding statutory language, reflect current agency practices relating to the collection and publication of financial and debt obligation information, and make non-substantive changes for clarity and readability. Throughout the subchapter, the comptroller amends rule titles and also amends cross-references accordingly. The comptroller does not intend to make substantive changes through these amendments to rule titles and through the amendments to cross-references.

The comptroller amends §10.1(1) to provide a definition of "affidavit of financial dormancy" that is more consistent with the description of the same provided under Water Code, §49.197. The comptroller amends paragraph (13) to state that the definition of

a "political subdivision" for the purposes of this subchapter will not include a special purpose district described by Government Code, §403.0241(b).

The comptroller amends §10.2 to update the title of this section.

The comptroller amends §10.3 to update the title of this section and to clarify that, while the comptroller will no longer provide copies of forms to be completed and submitted by reporting entities, those entities may instead submit any required or requested information directly to the comptroller via the agency's website, in accordance with instructions to be provided by the comptroller.

The comptroller amends §10.4 to update the title of this section and to describe debt reporting requirements generally applicable to political subdivisions under this subchapter. The amendments to this section state that a political subdivision that elects to post a report of its financial information on its own Internet website in lieu of submitting its information to the comptroller for posting on the comptroller's website shall provide upon request by the comptroller an electronic link to the location on the political subdivision's website where the information can be viewed. The comptroller's objectives in requesting this information are to promote financial transparency and public awareness of government financial activities, and to maintain a robust and accurate database of local debt information for the use and benefit of the public.

Similarly, and in furtherance of the same objectives, the comptroller amends §10.5 to update the title of the section and to identify requirements for annual debt reporting applicable to political subdivisions considered to be districts described under Water Code, §49.001. The amendments to this section state that a district of that type that elects to post a report of its financial information on its own Internet website, or make it available for public inspection at a regular office of the district, in lieu of submitting its information to the comptroller for posting on the comptroller's website shall provide upon request by the comptroller an electronic link to the location on the district's website where the information can be viewed, if applicable, or shall affirm and acknowledge that the documents have otherwise been made available for public inspection at the district office.

The comptroller amends §10.6, setting forth the comptroller's duties under this subchapter, including requirements that the comptroller receive and post financial information, documents and other information submitted by local governments pursuant to these rules, as well as other information the comptroller considers relevant or necessary for its purposes, on the comptroller's website, and make this information easily searchable by the public. Proposed amendments to this section also clarify that the comptroller is authorized to reject, and authorized to decline to post on its website, information submissions that do not comply with comptroller requirements or with certain accessibility standards and specifications set forth in the comptroller's electronic and information resources accessibility policy.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposals are in effect, the rules: 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 the proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amendments would benefit the public by conforming the rules to current statute. There would be no anticipated significant economic cost to the public. The proposed amendments would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposals may be submitted to Greg Conte, Data Analysis and Transparency Manager, Comptroller of Public Accounts, at Gregory.Conte@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*. For further information, please call Mr. Conte at (512) 463-7611.

The amendments are proposed under Local Government Code, §140.008(d), (e), and (h), which authorize the comptroller to adopt rules necessary for the implementation of Local Government Code, §140.008(d), (e), (g), and (h).

The proposed amendments implement Local Government Code, §140.008.

§10.1. Definitions.

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

(1) Affidavit of financial dormancy--The affidavit described by Water Code, §49.197 [Chapter 49, Subchapter G], that may be submitted by a district under §10.5 of this title (relating to Alternative Form of Financial Information for Report; Alternative Reporting Option Available for Certain Types of Districts) when the district [(Water District Alternative) and which states that the district is financially dormant and] has less than \$500 in receipts or disbursements during the calendar year, no bonds or long-term liabilities outstanding during the calendar year, and no cash or investments exceeding \$5,000 in a calendar year, or when the district is otherwise considered a financially dormant district in accordance with the requirements of Water Code, Chapter 49, Subchapter G.

(2) Authorized--With respect to a public security, authorized means allowed or directed by a resolution, order, or ordinance that is approved or adopted in a proceeding by the governing body of an issuer in authorizing the issuance of a public security.

(3) Combined principal and interest required to pay all outstanding debt obligations on time and in full--Total amount borrowed (par) that has yet to be repaid plus the cost of interest.

(4) Combined principal and interest required to pay all outstanding debt obligations secured by ad valorem taxation on time and in full--Total amount borrowed (par) of all property tax-secured obligations that has yet to be repaid plus the cost of interest.

(5) Combined principal and interest required to pay all outstanding debt obligations secured by ad valorem taxation on time and in full as a per capita amount--Total debt obligations secured by a pledge of property taxes plus the cost of debt service on these obligations divided by the population of the political subdivision.

(6) Combined principal and interest required to pay each outstanding debt obligations on time and in full--Total amount borrowed (par) plus the cost of interest for each individual debt obligation or bond series.

(7) Current credit rating--Existing rating given by any nationally recognized credit rating organization to debt obligations.

(8) Final maturity date--Final payment date of individual debt obligation at which point all principal and interest will be paid off.

(9) Issuance or issued--The process of authorizing, selling, and delivering public debt.

(10) Official stated purpose for which a debt obligation was authorized--The reason for the debt issuance as described in ballot language if applicable or the official statement.

(11) Outstanding debt obligation--An issued public security that has yet to be repaid.

(12) Outstanding principal--Total amount borrowed that has yet to be repaid.

(13) Political subdivision--A county, municipality, school district, junior college district, other special district, or other subdivision of state government subject to the reporting requirements set forth under Local Government Code, §140.008. The term does not include a special purpose district described by Government Code, §403.0241(b). [This definition includes a municipality with a population of less than 15,000 and a county with a population of less than 35,000.]

(14) Principal issued--The total amount borrowed.

(15) Proceeds spent--The portion of total proceeds received that have been spent.

(16) Proceeds unspent--The portion of total proceeds received that are remaining to be spent.

(17) Secured in any way by ad valorem taxes--Indicates which individual debt obligations are in part or entirely pledged with property taxes.

(18) Total authorized debt obligations--Debt obligations are defined as public securities which are instruments, including bonds, certificates, notes, or other types of obligations authorized to be issued by an issuer under a statute, a municipal home-rule charter, or the constitution of this state.

(19) Total authorized debt obligations secured by ad valorem taxation--Total debt obligations secured by a pledge of property taxes.

(20) Total authorized debt obligations secured by ad valorem taxation expressed as a per capita amount--Total authorized debt obligations secured by a pledge of property taxes divided by the population of the political subdivision.

(21) Total principal of all outstanding debt obligations--Total amount borrowed (par) of all obligations that have yet to be repaid.

(22) Total principal of all outstanding debt obligations secured by ad valorem taxation--Total amount borrowed (par) of obligations secured by a pledge of property taxes that have yet to be repaid.

(23) Total principal of outstanding debt obligations secured by ad valorem taxation as a per capita amount--Total amount borrowed (par) secured by a pledge of property taxes divided by the population of the political subdivision.

(24) Total proceeds received--Total assets received from the sale of a new issue of public securities.

§10.2. Annual Local Debt Report Required from Political Subdivision.

(a) A political subdivision shall annually compile and report certain financial information ("Annual Local Debt Report") in the manner prescribed by this subchapter.

(b) The Annual Local Debt Report to be compiled and reported by a political subdivision must include the following financial information:

- (1) Regarding total authorized debt obligations:
 - (A) the amount of all authorized debt obligations;
 - (B) the principal of all outstanding debt obligations;
 - (C) the combined principal and interest required to pay all outstanding debt obligations on time and in full;
 - (D) the amount of all authorized debt obligations secured by property taxes;
 - (E) the principal of all outstanding debt obligations secured by property taxes;
 - (F) the combined principal and interest required to pay all outstanding debt obligations secured by property taxes on time and in full;
 - (G) the amount of all authorized debt obligations secured by property taxes for municipalities, counties or school districts expressed as a per capita amount;
 - (H) the principal of all outstanding debt obligations secured by property taxes for municipalities, counties or school districts expressed as a per capita amount;
 - (I) the combined principal and interest required to pay all outstanding debt obligations on time and in full for all obligations secured by property taxes expressed as a per capita amount; and
 - (J) the current credit rating on total debt obligations given by any nationally recognized credit rating organization.
- (2) Regarding each authorized debt obligation:
 - (A) the principal of each outstanding debt;
 - (B) the principal of each outstanding debt obligation secured by property taxes for municipalities, counties or school districts expressed as a per capita amount;
 - (C) the combined principal and interest required to pay each outstanding debt obligation on time and in full;
 - (D) the combined principal and interest required to pay each outstanding debt obligation on time and in full for municipalities, counties or school districts expressed as a per capita amount;
 - (E) the issued and unissued amounts, the spent and unspent amounts, the maturity date and the stated purpose for which each debt obligation was authorized; and
 - (F) the current credit rating on each debt obligation given by any nationally recognized credit rating organization.
- (3) Any other information considered relevant or necessary to explain the above required data elements, such as explanations of payment sources for different kinds of debt or projections of per capita amounts of ad valorem taxation-secured obligations as of the last day of the maximum term of the most recent debt obligation issued by the political subdivision.

§10.3. Submission of Annual Local Debt Report to Comptroller [Form].

(a) The comptroller shall provide a location on the comptroller's Internet website where a political subdivision may submit the financial information described in §10.2 of this title (relating to Annual Local Debt Report Required from Political Subdivision) and any other related information required or requested by the comptroller for the

Annual Local Debt Report. [The comptroller shall provide an Annual Local Debt Report Form for use by a political subdivision under this subchapter. Copies of the form may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. The form may be viewed or downloaded from the comptroller's website at <https://comptroller.texas.gov/transparency/local/hb1378/apply.php>. Copies may also be requested by calling our toll-free number, (844) 519-5676, or by e-mailing staff at transparency@cpa.texas.gov.]

(b) The comptroller shall prescribe the form and manner in which financial information, financial documents, and related information must be submitted under this subchapter. These instructions and other information related to local government debt reporting will be provided on the comptroller's Internet website at <https://comptroller.texas.gov/transparency/> [may update the Annual Local Debt Report Form as needed].

§10.4. Reporting Options Available to Political Subdivisions Generally[Requirements].

(a) In order to comply with §10.2 of this title (relating to Annual Local Debt Report Required from Political Subdivision), on an annual basis, and within 180 days of the end of the most recently completed fiscal year, a political subdivision shall, in accordance with the reporting requirements set forth under Local Government Code, §140.008, either:

(1) submit an Annual Local Debt Report to the comptroller as described in §10.3 of this title (relating to Submission of Annual Local Debt Report to Comptroller), in the form and in the manner prescribed by the comptroller [via upload to the comptroller's Internet web site the completed Annual Local Debt Report Form provided by the comptroller] and, if the political subdivision maintains an Internet website, continually maintain a link from its website to the location on the comptroller's website where the political subdivision's financial information may be viewed; or

(2) post its contact information and the information required in an Annual Local Debt Report on the political subdivision's own Internet website and make the report available for inspection by any person in accordance with other law.

(b) For Fiscal Year 2019 and Fiscal Year 2020, a political subdivision shall submit to the comptroller or post the annual debt information described in subsection (a) of this section by the later of 180 days after the end of the respective fiscal year or 180 days after the effective date of this rule, as amended. [The governing body of a political subdivision that elects to post its annual debt information on its own Internet website as described in subsection (a)(2) of this section shall take action to ensure that:]

~~[(1) this information is made available for inspection by any person and posted continuously on the political subdivision's website until the political subdivision posts the next year's annual debt information; and]~~

~~[(2) the contact information for the political subdivision's main office is posted continuously on the website and such information includes a physical address, mailing address, main telephone number, and an e-mail address.]~~

(c) A political subdivision that elects to post a report of its financial information on its own Internet website as described in subsection (a)(2) of this section shall provide upon request an electronic link to the location on the political subdivision's website where the information can be viewed to facilitate compliance with the requirements of this subsection and to enable the comptroller to maintain a searchable database of local debt information that is comprehensive, accurate, and complete. [For Fiscal Year 2016 and Fiscal Year 2017, a political

subdivision shall submit to the comptroller or post the annual debt information described in subsection (a) of this section by the later of 180 days after the end of the respective fiscal year or 180 days after the effective date of this rule.]

§10.5. Alternative Form of Financial Information for Report; Alternative Reporting Option Available for Certain Types of Districts [Water District Alternative].

(a) A political subdivision that is a district as defined by ~~under~~ Water Code, §49.001~~[(1)]~~, complies with the requirements of this subchapter if the district, on an annual basis, complies with the requirements of Water Code, Chapter 49, Subchapter G, regarding audit reports, affidavits of financial dormancy, and annual financial reports, and ~~[submits to the comptroller via web upload on an annual basis and within 180 days of the end of the most recently completed fiscal year one of the following:]~~

(1) ~~submits the financial documents described in this subsection to the comptroller in the form and manner prescribed by the comptroller, on an annual basis and within 180 days of the end of the most recently completed fiscal year [an annual financial report as described by Water Code, Chapter 49, Subchapter G]; or~~

(2) ~~ensures that such documents are made available at a regular office of the district for inspection by any person and, if the district maintains an Internet website, that the documents are posted continuously for public viewing on the district's Internet website. [an audit report as described by Water Code, Chapter 49, Subchapter G; or]~~

~~[(3) an affidavit of financial dormancy as described by Water Code, Chapter 49, Subchapter G.]~~

(b) For Fiscal Year 2019 ~~[2016]~~ and Fiscal Year 2020 ~~[2017]~~, a district shall submit to the comptroller, or post on the district's website and make available for public inspection, as applicable, the information described in subsection (a) of this section in accordance with the requirements of this section by the later of 180 days after the end of the respective fiscal year or 180 days after the effective date of this rule, as amended.

(c) A district that is eligible for and that elects to avail itself of the alternative reporting method described in subsection (a)(2) of this section shall provide upon request confirmation to the comptroller of the district's compliance with that section by: providing an electronic link to the location on the district's website where the pertinent financial documents have been posted for public viewing, if applicable; or by otherwise affirming and acknowledging to the comptroller that the district has made the documents available for public inspection at a regular office of the district.

§10.6. Comptroller Procedures.

~~[(a) The comptroller shall receive the Annual Local Debt Report from political subdivisions (to include municipalities with a population of less than 15,000 and counties with a population of less than 35,000) electing to provide such information under §10.4(a)(1) of this title (relating to Reporting Requirements).]~~

(a) ~~[(b)]~~ The comptroller shall post on the comptroller's Internet website financial information and documents submitted under this subchapter, and any other information the comptroller considers relevant or necessary to fulfill its obligations under Local Government Code, §140.008, in the format that the comptroller determines to be appropriate and feasible subject to any limitations on the availability of such information to the comptroller, any limitations on format compatibility, and ability to comply with applicable technical accessibility standards and specifications set forth in the comptroller's electronic and information resources accessibility policy, which can be viewed on

the comptroller's website at: <https://comptroller.texas.gov/about/policies/accessibility.php>. ~~[each Annual Local Debt Report on the annual local debt reporting section of the comptroller's Internet website, making each political subdivision's report easily located via a search function.]~~

~~[(e) The comptroller shall post on the annual local debt reporting section of its Internet website, if submitted by a district as defined under Water Code, §49.001(1): an annual financial report, an affidavit of financial dormancy, or an audit report.]~~

(b) ~~[(d)]~~ The comptroller is committed to making its website and all electronic and information resources accessible to persons with disabilities by applying principles of accessibility and usability design to its information collection and publication practices. Accordingly, the comptroller shall ~~[may]~~ require documents and other information submitted to it under this subchapter ~~[section]~~ to comply with the accessibility standards and specifications described in 1 TAC Chapters 206 and 213, and reserves the right to reject non-compliant submissions. Moreover, the comptroller shall post information and documents submitted to it under this subchapter to the comptroller's Internet website to the extent that doing so complies with applicable technical accessibility standards and specifications established in the electronic and information resources accessibility policy adopted by the comptroller under other 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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Don Neal

Chief Counsel, Operations and Support Legal Services Division
Comptroller of Public Accounts

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



CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER F. CONTRACT MANAGEMENT

DIVISION 5. PROCUREMENT DIRECTOR

34 TAC §§20.560 - 20.562

The Comptroller of Public Accounts proposes new §§20.560, concerning definitions; 20.561, concerning certification of contract file; and 20.562, concerning certification of vendor assessment. These rules will be included in Subchapter F, new Division 5, Procurement Director.

These rules are proposed to implement Government Code, §2261.0525(a) and §2262.053(f) added by Senate Bill 65, 86th Legislature, 2019. Delegation of the authority of the procurement director to other persons, as described below, is proposed to efficiently implement new legislative requirements.

New §20.560 sets out the definitions for the division. Paragraph (1) adopts the definition of "contract manager" set out in Government Code, §2262.001. Paragraph (2) defines "procurement

director" as the employee designated by a state agency to oversee and be primarily responsible for the procurement of goods and services for the agency.

New §20.561 establishes the requirement for agencies to develop and use a checklist for contracts valued in excess of \$50,000.00 to assure compliance with state laws and rules and the retention of applicable file documents. Additionally, a written delegation is required.

New §20.562 establishes the requirements for the assessment and certification of vendors. Additionally, this new rule governs the written delegation required to permit delegation from an agency's procurement director to a qualified individual to review and certify contract assessment.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposals are in effect, the rules: 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 the proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amendments would benefit the public by conforming the rules to current statute. There would be no anticipated significant economic cost to the public. The proposed amendments would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposals may be submitted to Sarah Chacko, Comptroller of Public Accounts, at P.O. Box 13528 Austin, Texas 78711 or Sarah.Chacko@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register*.

The new rules are proposed under Government Code, §2262.053(h), which authorizes the comptroller by rule to prescribe contract monitoring responsibilities, as well as Government Code, §2262.0015(a), which authorizes the comptroller by rule to exclude small and routine contracts from the application of Government Code, Chapter 2262.

The new rules implement Government Code, §2261.0525(a) and §2262.053(f).

§20.560. Definitions.

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

(1) Contract manager--Has the meaning assigned by Government Code, §2262.001.

(2) Procurement director--The employee designated by a state agency to oversee and be primarily responsible for the procurement of goods and services for the agency.

§20.561. Certification of Contract File.

(a) Each state agency shall include in the contract file for each of its contracts with a value exceeding \$50,000 a checklist to ensure the agency's compliance with state laws and rules relating to the acquisition of goods and services by the agency.

(b) A state agency's procurement director may delegate to a person in the agency's procurement division the authority to certify the

contract file checklist under Government Code, §2262.053(f) under the following conditions:

(1) the agency has developed a checklist of documents required by state law or applicable agency rules to be maintained in the contract file;

(2) the agency's procurement division has a documented system for ensuring that contract files include complete copies of all documents required by the checklist, and that the contract file is retained by the agency as required by law; and

(3) the delegation is in writing.

§20.562. Certification of Vendor Assessment.

(a) Before a state agency may award a contract to a vendor, the agency's procurement director must review the process and all documents used by the agency to assess each vendor who responded to the solicitation. This requirement applies only to each procurement of goods or services made by a state agency that is neither made by the comptroller nor made under purchasing authority delegated to the agency by or under Education Code, §51.9335; Education Code, §73.115; Government Code, §2155.131; or Government Code, §2155.132.

(b) A state agency's procurement director may delegate to a person in the agency's procurement office the authority to review and certify the assessment process and documents under Government Code, §2261.0525(a) under the following conditions:

(1) the agency's procurement division has a documented system for ensuring the quality of the vendor assessment process, including the quality of documents used to calculate and record the scoring of vendors;

(2) the delegation is in writing; and

(3) the delegated person:

(A) is not the primary contract manager or contract developer for the contract;

(B) is in a position in the agency's procurement office that is at least equal to the position of contract manager;

(C) is a Certified Texas Contract Manager or Certified Texas Contract Developer under §20.133 of this title (relating to Training and Certification Program), or is an attorney or certified public accountant licensed to practice in Texas; and

(D) has signed all conflict of interest or nepotism forms required for a contract developer for the particular contract.

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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Don Neal

Chief Counsel, Operations and Support Legal Services Division
Comptroller of Public Accounts

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For further information, please call: (512) 475-0384



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.12

The Texas Department of Public Safety (the department) proposes amendments to §4.12, concerning Exemptions and Exceptions. The proposed amendments are necessary to harmonize updates to 49 CFR with those laws adopted by Texas. The Federal Motor Carrier Safety Administration has granted an exemption for interstate drivers of waste and recycle vehicles utilizing the short term hours of service exemption. This exemption allows them to return to their primary work-reporting location within 14 hours instead of the previous rule of 12 hours. This amendment adopts this same exemption for intrastate waste and recycling vehicle drivers.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does limit an existing regulation. It does not increase or decrease the number of individuals

subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should positively impact the state's economy.

The Texas Department of Public Safety, in accordance with the Administrative Procedures Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Tuesday, March 3, 2020, at 10:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.12 regarding Exemptions and Exceptions, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.12. Exemptions and Exceptions.

(a) Exemptions to the adoptions in §4.11 of this title (relating to General Applicability and Definitions) are made pursuant to Texas Transportation Code, §§644.052 - 644.054, and are adopted as follows:

(1) Such regulations shall not apply to the vehicles detailed in subparagraph (A) - subparagraph (D) of this paragraph when operated intrastate:

(A) a vehicle used in oil or water well servicing or drilling which is constructed as a machine consisting in general of a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for such purpose or purposes;

(B) a mobile crane which is an unladen, self-propelled vehicle constructed as a machine used to raise, shift, or lower weights;

(C) a vehicle transporting seed cotton; or

(D) concrete pumps.

(2) The provisions of Title 49, Code of Federal Regulations, §395.3 shall not apply to intrastate commerce. Drivers in intrastate commerce will be permitted to drive 12 hours following 8 con-

secutive hours off duty. Drivers in intrastate commerce may not drive after having been on duty 15 hours, following 8 consecutive hours off duty. Drivers in intrastate commerce violating the 12 or 15 hour limits provided in this paragraph shall be placed out-of-service for 8 consecutive hours. Drivers of vehicles operating in intrastate commerce shall be permitted to accumulate the equivalent of 8 consecutive hours off duty by taking a combination of at least 8 consecutive hours off duty and sleeper berth time; or by taking two periods of rest in the sleeper berth, providing:

(A) neither rest period in the sleeper berth is shorter than 2 hours duration;

(B) the driving time in the period immediately before and after each rest period in the sleeper berth, when added together, does not exceed 12 hours;

(C) the on duty time in the period immediately before and after each rest period in the sleeper berth, when added together, does not include any driving time after the 15th hour; and

(D) the driver may not return to driving subject to the normal hours of service requirements in this subsection without taking at least 8 consecutive hours off duty, at least 8 consecutive hours in the sleeper berth, or a combination of at least 8 consecutive hours off duty and sleeper berth time.

(3) Drivers in intrastate commerce who are not transporting placardable hazardous materials and were regularly employed in Texas as commercial vehicle drivers prior to August 28, 1989, are not required to meet the medical standards contained in the federal regulations.

(A) For the purpose of enforcement of this regulation, those drivers who reached their 18th birthday on or after August 28, 1989, shall be required to meet all medical standards.

(B) The exceptions contained in this paragraph [subsection (a)(3) of this section] shall not be deemed as an exemption from drug and alcohol testing requirements contained in Title 49, Code of Federal Regulations, Part 40 and Part 382.

(4) The maintenance of a driver's record of duty status is not required if the vehicle is operated within a 150 air-mile radius of the driver's normal work reporting location if:

(A) the driver returns to the normal work reporting location and is released from work within 12 consecutive hours;

(B) the driver has at least 8 consecutive hours off duty separating each 12 hours on duty; and

(C) the motor carrier that employs the driver maintains and retains for a period of 6 months true and accurate time and business records which include:

(i) the time the driver reports for duty each day;

(ii) the total number of hours the driver is on duty each day;

(iii) the time the driver is released from duty each day;

(iv) the total time on duty for the preceding seven days in accordance with Title 49, Code of Federal Regulations, §395.8(j)(2) for drivers used for the first time or intermittently; and

(v) the motor carrier maintains business records that provide the date, time, quantity, and location of the delivery of a product or service, including delivery tickets or sales invoices.

(5) The maintenance of a driver's record of duty status is not required for the driver of a ready-mix concrete delivery vehicle or a waste and recycling vehicle if the vehicle is operated intrastate within a 150 air-mile radius of the driver's normal work reporting location if:

(A) the driver returns to the normal work reporting location and is released from work within 14 consecutive hours;

(B) the driver has at least 8 consecutive hours off duty separating each 14 hours on duty;

(C) the driver does not exceed 12 hours maximum driving time following 8 consecutive hours off duty; and

(D) the motor carrier that employs the driver maintains and retains for a period of 6 months true and accurate time and business records which include:

(i) the time the driver reports for duty each day;

(ii) the total number of hours the driver is on duty each day;

(iii) the time the driver is released from duty each day;

(iv) the total time on duty for the preceding 7 days in accordance with Title 49, Code of Federal Regulations, §395.8(j)(2) for drivers used for the first time or intermittently; and

(v) the motor carrier maintains business records that provide the date, time, quantity, and location of the delivery of a product or service, including delivery tickets or sales invoices.

(6) An electronic logging device (ELD) and an automatic on-board recording device have the meaning as defined in Title 49, Code of Federal Regulations, §395.2.

(7) Unless otherwise exempted, [until December 16, 2019,] a motor carrier operating commercial motor vehicles intrastate shall require each of its drivers to record the driver's record of duty status:

(A) Using an ELD that meets the requirements of subpart B of Title 49, Code of Federal Regulations, Part 395;

(B) Using an automatic on-board recording device that meets the requirements of Title 49, Code of Federal Regulations, §395.15; or

(C) Manually, recorded as specified in Title 49, Code of Federal Regulations, §395.8. The record of duty status must be recorded in duplicate for each 24-hour period for which recording is required.

(8) Unless otherwise exempted, a motor carrier operating commercial motor vehicles intrastate must install and require each of its drivers to use an ELD to record the driver's duty status in accordance with Title 49, Code of Federal Regulations, Part 395 [no later than December 16, 2019].

(9) The provisions of Title 49, Code of Federal Regulations, Part 395 shall not apply to drivers transporting agricultural commodities in intrastate commerce for agricultural purposes within a 150 air-mile radius from the source of the commodities or the distribution point for the farm supplies during planting and harvesting seasons.

(b) Exceptions adopted by the director of the Texas Department of Public Safety not specified in Texas Transportation Code, §644.053, are:

(1) Title 49, Code of Federal Regulations, §393.86, requiring rear-end protection shall not be applicable provided the vehicle was

manufactured prior to September 1, 1991 and is used solely in intrastate commerce.

(2) Drivers of vehicles under this section operating in intrastate transportation shall not be permitted to drive after having worked and/or driven for 70 hours in any consecutive seven-day period. A driver may restart a consecutive seven-day period after taking 34 or more consecutive hours off-duty. Drivers in intrastate transportation violating the 70 hour limit provided in this paragraph will be placed out-of-service until no longer in violation.

(3) For drivers of commercial motor vehicles operating in intrastate transportation and used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 7 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(4) For drivers of a commercial motor vehicle operating in intrastate transportation and used primarily in the transportation of construction materials and equipment, any period of 7 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours. "Transportation of construction materials and equipment" has the meaning assigned by Title 49, Code of Federal Regulations, §395.2.

(5) Drivers of vehicles operating in intrastate transportation claiming the 150 air-mile radius exemption in paragraph (4) of this subsection [subsection (a)(4) of this section] must return to the work reporting location; be released from work within 12 consecutive hours; and have at least 8 consecutive hours off-duty separating each 12 hours on-duty.

(6) The provisions of Title 49, Code of Federal Regulations, §391.11(b)(1) shall not apply to intrastate commerce. The minimum age for an intrastate driver shall be 18 years of age. Intrastate drivers in violation of this paragraph shall be placed out-of-service until no longer in violation.

(7) The provisions of Title 49, Code of Federal Regulations, §391.11(b)(2) shall not apply to intrastate commerce. An intrastate driver must have successfully passed the examination for a Texas Commercial Driver's License and be a minimum age of 18 years old.

(8) Texas Transportation Code, §547.401 and §547.404, concerning brakes on trailers weighing 15,000 pounds gross weight or less take precedence over the brake requirements in the federal regulations for trailers of this gross weight specification unless the vehicle is required to meet the requirements of Federal Motor Vehicle Safety Standard No. 121 (Title 49, Code of Federal Regulations §571.121) applicable to the vehicle at the time it was manufactured.

(9) Title 49, Code of Federal Regulations, §390.23 (Relief from Regulations), is adopted for intrastate motor carriers with the exceptions detailed in subparagraph (A) and subparagraph (B) of this paragraph:

(A) Title 49, Code of Federal Regulations, §390.23(a)(2) is not applicable to intrastate motor carriers making emergency residential deliveries of heating fuels or responding to a pipeline emergency, provided the carrier:

(i) documents the type of emergency, the duration of the emergency, and the drivers utilized; and

(ii) maintains the documentation on file for a minimum of six months. An emergency under this paragraph is one that if left unattended would result in immediate serious bodily harm, death

or substantial property damage but does not include routine requests to refill ~~re-fill~~ empty propane gas tanks.

(B) The requirements of Title 49, Code of Federal Regulations, §390.23(c)(1) and (2), for intrastate motor carriers shall be:

(i) the driver has met the requirements of Texas Transportation Code, Chapter 644; and

(ii) the driver has had at least eight consecutive hours off-duty when the driver has been on duty for 15 or more consecutive hours, or the driver has had at least 34 consecutive hours off duty when the driver has been on duty for more than 70 hours in seven consecutive days.

(10) The provisions of Title 49, Code of Federal Regulations, Part 380 (Subparts A - D) shall not apply to intrastate motor carriers and drivers. Title 49, Code of Federal Regulations, Part 380 (Subpart E) is adopted for intrastate motor carriers and drivers. Intrastate motor carriers and drivers must complete the requirements of Title 49, Code of Federal Regulations, §380.500 on or before July 31, 2005.

(11) In accordance with §4132 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETA-LU) (Pub. L. 109-59), the hours of service regulations in this subchapter are not applicable to utility service vehicles that operate in either interstate or intrastate commerce. Utility service vehicles are those vehicles operated by public utilities, as defined in the Public Utility Regulatory Act, the Gas Utility Regulatory Act, the Texas Water Code, Title 49, Code of Federal Regulations, §395.2, or other applicable regulations, and charged with the responsibility for maintaining essential services to the public to protect health and safety.

(12) The United States Department of Transportation number requirements in Texas Transportation Code, Chapter 643 do not apply to vehicles/motor carriers operating exclusively in intrastate commerce and that are exempted from the requirements by Texas Transportation Code, §643.002.

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 January 24, 2020.

TRD-202000302

D. Phillip Adkins
General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: March 8, 2020

For further information, please call: (512) 424-5848



37 TAC §4.21

The Texas Department of Public Safety (the department) proposes amendments to §4.21, concerning Report of Valid Positive Result on Alcohol and Drug Test. The Federal Motor Carrier Safety Administration requires carriers to submit valid positive results on alcohol and drug tests. Code of Federal Regulations, Title 49, Part 40 (adopted in Texas Administrative Code, §4.12 of this title, relating to Exemptions and Exceptions) requires that these results be signed by a medical review officer. This signature allows for investigators to validate positive results during a compliance review or safety audit. Currently, §4.21 does not specify "signed." This change will harmonize the Texas Administrative Code with CFR Part 40 and make this requirement clear

for both industry and enforcement personnel. Additional, non-substantive changes have been made to the rule text for clarity.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

The Texas Department of Public Safety, in accordance with the Administrative Procedures Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Tuesday, March 3, 2020, at 10:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.21 regarding Report of Valid Positive Result on Alcohol and Drug Test, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence

should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.21. Report [Reports] of Valid Positive Result [Results] on Alcohol and Drug Test [Tests].

(a) [~~Reporting Requirement.~~] An employer required under the federal safety regulations to conduct alcohol and controlled substance testing of employees shall report to the department a valid positive result on an alcohol or controlled substance test performed as part of the carrier's alcohol and drug testing program or consortium, as defined by Title 49, Code of Federal Regulations, Part 382, on an employee of the carrier who holds a commercial driver license issued under Texas Transportation Code, Chapter 522.

(1) The report must be submitted by employers within 10 days of receiving notice of a valid positive result on an alcohol or drug test performed.

~~[(2) Report Submission Requirements.]~~

(2) [~~(A)~~] The report must be submitted on a department created form available on the department's website at <http://www.dps.texas.gov/internetforms/default.aspx>. [a form prescribed by the department that is available at the following Internet web site address: <http://www.txdps.state.tx.us/forms>.] All information requested on the form must be completed. The completed form must be mailed to MCS Section Supervisor, Motor Carrier Bureau, Texas Department of Public Safety, 6200 Guadalupe, MSC# 0521, Austin, Texas 78752-4019, or sent by facsimile to (512) 424-5310. Unless the report is for a refusal to submit a sample, employers must also attach a legible copy of either the Federal Drug Testing, Custody and Control Form (with at least steps one through six completed), the U.S. Department of Transportation (DOT) Alcohol Testing Form (with at least steps one through three completed), or the medical review officer's or breath alcohol technician's signed [Medical Review Officer's or Breath Alcohol Technician's] report of a positive, diluted, adulterated, or substituted alcohol or drug test.

(3) [~~(B)~~] Any requestor who has obtained permission to request and receive release of information via electronic mail under subsection (b)(2) of this section may also submit a report [reports] via electronic mail. The complete report must be filled out in its entirety, and must be clearly scanned with attachments as described in paragraph (2) [paragraph (2)(A)] of this subsection.

(4) [(3)] When a valid positive result is obtained on an owner-operator, that owner-operator is responsible for submission of the Report of Valid Positive Drug or Alcohol Test [test] to the department.

(5) [(4)] A medical review officer, breath alcohol technician [Medical Review Officer, Breath Alcohol Technician], laboratory, consortium, or other individual [individuals] may submit a Report of Valid Positive Drug or Alcohol Test to the department. A report [Reports] by a laboratory [laboratories] or other individual [individuals] will only be entered into [in] the department's database when the report has been verified by the medical review officer or breath alcohol technician [Medical Review Officer or Breath Alcohol Technician].

(6) [(5)] A dilute positive drug test under Title 49, Code of Federal Regulations, §40.197(a) [Part 40.197(a)] is a valid positive result. A dilute negative drug test is not a valid positive test. A positive drug test from a recollection under Title 49, Code of Federal Regulations, §40.197(b) [Part 40.197(b)] is a valid positive test.

(b) [~~Release of Information.~~] Information regarding Report [Reports] of Valid Positive Drug or Alcohol Test [Tests] is confidential and only subject to release as provided in Texas Transportation Code, §521.053 [521.053]. A request must be submitted on a department created form available on the department's website at <http://www.dps.texas.gov/internetforms/default.aspx>. [form prescribed by the department that is available at the following Internet web site address: <http://www.txdps.state.tx.us/forms->]

(1) The request form must be mailed to MCS Section Supervisor, Motor Carrier Bureau, Texas Department of Public Safety, 6200 Guadalupe, MSC# 0521, Austin, Texas 78752-4019, or sent by facsimile to (512) 424-5310.

(2) A requester may apply for and obtain permission to request and receive release of information via electronic mail. Electronic mail addresses are subject to initial and continuing verification by the department. A request must be submitted on a department created form available on the department's website at <http://www.dps.texas.gov/internetforms/default.aspx>. [form prescribed by the department that is available at the following Internet web site address: <http://www.txdps.state.tx.us/forms->] Once a requester has obtained permission to request and receive information via electronic mail, each individual request must still be made with a clearly scanned copy of the form described in subsection (b) of this section and be in compliance with the requirements of Texas Transportation Code, §521.053.

(c) A valid positive test result under §4.22 of this title (relating to Contract Carriers of Certain Passengers) must be reported and maintained in the same manner as reports under subsection (a) of this section. Such information may only be released in the same manner as described in subsection (b) of this section.

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

Filed with the Office of the Secretary of State on January 24, 2020.

TRD-202000303

D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: March 8, 2020
For further information, please call: (512) 424-5848

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC proposes amendments in Title 40, Part 1, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities to §9.177, concerning Certification Principles: Staff Member and Service Provider Requirements, and §9.579, concerning Certification Principles: Staff Member and Service Provider Requirements.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments is to implement Rider 45 of the 2020-21 General Appropriations Act, Article II, Special Provisions, House Bill 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriates funds to HHSC to increase the minimum base wage paid to "personal attendants" from \$8.00 to \$8.11 per hour. Currently, the requirements for payment of a base wage to personal attendants in the HCS and TxHmL Programs are addressed in §49.312, Personal Attendants. A new rule, §355.7051, is being proposed in Texas Administrative Code (TAC), Title 1, Part 15, Chapter 355, in this issue of the *Texas Register*, that will address the requirements for payment of a base wage to personal attendants for programs governed by Chapter 49 and for other programs and services administered by HHSC. As a result of the consolidation of base wage requirements in Chapter 355, §49.312 is proposed for amendment in this issue of the *Texas Register* to delete the base wage requirements in that section and instead reference new §355.7051. Because §49.312 is proposed for amendment, the references in Chapter 9 to §49.312 need to be amended.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §9.177(o) changes the reference §49.312(a) to §49.312 because HCS program providers will be

required to comply with all subsections in §49.312, as proposed for amendment.

The proposed amendment to §9.579(s) changes the reference §49.312(a) to §49.312 because TxHmL program providers will be required to comply with all subsections in §49.312, as proposed for amendment.

FISCAL NOTE

Liz Prado, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed.

Fiscal implications to state government relating to the minimum base wage for personal attendants are addressed in the fiscal note to proposed new 1 TAC §355.7051, which is also being proposed in this issue of the *Texas Register*.

There is no fiscal impact to local government.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Liz Prado has also determined that there could be an adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rules require some businesses to pay a higher wage to personal attendants than they do currently. HHSC lacks sufficient information to provide an estimate of the economic impact.

However, because Rider 45 appropriated funds to HHSC for the purpose of increasing the payment rate to persons required to comply with the proposed rules, the increased payment rates may offset any adverse economic effect incurred by such providers.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of the citizens of Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, and they are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Liz Prado has determined that for each year of the first five years the rules are in effect, the public benefit will be an improvement in the stability and quality of the attendant workforce as a result of higher wages.

Liz Prado has also determined that for the first five years the rules are in effect, HCS and TxHmL program providers may incur economic costs if they are currently paying an average base wage of less than \$8.11 per hour to personal attendants required to be paid a base wage of at least \$8.11 per hour. However, the increased payment rates may address most, if not all, of the increased wages for attendant services for those providers currently paying less than the required base wage. HHSC lacks sufficient data to estimate the cost to persons required to comply with the proposed rules.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing is scheduled for February 12, 2020, at 9:00 a.m. (central time) in the Public Hearing Room of the Brown-Heathly Building located at 4900 North Lamar Blvd., Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact the HHSC Rate Analysis Department's Customer Information Center at (512) 424-6637.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to the HHSC Rate Analysis Department's Customer Information Center at (512) 424-6637.

Written comments on this proposal may be submitted to the HHSC Rate Analysis Department, Mail Code H-400, P.O. Box 85200, Austin, TX 78705-5200, by fax to (512) 730-7475, or by e-mail to RAD-LTSS@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 20R032" in the subject line.

SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

40 TAC §9.177

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the Health and Human Services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code §531.0055, Texas Government Code Chapter 531, and Texas Human Resources Code Chapter 32.

§9.177. Certification Principles: Staff Member and Service Provider Requirements.

(a) - (n) (No change.)

(o) A program provider must comply with §49.312 [§49.312(a)] of this title (relating to Personal Attendants).

(p) - (u) (No change.)

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

Filed with the Office of the Secretary of State on January 22, 2020.

TRD-202000257

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: March 8, 2020

For further information, please call: (512) 424-6637



SUBCHAPTER N. TEXAS HOME LIVING (TXHML) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

40 TAC §9.579

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the Health and Human Services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code §531.0055, Texas Government Code Chapter 531, and Texas Human Resources Code Chapter 32.

§9.579. Certification Principles: Staff Member and Service Provider Requirements.

(a) - (r) (No change.)

(s) A program provider must comply with §49.312 [§49.312(a)] of this title (relating to Personal Attendants).

(t) - (u) (No change.)

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

Filed with the Office of the Secretary of State on January 22, 2020.

TRD-202000258

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: March 8, 2020

For further information, please call: (512) 424-6637



CHAPTER 41. CONSUMER DIRECTED SERVICES OPTION

SUBCHAPTER E. BUDGETS

40 TAC §41.505

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC proposes an amendment to §41.505, concerning Payroll Budgeting, in Title 40, Part 1, Chapter 41, Consumer Directed Services Option.

BACKGROUND AND PURPOSE

The purpose of the proposed amendment is to implement Rider 45 of the 2020-21 General Appropriations Act, Article II, Special Provisions, House Bill 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriates funds to HHSC to increase the minimum base wage paid to "personal attendants" from \$8.00 to \$8.11 per hour. Currently, the requirements for payment of a base wage to personal attendants in the consumer-directed services (CDS) option are addressed in §41.505, Payroll Budgeting. A new rule, §355.7051, is being proposed in Texas Administrative Code (TAC), Title 1, Part 15, Chapter 355, in this issue of the Texas Register, that will address the requirements for payment of a base wage to personal attendants in

many of the programs and services administered by HHSC. As a result of the consolidation of base wage requirements in Chapter 355, §41.505 is proposed for amendment to delete the base wage requirements in that section and instead reference new §355.7051.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §41.505(a) replaces existing language with the requirement that an employer or designated representative budget to pay an employee who is a personal attendant at least the base wage specified in 1 TAC §355.7051(c), (d)(2), or (f).

The proposed amendment to §41.505(c) adds new paragraph (5) requiring that financial management services agencies comply with 1 TAC §355.7051(c), (d)(2), or (f).

FISCAL NOTE

Liz Prado, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rule as proposed.

Fiscal implications to state government relating to the minimum base wage for personal attendants are addressed in the fiscal note to proposed new 1 TAC §355.7051, which is also being proposed in this issue of the *Texas Register*.

There is no fiscal impact to local government.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Liz Prado has also determined that there could be an adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule requires some employers to pay a higher wage to personal attendants than they do currently. HHSC lacks sufficient information to provide an estimate of the economic impact.

However, because Rider 45 appropriated funds to HHSC for the purpose of increasing the payment rate to persons required to comply with the proposed rule, the increased payment rates may offset any adverse economic effect incurred by such providers.

HHSC determined that alternative methods to achieve the purpose of the proposed rule for small businesses, micro-busi-

nesses, or rural communities would not be consistent with ensuring the health and safety of the citizens of Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas, and it is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Liz Prado has determined that for each year of the first five years the rule is in effect, the public benefit will be an improvement in the stability and quality of the attendant workforce as a result of higher wages.

Liz Prado has also determined that for the first five years the rule is in effect, persons who are required to comply with the proposed rule may incur economic costs if they are currently paying an average base wage of less than \$8.11 per hour to personal attendants required to be paid a base wage of at least \$8.11 per hour. However, the increased payment rates may address most, if not all, of the increased wages for attendant services for those providers currently paying less than the required base wage. HHSC lacks sufficient data to estimate the cost to persons required to comply with the proposed rule.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing is scheduled for February 12, 2020, at 9:00 a.m. (central time) in the Public Hearing Room of the Brown-Healy Building located at 4900 North Lamar Blvd., Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact the HHSC Rate Analysis Department's Customer Information Center at (512) 424-6637.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to the HHSC Rate Analysis Department's Customer Information Center at (512) 424-6637.

Written comments on this proposal may be submitted to the HHSC Rate Analysis Department, Mail Code H-400, P.O. Box 85200, Austin, Texas 78705-5200, by fax to (512) 730-7475, or by email to RAD-LTSS@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 20R032" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the Health and Human Services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code §531.0055, Texas Government Code Chapter 531, and Texas Human Resources Code Chapter 32.

§41.505. Payroll Budgeting.

(a) An employer or DR must, when developing a budget that includes payroll expenses for an employee:

(1) budget to pay [:] an employee who is a "personal attendant," as defined in 1 TAC §355.7051(a) (relating to Base Wage for a Personal Attendant), at least the base wage specified in 1 TAC §355.7051(c), (d)(2), or (f).

[(A) subject to subparagraph (B) of this paragraph, an employee at least the minimum hourly wage required by law before withholdings and garnishments; and]

[(B) the following employees at least \$8.00 per hour, if the rate required by this subparagraph exceeds the minimum wage required by law:]

[(i) an employee providing primary home care, family care, or community attendant services;]

[(ii) an employee providing flexible family support and respite services in the Medically Dependent Children Program;]

[(iii) an employee providing habilitation or CFC PAS/HAB in the Community Living Assistance and Support Services Program;]

[(iv) an employee providing residential habilitation or CFC PAS/HAB in the Deaf Blind Multiple Disabilities Program;]

[(v) an employee providing personal attendant services in the Consumer Managed Personal Attendant Services Program;]

[(vi) an employee providing supported home living or CFC PAS/HAB in the Home and Community-based Services Program; and]

[(vii) an employee providing community support or CFC PAS/HAB in the Texas Home Living Program;]

(2) - (3) (No change.)

(b) (No change.)

(c) An FMSA must:

(1) review the employer's budgeted payroll spending decisions;

(2) review Form 1730 for each employee at time of hire and as revised by the employer or DR;

(3) verify that each applicable budget workbook and Form 1730 is within the approved budget; [and]

(4) notify the employer in writing of the approval or disapproval of Form 1730 and work with the employer or DR to resolve those issues that prevent the approval of [the] Form 1730; and[-]

(5) comply with 1 TAC §355.7051(c), (d)(2), or (f) (relating to Base Wage for a Personal Attendant).

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 January 22, 2020.

TRD-202000259

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: March 8, 2020

For further information, please call: (512) 424-6637



CHAPTER 44. CONSUMER MANAGED PERSONAL ATTENDANT SERVICES (CMPAS) PROGRAM

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC proposes amendments in Title 40, Part 1, Chapter 44, Consumer Managed Personal Attendant Services (CMPAS) Program to §44.302, concerning Provider Qualifications and Responsibilities in All CMPAS Service Delivery Options, and §44.422, concerning Individual Responsibilities in the Block Grant Option.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments is to implement Rider 45 of the 2020-21 General Appropriations Act, Article II, Special Provisions, House Bill 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriates funds to HHSC to increase the minimum base wage paid to "personal attendants" from \$8.00 to \$8.11 per hour. Currently, the minimum hourly base wage for a personal attendant is referenced in multiple rules, including §49.312, Personal Attendants, and §41.505, Payroll Budgeting. HHSC is proposing new §355.7051, Base Wage for a Personal Attendant, in Title 1, Part 15, Chapter 355 Texas Administrative Code (TAC), so that the specific base wage requirements for all of HHSC's programs and services will be contained in one section. Other rules to which the new

minimum base wage applies, including in 40 TAC Chapter 44, are being proposed for amendment in this issue of the *Texas Register* to cross reference the specific requirements of new §355.7051.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §44.302 adds paragraph (9) to require providers participating in the Consumer Managed Personal Attendant Services (CMPAS) program to comply with the requirements of 1 TAC §355.7051(d).

The proposed amendment to §44.422(8)(C) clarifies the requirement that the agreement with an attendant in the CMPAS program include an hourly rate that is "at or above the minimum wage required by law" to more specifically refer to the minimum base wage specified in new 1 TAC §355.7051 being proposed in this issue of the *Texas Register*.

FISCAL NOTE

Liz Prado, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed.

Fiscal implications to state government relating to the minimum base wage for personal attendants are addressed in the fiscal note to proposed new 1 TAC §355.7051, which is also being proposed in this issue of the *Texas Register*.

There is no fiscal impact to local government.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Liz Prado has also determined that there could be an adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rules require some businesses to pay a higher wage to personal attendants than they do currently. HHSC lacks sufficient information to provide an estimate of the economic impact.

However, because Rider 45 appropriated funds to HHSC for the purpose of increasing the payment rate to persons required to comply with the proposed rules, the increased payment rates may offset any adverse economic effect incurred by such providers.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of the citizens of Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, and they are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Liz Prado has determined that for each year of the first five years the rules are in effect, the public benefit will be an improvement in the stability and quality of the attendant workforce as a result of higher wages.

Liz Prado has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs if they are currently paying an average base wage of less than \$8.11 per hour to attendants providing CMPAS services. However, the increased payment rates may address most, if not all, of the increased wages for attendant services for those providers currently paying less than the required base wage. HHSC lacks sufficient data to estimate the cost to persons required to comply with the proposed rules.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing is scheduled for February 12, 2020, at 9:00 a.m. (central time) in the Public Hearing Room of the Brown-Heathly Building located at 4900 North Lamar Blvd., Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact the HHSC Rate Analysis Department's Customer Information Center at (512) 424-6637.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to the HHSC Rate Analysis Department's Customer Information Center at (512) 424-6637.

Written comments on this proposal may be submitted to the HHSC Rate Analysis Department, Mail Code H-400, P.O. Box 85200, Austin, Texas 78705-5200, by fax to (512) 730-7475, or by email to RAD-LTSS@hhsc.state.tx.us.

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

ments, please indicate "Comments on Proposed Rule 20R032" in the subject line.

SUBCHAPTER C. SERVICE DELIVERY IN ALL CMPAS OPTIONS

40 TAC §44.302

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which authorizes the executive commissioner to adopt rules governing the delivery of services to persons served by the health and human services system, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

The amendment affects Texas Government Code §531.0055, and Texas Government Code Chapter 531.

§44.302. Provider Qualifications and Responsibilities in All CMPAS Service Delivery Options.

To participate as a provider in the CMPAS Program, the provider must:

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

(9) comply with the requirements of 1 TAC §355.7051(d) (relating to Base Wage for a Personal Attendant).

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 January 22, 2020.

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: March 8, 2020

For further information, please call: (512) 424-6637



SUBCHAPTER D. SERVICE DELIVERY OPTIONS

DIVISION 2. BLOCK GRANT OPTION

40 TAC §44.422

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which authorizes the executive commissioner to adopt rules governing the delivery of services to persons served by the health and human services system, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

The amendment affects Texas Government Code §531.0055, and Texas Government Code Chapter 531.

§44.422. Individual Responsibilities in the Block Grant Option.

In the block grant option, an individual must:

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

(8) prepare and sign an agreement with the attendant that includes:

(A) the tasks the attendant is to perform for the individual;

(B) the schedule the attendant will work for the individual;

(C) the hourly rate [~~5~~ at or above the minimum wage required by law,] the individual will pay the attendant, which must be at least the base wage specified in 1 TAC §355.7051(d) (relating to Base Wage for a Personal Attendant);

(D) the schedule the individual will use to pay the attendant (at least twice per month);

(E) the reasons the individual may terminate the attendant's employment; and

(F) a requirement that the attendant provide the individual at least 24 hours advance notice if unable to work a scheduled shift;

(9) - (10) (No change.)

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

Filed with the Office of the Secretary of State on January 22, 2020.

TRD-202000261

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: March 8, 2020

For further information, please call: (512) 424-6637



CHAPTER 49. CONTRACTING FOR COMMUNITY SERVICES

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC proposes amendments in Title 40, Part 1, Chapter 49, Contracting for Community Services to §49.102, concerning Definitions, and §49.312, concerning Personal Attendants.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments is to implement Rider 45 of the 2020-21 General Appropriations Act, Article II, Special Provisions, House Bill 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriates funds to HHSC to increase the minimum base wage paid to "personal attendants" from \$8.00 to \$8.11 per hour. Currently, the requirements for payment of a base wage to personal attendants for contractors

subject to Chapter 49 are addressed in §49.312, Personal Attendants. A new rule, §355.7051, is being proposed in Texas Administrative Code (TAC), Title 1, Part 15, Chapter 355, in this issue of the *Texas Register*, that will address the requirements for payment of a base wage to personal attendants for programs governed by Chapter 49 and for other programs and services administered by HHSC. As a result of the consolidation of base wage requirements in Chapter 355, §49.312 is proposed for amendment to delete the base wage requirements in that section and instead reference new §355.7051.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §49.102 deletes the definition of "personal attendant" in paragraph (52).

The proposed amendment to §49.312 revises subsection (a) to require a contractor to comply with 1 TAC §355.7051 (relating to Base Wage for a Personal Attendant). The proposed amendment revises subsection (b) to require a contractor, other than a contractor that has an FMSA contract listed in §49.101(a)(4), to notify a person who becomes employed or contracts with the contractor as a personal attendant that the contractor must pay at least the wage required by 1 TAC §355.7051. Proposed revised subsection (b) also requires a contractor to make this notification within three days after the person accepts employment or enters into a contract with the contractor. Proposed revised subsection (b) also gives the term "personal attendant" the meaning set forth in 1 TAC §355.7051(a) for purposes of subsection (b).

FISCAL NOTE

Liz Prado, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed.

Fiscal implications to state government relating to the minimum base wage for personal attendants are addressed in the fiscal note to proposed new 1 TAC §355.7051, which is also being proposed in this issue of the *Texas Register*.

There is no fiscal impact to local government.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Liz Prado has also determined that there could be an adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rules require some businesses to pay a higher wage to personal attendants than they do currently. HHSC lacks sufficient information to provide an estimate of the economic impact.

However, because Rider 45 appropriated funds to HHSC for the purpose of increasing the payment rate to persons required to comply with the proposed rules, the increased payment rates may offset any adverse economic effect incurred by such providers.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of the citizens of Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, and they are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Liz Prado has determined that for each year of the first five years the rules are in effect, the public benefit will be an improvement in the stability and quality of the attendant workforce as a result of higher wages.

Liz Prado has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs if they are currently paying an average base wage of less than \$8.11 per hour to personal attendants required to be paid a base wage of at least \$8.11 per hour. However, the increased payment rates may address most, if not all, of the increased wages for attendant services for those providers currently paying less than the required base wage. HHSC lacks sufficient data to estimate the cost to persons required to comply with the proposed rules.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing is scheduled for February 12, 2020, at 9:00 a.m. (central time) in the Public Hearing Room of the Brown-Heatly Building located at 4900 North Lamar Blvd., Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact the HHSC Rate Analysis Department's Customer Information Center at (512) 424-6637.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to the HHSC Rate Analysis Department's Customer Information Center at (512) 424-6637.

Written comments on this proposal may be submitted to the HHSC Rate Analysis Department, Mail Code H-400, P.O. Box 85200, Austin, TX 78705-5200, by fax to (512) 730-7475, or by email to RAD-LTSS@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 20R032" in the subject line.

SUBCHAPTER A. APPLICATION AND DEFINITIONS

40 TAC §49.102

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the Health and Human Services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code §531.0055, Texas Government Code Chapter 531, and Texas Human Resources Code Chapter 32.

§49.102. Definitions.

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

(1) - (51) (No change).

~~(52) Personal attendant--An employee or subcontractor of a contractor or an employee of a CDS employer who provides:}~~

~~[(A) personal attendant services in the PHC Program;}~~

~~[(B) personal attendant services in the FC Program;}~~

~~[(C) personal attendant services in the CAS Program;}~~

~~[(D) DAHS;}~~

~~[(E) RC;}~~

~~[(F) personal attendant services in the CMPAS Program;}~~

~~[(G) habilitation or CFC PAS/HAB in the CLASS Program;}~~

~~[(H) residential habilitation or CFC PAS/HAB in the DBMD Program;}~~

~~[(I) chore services in the DBMD Program;}~~

~~[(J) day habilitation in the DBMD Program;}~~

~~[(K) supported home living or CFC PAS/HAB in the HCS Program; or}~~

~~[(L) community support or CFC PAS/HAB in the TxHmL Program.}~~

~~(52) [(53)] PHC Program--Primary Home Care Program.~~

~~(53) [(54)] Provisional contract--An initial contract that HHSC enters into in accordance with §49.208 of this chapter (relating to Provisional Contract Application Approval) that has a stated expiration date.~~

~~(54) [(55)] RC--Residential care.~~

~~(55) [(56)] Records--Paper records and electronic records.~~

~~(56) [(57)] Recoup--To reduce payments that are due to a contractor under a contract to satisfy a debt the contractor owes to HHSC but does not include making routine adjustments for prior overpayments to the contractor.~~

~~(57) [(58)] Referral hold--An action in which HHSC prohibits a contractor from, for a period of time determined by HHSC, providing services to an individual not receiving services from the contractor at the time the referral hold was imposed.~~

~~(58) [(59)] SFS--Support family services.~~

~~(59) [(60)] Signature authority--A person authorized to negotiate and execute a contract on behalf of a contractor as identified on the HHSC "Governing Authority Resolution" form.~~

~~(60) [(61)] SSPD--Special Services to Persons with Disabilities (SSPD) Program.~~

~~(61) [(62)] Standard contract--A contract that HHSC enters into in accordance with §49.209 of this chapter (relating to Standard Contract) that does not have a stated expiration date.~~

~~(62) [(63)] Subcontract--An agreement, other than a contract, between a contractor and another person that obligates the other person to provide all or part of the goods, services, work, or materials required of the contractor in a contract.~~

~~(63) [(64)] Subcontractor--The person other than a contractor who is a party to a subcontract.~~

~~(64) [(65)] TAS--Transition assistance services.~~

~~(65) [(66)] TxHmL Program--Texas Home Living Program.~~

~~(66) [(67)] Vendor hold--A temporary suspension of payments that are due to a contractor under a contract.~~

~~(67) [(68)] Volunteer--A person who works for a contractor without compensation, other than reimbursement for actual expenses.~~

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 January 22, 2020.

TRD-202000263

Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: March 8, 2020
For further information, please call: (512) 424-6637



SUBCHAPTER C. REQUIREMENTS OF A CONTRACTOR

40 TAC §49.312

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the Health and Human Services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code §531.0055, Texas Government Code Chapter 531, and Texas Human Resources Code Chapter 32.

§49.312. *Personal Attendants.*

(a) A contractor~~;~~ other than a contractor that has an FMSA contract listed in §49.101(a)(5) of this chapter (relating to Application); must comply with requirements regarding payment of a base wage to ~~[:]~~

~~[(1) pay] a personal attendant as described in 1 TAC §355.7051 (relating to Base Wage for a Personal Attendant). [a base wage of at least \$8.00 per hour; and]~~

~~[(2) notify a person who becomes employed or contracts as a personal attendant within three days after the person accepts the offer of employment or enters into the contract that the contractor is required to pay the wage described in paragraph (1) of this subsection.]~~

~~(b) A contractor, other than a contractor that has an FMSA contract listed in §49.101(a)(4) of this chapter (relating to Application), must notify a person who becomes employed or contracts with the contractor as a personal attendant that the contractor must pay at least the wage required by 1 TAC §355.7051. The contractor must make this notification within three days after the person accepts employment or enters into a contract with the contractor. For purposes of this subsection, a personal attendant has the meaning set forth in 1 TAC §355.7051(a).~~

~~[(b) A contractor that has an FMSA contract listed in §49.101(a)(5) of this chapter must ensure that an employer or designated representative pays a personal attendant in accordance with a budget that meets the requirements of §41.505(a)(1) of this title (relating to Payroll Budgeting).]~~

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 January 22, 2020.

TRD-202000264

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: March 8, 2020

For further information, please call: (512) 424-6637



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 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 27. FIELDS OF STUDY SUBCHAPTER SS. MECHANICAL ENGINEERING FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.981 - 27.987

The Texas Higher Education Coordinating Board withdraws the proposed new §§27.981 - 27.987, which appeared in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3753).

Filed with the Office of the Secretary of State on January 24, 2020.

TRD-202000298

William Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: January 24, 2020

For further information, please call: (512) 427-6518



TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

SUBCHAPTER A. LICENSING

22 TAC §203.8

The Texas Funeral Service Commission withdraws the proposed amended §203.8, which appeared in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6673).

Filed with the Office of the Secretary of State on January 23, 2020.

TRD-202000288

Kyle E. Smith

Interim Executive Director

Texas Funeral Service Commission

Effective date: January 23, 2020

For further information, please call: (512) 936-2469



22 TAC §203.16

The Texas Funeral Service Commission withdraws the proposed amended §203.16, which appeared in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6676).

Filed with the Office of the Secretary of State on January 23, 2020.

TRD-202000289

Kyle E. Smith

Interim Executive Director

Texas Funeral Service Commission

Effective date: January 23, 2020

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SUBCHAPTER B. DUTIES OF A FUNERAL ESTABLISHMENT/LICENSEE

22 TAC §203.32

The Texas Funeral Service Commission withdraws the proposed amended §203.32, which appeared in the November 1, 2019, issue of the *Texas Register* (44 TexReg 6495).

Filed with the Office of the Secretary of State on January 23, 2020.

TRD-202000290

Kyle E. Smith

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Texas Funeral Service Commission

Effective date: January 23, 2020

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 2. CHRONIC WASTING DISEASE - MOVEMENT OF DEER

31 TAC §65.98

Proposed repeal of §65.98, published in the July 19, 2019, issue of the *Texas Register* (44 TexReg 3616), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on January 22, 2020.

TRD-202000277



31 TAC §65.98

Proposed new of §65.98, published in the July 19, 2019, issue of the *Texas Register* (44 TexReg 3616), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on January 22, 2020.

TRD-202000278



ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 171. REPORTING REQUIREMENTS

1 TAC §§171.4 - 171.6, 171.9, 171.10

The Texas Judicial Council (the Council) adopts the amendments to §§171.4 - 171.6, 171.9, and 171.10 regarding requirements for case activity reports and other reports required to be submitted to the Office of Court Administration (OCA). Sections 171.4 and 171.5 are adopted with changes to the proposed text as published in the August 9, 2019, issue of the *Texas Register* (44 TexReg 4128). Sections 171.6, 171.9, and 171.10 are adopted without changes to the proposed text as published in the August 9, 2019, issue of the *Texas Register* (44 TexReg 4128). Sections 171.4 and 171.5 will be republished. Sections 171.6, 171.9, and 171.10 will not be republished.

The amendments implement changes in law or rule made by Senate Bill 42, Senate Bill 291, and House Bill 3994, 85th Legislature, Regular Session (2017); Senate Bill 891 and House Bill 601, 86th Legislature, Regular Session (2019); the expiration of Texas Government Code Sec. 72.031(c); and the repeal of Supreme Court Miscellaneous Order 07-9188.

No comments were received regarding the proposal.

The adoption is made under the following Government Code Sections: §71.019, which authorizes the Council to adopt rules expedient for the administration of its functions, and §71.038, which requires the Council to collect judicial statistics from the presiding judges of the administrative judicial regions. The amendments are also adopted under the following Code of Criminal Procedure Articles: Art. 2.212, which requires the clerk of a court to report to the Council information regarding writs of attachment issued by a court; Art. 16.22(e) which requires the Council to adopt rules to require the reporting of written reports provided to a court under Art. 16.22(a)(1)(B); and Art. 102.017, which requires a sheriff, constable, or other law enforcement entity that provides security for a court to provide the Council reports of court security incidents. They are also adopted under §33.003(l-1) of the Family Code which requires district and county clerks to submit a report regarding the filing of an application for a court order authorizing the minor to consent to the performance of an abortion without notification and consent of a parent, managing conservator or guardian. The adoption of the proposed repeal of certain sections is done pursuant to Government Code §72.031(c), the provision that requires local governments and appellate courts to certify to OCA that the filing fee they collect under Government Code §72.031(c) is necessary to recover system operating costs to implement e-filing, which expired on September 1, 2019, and Supreme

Court Miscellaneous Order 16-9123, which repealed Supreme Court Miscellaneous Order 07-9188.

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

§171.4. District Court Reports.

(a) Method. The district clerk of each county shall submit a district court activity report of the criminal, civil, family law and juvenile cases in the county's district courts. A separate report may be submitted for each district court or a single report may be submitted showing the combined activity of all the district courts in the county. Unless OCA grants a waiver for good cause, the district clerk shall submit the reports by electronic means approved by OCA. The maximum duration of a waiver is one year, but OCA may approve successive waivers.

(b) Reporting Categories.

(1) Criminal Cases.

(A) Criminal case type categories. The monthly report contains the following categories of felony case types: capital murder, murder, other homicides, aggravated assault or attempted murder, sexual assault of an adult, indecency with or sexual assault of a child, family violence assault, aggravated robbery or robbery, burglary, theft, automobile theft, drug sale or manufacture, drug possession, felony D.W.I., and other felonies; and a misdemeanor case type category for all misdemeanors.

(B) Criminal case activity categories. The monthly report contains sections for reporting cases on docket, dispositions, supplemental information and additional court activity.

(C) Report of a request for a hate crime finding. This section of the monthly report requests information pursuant to Article 2.211 of the Code of Criminal Procedure.

(D) Other Case Activity Reporting.

(i) Pursuant to Section 71.0353 of the Government Code, the clerk shall also report the number of cases filed for the following offenses:

(I) trafficking of persons under Sec. 20A.02, Penal Code;

(II) prostitution under Sec. 43.02, Penal Code;

(III) compelling prostitution under Sec. 43.05, Penal Code.

(ii) The clerk shall also report the number of reports provided to the court under Art. 16.22(a)(1)(B) of the Code of Criminal Procedure.

(2) Civil Cases.

(A) Civil case type categories. The monthly report contains the following categories of civil cases: injury or damage--motor vehicle, injury or damage--medical malpractice, injury or damage--other professional malpractice, injury or damage--asbestos/silica product liability, injury or damage--other product liability, other injury or damage, real property--eminent domain, other real property, contract--consumer/commercial/debt, other contract, civil cases relating to criminal matters, other civil cases, and tax cases.

(B) Civil case activity categories. The monthly report contains sections for reporting cases on docket, dispositions and additional court activity.

(3) Family Law Cases.

(A) Family law case type categories. The monthly report contains the following categories of family law cases: divorce--children, divorce--no children, parent/child--no divorce, child protective services, termination of parental rights, adoption, protective orders--no divorce, Title IV-D--paternity, Title IV-D--support order, and Title IV-D--UIFSA, all other family law cases, and post-judgment actions for modification--custody, modification--other, enforcement, and Title IV-D.

(B) Family law case activity categories. The monthly report contains sections for cases on docket, dispositions and additional court activity section.

(4) Juvenile Cases.

(A) Juvenile case type categories. The monthly report contains a category for conduct indicating a need for supervision (C.I.N.S.) cases and the following categories of delinquent conduct cases: capital murder, murder, other homicides, aggravated assault or attempted murder, assault, indecency with a child or sexual assault, aggravated robbery or robbery, burglary, theft, automobile theft, felony drug offenses, misdemeanor drug offenses, D.W.I., contempt of court, and all other offenses.

(B) Juvenile case activity categories. The monthly report contains sections for reporting cases on docket, adjudications, dispositions and additional court activity.

§171.5. *Statutory County Court Reports.*

(a) Method. Each district clerk or county clerk who maintains the records for the statutory county courts (including statutory probate courts) of a county shall submit a court activity report of criminal, civil, family law, juvenile, probate and guardianship, and mental health cases for these courts. A separate report may be submitted for each statutory county court or a single report may be submitted for all statutory county courts in the county. Unless OCA grants a waiver for good cause, the clerk shall submit the reports by electronic means approved by the OCA. The maximum duration of a waiver is one year, but OCA may approve successive waivers.

(b) Reporting Categories.

(1) Criminal Cases.

(A) Criminal case type categories. The monthly report for criminal cases is divided into sections for misdemeanors and felonies.

(i) Misdemeanor case types. The report contains the following categories for reporting misdemeanor cases: D.W.I.--first offense, D.W.I.--second offense, theft, theft by check, drug possession--marijuana, drug offenses--other, family violence assault, other assault, traffic, D.W.L.S./D.W.L.I., and other misdemeanor cases.

(ii) Felony case types. The report contains the following categories for reporting felony cases: capital murder, murder,

other felony homicides, aggravated assault or attempted murder, sexual assault of an adult, indecency with or sexual assault of a child, family violence assault, aggravated robbery or robbery, burglary, theft, automobile theft, drug sale or manufacture, drug possession, felony D.W.I., and other felonies.

(B) Criminal case activity categories. The monthly report contains sections for reporting cases on docket, dispositions, supplemental information and additional court activity.

(C) Report of a request for a hate crime finding. This section of the monthly report requests information pursuant to Article 2.211 of the Code of Criminal Procedure.

(D) Other Case Activity Reporting.

(i) Pursuant to Section 71.0353 of the Government Code, the clerk shall also report the number of cases filed for the following offenses:

(I) trafficking of persons under Sec. 20A.02, Penal Code;

(II) prostitution under Sec. 43.02, Penal Code; and

(III) compelling prostitution under Sec. 43.05, Penal Code.

(ii) The clerk shall also report the number of reports provided to the court under Art. 16.22(a)(1)(B) of the Code of Criminal Procedure.

(2) Civil Cases.

(A) Civil case type categories. The monthly report contains the following categories of civil cases: injury or damage--motor vehicle, injury or damage--medical malpractice, injury or damage--other professional malpractice, injury or damage--asbestos/silica product liability, injury or damage--other product liability, other injury or damage, real property--eminent domain, other real property, contract--consumer/commercial/debt, other contract, civil cases relating to criminal matters, all other civil cases, and tax cases.

(B) Civil case activity categories. The monthly report contains sections for reporting cases on docket, dispositions and additional court activity.

(3) Family Law Cases.

(A) Family law case type categories. The monthly report contains the following categories of family law cases: divorce--children, divorce--no children, parent/child--no divorce, child protective services, termination of parental rights, adoption, protective orders--no divorce, Title IV-D--paternity, Title IV-D--support order, Title IV-D--UIFSA, all other family law cases, and post-judgment actions for modification--custody, modification--other, enforcement, and Title IV-D.

(B) Family law case activity categories. The monthly report contains sections for reporting cases on docket, dispositions and additional court activity.

(4) Juvenile Cases.

(A) Juvenile case type categories. The monthly report contains a category for C.I.N.S. cases and the following categories of delinquent conduct cases: capital murder, murder, other homicides, aggravated assault or attempted murder, assault, indecency with a child or sexual assault, aggravated robbery or robbery, burglary, theft, automobile theft, felony drug offenses, misdemeanor drug offenses, D.W.I., contempt of court, and all other offenses.

(B) Juvenile case activity categories. The monthly report contains sections for reporting juvenile case activity for cases on docket, adjudications, dispositions and additional court activity.

(5) Probate and Guardianship Cases.

(A) Probate and guardianship case type categories. The monthly report contains the following categories for reporting probate and guardianship case types: decedents' estates (independent administration, dependent administration, and all other estate proceedings), guardianships (minor and adult), and other cases.

(B) Probate and guardianship activity categories. The monthly report contains activity report categories for cases on docket and additional information.

(6) Mental Health Cases.

(A) Mental health case type categories. The monthly report contains the following categories for reporting mental health cases: temporary mental health services, extended mental health services, modification--inpatient to outpatient, modification--outpatient to inpatient, and orders to authorize psychoactive medications.

(B) Mental health activity categories. The monthly report contains activity report categories for intake, hearings, and other information.

(C) Mental health commitments. Pursuant to Section 574.014 of the Health and Safety Code, the clerk shall report the number of applications for commitment orders for involuntary mental health services filed with the court and the disposition of those cases, including the number of commitment orders for inpatient and outpatient mental health services.

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

Filed with the Office of the Secretary of State on January 17, 2020.

TRD-202000225
Maria Elena Ramon
General Counsel
Texas Judicial Council
Effective date: February 6, 2020
Proposal publication date: August 9, 2019
For further information, please call: (512) 787-9137



CHAPTER 175. COLLECTION IMPROVEMENT PROGRAM

1 TAC §§175.1 - 175.6

The Texas Judicial Council (the Council) adopts the repeal of Chapter 175 of Title 1 of the Texas Administrative Code (1 TAC §§175.1 - 175.6), concerning the Collection Improvement Program. The proposed repeal was published in the August 9, 2019, issue of the *Texas Register* (44 TexReg 4131). These rules will not be republished.

The repeal of Chapter 175 will implement the change in law made by Senate Bill 891, 86th Legislature, Regular Session (2019).

No comments were received regarding the proposed repeal.

The adoption of the repeal of Chapter 175 is done pursuant to Government Code §71.019, which authorizes the Council to adopt rules expedient for the administration of its functions and Section 15.01 of Senate Bill 891, which repeals Code of Criminal Procedure Art. 103.0033.

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

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 January 17, 2020.

TRD-202000224
Maria Elena Ramon
General Counsel
Texas Judicial Council
Effective date: February 6, 2020
Proposal publication date: August 9, 2019
For further information, please call: (512) 936-7553



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") adopts new 16 TAC §309.106, Transfers to Texas-Bred Incentive Fund, without changes to the text as proposed in the November 15, 2019, issue of the *Texas Register* (44 TexReg 6994), which will not be republished. The rule implements 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 addresses their deposit with the state by memorializing the current practice.

REASONED JUSTIFICATION

The reasoned justification for this rule is compliance with House Bill 3366 and establishing clear procedures regarding the deposit of Texas-bred funds.

PUBLIC COMMENTS

No comments were submitted in response to the proposed rule.

STATUTORY AUTHORITY

The rule 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 rule.

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 January 22, 2020.

TRD-202000276

Chuck Trout

Executive Director

Texas Racing Commission

Effective date: February 11, 2020

Proposal publication date: November 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") adopts amendments to 16 TAC §311.2, Application Procedure, without changes to the text as proposed in the November 15, 2019, issue of the *Texas Register* (44 TexReg 6995). The rule will not be republished. The amendments 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 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.

REASONED JUSTIFICATION

The reasoned justification for these amendments is 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.

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 §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 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 January 23, 2020.

TRD-202000279

Chuck Trout

Executive Director

Texas Racing Commission

Effective date: February 12, 2020

Proposal publication date: November 15, 2019

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



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING INSTRUCTIONAL MATERIALS ALLOTMENT

19 TAC §66.1307

The Texas Education Agency (TEA) adopts an amendment to §66.1307, concerning the instructional materials allotment. The amendment is adopted without changes to the proposed text as published in the October 4, 2019 issue of the *Texas Register* (44 TexReg 5711) and will not be republished. The adopted amendment is necessary to align the rule for allowable instructional materials allotment expenditures with statute amended by House Bill (HB) 396, 86th Texas Legislature, 2019.

REASONED JUSTIFICATION: Texas Education Code (TEC), §31.0211, establishes the instructional materials allotment and gives the commissioner rulemaking authority over the allotment. HB 3526, 85th Texas Legislature, Regular Session, 2017, changed the name of the allotment to technology and instructional materials allotment. HB 396, 86th Texas Legislature, 2019, expands the allowable use of allotment funds to include inventory software or systems for storing, managing, and accessing instructional materials and analyzing the usage and effectiveness of the instructional materials.

The adopted amendment to 19 TAC §61.1307, Instructional Materials Allotment, updates the rule to reflect these statutory changes, including renaming the subchapter and section titles.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 4, 2019, and ended November 4, 2019. Following is a summary of public comments received and corresponding agency responses.

Comment: An individual expressed support for the changes to 19 TAC §66.1307, specifically the addition of using allotment funds for software to analyze the use/effectiveness of instructional materials allowed by new subsection (f)(17).

Agency Response: The agency agrees and has maintained language as proposed.

Comment: An individual asked where monies received from lost or damaged textbooks and related requirements are covered.

Agency Response: This comment is outside the scope of the proposed rulemaking. The topic is addressed in 19 TAC §66.1310, Acceptable Condition of Instructional Materials and Technological Equipment.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §31.0211(c), as amended by House Bill 396, 86th Texas Legislature, 2019, which identifies allowable uses of instructional materials allotment fund; and TEC, §31.0211(f), which authorizes the commissioner to adopt rules to implement the technology and instructional materials allotment.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §31.0211, as amended by House Bill 396, 86th Texas Legislature, 2019.

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

Filed with the Office of the Secretary of State on January 17, 2020.

TRD-202000236

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: February 6, 2020

Proposal publication date: October 4, 2019

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



CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL GRADUATION

The Texas Education Agency (TEA) adopts the repeal of §74.1021 and §74.1022 and amendments to §74.1025 and §74.1027, concerning high school graduation. The repeals and amendment to §74.1025 are adopted without changes to the proposed text as published in the October 4, 2019 issue of the *Texas Register* (44 TexReg 5715) and will not be republished. The amendment to §74.1027 is adopted with changes to the proposed text as published in the October 4, 2019 issue of the *Texas Register* (44 TexReg 5715) and will be republished. The adopted repeals are necessary due to the expiration of the authorizing statute. The adopted amendments extend the expiration provisions as required by Senate Bill (SB) 213, 86th Texas Legislature, 2019, and clarify language.

REASONED JUSTIFICATION: The 83rd Texas Legislature, Regular Session, 2013, amended Texas Education Code (TEC), §28.025, to establish a new high school graduation program, known as the Foundation High School Program, to replace the previous three graduation programs available to students. The Foundation High School Program was effective for all students entering high school beginning in the 2014-2015 school year, however, statute permitted students who entered high school prior to the 2014-2015 school year the choice to graduate under either the new Foundation High School Program or one of the existing high school programs in accordance with rules adopted by the commissioner of education. The authorizing statute also required the commissioner of education to by rule permit a student completing the fourth year of high school during the

2013-2014 school year who was participating in one of the existing high school programs and who did not satisfy the curriculum requirements of the existing high school program in which the student was participating to graduate if the student satisfied the curriculum requirements established by the commissioner for the Foundation High School Program. In 2013, the commissioner adopted 19 TAC §74.1021, Transition to the Foundation High School Program, and §74.1022, Foundation High School Program for Students Who Graduate in the 2013-2014 School Year, to establish graduation requirements that aligned with these requirements. The authorizing statute expired September 1, 2018, and, as a result, the corresponding rules in 19 TAC §74.1021 and §74.1022 are no longer necessary and should be repealed.

TEC, §39.025(a), prohibits a student from receiving a high school diploma until the student has performed satisfactorily on state end-of-course (EOC) assessments. Students who first entered high school beginning with the 2011-2012 school year must perform satisfactorily on EOC assessments in Algebra I, Biology, English I, English II, and U.S. History. Prior to 2017, the TEC prohibited a student who entered ninth grade before the 2011-2012 school year from receiving a high school diploma unless the student performed satisfactorily on each subject of the exit-level Texas Assessment of Knowledge and Skills (TAKS). Students subject to this requirement were required to perform satisfactorily on exit-level subject-area tests in English language arts, mathematics, science, and social studies. Prior to 2002, students were required to meet performance standards on older exit-level assessments: the Texas Assessment of Academic Skills (TAAS) and the Texas Educational Assessment of Minimum Skills (TEAMS).

TEC, §28.0258, requires each school district and open-enrollment charter school to establish an individual graduation committee for each 11th or 12th grade student who fails to perform satisfactorily on not more than two EOC assessments. The committee must be established at the end of or after the student's 11th grade year to determine whether a student may qualify to graduate. A student may not graduate under this provision before the student's 12th grade year. Statute requires the commissioner to adopt rules to establish alternative individual graduation committee members and a timeline for decisions by individual graduation committees. TEC, §28.0259, requires each school district and open-enrollment charter school to report through TSDS PEIMS the number of students for which an individual graduation committee was convened and the number of students who are awarded a diploma by means of an individual graduation committee determination each year. The commissioner's rule in 19 TAC §74.1025, Individual Graduation Committee Review, addresses the make-up of the individual graduation committee, identifies alternative committee members, and establishes a timeline for individual graduation committee decisions.

TEC, §28.02541, establishes provisions to allow former students who entered Grade 9 before the 2011-2012 school year and who have completed the curriculum requirements for graduation but who have not yet performed satisfactorily on the required assessments to qualify for a high school diploma. The commissioner's rule in 19 TAC §74.1027, Diplomas for Certain Individuals Who Entered Grade 9 Before 2011-2012 School Year, establishes certain alternative requirements for high school graduation that eligible individuals may meet in order to qualify to receive a high school diploma under the TEC, §28.02541.

The adopted amendments update the expiration provisions of 19 TAC §74.1025 and §74.1027 to September 1, 2023, in accordance with recent amendments to the authorizing statutes. The adopted amendments also incorporate minor technical edits to clarify language.

In response to public comment, the following changes were made to 19 TAC §74.1027 at adoption.

An amendment has been made to §74.1027(a)(4) at adoption to include the administration of an alternate assessment instrument offered under TEC, §39.025(c-2), as one of the three administrations required of individuals.

An amendment has been made to §74.1027(c)(3) at adoption to replace the reference to §74.1003 with a Texas Education Agency (TEA)-approved industry-based postsecondary license or certification.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 4, 2019, and ended November 4, 2019. Following is a summary of the public comments received and the corresponding agency responses.

Comment: One district administrator asked for clarification regarding §74.1027(a)(4) and whether newer assessments such as State of Texas Assessments of Academic Readiness (STAAR®) could be counted toward the required three-time rule for subject area tests.

Response: The agency agrees that additional clarification was necessary and took action to amend §74.1027(a)(4) at adoption to specify that an alternate assessment instrument under TEC, §39.025(c-2), could apply toward the three administrations of a subject-area test required of individuals seeking to graduate under the alternative graduation requirements.

Comment: One educational resource center specialist asked for clarification in §74.1027(c)(3) regarding the reference to §74.1003, the TEA-approved list of industry-based certifications, which expired September 1, 2019.

Response. The agency agrees that clarification was necessary and took action to amend §74.1027(c)(3) at adoption to replace the reference to §74.1003 with reference to a TEA-approved industry-based postsecondary license or certification.

19 TAC §74.1021, §74.1022

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §28.02541, which requires the commissioner of education to by rule establish a procedure to determine whether certain students who entered ninth grade before the 2011-2012 school year may qualify to graduate and receive a high school diploma; TEC §28.0258(c), which requires the commissioner of education to establish by rule a procedure for the appointment of alternative individual graduation committee members in the event that a required member is unable to serve; TEC, §28.0258(i), which requires the commissioner to establish by rule a timeline for an individual graduation committee to make a determination regarding whether a student is qualified to graduate; and TEC, §28.0259, which requires the commissioner to adopt rules regarding the requirement that school districts report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) information regarding the number of students for whom an individual graduation committee was established and the number of students who were awarded a diploma based on the

decision of an individual graduation committee. SB 213, 86th Texas Legislature, 2019, amended TEC, §§28.02541, 28.0258, and 28.0259, to extend expiration provisions from September 1, 2019, to September 1, 2023.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§28.02541, 28.0258, and 28.0259, as amended by SB 213, 86th Texas Legislature, 2019.

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

Filed with the Office of the Secretary of State on January 21, 2020.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



19 TAC §74.1025, §74.1027

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §28.02541, which requires the commissioner of education to establish by rule a procedure to determine whether certain students who entered ninth grade before the 2011-2012 school year may qualify to graduate and receive a high school diploma; TEC §28.0258(c), which requires the commissioner of education to establish by rule a procedure for the appointment of alternative individual graduation committee members in the event that a required member is unable to serve; TEC, §28.0258(i), which requires the commissioner to establish by rule a timeline for an individual graduation committee to make a determination regarding whether a student is qualified to graduate; and TEC, §28.0259, which requires the commissioner to adopt rules regarding the requirement that school districts report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) information regarding the number of students for whom an individual graduation committee was established and the number of students who were awarded a diploma based on the decision of an individual graduation committee. SB 213, 86th Texas Legislature, 2019, amended TEC, §§28.02541, 28.0258, and 28.0259, to extend expiration provisions from September 1, 2019, to September 1, 2023.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§28.02541, 28.0258, and 28.0259, as amended by SB 213, 86th Texas Legislature, 2019.

§74.1027. Diplomas for Certain Individuals Who Entered Grade 9 Before 2011-2012 School Year.

(a) Effective beginning with the 2017-2018 school year, in accordance with the Texas Education Code (TEC), §28.02541, a school district or an open-enrollment charter school may award a high school diploma to an individual who:

(1) entered Grade 9 before the 2011-2012 school year;

(2) successfully completed the curriculum requirements for high school graduation applicable to the individual when the individual entered Grade 9;

(3) has not performed satisfactorily on an assessment instrument or a part of an assessment instrument required for high school graduation, including an alternate assessment instrument offered under TEC, §39.025(c-2);

(4) has been administered at least three times the required subject-areas test(s), including an alternate assessment as specified in paragraph (3) of this subsection, for which the individual has not performed satisfactorily on the exit-level assessment instrument applicable to the individual when the individual entered Grade 9; and

(5) meets the alternative requirements for graduation in accordance with subsection (c) of this section or the local alternative requirements approved by the board of trustees in accordance with subsection (d) of this section.

(b) The school district or open-enrollment charter school in which the individual is enrolled or was last enrolled shall determine whether the individual may qualify to graduate and receive a high school diploma on the basis of the alternative requirements for graduation.

(c) The alternative requirements for graduation shall permit an individual to qualify to graduate and receive a high school diploma if the individual:

(1) has met the performance standard on an alternate assessment as specified in §101.4003 of this title (relating to Texas Assessment of Knowledge and Skills Exit-Level Alternate Assessments);

(2) has performed satisfactorily on the applicable subject-area test of a state-approved high school equivalency examination in accordance with §89.43(a)(4) of this title (relating to Eligibility for a Texas Certificate of High School Equivalency);

(3) provides evidence of attainment of a Texas Education Agency-approved industry-recognized postsecondary license or certification;

(4) provides evidence of current active duty service in the armed forces or a DD Form 214 indicating honorable or general discharge from the armed forces; or

(5) has successfully completed college-level coursework and earned college credit.

(d) With approval by the school district board of trustees, a school district may develop recommendations for local alternative requirements if the requirements would allow an individual to demonstrate proficiency in the content related to an examination for which the individual has not performed satisfactorily.

(e) A decision regarding whether the individual qualifies to graduate and receive a high school diploma is final and may not be appealed.

(f) The school district or open-enrollment charter school shall maintain documentation to support the decision to award or not award an individual a high school diploma.

(g) Provisions of this section expire September 1, 2023.

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 102. EDUCATIONAL PROGRAMS SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING EARLY CHILDHOOD EDUCATION PROGRAMS

19 TAC §102.1003

The Texas Education Agency (TEA) adopts an amendment to §102.1003, concerning the high-quality prekindergarten grant program. The amendment is adopted with changes to the proposed text as published in the November 8, 2019 issue of the *Texas Register* (44 TexReg 6661) and will be republished. The adopted amendment modifies the rule to reflect changes made by House Bill (HB) 3, 86th Texas Legislature, 2019. The adopted amendment updates the rule to implement full-day high-quality prekindergarten for eligible four-year-old students and remove reference to the grant program.

REASONED JUSTIFICATION: Effective April 6, 2016, the commissioner adopted 19 TAC §102.1003 as authorized by the Texas Education Code (TEC), §§29.1532, 29.165-29.169, and 29.172. The law required the commissioner to adopt rules for implementing a High-Quality Prekindergarten Grant program. The rule provides appropriate definitions and explains the required quality components. The components include curriculum aligned to the Texas Prekindergarten Guidelines, increased prekindergarten teacher training and/or qualifications, implementation of student progress monitoring, program evaluation, and development of a family engagement plan.

HB 3, 86th Texas Legislature, 2019, removed the High-Quality Prekindergarten Grant program from statute and requires that school districts and charters schools provide full-day prekindergarten to eligible four-year-old students consistent with the requirements of a High-Quality Prekindergarten program as established by TEC, Chapter 29, Subchapter E-1.

The adopted amendment to 19 TAC §102.1003 implements statute and updates and clarifies existing provisions, as follows.

Previous subsection (a) was deleted to remove reference to the High-Quality Prekindergarten Grant Program.

Adopted subsection (a) was updated to remove all references to the grant program and grant funding so that all school districts and charter schools providing a prekindergarten program must provide high-quality educational services established under TEC, Chapter 29, Subchapter E-1, to qualifying students. Paragraph (7) was added to include the eligibility of the child of a person eligible for the Star of Texas Award. House Bill 357, 85th Texas Legislature, 2017, amended the prekindergarten eligibility criteria. New paragraph (7) aligns the rule with current statute.

Adopted subsection (b) was updated to remove references to the grant program and grant funding.

Adopted subsection (c) was updated to remove reference to grant funding. Paragraph (1) was revised to add the frequency and timing to student progress monitoring and specify that social and emotional development may be referred to as health and wellness in a progress monitoring tool. Paragraph (2) was revised to add the administration timeframe for the kindergarten assessment and specify that it must address reading and at least three developmental skills, including literacy. The revisions to frequency and timing were amended to align with best practices for administering child progress monitoring tools.

Adopted subsection (d) was updated to remove reference to grant funding. Paragraph (4) was revised to provide additional teacher qualification guidance regarding degrees. Paragraph (6) was revised to provide a window for professional development to occur as well as suggested topics relating to a high-quality program. The revisions made to the teacher qualifications are to ensure the professional development occurs during the school year and is aligned with national standards.

In response to public comment, subsection (d) was modified at adoption to change the proposed term "lead teacher" to "teacher of record" for clarification.

Adopted subsection (e) was updated to remove reference to grant funding and provide a deadline for school districts and charter schools to make their family engagement plan available on the district or charter website. Adopted new paragraph (2)(D)(i) was added to require school districts and charter schools to provide families with updates at least three times a year regarding their child's development. Subsequent clauses in paragraph (2)(D) were relettered. The revisions made to the family engagement plan are to ensure the plan is complete at the beginning of the year and it is a best practice to share a child's progress with families.

Adopted subsection (f) was updated to remove reference to grant funding. Applicable cross references were updated throughout. Paragraph (2) was revised to add frequency to the reporting of prekindergarten assessment information. Paragraph (3) was revised to add the requirement that the kindergarten readiness instrument must be multidimensional and approved by the commissioner as well as a deadline for submitting results. Adopted new paragraphs (4)-(6) add the reporting of the additional teacher qualifications, the family engagement URL/website link, and the prekindergarten program evaluation type. These reporting requirements have been in place since the 2016-2017 school year and the adopted changes align the rule with the reporting requirements.

Adopted subsection (g) was updated to remove reference to grant funding.

Previous subsection (j) was deleted to remove reference to grant funding.

Adopted subsection (i) was updated to remove reference to grant funding.

The section title was also revised to remove reference to the grant program. Technical edits to the reference of the Texas Prekindergarten Guidelines were made throughout the rule.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began November 8, 2019, and ended December 9, 2019. Following is a summary of public comments received and corresponding agency responses.

Comment: An individual expressed support for the removal of grant language from the proposed rule since it is no longer grant funded.

Response: The agency agrees with the removal of the grant funding language.

Comment: An individual requested clarification regarding the frequency of prekindergarten student progress monitoring.

Response: The agency provides the following clarification. Districts are required to administer and submit beginning-of-year and end-of-year prekindergarten student progress monitoring data. Administering middle-of-year prekindergarten student progress monitoring data is a best practice.

Comment: An individual requested clarification on the beginning-of-year kindergarten diagnostic developmental skills to be administered and reported.

Response: The agency provides the following clarification. The agency will address details on administering and reporting diagnostics for developmental skills in the HB 3 in 30 video on K-2 Diagnostics available on the TEA website. The domains will include emergent literacy reading, emergent literacy writing, and language and communication.

Comment: Good Reason Houston suggested changing the term "lead teacher" in proposed subsection (d) to "teacher of record" to clarify that the qualification requirements specified in the subsection apply to each prekindergarten classroom teacher of record.

Response: The agency agrees and has modified subsection (d) at adoption to refer to the teacher of record rather than lead teacher.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §29.165, repealed by House Bill (HB) 3, §4.001, 86th Texas Legislature, 2019, which required the commissioner to by rule establish a grant funding program under which funds are awarded to school districts and open-enrollment charter schools to implement a high-quality prekindergarten grant program; TEC, §29.166, repealed by HB 3, §4.001, 86th Texas Legislature, 2019, which addressed the student qualifications and general school district and charter eligibility for funding under this grant program; TEC, §29.167, as amended by HB 3, 86th Texas Legislature, 2019, which requires school districts and charter schools to select and implement a curriculum for a high-quality prekindergarten program that includes the prekindergarten guidelines established by the TEA, measures the progress of students in meeting the recommended learning outcomes, and does not use national curriculum standards developed by the Common Core State Standards Initiative. This section also outlines requirements that each teacher of a prekindergarten program class must meet, including employment as a prekindergarten teacher in a school district that has received approval from the commissioner for the district's prekindergarten-specific instructional training plan that the teacher uses in the teacher's prekindergarten classroom, and allows for equivalent qualifications; TEC, §29.168, which requires a school district or charter school to develop and implement a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education. The local family engagement plan must be based on the family engagement strategies established by the TEA in collaboration with other state agencies; TEC, §29.169, which requires a school district

to select and implement appropriate methods for evaluating the district's program classes by measuring student progress and make data from the results of program evaluations available to parents; and TEC, §29.172, as amended by HB 3, 86th Texas Legislature, 2019, which permits the commissioner of education to adopt rules necessary to implement TEC, Chapter 29, Subchapter E-1. HB 3, §2.019, 86th Texas Legislature, 2019, which requires that school districts and charters schools provide full-day prekindergarten to eligible four-year-old students consistent with the requirements of a High-Quality Prekindergarten program as established by TEC, Chapter 29, Subchapter E-1.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §29.165 and §29.166, repealed by HB 3, 86th Texas Legislature; §29.167, as amended by HB 3, 86th Texas Legislature, 2019; §29.168; §29.169; and §29.172, as amended by HB 3, 86th Texas Legislature, 2019.

§102.1003. *High-Quality Prekindergarten Program.*

(a) School districts and open-enrollment charter schools providing a prekindergarten program must provide high-quality educational services established under the Texas Education Code (TEC), Chapter 29, Subchapter E-1, to qualifying students. A student is qualified to participate in a high-quality prekindergarten program if the student is four years of age on September 1 of the year the student begins the program and:

- (1) is unable to speak and comprehend the English language;
- (2) is educationally disadvantaged;
- (3) is a homeless child, as defined by 42 United States Code §11434a, regardless of the residence of the child, of either parent of the child, or of the child's guardian or other person having lawful control of the child;
- (4) is the child of an active duty member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who is ordered to active duty by proper authority;
- (5) is the child of a member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who was injured or killed while serving on active duty;
- (6) is or ever has been in the conservatorship of the Department of Family and Protective Services following an adversary hearing held as provided by the Texas Family Code, §262.201; or
- (7) is the child of a person eligible for the Star of Texas Award as:
 - (A) a peace officer under Texas Government Code, §3106.002;
 - (B) a firefighter under Texas Government Code, §3106.003; or
 - (C) an emergency medical first responder under Texas Government Code, §3106.004.

(b) A school district or an open-enrollment charter school shall implement a curriculum for a high-quality prekindergarten program that addresses the 2015 Texas Prekindergarten Guidelines in the following domains:

- (1) social and emotional development;
- (2) language and communication;

- (3) emergent literacy reading;
- (4) emergent literacy writing;
- (5) mathematics;
- (6) science;
- (7) social studies;
- (8) fine arts;
- (9) physical development and health; and
- (10) technology.

(c) A school district or an open-enrollment charter school shall measure:

(1) at the beginning and end of the school year, the progress of each student in meeting the recommended end of prekindergarten year outcomes identified in the 2015 Texas Prekindergarten Guidelines using a progress monitoring tool included on the commissioner's list of approved prekindergarten instruments that measures:

- (A) social and emotional development, which may be referred to as "health and wellness" in a progress monitoring tool;
- (B) language and communication;
- (C) emergent literacy reading;
- (D) emergent literacy writing; and
- (E) mathematics; and

(2) the preparation of each student for kindergarten using a commissioner-approved multidimensional kindergarten instrument during the first 60 days of school for reading and at least three developmental skills, including literacy, as described in TEC, §28.006.

(d) Each teacher of record in a high-quality prekindergarten program must be certified under the TEC, Chapter 21, Subchapter B, and have one of the following additional qualifications:

- (1) a Child Development Associate (CDA) credential;
- (2) a certification offered through a training center accredited by Association Montessori Internationale or through the Montessori Accreditation Council for Teacher Education;
- (3) at least eight years' experience of teaching in a nationally accredited child care program;
- (4) a graduate or undergraduate degree in early childhood education or early childhood special education or a non-early childhood education degree with a documented minimum of 15 units of coursework in early childhood education;
- (5) documented completion of the Texas School Ready Training Program (TSR Comprehensive); or
- (6) be employed as a prekindergarten teacher in a school district that has ensured that:

(A) prior to assignment in a prekindergarten class, teachers who provide prekindergarten instruction have completed at least 150 cumulative hours of documented professional development addressing the 2015 Texas Prekindergarten Guidelines in addition to other relevant topics related to high-quality prekindergarten over a consecutive five-year period;

(B) teachers who have not completed training required in subparagraph (A) of this paragraph prior to assignment in a prekindergarten class shall complete:

(i) the first 30 hours of 150 cumulative hours of documented professional development before the beginning of the next school year. The professional development shall address topics relevant to high-quality prekindergarten and may include:

(I) the 2015 Texas Prekindergarten Guidelines;

(II) the use of student progress monitoring results to inform classroom instruction;

(III) improving the prekindergarten classroom environment to enhance student outcomes; and

(IV) improving the effectiveness of teacher interaction with students as determined by an evaluation tool; and

(ii) the additional hours in the subsequent four years in order to continue providing instruction in a high-quality prekindergarten classroom; and

(C) at least half of the hours required by subparagraph (A) or (B) of this paragraph shall include experiential learning, practical application, and direct interaction with specialists in early childhood education, mentors, or instructional coaches.

(e) A school district or an open-enrollment charter school shall develop, implement, and make available on the district, charter, or campus website by November 1 of each school year, a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education. An effective family engagement plan creates a foundation for the collaboration of mutual partners, embraces the individuality and uniqueness of families, and promotes a culture of learning that is child centered, age appropriate, and family driven.

(1) The following terms, when used in this section, shall have the following meanings.

(A) Family--Adults responsible for the child's care and children in the child's life who support the early learning and development of the child.

(B) Family engagement--The mutual responsibility of families, schools, and communities to build relationships to support student learning and achievement and to support family well-being and the continuous learning and development of children, families, and educators. Family engagement is fully integrated in the child's educational experience and supports the whole child and is both culturally responsive and linguistically appropriate.

(2) The family engagement plan shall:

(A) facilitate family-to-family support using strategies such as:

(i) creating a safe and respectful environment where families can learn from each other as individuals and in groups;

(ii) inviting former program participants, including families and community volunteers, to share their education and career experiences with current families; and

(iii) ensuring opportunities for continuous participation in events designed for families by families such as training on family leadership;

(B) establish a network of community resources using strategies such as:

(i) building strategic partnerships;

(ii) leveraging community resources;

(iii) monitoring and evaluating policies and practices to stimulate innovation and create learning pathways;

(iv) establishing and maintaining partnerships with businesses, faith-based organizations, and community agencies;

(v) identifying support from various agencies, including mental and physical health providers;

(vi) partnering with local community-based organizations to create a family-friendly transition plan for students arriving from early childhood settings;

(vii) providing and facilitating referrals to family support or educational groups based on family interests and needs;

(viii) communicating short- and long-term program goals to all stakeholders; and

(ix) identifying partners to provide translators and culturally relevant resources reflective of the home language;

(C) increase family participation in decision making using strategies such as:

(i) developing and supporting a family advisory council;

(ii) developing, adopting, and implementing identified goals within the annual campus/school improvement plan targeting family engagement;

(iii) developing and supporting leadership skills for family members and providing opportunities for families to advocate for their children/families;

(iv) collaborating with families to develop strategies to solve problems and serve as problem solvers;

(v) engaging families in shaping program activities and cultivating the expectation that information must flow in both directions to reflect two-way communication;

(vi) developing, in collaboration with families, clearly defined goals, outcomes, timelines, and strategies for assessing progress;

(vii) providing each family with an opportunity to review and provide input on program practices, policies, communications, and events in order to ensure the program is responsive to the needs of families; and

(viii) using appropriate tools such as surveys or focus groups to gather family feedback on the family engagement plan;

(D) equip families with tools to enhance and extend learning using strategies such as:

(i) providing families with updates at least three times a year that specify student progress in health and wellness, language and communication, emergent literacy reading, emergent literacy writing, and mathematics;

(ii) designing or implementing existing home educational resources to support learning at home while strengthening the family/school partnership;

(iii) providing families with information and/or training on creating a home learning environment connected to formal learning opportunities;

(iv) equipping families with resources and skills to support their children through the transition to school and offering op-

portunities for families and children to visit the school in advance of the prekindergarten school year;

(v) providing complementary home learning activities for families to engage in at home with children through information presented in newsletters, online technology, social media, parent/family-teacher conferences, or other school- or center-related events;

(vi) providing families with information, best practices, and training related to age-appropriate developmental expectations;

(vii) emphasizing benefits of positive family practices such as attachment and nurturing that complement the stages of children's development;

(viii) collaborating with families to appropriately respond to children's behavior in a non-punitive, positive, and supportive way;

(ix) encouraging families to reflect on family experiences and practices in helping children; and

(x) assisting families to implement best practices that will help achieve the goals and objectives identified to meet the needs of the child and family;

(E) develop staff skills in evidence-based practices that support families in meeting their children's learning benchmarks using strategies such as:

(i) providing essential professional development for educators in understanding communication and engagement with families, including training on communicating with families in crisis;

(ii) promoting and developing family engagement as a core strategy to improve teaching and learning among all educators and staff; and

(iii) developing staff skills to support and use culturally diverse, culturally relevant, and culturally responsive family engagement strategies; and

(F) evaluate family engagement efforts and use evaluations for continuous improvement using strategies such as:

(i) conducting goal-oriented home visits to identify strengths, interests, and needs;

(ii) developing data collection systems to monitor family engagement and focusing on engagement of families from specific populations to narrow the achievement gap;

(iii) using data to ensure alignment between family engagement activities and district/school teaching and learning goals and to promote continuous family engagement;

(iv) ensuring an evaluation plan is an initial component that guides action;

(v) using a cyclical process to ensure evaluation results are used for continuous improvement and adjustment; and

(vi) ensuring teachers play a role in the family engagement evaluation process.

(f) In a format prescribed by the Texas Education Agency (TEA), a school district or an open-enrollment charter school shall:

(1) report the curriculum used in the high-quality prekindergarten program classes as required by subsection (b) of this section;

(2) report a description and the beginning- and end-of-year results of each commissioner-approved prekindergarten instrument used in the high-quality prekindergarten program classes as required by subsection (c) of this section;

(3) report:

(A) a description of each commissioner-approved multidimensional kindergarten readiness instrument used in the district or charter school to measure the effectiveness of the district's or charter school's high-quality prekindergarten program classes as required by subsection (c) of this section; and

(B) the results for at least 95% of the district's or charter school's kindergarten students on the commissioner-approved multidimensional kindergarten readiness instrument by the end of the TEA-determined assessment collection window;

(4) report additional teacher qualifications described in subsection (d) of this section;

(5) report the family engagement plan URL/website link described in subsection (e) of this section; and

(6) report the prekindergarten program evaluation type.

(g) A school district or an open-enrollment charter school shall:

(1) select and implement appropriate methods for evaluating the district's or charter school's high-quality prekindergarten program by measuring student progress; and

(2) make data from the results of program evaluations available to parents.

(h) A school district or an open-enrollment charter school must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students.

(i) A school district or an open-enrollment charter school shall maintain locally and provide at the TEA's request the necessary documentation to ensure fidelity of high-quality prekindergarten program implementation.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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

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TITLE 22. EXAMINING BOARDS

**PART 16. TEXAS BOARD OF
PHYSICAL THERAPY EXAMINERS**

CHAPTER 322. PRACTICE

22 TAC §322.5

The Texas Board of Physical Therapy Examiners adopts the amendment to §322.5, Telehealth in response to a petition for adoption of rule changes.

The amendment is adopted in order to clarify the role of the physical therapist assistant in the provision of physical therapy via telehealth.

The amendment is adopted with changes to the proposed text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7298). The rule will be republished.

No public comment was received.

The amended rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§322.5. Telehealth.

(a) When used in the rules of the Texas Board of Physical Therapy Examiners, telehealth is the use of telecommunications or information technology to provide physical therapy services to a patient who is physically located at a site in Texas other than the site where the physical therapist or physical therapist assistant is located, whether or not in Texas.

(b) Physical therapy telehealth services must be provided by a physical therapist or physical therapist assistant under the supervision of the physical therapist who possesses a current:

- (1) unrestricted Texas license; or
- (2) Compact Privilege to practice in Texas.

(c) The provision of physical therapy services via telehealth requires synchronous audiovisual or audio interaction between the physical therapist or physical therapist assistant and the patient/client, which may be accompanied by the use of asynchronous store and forward technology.

(d) Standard of Care. A physical therapist or physical therapist assistant that provides telehealth services:

- (1) is subject to the same standard of care that would apply to the provision of the same physical therapy service in an in-person setting; and
- (2) the physical therapist is responsible for determining whether an evaluation or intervention may be conducted via telehealth or must be conducted in an in-person setting.

(e) Informed Consent. A physical therapist that provides telehealth services must obtain and maintain the informed consent of the patient, or of another individual authorized to make health care treatment decisions for the patient, prior to the provision of telehealth services.

(f) Confidentiality. A physical therapist or physical therapist assistant that provides telehealth services must ensure that the privacy and confidentiality of the patient's medical information is maintained during and following the provision of telehealth services, including compliance with HIPAA regulations and other federal and state law.

(g) The failure of a physical therapist or physical therapist assistant to comply with this section shall constitute detrimental practice and could subject the licensee to disciplinary action by the Board.

(h) Provision of telehealth services by a physical therapist assistant must occur under the supervision of the physical therapist in accordance with rule §322.3 of this title (relating to Supervision).

(i) Telehealth is a mode for providing one-on-one physical therapy services to a patient/client and is not a means for supervision of physical therapy aides.

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 January 17, 2020.

TRD-202000238

Ralph A. Harper

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: March 1, 2020

Proposal publication date: November 29, 2019

For further information, please call: (512) 305-6900



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 553. LICENSING STANDARDS

FOR ASSISTED LIVING FACILITIES

SUBCHAPTER C. STANDARDS FOR

LICENSURE

26 TAC §553.44

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts new §553.44, concerning Emergency Preparedness and Response. The new section is adopted with changes to the proposed text as published in the August 16, 2019, issue of the *Texas Register* (44 TexReg 4291). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The new rule provides greater detail and specificity to the current requirement in §553.62(d) for assisted living facilities (ALFs) to have a written emergency preparedness and response plan that addresses a minimum of eight specified core functions. New §553.44 describes components of the eight core functions in more detail and provides ALFs with additional direction for developing and implementing a written plan to ensure adequate emergency preparedness and response. The new section includes requirements for ALFs to perform a risk assessment, enhance staff training, plan and map out potential evacuation routes, and develop systems for communication and coordination with state and local resources.

COMMENTS

The 31-day comment period ended on September 16, 2019. During this period, HHSC received comments regarding the proposed rule from six commenters: the Texas Assisted Living Association, the Office of the State Long-Term Care Ombudsman, Disability Rights Texas, and three individuals. The Office of the

State Long-Term Care Ombudsman, Disability Rights Texas, and one of the individuals expressed overall support for adoption of the new rule. None of the other commenters expressed opposition to adoption of the rule. However, each requested that the adopted rule include changes to the text of the proposed rule. A summary of comments relating to §553.44, and HHSC responses, follows.

Comment: One commenter recommended that Texas and the Centers for Medicare & Medicaid Services be held responsible for ensuring that all admissions to hospitals and long-term care facilities during and after disasters are monitored and that people placed are provided with the assistance needed to return to their community, with all supports and services they need to regain and maintain their independence.

Response: HHSC disagrees and declines to add a rule provision in response to this comment. The recommendation addresses issues outside of the rule proposal that would require a new rule proposal.

Comment: One commenter recommended making changes to §553.44(a), Definitions, to define terms consistent with federal definitions where those definitions exist. The commenter stated that consistent definitions can promote clear communication between actors at the local, state, and federal levels, and increase access to preparedness and response resources.

Response: HHSC disagrees with the recommendation and declines to make changes to the definitions in response to this comment. The commenter does not specify the federal agency or definitions it is referring to in its comment.

Comment: One commenter objected that the definition for "receiving facility" in proposed §553.44(a)(7) does not include a skilled nursing facility. The commenter recommended expanding the definition to refer to a separate licensed assisted living facility "or a skilled nursing facility." The commenter also requested a corresponding change to §553.44(m), Receiving Facility, to replace the reference in the requirement that a receiving facility plan to accommodate temporary emergency placement of residents from "another assisted living facility" to "an assisted living facility," based on the expanded definition of "receiving facility."

Response: HHSC disagrees with the recommendation because the scope of agency rulemaking authority applicable to rules adopted in Chapter 553, including §553.44, is limited to rules relating to persons licensed or required to be licensed as an ALF under Texas Health and Safety Code, Chapter 247. There were no changes to the rule based on this comment.

Comment: Regarding §553.44(b)(9), one commenter recommended eliminating "cyber attack" from the list of examples of potential internal and external emergencies or disasters relevant to an ALF's operations and location. The commenter stated that cyber attacks would probably not affect residents, and an ALF's risk assessment for, and response to, cyber attacks may be considered proprietary information and could facilitate successful cyber attacks.

Response: HHSC disagrees with the comment. The rule does not require an ALF to include proprietary information in the plan. Due to the ever-evolving role of technology in health care settings, a cyber attack is a valid example of a potential emergency or disaster relevant to an ALF's operations and location. However, HHSC did change §553.44(b)(9) to delete the hyphen in the word "cyber-attack" and change it to "cyber attack."

Comment: One commenter suggested adding to the requirement, in §553.44(c)(2)(C)(ii), that an emergency preparedness plan include the location of a current list that identifies facility residents with an approved evacuation waiver, an additional requirement that such residents "must be easily and quickly identified, have information accessible for first responders and facility staff, and be provided sufficient trained staff for safely implementing a response."

Response: HHSC disagrees and declines to add wording at the end of §553.44(c)(2)(C)(ii). This paragraph requires specific identification of residents with an approved evacuation waiver on the ALF's current list of facility residents, and the location of which an ALF must identify in its emergency response plan. In addition, §553.44(c)(2)(C)(iii) requires the same list to identify residents who may need specialized assistance, either at the facility or in case of evacuation. Other provisions address staff training and planning for sufficient staffing to meet resident needs in the event of evacuation.

As a specific condition for approval of an evacuation waiver for an ALF resident, §553.41(f)(2) requires the ALF to submit a detailed emergency plan for meeting the resident's evacuation needs.

Comment: The same commenter also noted that an approved waiver may not take into account full evacuation of a facility or a facility sheltering in place during a disaster or emergency. The commenter requested that provisions for full evacuation or sheltering in place be added to the waiver.

Response: HHSC disagrees with the suggestion and declines to make any changes in response to the comment. The subject of §553.44 is emergency preparedness and response, even though it cross-references §553.41(f)(2), which addresses evacuation waivers. HHSC evacuation waiver requirements are addressed in §553.41(f)(2), which is not included in the rule proposal.

Comment: One commenter questioned the proposed requirement in §553.44(d)(2) that a facility update its emergency preparedness and response plan after each disaster or emergency. The comment indicated that the plan may not need any revision and suggested requiring an update only "if needed."

Response: HHSC agrees that an ALF's emergency preparedness and response plan may not need revision after a disaster or emergency. HHSC added a requirement to §553.44(d)(2)(B) to update the emergency preparedness and response plan within 30 days, or as soon as practicable, "if a shortcoming is manifested or identified during the facility's response."

Comment: One commenter suggested adding "by name and/or title" to the required designation of the Emergency Preparedness Coordinator (EPC) and alternate EPC in proposed §553.44(e)(1) and (2), respectively. The commenter stated that allowing designation of the EPC and alternate EPC by title would prevent the ALF from having to change the plan if the designated EPC or alternate EPC is no longer employed by the facility or changes positions.

Response: HHSC disagrees with the commenter's request and made no change to the rule based on this comment. Designation of the EPC and alternate EPC only by title would not identify the specific facility person with that responsibility.

Comment: One commenter suggested adding "which may include posting to a website, social media, or other forms of communication" to proposed §553.44(g)(5) to specify ways of noti-

fying and maintaining ongoing communication during a disaster, emergency, or evacuation.

Response: HHSC disagrees and declines to revise the rule in response to this comment. These are individual considerations and determinations for each ALF. A list of persons for whom the ALF must describe its procedures for notification and maintaining ongoing communication is in §553.44(g)(5). Appropriate methods and procedures may differ according to the person listed and may depend on the primary and supplemental or alternate modes of communication and communication procedures the ALF has identified under Section 553.44(g)(1) for use in a disaster or emergency, and if telecommunication is affected.

Comment: One commenter suggested changing the wording in §553.44(h), concerning sheltering arrangements, to require ALFs to ensure that each resident "has information about options for supports and services in the most integrated setting based on needs and preferences of the individual and assistance to transition to the most integrated setting appropriate for the individual during and following the disaster." The commenter suggested the change to provide people with disabilities with "equal access" to disaster-related programs and services under the Americans with Disabilities Act of 1990, as amended, 42 USC §12101 et seq. (ADA). The commenter requested that the same requirement be added as a new requirement for receiving facilities under an added paragraph (6) in §553.44(m).

Response: HHSC disagrees that the recommended changes are mandated by the ADA and declines to make the suggested change. The rule requires ALFs to identify residents needing specialized assistance and special services, and to have procedures to ensure continuation of such services so that staff can meet residents' needs.

Comment: One commenter suggested changing the wording to proposed §553.44(h)(1)(B) to clarify that an ALF is not required to have an emergency power source to provide safe ambient temperatures, noting that, if an event happens that would create unsafe temperatures in the ALF, the ALF can evacuate the facility.

Response: HHSC does not agree that further clarification is needed and declines to revise the rule in response to this comment. Section 553.44(h)(1) relates to a decision to remain in the facility during a disaster or emergency and does not prevent an ALF from evacuating if it is unable to provide safe temperatures.

Comment: Multiple commenters suggested changing the wording to proposed §553.44(h)(1)(B) to provide specific guidance to ALFs regarding "safe" ambient temperatures when sheltering at the facility during a disaster or emergency. One commenter specifically requested that the rule specify temperatures of not more than 82 degrees. Another requested that a specific temperature range also be added to subsection (j), relating to Transportation.

Response: HHSC agrees with the recommendation to provide a more specific temperature range in §553.44(h)(1)(B), in connection with the requirement to provide safe ambient temperatures. This is consistent with the air conditioning system capability required by §553.62(i)(10) to maintain a range of 68 degrees to 82 degrees Fahrenheit in resident use areas. However, the changes maintain the "safe ambient temperature" requirement to ensure that if, under the circumstances, resident health or safety is endangered within the specified range, the ALF remains responsible for maintaining safe temperatures for each resident, including at the ALF, while evacuating, and throughout a pe-

riod of evacuation. The adopted rule revises §553.44(h)(1)(B), as proposed, to read "facility arrangements and procedures for providing, in areas used by residents during a disaster or emergency, power and ambient temperatures that are safe under the circumstances, but which may not be less than 68 degrees Fahrenheit or more than 82 degrees Fahrenheit."

HHSC does not agree that a prescriptive temperature requirement for evacuation transportation is appropriate, so it did not change §553.44(j) in response to the comment. Transportation modes, circumstances, duration, and distances will vary according to the facility and circumstances, which will affect and determine safe temperatures. Nevertheless, an ALF's emergency preparedness and response plan is required by §553.44(j) to include procedures for safely transporting residents.

Comment: One commenter suggested adding a paragraph to §553.44(h) to permit an ALF's plan to include "accepting emergency placements from the community if a disaster declaration has been made," and if "the additional individuals do not compromise the health and safety of the residents and the needs of residents and other individuals sheltered at the facility can be met by the facility."

Response: HHSC does not agree with the recommendation to add a provision for ALFs to accept non-resident community members and did not add the recommended text to §553.44(h). Consistent with the scope of agency rulemaking authority relating to ALFs, Chapter 553 establishes standards for an ALF's care of its residents.

Comment: One commenter suggested deleting the reference to the governor in proposed §553.44(i)(1), distinguishing between local authority for mandatory evacuation orders and gubernatorial authority for disaster declarations. The commenter suggested observed that reference to the governor, in relation to concurrent mandatory evacuation orders with local authorities, may be misunderstood to require evacuation when the governor declares a disaster.

Response: HHSC agrees with the commenter and removed the phrase "independently or concurrently with the governor" from §553.44(i)(1).

Comment: One commenter suggested a change in §553.44(i)(2)(A) from "pre-arranged evacuation destination and receiving facility" to "pre-arranged evacuation destination or receiving facility" to emphasize that an evacuation destination does not have to be a receiving facility.

Response: HHSC declines to make the recommended change. HHSC agrees that a pre-arranged evacuation destination does not have to be a receiving facility but disagrees with the commenter's reading of §553.44(i)(2)(A). Under §553.44(i)(2)(A), evacuation destinations and routes must be identified for each destination of both types described in §553.44(i)(2)(C). If the location of the required acknowledgments in §553.44(i)(2)(C) are for only primary and alternate pre-arranged evacuation destinations or for primary and alternate receiving facilities, but not both, as permitted by the use of "or" in §553.44(i)(2)(C), §553.44(i)(2)(A) is fulfilled by identifying evacuation destinations and routes for each such destination.

Comment: One commenter suggested that the requirement that the evacuation section of an ALF's plan include the procedures and staff responsible for ensuring that sufficient staff with necessary qualifications "to meet resident needs" accompany the evacuating residents be modified to more specifically describe

the resident needs being referred to as "physical, medical and emotional" needs. The commenter stated that any staff accompanying residents during an evacuation must be qualified to meet residents' emotional, physical, and medical needs.

Response: HHSC disagrees with the suggested change. Making the revision would be limiting when all applicable needs for an evacuated resident are included in §553.44(i)(2)(D)(ii).

Comment: One commenter suggested adding a requirement in §553.44(i)(2)(D)(viii) for an ALF to provide a checklist for determining "safe re-entry" after an evacuation.

Response: HHSC declines to make the suggested change. An ALF's plan must contain a section for evacuation that includes the procedure for making or obtaining a comprehensive determination of when it is safe to re-enter after an evacuation. A checklist may be one method for ensuring the determination is comprehensive, but the rule allows each ALF to choose the procedure and the staff it will use to make or obtain that comprehensive determination.

Comment: One commenter suggested adding to §553.44(j) a requirement for each vehicle used for evacuation to contain portable fire extinguishers and emergency egress. The commenter also suggested requiring staff training on the use of an evacuation vehicle's portable fire extinguishers and emergency egress.

Response: HHSC declines to add the specific requirements in response to this comment. HHSC agrees that an ALF's plan must address safe evacuation transportation. Section 553.44(j)(3) directs the ALF to ensure its emergency preparedness and response plan contains procedures for safely transporting residents, facility staff, and any other individuals evacuating a facility, and §553.44(n) provides for staff training on the plan and on staff member responsibilities under the plan. HHSC declines to add more specific requirements without a prior opportunity for public comment and for more comprehensive consideration of suggestions from affected parties.

Comment: One commenter suggested clarifying the requirement in proposed §553.44(k)(1) that a plan's section on health and medical needs "identif(y) special services that residents use, such as dialysis, oxygen, or hospice services," by adding "which could be impacted by an emergency event" to the end of the paragraph.

Response: HHSC agrees with the commenter and rephrased §553.44(k)(1) to read "identifies special services that residents use that may be impacted by a disaster or emergency, such as dialysis, oxygen, or hospice services."

Comment: One commenter suggested adding mental health and trauma-informed care services to the special services listed in §553.44(k)(1), because these are critical needs for some residents.

Response: HHSC disagrees that the recommended change is needed and declines to make a change to the rule. An ALF must provide care according to a resident's individual service plan, which must be based on a comprehensive assessment of the resident that includes assessment of the resident's psychosocial issues, as required by §553.41(c) and §553.53(f), as applicable. A receiving facility must ensure that it receives each resident's individual service plan. Moreover, §553.44(c) and (i) requires an ALF to identify residents with special needs who may need specialized assistance, either at the facility or in case of evacu-

ation, and to have procedures to ensure that its staff can meet the needs of evacuating residents.

Comment: One commenter stated that the wording proposed for §553.44(k)(2) would require the facility to update the plan every time there is a change relating to a resident. The commenter stated that the provision is overly broad and burdensome if the ALF must detail for each individual resident how their specific need for special services will continue to be met in the event of a disaster or emergency.

Response: HHSC agrees with the commenter that the phrase "each resident" in proposed §553.44(k)(2) could be subject to misunderstanding and rephrases paragraph (2) in adopted §553.44(k) for clarification to read, "identifies procedures to enable all facility residents, notwithstanding a disaster or emergency, to continue to receive the services identified under paragraph (1) of this subsection from the appropriate provider." The adopted rule requires a facility's plan to identify general procedures for all residents to continue receiving special services.

Comment: One commenter requested that the wording in proposed §553.44(m)(1) be changed to restate the condition applicable to a receiving facility stated in that paragraph, which an ALF's plan must incorporate to act as a receiving facility. The commenter suggested that an ALF's accommodation as a receiving facility for temporary emergency placement of another ALF's residents in a disaster or emergency be permitted under its plan only if "the facility does not exceed 10 percent of its licensed capacity without written preapproval by HHSC, and the facility complies with §553.18(h) of this chapter."

Response: HHSC disagrees with this comment. Allowing a receiving facility to exceed its capacity by 10 percent, when acting as a receiving facility in a disaster or emergency without HHSC approval, would conflict with §553.18(h), with which the commenter's recommended text would also require compliance. At the same time, the health and safety standard for approval under §553.18(h) allows for a case-by-case determination without the 10 percent maximum imposed for every circumstance in §553.44(m)(1). Therefore, HHSC made a change to the adopted paragraph to permit an ALF to act as a receiving facility, if its plan permits its temporary emergency placement of another ALF's residents in a disaster or emergency, only if "the facility does not exceed its licensed capacity, unless the facility complies with §553.18(h) of this chapter."

Comment: Multiple commenters suggested deleting "facility staff, or any other individual" from §553.44(m)(2) to prevent an evacuated resident from being denied temporary emergency placement to protect a non-resident. One commenter observed that the reference to the health and safety of facility staff and non-residents is highly unusual and inconsistent with other ALF rules that focus solely on the safety of residents.

Response: HHSC agrees with the commenter and made the suggested change.

Comment: One commenter suggested adding, as a new paragraph (6) to §553.44(m), "a receiving facility is not admitting emergency placements and as such the normal admittance requirements of this chapter do not apply."

Response: HHSC disagrees and did not make the suggested change. The suggested paragraph does not address the topic of §553.44(m) and the paragraphs under that subsection. Those paragraphs state conditions for an ALF to act as a receiving fa-

cility, which the ALF's emergency preparedness and response procedures must incorporate.

Comment: One commenter suggested adding the following new requirement for receiving facilities under an added paragraph (6) in §553.44(m) to provide people with disabilities with "equal access" to disaster-related programs and services under the ADA, "the receiving facility must ensure that each temporarily placed resident has information about options for supports and services in the most integrated setting based on needs and preferences of the individual and assistance to transition to the most integrated setting appropriate for the individual during and following the disaster."

Response: HHSC disagrees that the recommended changes are mandated by the ADA and declines to make the suggested change. In addition, the requested addition would add significant new requirements without a prior opportunity for public comment from affected parties.

Comment: One commenter suggested changing the wording proposed for §553.44(n)(1), regarding the requirement for at least annual staff training on an ALF's emergency preparedness plan to add "including how to support residents emotionally during the event, evacuation, and following the event to address or prevent trauma." The commenter stated that the emotional impact of anticipating or being involved in a disaster or emergency event is as important as physical and medical impacts and should be covered both in general training and training specific to individual residents.

Response: HHSC disagrees with the suggestion to add specific training elements that don't correspond to specific plan requirements and concerning which there has not been an opportunity for public comment. However, the adopted rule does require staff training on the emergency preparedness plan, which must include, under §553.44(i)(2)(D)(ii), the procedure and staff responsible for meeting resident needs during evacuation, and, under §553.44(c)(2)(C)(iii), the location of a list identifying residents with special needs who may need specialized assistance, either at the facility or in case of evacuation.

Comment: One commenter suggested changing the wording in §553.44(n)(4) to omit the requirement to document the provision or refusal of offered training, for each resident, legally authorized representative, if any, and designated emergency contact. The commenter indicated the documentation requirement is overly burdensome, especially as it relates to non-residents. The commenter suggested only requiring an ALF to document that it offered training.

Response: HHSC agrees with the commenter and made the proposed change in the adopted rule. However, documentation of the facility's compliance with each paragraph of this subsection at the time of completion, including with paragraph (4), is still required in accordance with §553.44(n)(5).

Comment: One commenter added that there should be a debriefing following a drill or disaster, so that staff, administrators, and residents can provide feedback to improve the process for everyone.

Response: HHSC disagrees with the suggestion to add a debriefing requirement and declines to do so without a prior opportunity for public comment. However, the adopted rule does require plan review and appropriate updates after a drill or disaster in §553.44(d).

Comment: One commenter suggested including any special needs triggered by an emergency in a resident's initial and annual assessment.

Response: HHSC declines to make the suggested change at this time. It is not part of the scope of this proposal. Assessment requirements are addressed in §553.41(c) and §553.53(f), and no amendments were proposed to either of those sections in the §553.44 rule proposal published for comment.

Comment: One commenter suggested including a section regarding inappropriately placed residents in an ALF. The commenter stated that ALFs with an approved waiver for an inappropriately placed resident must have an updated emergency preparedness plan, and an emergency preparedness plan needs to be updated when a waiver is no longer needed.

Response: HHSC disagrees and declines to make the requested change. The rule already requires, in §553.44(c)(2)(C)(ii), that an ALF include in its plan the location of a current list that identifies residents with an approved evacuation waiver and requires updates under §553.44(d)(2)(A) when information changes, including when an evacuation waiver is approved. However, HHSC did add a specific reference to §553.44(c)(2)(C)(ii) in subsection (g)(3)(E), as adopted to ensure that residents with approved evacuation waivers are included on the list described in subsection (g)(3). This addition ensures that the requirement for plan reviews and updates in §553.44(d)(2), which includes to the list described in subsection (g)(3), will capture changes in approved evacuation waivers, including instances when an evacuation waiver is no longer needed.

The adopted rule also adds "disaster or" to certain references to "emergency," or reverses the order of "emergency or disaster" to "disaster or emergency" in order to use the defined term, "disaster or emergency," and to avoid confusion over whether reference to an "emergency," rather than "disaster or emergency," might suggest an unintended limitation in meaning. Section 553.44(a)(1), (a)(2)(D), (a)(4), (a)(5)(D) and (E), (c), (c)(2), (c)(2)(B), (d)(7), (e)(1) and (3), (f)(1), (2), and (3), (g)(1), (4), and (5), (h)(1)(C), (i)(2)(D)(vi), (k)(1) and (2), (k)(l)(1), (3) and (4), (m), (m)(3), (n)(3), (o), and (o)(1) and (2), contain these word additions or reversals of word order.

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; by Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and by Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Health and Safety Code, Chapter 247, relating to Assisted Living Facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

§553.44. *Emergency Preparedness and Response.*

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

(1) Designated emergency contact--A person that a resident, or a resident's legally authorized representative, identifies in writing for the facility to contact in the event of a disaster or emergency.

(2) Disaster or emergency--An impending, emerging, or current situation that:

(A) interferes with normal activities of a facility and its residents;

(B) may:

(i) cause injury or death to a resident or staff member of the facility; or

(ii) cause damage to facility property;

(C) requires the facility to respond immediately to mitigate or avoid the injury, death, damage, or interference; and

(D) except as it relates to an epidemic or pandemic, or to the extent it is incident to another disaster or emergency, does not include a situation that arises from the medical condition of a resident, such as cardiac arrest, obstructed airway, or cerebrovascular accident.

(3) Emergency Management Coordinator (EMC)--The person who is appointed by the local mayor or county judge to plan, coordinate, and implement public health emergency preparedness planning and response within the local jurisdiction.

(4) Emergency Preparedness Coordinator (EPC)--The facility staff person with the responsibility and authority to direct, control, and manage the facility's response to a disaster or emergency.

(5) Evacuation Summary--A current summary of the facility's emergency preparedness and response plan that includes:

(A) the name, address, and contact information for each receiving facility or pre-arranged evacuation destination identified by the facility under subsection (g)(3)(B) of this section;

(B) the procedure for safely transporting residents and any other individuals evacuating a facility;

(C) the name or title, and contact information, of the facility staff member to contact for evacuation information;

(D) the facility's primary mode of communication to be used during a disaster or emergency and the facility's supplemental or alternate mode of communication;

(E) the facility's procedure for notifying persons referenced in subsection (g)(5) of this section as soon as practicable about facility actions affecting residents during a disaster or emergency, including an impending or actual evacuation, and for maintaining ongoing communication with them for the duration of the disaster, emergency, or evacuation;

(F) a statement about training that is available to a resident, the resident's legally authorized representative, and each designated emergency contact for the resident, on procedures under the facility's plan that involve or impact each of them, respectively; and

(G) the facility's procedures for when a resident evacuates with a person other than a facility staff member.

(6) Plan--A facility's emergency preparedness and response plan.

(7) Receiving facility--A separate licensed assisted living facility:

(A) from which a facility has documented acknowledgement, from an identified authorized representative, as described in subsection (i)(2)(C) of this section; and

(B) to which the facility has arranged in advance of a disaster or emergency to evacuate some or all of a facility's residents,

on a temporary basis due to a disaster or emergency, if, at the time of evacuation:

(i) the receiving facility can safely receive and accommodate the residents; and

(ii) the receiving facility has any necessary licensure or emergency authorization required to do so.

(8) Risk assessment--The process of evaluating, documenting, and examining potential disasters or emergencies that pose the highest risk to a facility, and their foreseeable impacts, based on the facility's geographical location, structural conditions, resident needs and characteristics, and other influencing factors, in order to develop an effective emergency preparedness and response plan.

(b) A facility must conduct and document a risk assessment that meets the definition in subsection (a)(8) of this section for potential internal and external emergencies or disasters relevant to the facility's operations and location, and that pose the highest risk to a facility, such as:

(1) a fire or explosion;

(2) a power, telecommunication, or water outage; contamination of a water source; or significant interruption in the normal supply of any essential, such as food or water;

(3) a wildfire;

(4) a hazardous materials accident;

(5) an active or threatened terrorist or shooter, a detonated bomb or bomb threat, or a suspicious object or substance;

(6) a flood or a mudslide;

(7) a hurricane or other severe weather conditions;

(8) an epidemic or pandemic;

(9) a cyber attack; and

(10) a loss of all or a portion of the facility.

(c) A facility must develop and maintain a written emergency preparedness and response plan based on its risk assessment under subsection (b) of this section and that is adequate to protect facility residents and staff in a disaster or emergency.

(1) The plan must address the eight core functions of emergency management, which are:

(A) Direction and Control;

(B) Warning;

(C) Communication;

(D) Sheltering arrangements;

(E) Evacuation;

(F) Transportation;

(G) Health and medical needs; and

(H) Resource management.

(2) The facility must prepare for a disaster or emergency based on its plan and follow each plan procedure and requirement, including contingency procedures, at the time it is called for in the event of a disaster or emergency. In addition to meeting the other requirements of this section, the emergency preparedness plan must:

(A) document the contact information for the EMC for the area, as identified by the office of the local mayor or county judge;

(B) include a process that ensures communication with the EMC, both as a preparedness measure and in anticipation of and during a developing and occurring disaster or emergency; and

(C) include the location of a current list of the facility's resident population, which must be maintained as required under subsection (g)(3) of this section, that identifies:

(i) residents with Alzheimer's disease or related disorders;

(ii) residents who have an evacuation waiver approved under §553.41(f)(2) of this subchapter; and

(iii) residents with mobility limitations or other special needs who may need specialized assistance, either at the facility or in case of evacuation.

(3) A facility must notify the EMC of the facility's emergency preparedness and response plan, take actions to coordinate its planning and emergency response with the EMC, and document communications with the EMC regarding plan coordination.

(d) A facility must:

(1) maintain a current printed copy of the plan in a central location that is accessible to all staff, residents, and residents' legally authorized representatives at all times;

(2) at least annually and after an event described in subparagraphs (A)-(D) of this paragraph, review the plan, its evacuation summary, if any, and the contact lists described in subsection (g)(3) of this section, and update each:

(A) to reflect changes in information, including when an evacuation waiver is approved under §553.41(f)(2) of this subchapter;

(B) within 30 days or as soon as practicable following a disaster or emergency if a shortcoming is manifested or identified during the facility's response;

(C) within 30 days after a drill, if, based on the drill, a shortcoming in the plan is identified; and

(D) within 30 days after a change in a facility policy or HHSC rule that would impact the plan;

(3) document reviews and updates conducted under paragraph (2) of this subsection, including the date of each review and dated documentation of changes made to the plan based on a review;

(4) provide residents and the residents' legally authorized representative with a written copy of the plan or an evacuation summary, as defined in subsection (a)(5) of this section, upon admission, on request, and when the facility makes a significant change to a copy of the plan or evacuation summary it has provided to a resident or a resident's legally authorized representative;

(5) provide the information described in subsection (a)(5)(A) of this section to a resident or legally authorized agent who does not receive an evacuation summary under paragraph (4) of this subsection and requests that information;

(6) notify each resident, next of kin, or legally authorized representative, in writing, how to register for evacuation assistance with the Texas Information and Referral Network (2-1-1 Texas); and

(7) register as a provider with 2-1-1 Texas to assist the state in identifying persons who may need assistance in a disaster or emergency. In doing so, the facility is not required to identify or register individual residents for evacuation assistance.

(e) Core Function One: Direction and Control. A facility's plan must contain a section for direction and control that:

(1) designates the EPC, who is the facility staff person with the responsibility and authority to direct, control, and manage the facility's response to a disaster or emergency;

(2) designates an alternate EPC, who is the facility staff person with the responsibility and authority to act as the EPC if the EPC is unable to serve in that capacity; and

(3) assigns responsibilities to staff members by designated function or position and describes the facility's system for ensuring that each staff member clearly understands the staff member's own role and how to execute it, in the event of a disaster or emergency.

(f) Core Function Two: Warning. A facility's plan must contain a section for warning that:

(1) describes applicable procedures, methods, and responsibility for the facility and for the EMC and other outside organizations, based on facility coordination with them, to notify the EPC or alternate EPC, as applicable, of a disaster or emergency;

(2) identifies whom, including during off hours, weekends, and holidays, the EPC or alternate EPC, as applicable, will notify of a disaster or emergency, and the methods and procedures for notification;

(3) describes a procedure for keeping all persons present in the facility informed of the facility's present plan for responding to a potential or current disaster or emergency that is impacting or threatening the area where the facility is located; and

(4) addresses applicable procedures, methods, and responsibility for monitoring local news and weather reports regarding a disaster or potential disaster or emergency, taking into consideration factors such as:

(A) location-specific natural disasters;

(B) whether a disaster is likely to be addressed or forecast in the reports; and

(C) the conditions, natural or otherwise, under which designated staff become responsible for monitoring news and weather reports for a disaster or emergency.

(g) Core Function Three: Communication. A facility's plan must contain a section for communication that:

(1) identifies the facility's primary mode of communication to be used during a disaster or emergency and the facility's supplemental or alternate mode of communication, and procedures for communication if telecommunication is affected by a disaster or emergency;

(2) includes instructions on when to call 911;

(3) includes the location of a list of each of the following, with current contact information for each, where it is easily accessible to staff at all times:

(A) the legally authorized representative and designated emergency contacts for each resident;

(B) each primary and alternate receiving facility or pre-arranged evacuation destination; the list for which must be kept with the written acknowledgement for each, as described and required in subsection (i)(2)(C) of this section;

(C) home and community support services agencies and independent health care professionals that deliver health care services to residents in the facility;

(D) personal contact information for facility staff; and

(E) the facility's resident population, which must identify residents who may need specialized assistance at the facility or in case of evacuation, as described in subsection (c)(2)(C)(ii) or (iii) of this section;

(4) provides a method for the facility to communicate information to the public about its status during a disaster or emergency; and

(5) describes the facility's procedure for notifying at least the following persons, as applicable and as soon as practicable, about facility actions affecting residents during a disaster or emergency, including an impending or actual evacuation, and for maintaining ongoing communication for the duration of the disaster, emergency, or evacuation:

(A) all facility staff members, including off-duty staff;

(B) each facility resident;

(C) any legally authorized representative of a resident;

(D) each resident's designated emergency contacts;

(E) each home and community support services agency or independent health care professional that delivers health care services to a facility resident;

(F) each receiving facility or evacuation destination to be utilized, if there is an impending or actual evacuation, which must be utilized in accordance with the pre-arranged acknowledged procedures described in subsection (i)(2)(C) of this section, where applicable, and with which the facility must verify, prior to evacuating, that the applicable destination is available and legally authorized at the time to receive the evacuated residents, and can safely do so;

(G) the driver of a vehicle transporting residents or staff, medication, records, food, water, equipment, or supplies during an evacuation, and the employer of a driver who is not a facility staff person; and

(H) the EMC.

(h) Core Function Four: Sheltering Arrangements. A facility's plan must contain a section for sheltering arrangements that:

(1) describes the procedure for making and implementing a decision to remain in the facility during a disaster or emergency, that includes:

(A) the arrangements, staff responsibilities, and procedures for accessing and obtaining medication, records, equipment and supplies, water and food, including food to accommodate an individual who has a medical need for a special diet;

(B) facility arrangements and procedures for providing, in areas used by residents during a disaster or emergency, power and ambient temperatures that are safe under the circumstances, but which may not be less than 68 degrees Fahrenheit or more than 82 degrees Fahrenheit; and

(C) if necessary, arrangements for sheltering facility staff or emergency staff involved in responding to a disaster or emergency and, as necessary and appropriate, their family members; and

(2) includes a procedure for notifying the HHSC Regulatory Services regional office for the area in which the facility is located and, in accordance with subsection (g)(5)(H) of this section, the EMC, immediately after the EPC or alternate EPC, as applicable, makes a decision to remain in the facility during a disaster or emergency.

(i) Core Function Five: Evacuation.

(1) A facility has the discretion to determine when an evacuation is necessary for the health and safety of residents and staff. However, a facility must evacuate if a mandatory evacuation order is given by the county judge of the county in which the facility is located or the mayor of the municipality in which the facility is located.

(2) A facility's plan must contain a section for evacuation that:

(A) identifies evacuation destinations and routes, including at least each pre-arranged evacuation destination and receiving facility described in subparagraph (C) of this paragraph, and includes a map that shows each identified destination and route;

(B) describes the procedure for making and implementing a decision to evacuate some or all residents to one or more receiving facilities or pre-arranged evacuation destinations, with contingency procedures and a plan for any pets or service animals that reside in the facility;

(C) includes the location of a current documented acknowledgment with an identified authorized representative of at least one receiving facility or pre-arranged evacuation destination, and at least one alternate. The documented acknowledgment must include acknowledgement by the receiving facility or pre-arranged evacuation destination of:

(i) arrangements for the receiving facility or pre-arranged destination to receive an evacuating facility's residents; and

(ii) the process for the facility to notify each applicable receiving facility or pre-arranged destination of the facility's plan to evacuate and to verify with the applicable destination that it is available, and not legally restricted at the time from receiving the evacuated residents, and can do so safely;

(D) includes the procedure and the staff responsible for:

(i) notifying the HHSC Regulatory Services regional office for the area in which the facility is located and, in accordance with subsection (g)(5)(H) of this section, the EMC, immediately after the EPC or alternate EPC, as applicable, makes a decision to evacuate, or as soon as feasible thereafter, if it is not safe to do so at the time of decision;

(ii) ensuring that sufficient facility staff with qualifications necessary to meet resident needs accompany evacuating residents to the receiving facility, pre-arranged evacuation destination, or other destination to which the facility evacuates, and remain with the residents to provide any necessary care for the duration of the residents' stay in the receiving facility, or other destination to which the facility evacuates;

(iii) ensuring that residents and facility staff present in the building have been evacuated;

(iv) accounting for and tracking the location of residents, facility staff, and transport vehicles involved in the facility evacuation, both during and after the facility evacuation, through the time the residents and facility staff return to the evacuated facility;

(v) accounting for residents absent from the facility at the time of the evacuation and residents who evacuate on their own or with a third party, and notifying them that the facility has been evacuated;

(vi) overseeing the release of resident information to authorized persons in a disaster or emergency to promote continuity of a resident's care;

(vii) contacting the EMC to find out if it is safe to return to the geographical area after an evacuation;

(viii) making or obtaining, as appropriate, a comprehensive determination of when it is safe to re-enter and occupy the facility after an evacuation;

(ix) returning evacuated residents to the facility and notifying persons listed in subsection (g)(5) of this section who were not involved in the return of the residents; and

(x) notifying the HHSC Regulatory Services regional office for the area in which the facility is located, immediately after each instance when some or all residents have returned to the facility after an evacuation.

(j) Core Function Six: Transportation. A facility's plan must contain a section for transportation that:

(1) identifies current arrangements for access to a sufficient number of vehicles to safely evacuate all residents;

(2) identifies facility staff designated during an evacuation to drive a vehicle owned, leased, or rented by the facility; notification procedures to ensure designated staff's availability at the time of an evacuation; and methods for maintaining communication with vehicles, staff, and drivers transporting facility residents or staff during evacuation, in accordance with subsection (g)(5)(A) and (G) of this section;

(3) includes procedures for safely transporting residents, facility staff, and any other individuals evacuating a facility; and

(4) includes procedures for the safe and secure transport of, and staff's timely access to, the following resident items needed during an evacuation: oxygen, medications, records, food, water, equipment, and supplies.

(k) Core Function Seven: Health and Medical Needs. A facility's plan must contain a section for health and medical needs that:

(1) identifies special services that residents use that may be impacted by a disaster or emergency, such as dialysis, oxygen, or hospice services;

(2) identifies procedures to enable all facility residents, notwithstanding a disaster or emergency, to continue to receive the services identified under paragraph (1) of this subsection from the appropriate provider; and

(3) identifies procedures for the facility to notify home and community support services agencies, and independent health care professionals that deliver services to residents in the facility, of an evacuation in accordance with subsection (g)(5)(E) of this section.

(l) Core Function Eight: Resource Management. A facility's plan must contain a section for resource management that:

(1) identifies a plan for identifying, obtaining, transporting, and storing medications, records, food, water, equipment, and supplies needed for both residents and evacuating staff during a disaster or emergency;

(2) identifies facility staff, by position or function, who are assigned to access or obtain the items under paragraph (1) of this subsection and other necessary resources, and to ensure their delivery to the facility or their transport, as needed, in the event of an evacuation;

(3) describes the procedure to ensure medications are secure and maintained at the proper temperature throughout a disaster or emergency; and

(4) describes procedures and safeguards to protect the confidentiality, security, and integrity of resident records throughout a disaster or emergency and any evacuation of residents.

(m) Receiving Facility. To act as a receiving facility, as defined in paragraph (a)(7) of this section, a facility's plan must include procedures for accommodating a temporary emergency placement of one or more residents from another assisted living facility, only in a disaster or emergency and only if:

(1) the facility does not exceed its licensed capacity, unless the facility complies with §553.18(h) of this chapter;

(2) the facility ensures that the temporary emergency placement of one or more residents evacuated from another assisted living facility does not compromise the health or safety of any evacuated or facility resident;

(3) the facility is able to meet the needs of all evacuated residents and any other persons it receives on a temporary emergency basis, while continuing to meet the needs of its own residents, and of any of its own staff or other individuals it is sheltering at the facility during a disaster or emergency, in accordance with its plan under subsection (h) of this section;

(4) the facility maintains a log of each additional individual being housed in the facility that includes the individual's name, address, and the date of arrival and departure; and

(5) the receiving facility ensures that each temporarily placed resident has at arrival, or as soon after arrival as practicable and no later than necessary to protect the health of the resident, each of the following necessary to the resident's continuity of care:

(A) necessary physician orders for care;

(B) medications;

(C) a service plan;

(D) existing advance directives; and

(E) contact information for each legally authorized representative and designated emergency contact of an evacuated resident, and a record of any notifications that have already occurred.

(n) Emergency Preparedness and Response Plan Training. The facility must:

(1) provide staff training on the emergency preparedness plan at least annually;

(2) train a facility staff member on the staff member's responsibilities under the plan:

(A) prior to the staff member assuming job responsibilities; and

(B) when a staff member's responsibilities under the plan change;

(3) conduct at least one unannounced annual drill with facility staff for severe weather, or another disaster or emergency identified by the facility as likely to occur, based on the results of the risk assessment required by subsection (b) of this section;

(4) offer training to each resident, legally authorized representative, if any, and each designated emergency contact, on procedures under the facility's plan that involve or impact each of them, respectively; and

(5) document the facility's compliance with each paragraph of this subsection at the time it is completed.

(o) Self-Reported Incidents Related to a Disaster or Emergency. Without limiting any other applicable requirement under this chapter to report or investigate, a facility must report to HHSC a death or serious injury of a resident, or threat to resident health or safety, resulting from a disaster or emergency as follows:

(1) by calling 1-800-458-9858 immediately after the death, serious injury, or threat, or, if the disaster or emergency is of extended duration, as soon as practicable after the serious injury, death or threat to the resident; and

(2) by conducting an investigation of the disaster or emergency and resulting resident injury, death, or threat, and filing a written report using the most current version of the HHSC form titled "SNF, NF, ICF/IID, ALF, DAHS and PPECC Provider Investigation Report with Cover Sheet" available on the HHSC website. The facility must file the written report within five working days after making the telephone report required by paragraph (1) of this subsection.

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

Filed with the Office of the Secretary of State on January 21, 2020.

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Health and Human Services Commission

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For further information, please call: (512) 438-3161



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER Q. GENERAL PROPERTY AND CASUALTY RULES

DIVISION 3. MULTIPLE LINES

28 TAC §§5.9750 - 5.9752

INTRODUCTION. The Commissioner of Insurance adopts new 28 TAC §§5.9750 - 5.9752, concerning notice to policyholders and agents of certain changes to property and casualty insurance policies. Sections 5.9750 - 5.9752 implement Senate Bill 417, 85th Legislature, Regular Session (2017). The new sections are adopted without changes to the proposed text as published in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5548). The rules will not be republished.

REASONED JUSTIFICATION. Sections 5.9750 - 5.9752 clarify what constitutes a material change under SB 417; ensure consistency with the conspicuousness requirements in the Business and Commerce Code; and clarify the requirements for a clear, plain-language notice of a change in coverage from replacement cost to actual cash value.

SB 417 amended the Insurance Code regarding notice to policyholders and agents of certain changes to property and casualty insurance policies. Before SB 417, insurers that wanted to provide less coverage to an existing policyholder were required to cancel or nonrenew the policy and give the policyholder a new offer. SB 417 created an exception that allows insurers to avoid canceling or nonrenewing the policy by providing policyholders and agents with a notice of material change describing the reductions in coverage.

Under SB 417, a "material change" on renewal is not a nonrenewal or cancellation if the insurer provides the policyholder with written notice of any material change in each form of the policy offered to the policyholder on renewal from the form of the policy held immediately before renewal. SB 417 requires that the notice of material change be clear, provided in a conspicuous place, and in plain language. It also requires the insurer to provide the notice at least 30 days before the renewal date.

Insurers are only required to provide the notice of material change under SB 417 if they offer a policy that reduces coverage, changes coverage conditions, or changes the duties of the policyholder, but do not provide notice of nonrenewal or cancellation. If the insurer chooses instead to nonrenew or cancel and issue a new policy, the notice requirements in SB 417 would not apply. Instead, the insurer would comply with the notice requirements for cancellation or nonrenewal in Insurance Code Chapter 551.

Informal Draft. TDI received comments on an informal draft posted on TDI's website on January 16, 2019. Although TDI specifically requested comments on anticipated costs of compliance with the rule, no comments addressed costs. Two comments asked that the rule be drafted to clearly not apply to surplus lines policies, as the underlying statute does not apply. One comment supported the draft rule text and made additional suggestions to enhance clarity. One comment requested more insight about what qualifies as a reduction in coverage. TDI made changes in response to those comments. Those changes were included in the proposed rule.

Section 5.9750. Section 5.9750 clarifies the applicability of the rule and provides examples of material changes. It is necessary to prevent confusion about notices of material change subject to the rule, and to clarify the types of changes that require a notice.

Section 5.9751. Section 5.9751 provides requirements for the notice of material change. It harmonizes the conspicuousness requirement in the new sections and Insurance Code §§551.1055(c)(1), 2002.001(b)(2)(A), and 2002.102(c)(1) with the definition of "conspicuous" in Business and Commerce Code §1.201(b)(10). It also clarifies that "material change" includes material changes to the entire policy or to any part of it. Section 5.9751 is necessary to ensure a consistent interpretation of "conspicuous" between the Insurance Code, the Business and Commerce Code, and the new sections. It is also necessary to ensure that material changes to one type of risk or coverage - for example, changes to coverage for a roof from replacement cost to actual cash value - are subject to the same notice requirements as material changes to the policy as a whole.

Section 5.9752. Section 5.9752 clarifies that a change from replacement cost coverage to actual cash value coverage is a material change. It also provides requirements for the notice. For a change from replacement cost to actual cash value coverage, §5.9752 requires that a notice of material change explain the terms "replacement cost" and "actual cash value" in plain lan-

guage; and that if the notice uses the term "depreciation," it must also include a plain-language explanation of that term. Section 5.9752 also requires that a notice of material change that describes a change from replacement cost to actual cash value coverage must include at least one plain-language example that shows the difference in dollar amounts between coverage before and after the material change. Section 5.9752 includes a sample figure to illustrate a possible way to list the amounts a policyholder might receive for a total roof replacement. Insurers are not limited to using the sample figure, and they may use other content and formatting.

Section 5.9752 clarifies that a change in coverage from replacement cost to actual cash value is a material change that requires notice under SB 417. Unlike replacement cost coverage, actual cash value coverage includes a deduction for depreciation, which reduces coverage under a policy. However, the inquiries and complaints TDI has received regarding replacement cost, actual cash value, and depreciation indicate that the differences in coverage are not easy for consumers to understand. As a result, §5.9752 is necessary to ensure that consumers get clear descriptions and illustrations of actual cash value and replacement cost coverage. Without those explanations, consumers are unlikely to appreciate the impact of a change in coverage from replacement cost to actual cash value, and they are unlikely to be able to make informed coverage choices.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received three written comments. Commenters in support of the proposal were: the American Property Casualty Insurance Association (APCIA), the Insurance Council of Texas (ICT), and the Office of Public Insurance Counsel (OPIC).

Comment on §§5.9750 - 5.9752.

One commenter supports the proposed rules, particularly the parts that clarify that a material change might be to the entire policy, or to any part of it; require examples; and require plain-language dollar examples to show how a change from replacement cost to actual cash value affects coverage. The commenter states that the rules and examples will help consumers make more informed decisions about their insurance.

Agency Response.

TDI agrees that the rules will help consumers make more informed decisions about their insurance.

Comment on §5.9750.

One commenter notes that a change that expands or broadens coverage is not a material change under §5.9750.

Agency Response.

TDI agrees that a broadening of coverage is not a material change under §5.9750.

Comment on §5.9752(b) and (c) definitions.

Two commenters ask whether the definitions of "replacement cost," "actual cash value," and "depreciation" in §5.9752(b) and (c) are permissible as plain-language definitions for those terms in the notice of material change.

Agency Response.

Yes. The definitions of "replacement cost," "actual cash value," and "depreciation" in §5.9752(b) and (c) are acceptable as plain-

language definitions for those terms in the notice of material change.

Comment on Figure: 28 TAC §5.9752(d)(1).

Two commenters ask whether insurers may use their own examples instead of the example in Figure: 28 TAC §5.9752(d)(1).

Agency Response.

Yes. The example in Figure: 28 TAC §5.9752(d)(1) is one way to comply with the requirement for a plain-language example that shows the difference in dollar amounts between coverage before and after the material change from replacement cost to actual cash value. But insurers may produce and use their own plain-language examples.

Comment on Figure: 28 TAC §5.9752(d)(1).

One commenter asks whether a general example, such as the one in Figure: 28 TAC §5.9752(d)(1), is sufficient to comply with the plain-language example requirement in §5.9752(d), or whether the rule would require the insurer to produce a policy-specific dollar example.

Agency Response.

Yes. A general example, such as the one in Figure: 28 TAC §5.9752(d)(1), is sufficient to comply with the plain-language example requirement in §5.9752(d). The rule does not require insurers to produce individual policy-specific dollar examples.

STATUTORY AUTHORITY. The Commissioner adopts new 28 TAC §§5.9750 - 5.9752 under Insurance Code §§551.103, 551.1055, 2002.001, and 2002.102, as added or amended by SB 417; and Insurance Code §§551.112, 2002.102(e), 36.002(2)(E), and 36.001.

Insurance Code §551.103(3) provides that if an insurer, without the policyholder's consent, reduces or restricts coverage under the policy by endorsement or other means, then the insurer has canceled the policy. SB 417 amended §551.103(3) to provide an exception for changes to the policy on renewal for which the insurer provides a written notice of material change under §551.1055.

SB 417 added definitions of "material change" to Insurance Code §§551.1055, 2002.001, and 2002.102. Under those definitions, a "material change" is a change to a policy that, with respect to a prior or existing policy reduces coverage, changes conditions of coverage, or changes the policyholder's duties.

SB 417 added requirements for notice of material change to policyholders under Insurance Code §§551.1055, 2002.001, and 2002.102. The notice of material change must appear in a conspicuous place, clearly indicate each material change to the policy, be written in plain language, and be provided to the policyholder not later than the 30th day before the renewal or expiration date.

In addition to the notice to the policyholder, under Insurance Code §§551.1055, 2002.001, and 2002.102, the insurer must provide each of its agents with a written notice that clearly indicates each material change being made to the policy form.

Insurance Code §551.112 allows the Commissioner to adopt rules relating to the cancellation and nonrenewal of insurance policies.

Insurance Code §2002.102(e) allows the Commissioner to adopt rules as necessary to implement §2002.102.

Insurance Code §36.002(2)(E) allows the Commissioner to adopt reasonable rules that are appropriate to accomplish the purposes of a provision of Insurance Code Title 10, Subtitle D, which includes §2002.001 and §2002.102.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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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General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584



CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER P. ADMINISTRATORS

28 TAC §7.1603

The Commissioner of Insurance adopts amendments to 28 TAC §7.1603, relating to the requirements for administrators. The amendments are adopted without changes to the proposed text published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6699). The rule will not be republished.

REASONED JUSTIFICATION. The amendments are necessary to implement legislation. Senate Bill 1200, 86th Legislature, Regular Session (2019), amended Occupations Code §55.0041 as it addresses authority of military spouses to engage in a business or occupation in this state. These amendments impact TDI's licensing rules, which necessitates revisions to 28 TAC §7.1603, as well as revisions to sections in other chapters of Title 28 of the Texas Administrative Code addressed in separate adoption orders.

Section 7.1603(a). Section 7.1603(a) requires any person acting or holding himself or herself out as an administrator to obtain a certificate authority, as required by Insurance Code Chapter 4151, unless the person meets an exemption described in Insurance Code §§4151.002, 4151.0021, or 4151.004. Section 7.1603(a) clarifies that certain military spouses can engage as administrators by applying for a temporary certificate of authority.

Section 7.1603(c). Section 7.1603(c) establishes an eligibility requirement that military spouses must be licensed in a jurisdiction with substantially equivalent licensing requirements as those described in §7.1604 and in Insurance Code Chapter 4151. Section 7.1603(c) provides that a military spouse licensed in a jurisdiction outside of Texas will only be authorized to engage as an administrator in Texas for the period during which the military service member to whom the military spouse is married is stationed

at a military installation in Texas, but not to exceed three years from the date the spouse receives the confirmation described by §7.1603(d).

Section 7.1603(d). Section 7.1603(d) states the criteria that must be met for a military spouse to engage as an administrator. It requires the military spouse to submit an application notifying TDI of the military spouse's intent to practice in this state, submit to TDI proof of the spouse's residency in Texas, a copy of the spouse's military identification card, and evidence of good standing in the jurisdiction with substantially equivalent requirements. Section 7.1603(d) also require the military spouse to receive confirmation from TDI that indicates TDI has verified the spouse's license and that the spouse is authorized to engage in the business or occupation in accordance with this section.

Section 7.1603(e). Section 7.1603(e) states that no fees will be assessed in connection with the administrator license.

Section 7.1603(f). Section 7.1603(f) states that a military spouse engaged as an administrator under this authority is bound by all laws and rules applicable to the business and occupation in Texas.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received one written comment from The Surety & Fidelity Association of America.

Comment on §7.1603.

A commenter requests clarification on whether certain licensing requirements to furnish surety and fidelity bonds would still be required for military spouses seeking licensure through Occupations Code §55.0041 and the corresponding proposed rules.

Agency Response.

Texas Occupations Code §55.0041 provides the framework and rulemaking authority for this rule. Section 55.0041 authorizes a military spouse to engage in a business or occupation without obtaining an applicable license if the military spouse is currently licensed in a jurisdiction with substantially equivalent licensing requirements, but it also requires the military spouse to comply with all other laws and regulations applicable to the business or occupation. Consistent with §55.0041, the proposed rules do not absolve a military spouse from financial responsibility requirements imposed by law or regulation.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §7.1603 under Occupations Code § 55.0041 and Insurance Code §36.001.

Occupations Code §55.0041 addresses licensing of military spouses with out of state licenses. This section also grants rule making authority to applicable state agencies

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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 January 17, 2020.

TRD-202000226



CHAPTER 15. SURPLUS LINES INSURANCE SUBCHAPTER B. SURPLUS LINES AGENTS

28 TAC §15.101

The Commissioner of Insurance adopts amendments to 28 TAC §15.101, relating to requirements for surplus lines agents. The amendments are adopted with nonsubstantive changes to the proposed text published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6701). The rules will be republished.

TDI revised §15.101(g)(2), as proposed, to correct a cross-reference and an error in punctuation. Specifically, section 15.101(g)(2) is corrected to refer to subsection (d)(2) instead of (d)(1), as was originally intended, and to change the "A" before "military spouse" to be a lowercase letter.

REASONED JUSTIFICATION. The amendments are necessary to implement legislation. Senate Bill 1200, 86th Legislature, Regular Session (2019), amended Occupations Code §55.0041 as it addresses authority of military spouses to engage in a business or occupation in this state. These amendments impact TDI licensing rules, which necessitates revisions to 28 TAC §15.101, as well as revisions to sections in other chapters of Title 28 of the Texas Administrative Code addressed in separate rule proposals and adoption orders.

Section 15.101(g). Section 15.101(g) describes the criteria for a military spouse to engage as a surplus lines agent in Texas. The military spouse must be licensed in a state with substantially equivalent requirements to those of Texas and the military service member to whom the military spouse is married must be stationed in Texas. The military spouse may engage as a surplus lines agent for three years from the date confirmation is received from TDI.

Section 15.101(g)(1) describes what the military spouse must submit to TDI to engage as a surplus lines agent. Section §15.101(g)(1)(A) requires the military spouse submit an application notifying TDI of their intent to operate under the license in Texas. Section 15.101(g)(1)(B) requires the military spouse to submit to TDI proof of the military spouse's residency in Texas and a copy of the spouse's military identification card and §15.101(g)(1)(C) requires evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of Texas.

Section 15.101(g)(2) states that the military spouse will not be assessed any application fees that are usually assessed under §15.101(d)(2), §19.801 and §19.802.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received one written comment from The Surety & Fidelity Association of America.

Comment on §15.101.

A commenter requests clarification on whether certain licensing requirements to furnish surety and fidelity bonds would still be

required for military spouses seeking licensure through Occupations Code §55.0041 and the corresponding proposed rules.

Agency Response.

Surplus lines agents do not have a bond requirement.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §15.101 under Occupations Code §55.0041 and Insurance Code §36.001.

Occupations Code §55.0041 addresses licensing of military spouses with out of state licenses. This section also grants rule making authority to applicable state agencies.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§15.101. *Licensing of Surplus Lines Agents.*

(a) Persons performing any of the following surplus lines insurance activities are required to have a surplus lines agent license:

(1) supervising unlicensed staff engaged in activities described in subsection (b) of this section, although unlicensed intermediary supervisors may supervise unlicensed staff engaging in these activities if the ultimate supervisor is licensed;

(2) negotiating, soliciting, effecting, procuring, or binding surplus lines insurance contracts for clients or offering advice, counsel, opinions, or explanations of surplus lines insurance products to agents or clients beyond the scope of underwriting policies or contracts, except for a general lines property and casualty agent making a referral of surplus lines business to a surplus lines agent that then completes the surplus lines transaction; or

(3) receiving any direct commission or variance in compensation based on the volume of surplus lines premiums taken and received from, or as a result of, another person selling, soliciting, binding, effecting, or procuring surplus lines insurance policies, contracts, or coverages, except for a general lines property and casualty agent making a referral of surplus lines business to a surplus lines agent that then completes the surplus lines transaction.

(b) The following activities, if supervised by a surplus lines agent, do not require a surplus lines agent license if the employee does not receive any direct commission from selling, soliciting, binding, effecting, or procuring insurance policies, contracts, or coverages, and the employee's compensation is not varied by the volume of premiums taken and received:

(1) full-time clerical and administrative services, including, but not limited to, the incidental taking of information from clients; receipt of premiums in the office of a licensed agent; or transmitting to clients, as directed by a licensed surplus lines agent, prepared marketing materials or other prepared information and materials including, without limitation, invoices and evidences of coverage;

(2) contacting clients to obtain or confirm information necessary to process an application for surplus lines insurance so long as the contact does not involve any activities for which a license would be required under subsection (a)(2) of this section;

(3) performing the task of underwriting any insurance policy, contract, or coverage, including and without limitation, pricing of the policy or contract; or

(4) contacting clients, insureds, agents, other persons, and insurers to gather and transmit information regarding claims and losses

under the policy to the extent the contact does not require a licensed adjuster as set forth under Insurance Code Chapter 4101.

(c) This section must not be construed to prohibit distribution of agency profits to unlicensed persons, including shareholders, partners, and employees.

(d) Before TDI issues a surplus lines agent license, the applicant must submit the following:

- (1) an appropriate, fully completed written application; and
- (2) the fee specified by §19.801 and §19.802 of this title (relating to General Provisions and Amount of Fees, respectively).

(e) Texas-resident applicants, and nonresident applicants who do not hold a surplus lines license in their state of residence or whose state of residence does not license Texas residents on a reciprocal basis as determined by TDI, must meet all licensing requirements set forth in Insurance Code Chapter 981. Nonresident applicants under this section must also comply with Insurance Code §4056.051.

(f) Nonresident applicants who hold a surplus lines agent license in good standing in the agent's state of residence and meet the requirements of Insurance Code §4056.052 must meet all the licensing requirements of Insurance Code Chapter 981 to the extent that the requirements are not waived by the Commissioner under Insurance Code §4056.055.

(g) Military spouses who are licensed in a state with substantially equivalent requirements to those of this state are eligible for a license while the military service member to whom the military spouse is married is stationed at a military installation in this state. This license is effective for a period of three years from the date the spouse receives the confirmation described by paragraph (1) of this subsection.

(1) The military spouse must:

(A) submit an application notifying TDI of the military spouse's intent to operate under the license in Texas;

(B) submit to TDI proof of the military spouse's residency in Texas and a copy of the spouse's military identification card; and

(C) show evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of this state.

(2) Notwithstanding subsection (d)(2) of this section and §19.801 and §19.802 of this title, a military spouse will not be assessed any application fees under those sections.

(h) Notwithstanding any other subsection of this section, nonresident applicants are not required to obtain a general property and casualty agent license if they meet the requirements of Insurance Code §981.203(a-1).

(i) Each surplus lines agent license issued to an agent will be valid for a term as established under Insurance Code §4003.001 and Chapter 19, Subchapter I of this title (relating to General Provisions Regarding Fees, Applications, and Renewals). The license may be renewed by submitting a renewal application and a nonrefundable license fee as specified by §19.801 and §19.802 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.

Filed with the Office of the Secretary of State on January 17, 2020.

TRD-202000227

James Person

General Counsel

Texas Department of Insurance

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Proposal publication date: November 8, 2019

For further information, please call: (512) 676-6584

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CHAPTER 19. LICENSING AND REGULATION OF INSURANCE PROFESSIONALS

SUBCHAPTER I. GENERAL PROVISIONS REGARDING FEES, APPLICATIONS, AND RENEWALS

28 TAC §19.803

The Commissioner of Insurance adopts amendments to 28 TAC §19.803, relating to licensing requirements for insurance professionals. The amendments are adopted without changes to the proposed text published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6703) and will not be republished.

REASONED JUSTIFICATION. The amendments are necessary to implement legislation. Senate Bill 1200, 86th Legislature, Regular Session (2019), amended Occupations Code §55.0041 as it addresses authority of military spouses to engage in a business or occupation in this state. These amendments impact TDI licensing rules, which necessitates revisions to 28 TAC §19.803, as well as revisions to sections in other chapters of Title 28 of the Texas Administrative Code addressed in separate rule proposals and adoption orders.

Section 19.803(g). Section 19.803(g) describes the criteria for a military spouse to engage as an insurance professional in Texas. The military spouse must be licensed in a state with substantially equivalent requirements to those of Texas and the military service member to whom the military spouse is married must be stationed in Texas. The military spouse may engage as an insurance professional for three years from the date confirmation is received from TDI.

Section 19.803(g)(1) describes what the military spouse must submit to TDI to engage in business as an insurance professional. Section 19.803(g)(1)(A) requires the military spouse submit an application notifying TDI of their intent to operate under the license in Texas. Section 19.803(g)(1)(B) requires the military spouse to submit to TDI proof of the military spouse's residency in Texas and a copy of the spouse's military identification card and §19.803(g)(1)(C) requires evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of Texas.

Section 19.803(h). Section 19.803(h) states that the military spouse will not be assessed an application fee.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received one written comment from The Surety & Fidelity Association of America.

Comment on §19.803.

A commenter requests clarification on whether certain licensing requirements to furnish surety and fidelity bonds would still be

required for military spouses seeking licensure through Occupations Code §55.0041 and the corresponding proposed rules.

Agency Response.

Texas Occupations Code §55.0041 provides the framework and rulemaking authority for this rule. Section 55.0041 authorizes a military spouse to engage in a business or occupation without obtaining an applicable license if the military spouse is currently licensed in a jurisdiction with substantially equivalent licensing requirements, but it also requires the military spouse to comply with all other laws and regulations applicable to the business or occupation. Consistent with §55.0041, the proposed rules do not absolve a military spouse from financial responsibility requirements imposed by law or regulation.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §19.803 under Occupations Code §55.0041 and Insurance Code §36.001.

Occupations Code §55.0041 addresses licensing of military spouses with out of state licenses. This section also grants rule making authority to applicable state agencies.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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 January 17, 2020.

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James Person

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584



CHAPTER 25. INSURANCE PREMIUM FINANCE

SUBCHAPTER B. LICENSING AND REGULATION

28 TAC §25.24

The Commissioner of Insurance adopts amendments to 28 TAC §25.24, relating to requirements for premium finance companies. The amendments are adopted without changes to the proposed text published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6705). The rule will not be republished.

REASONED JUSTIFICATION. The amendments are necessary to implement legislation. Senate Bill 1200, 86th Legislature, Regular Session (2019), amended Occupations Code §55.0041 as it addresses authority of military spouses to engage in a business or occupation in this state. These amendments impact TDI licensing rules, which necessitates revisions to 28 TAC §25.24,

as well as revisions to sections in other chapters of Title 28 of the Texas Administrative Code addressed in separate rule proposals and adoption orders.

Section 25.24(b). Section 25.24(b) clarifies that the fees described in section 25.24(b) do not apply to military spouses.

Section 25.24(c). Section 25.24(c) describes the criteria for a military spouse to engage in business as a premium finance company in Texas. The military spouse must be licensed in a state with substantially equivalent requirements to those of Texas and the military service member to whom the military spouse is married must be stationed in Texas. The military spouse may engage in business as a premium finance company for three years from the date confirmation is received from TDI.

Section 25.24(c) also describes what the military spouse must submit to TDI to engage in business as a premium finance company. Section 25.24(c)(1) requires the military spouse to submit an application notifying TDI of their intent to operate under the license in Texas. Section 25.24(c)(2) requires the military spouse to submit to TDI proof of the military spouse's residency in Texas and a copy of the spouse's military identification card, and §25.24(c)(3) requires evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of Texas.

Section 25.24(d). Section 25.24(d) states that the military spouse will not be assessed an application fee.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received one written comment from The Surety & Fidelity Association of America.

Comment on §25.24.

A commenter requests clarification on whether certain licensing requirements to furnish surety and fidelity bonds would still be required for military spouses seeking licensure through Occupations Code §55.0041 and the corresponding proposed rules.

Agency Response.

An applicant for a premium finance company license does not have a bond requirement.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §25.24 under Occupations Code §55.0041 and Insurance Code §36.001.

Occupations Code §55.0041 addresses licensing of military spouses with out of state licenses. This section also grants rule making authority to applicable state agencies.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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 January 17, 2020.

TRD-202000229

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CHAPTER 34. STATE FIRE MARSHAL

The Commissioner of Insurance adopts amendments to 28 TAC §§34.524, 34.631, 34.726, and 34.833, relating to licensing requirements for military spouses. The amendments are adopted without changes to the proposed text published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6707). The rules will not be republished.

REASONED JUSTIFICATION. The amendments are necessary to implement legislation. Senate Bill 1200, 86th Legislature, Regular Session (2019), amended Occupations Code §55.0041 as it addresses authority of military spouses to engage in a business or occupation in this state. These amendments impact TDI's licensing rules, which necessitates revisions to 28 TAC §§34.524, 34.631, 34.726, and 34.833, as well as changes in other chapters of Title 28 of the Texas Administrative Code addressed in separate rule proposals and adoption orders.

Section 34.524. Section 34.524(d) describes alternative licensing for a military service member or military veteran who holds a current license as described under §34.524(d)(1) and has held that license for the time required under §34.524(d)(2).

Section 34.524(e) describes the criteria for a military spouse to engage in business relating to fire extinguishers in Texas. The military spouse must be licensed in a state with substantially equivalent requirements to those of Texas and the military service member to whom the military spouse is married must be stationed in Texas. The military spouse may engage in business relating to fire extinguishers for three years from the date confirmation is received from TDI.

Section 34.524(e)(1) requires the military spouse submit an application notifying TDI of their intent to operate under the license in Texas. Section 34.524(e)(2) requires the military spouse to submit to TDI proof of the military spouse's residency in Texas and a copy of the spouse's military identification card and §34.524(e)(3) requires evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of Texas.

Section 34.631. Section 34.631(d) describes alternative licensing for a military service member or military veteran who holds a current license as described under §34.631(d)(1) and has held that license for the time required under §34.631(d)(2).

Section 34.631(e) describes the criteria for a military spouse to engage in business related to fire alarms in Texas. The military spouse must be licensed in a state with substantially equivalent requirements to those of Texas and the military service member to whom the military spouse is married must be stationed in Texas. The military spouse may engage in business relating to fire alarms for three years from the date confirmation is received from TDI.

Section 34.631(e)(1) requires the military spouse submit an application notifying TDI of their intent to operate under the

license in Texas. Section 34.631(e)(2) requires the military spouse to submit to TDI proof of the military spouse's residency in Texas and a copy of the spouse's military identification card and §34.631(e)(3) requires evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of Texas.

Section 34.726. Section 34.726(d) describes alternative licensing for a military service member or military veteran who holds a current license as described under §34.726(d)(1) and has held that license for the time required under §34.726(d)(2).

Section 34.726(e) describes the criteria for a military spouse to engage in business relating to fire sprinklers in Texas. The military spouse must be licensed in a state with substantially equivalent requirements to those of Texas and the military service member to whom the military spouse is married must be stationed in Texas. The military spouse may engage in business relating to fire sprinklers for three years from the date confirmation is received from TDI.

Section 34.726(e)(1) requires the military spouse submit an application notifying TDI of their intent to operate under the license in Texas. Section 34.726(e)(2) requires the military spouse to submit to TDI proof of the military spouse's residency in Texas and a copy of the spouse's military identification card and §34.726(e)(3) requires evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of Texas.

Section 34.833. Section 34.833(d) describes alternative licensing for a military service member or military veteran who holds a current license as described under §34.833(d)(1) and has held that license for the time required under §34.833(d)(2).

Section 34.833(e) describes the criteria for a military spouse to engage in business related to storage and sale of fireworks in Texas. The military spouse must be licensed in a state with substantially equivalent requirements to those of Texas and the military service member to whom the military spouse is married must be stationed in Texas. The military spouse may engage in business related to the storage and sale of fireworks for three years from the date confirmation is received from TDI.

Section 34.833(e)(1) requires the military spouse submit an application notifying TDI of their intent to operate under the license in Texas. Section 34.833(e)(2) requires the military spouse to submit to TDI proof of the military spouse's residency in Texas and a copy of the spouse's military identification card and §34.833(e)(3) requires evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of Texas.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received one written comment from The Surety & Fidelity Association of America.

Comment on §§34.524,34.631,34.726,34.833.

A commenter requests clarification on whether certain licensing requirements to furnish surety and fidelity bonds would still be required for military spouses seeking licensure through Occupations Code §55.0041 and the corresponding proposed rules.

Agency Response.

These particular occupations regulated under 28 TAC Chapter 34 do not have bond requirements.

SUBCHAPTER E. FIRE EXTINGUISHER RULES

28 TAC §34.524

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §34.524 under Occupations Code §55.0041 and Insurance Code §36.001.

Occupations Code §55.0041 addresses licensing of military spouses with out of state licenses. This section also grants rule making authority to applicable state agencies.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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 January 17, 2020.

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James Person
General Counsel
Texas Department of Insurance
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Proposal publication date: November 8, 2019
For further information, please call: (512) 676-6584



SUBCHAPTER F. FIRE ALARM RULES

28 TAC §34.631

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §34.631 under Occupations Code §55.0041 and Insurance Code §36.001.

Occupations Code §55.0041 addresses licensing of military spouses with out of state licenses. This section also grants rule making authority to applicable state agencies.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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Texas Department of Insurance
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SUBCHAPTER G. FIRE SPRINKLER RULES

28 TAC §34.726

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §34.726 under Occupations Code §55.0041 and Insurance Code §36.001.

Occupations Code §55.0041 addresses licensing of military spouses with out of state licenses. This section also grants rule making authority to applicable state agencies.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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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James Person
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584



SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

28 TAC §34.833

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §34.833 under Occupations Code §55.0041 and Insurance Code §36.001.

Occupations Code §55.0041 addresses licensing of military spouses with out of state licenses. This section also grants rule-making authority to applicable state agencies.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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 January 17, 2020.

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James Person
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 529. FLOOD CONTROL

SUBCHAPTER B. STRUCTURAL REPAIR GRANT PROGRAM

31 TAC §§529.51, 529.52, 529.54 - 529.57

The Texas State Soil and Water Conservation Board (State Board) adopts amendments to the following sections of Title 31, Part 17, Chapter 529, Subchapter B, Flood Control, Structural Repair Grant Program:

§529.51, concerning Definitions;

§529.52, concerning Administration of Funds;

§529.54, concerning Request for Applications;

§529.55, concerning Submitting an Application;

§529.56, concerning Review and Selection of Applications; and

§529.57, concerning Contracts Between the State Board and Sponsors.

The amendments are adopted without changes to the proposed text as published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6274) and will not be republished.

REASONED JUSTIFICATION

The proposed amendments are necessary to comply and successfully implement Senate Bill (S.B.) 500, regarding an appropriation of \$150,000,000 from the economic stabilization fund (ESF) to the State Board for dam infrastructure projects beginning on June 6, 2019.

As requested by the 86th Legislature, the State Board developed a plan, known as the "Plan for \$150 Million," to implement dam infrastructure projects with the appropriated funding. The plan calls to provide funding for the upgrade of approximately 24 dams to meet current Texas Commission on Environmental Quality (TCEQ) safety criteria. The proposed rule changes will decrease the non-state funded matching requirement for upgrade projects for sponsors from 5-percent, to 1.75-percent. This rule change is required for the successful implementation of the "Plan for \$150 Million," as local sponsors often have small, limited operating budgets, and many will not have the means to participate in upgrading dams to meet current TCEQ safety criteria if a 5-percent match is required. The primary purpose of these dams is to protect lives and property by reducing the velocity of floodwaters and thereby reducing flows to a safer rate.

SUMMARY OF RESPONSES AND AGENCY COMMENTS

The public comment period began on October 25, 2019, and ended November 24, 2019. The Board received no comments in response to its request for comment published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6274).

The State Board hereby certifies that the amendments to Title 31, Part 17, Chapter 529, Subchapter B, Flood Control, Structural Repair Grant Programs are adopted without changes, under the authority of Texas Agriculture Code 201.022, which authorizes the State Board to assist Soil and Water Conservation Districts

in carrying out programs and powers and § 201.020, which provides the State Board with authority to adopt rules as necessary for the performance of its functions under Chapter 201 of the Texas Agriculture Code.

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

Filed with the Office of the Secretary of State on January 17, 2020.

TRD-202000239

Liza Parker

Policy Analyst/Legislative Liaison

Texas State Soil and Water Conservation Board

Effective date: February 6, 2020

Proposal publication date: October 25, 2019

For further information, please call: (254) 773-2250



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER B. NATURAL GAS

34 TAC §3.23

The Comptroller of Public Accounts adopts amendments to §3.23, concerning credits for qualifying low producing wells, without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7849). The rule will not be republished. These amendments improve readability and implement Senate Bill 925, 86th Legislature, 2019.

The comptroller amends subsection (a)(3) to remove unnecessary capitalizations from the defined term.

The comptroller amends subsection (a)(4) to change the term "Qualified Low Producing Well" to "Qualifying low-producing well" so that term is consistent with Tax Code, §201.059(a)(3) (Credits for Qualifying Low-Producing Wells) and amends this definition to better reflect the content of §201.059(a)(3). The comptroller also amends this subsection to incorporate the changes to §201.059(a)(3) made by Senate Bill 925, 86th Legislature, 2019. Senate Bill 925 requires the production per day be calculated based on the greater of the production reported to the Railroad Commission of Texas on the monthly well production reports or the production reported to the comptroller under Tax Code, §201.203 (Producer's Report).

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 (State Taxation).

The amendments implement Tax Code, §201.059 (a)(3) (Credits for Qualifying Low-Producing Wells).

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 January 22, 2020.

TRD-202000272

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Effective date: February 11, 2020

Proposal publication date: December 20, 2019

For further information, please call: (512) 475-2220



SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.432

The Comptroller of Public Accounts adopts amendments to §3.432, concerning refunds on gasoline, diesel fuel, compressed natural gas, and liquefied natural gas taxes, without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7850). The rule will not be published.

The amendments implement House Bill 791, 86th Legislature, 2019, effective May 24, 2019. The bill amends Tax Code, §162.001 (Definitions) to provide a definition of "volunteer fire department".

The comptroller reorganizes subsection (h)(1)(E), regarding credits and refunds for state fuel tax paid on gasoline and diesel fuel sold to or used by Texas volunteer fire departments and adds clauses (i) and (ii). Clause (i) contains the current language reflecting the comptroller's prior interpretation that a qualifying volunteer fire department meant a department consisting wholly of unpaid members. Clause (ii) provides the exemption for a volunteer fire department, incorporating the new definition of "volunteer fire department" and explains that this definition applies to motor fuel sales on or after the effective date of House Bill 791. The comptroller also updates the website address to the directory of fire departments.

No comments were received regarding adoption of the amendment.

This amendment is 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 (State Taxation), and taxes, fees, or other charges which the comptroller administers under other law.

The amendments implement Tax Code, §162.001 (Definitions).

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 January 22, 2020.

TRD-202000273

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

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Proposal publication date: December 20, 2019

For further information, please call: (512) 475-2220



SUBCHAPTER FF. SPECIAL FEE ON CERTAIN CIGARETTES AND CIGARETTE TOBACCO PRODUCTS

34 TAC §3.751

The Comptroller of Public Accounts adopts amendments to §3.751, concerning special fee on certain cigarettes and cigarette tobacco products; definitions, imposition of fee, and reports, without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7855). The rule will not be republished. The amendments to this section implement provisions in Senate Bill 1390, 85th Legislature, 2017 that changed the due date of the distributor's report from the last day of the month to the 25th day of the month.

Throughout the section, the comptroller adds or amends the titles to statutory references and does not intend to make substantive changes through these additions of and amendments to the statutory references.

The comptroller amends subsection (a)(5) to replace the statutory references with a definition combining the cigarette and tobacco definitions of distributor.

The comptroller amends subsection (f)(2) by adding "and tobacco" to explain that all distributor reports and payments are due on the 25th day of the month, in accordance with the provisions of Senate Bill 1390 and §154.212 (Reports by Wholesalers and Distributors of Cigarettes).

No comments were received regarding adoption of the amendment.

The amendments are adopted 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 which the comptroller administers under other law.

The amendments implement legislative changes to Tax Code, §154.210.

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 January 22, 2020.

TRD-202000269

William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Effective date: February 11, 2020
Proposal publication date: December 20, 2019
For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER A. ACCREDITATION

37 TAC §651.4

The Texas Forensic Science Commission ("Commission") adopt amendments to 37 TAC §651.4, without changes to the text as published in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7672). The rule will not be republished. The amendments address a change in the administration of the American Board of Forensic Toxicology ("ABFT") forensic toxicology accreditation program. Under a "strategic alliance" between the ANSI-ASQ National Accreditation Board ("ANAB") and the American Board of Forensic Toxicology ("ABFT"), ABFT's forensic toxicology accreditation program is now administered by ANAB. In addition to the ABFT program administered by ANAB, the Commission also recognizes accreditation by ANAB in the following forensic disciplines: seized drugs, forensic toxicology, forensic biology/dna, firearms/toolmarks, and materials (trace). In sum, the adopted amendments make clear to affected crime laboratories, attorneys and judges that the Commission recognizes accreditation for crime laboratories that are accredited to perform forensic toxicology under any of the following ABFT/ANAB programs: 1) solely by ABFT for laboratories that have not yet transitioned to the ANAB-administered program; 2) solely by ANAB; or 3) under the new ABFT program administered by ANAB. The amendments are necessary to reflect adoptions made by the Commission at its October 25, 2019, quarterly meeting. The adoption is made in accordance with the Commission's accreditation authority under Tex. Code. Crim. Proc. art. 38.01 §4-d.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Article 38.01 §4(a)(3), Code of Criminal Procedure.

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 January 21, 2020.

TRD-202000250

Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Effective date: February 10, 2020
Proposal publication date: December 13, 2019
For further information, please call: (512) 936-0661



SUBCHAPTER D. PROCEDURE FOR PROCESSING COMPLAINTS AND LABORATORY SELF-DISCLOSURES

37 TAC §651.306

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 TAC §651.306, with changes to the text as published in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7673). Nonsubstantive changes were made to (c) to correct formatting. The rule will be republished. The amendments outline Commission staff's authority to dismiss complaints concerning certain activities that do not meet the definition of forensic analysis under Texas law. Subject to review by the Commission, the current rules allow the Commission's General Counsel to dismiss any complaint involving activities that do not meet the definition of "forensic analysis" set forth in Article 38.35(a)(4) of the Code of Criminal Procedure because the activities described do not constitute expert examinations or tests on physical evidence. The amendments adopted here delegate additional authority to the General Counsel to dismiss a complaint if the expert examination or test described falls within one of the following categories expressly exempt by Article 38.35(a)(4) of the Code of Criminal Procedure: (1) presumptive tests performed for the purposes of determining compliance with a term or condition of community supervision or parole and conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles; or (2) expert examinations or tests conducted principally for the purpose of scientific research, medical practice, civil, or administrative litigation, or other purpose unrelated to determining the connection of the physical evidence to a criminal action. The amendments are necessary to reflect adoptions made by the Commission at its October 25, 2019, quarterly meeting. The adoption is made in accordance with the Commission's authority under Article 38.01 §4(a)(3), Code of Criminal Procedure, which requires the Commission to investigate, in a timely manner, any allegation of professional negligence or professional misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by a crime laboratory.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Article 38.01 §4(a)(3), Code of Criminal Procedure.

§651.306. *Dismissal for Lack of Jurisdiction.*

(a) Autopsy-related complaints. The Commission's General Counsel may dismiss complaints related to the portion of an autopsy conducted by a medical examiner or licensed physician as falling outside the Commission's statutory jurisdiction without bringing the complaint before the Complaint Screening Committee or a quorum of Commissioners for consideration.

(b) DNA mixture complaints. The General Counsel may refer complaints and requests involving DNA mixtures to the statewide DNA Mixture Triage Team or other responsible entity without bringing the complaints and requests before the Complaint Screening Committee or a quorum of Commissioners for consideration. The General Counsel shall provide the total number of complaints and inquiries referred to the statewide DNA Mixture Triage Team to the Commission at each quarterly meeting during which such referrals are made.

(c) Non-forensic analysis complaints. The General Counsel may dismiss the following categories of complaints without bringing the complaints before the Complaint Screening Committee or a quorum of Commissioners for consideration:

(1) those the General Counsel does not consider to include a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action;

(2) those the General Counsel believes constitute a presumptive test performed for the purpose of determining compliance with a term or condition of community supervision or parole and conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles; or

(3) those the General Counsel believes constitute an expert examination or test conducted principally for the purpose of scientific

research, medical practice, civil or administrative litigation, or other purpose unrelated to determining the connection of the evidence to a criminal action.

(d) Right to re-open. Any Commission member has a right to reopen cases dismissed pursuant to subsections (a)-(c) of this section. Commission staff must maintain a list of complaints dismissed under this subsection.

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

Filed with the Office of the Secretary of State on January 21, 2020.

TRD-202000249

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: February 10, 2020

Proposal publication date: December 13, 2019

For further information, please call: (512) 936-0661



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 Judicial Council

Title 1, Part 8

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission files this notice of its intention to review and consider for re-adoption, revision, or repeal of Subchapter C and D of Chapter 174 pursuant to Texas Government Code §2001.039. An assessment will be made by the Commission as to whether the reasons for adopting or readopting the chapter continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted in writing to Wesley Shackelford, Deputy Director, Texas Indigent Defense Commission, 209 West 14th Street, Room 202, Austin, Texas 78701 or by email to wshackelford@tidc.texas.gov no later than 30 days from the date that these proposed amendments are published in the *Texas Register*.

TRD-202000348
Wesley Shackelford
Deputy Director
Texas Judicial Council
Filed: January 29, 2020



Texas Department of Banking

Title 7, Part 2

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for re-adoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 35 (Check Verification Entities), comprised of Subchapter A (§35.1); Subchapter B (§§35.11 - 35.19); Subchapter C (§35.31); Subchapter D (§§35.51 - 35.59); and Subchapter E (§35.71 and §35.72).

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-202000340
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: January 28, 2020



Texas State Board of Public Accountancy

Title 22, Part 22

The Texas State Board of Public Accountancy will review and consider for re-adoption, revision or repeal Title 22 Texas Administrative Code, Part 22, Chapters 501, 502, 505, 507, 509, 511, 512, 513, 514, 515, 517, 518, 519, 520, 521, 523, 525, 526 and 527.

This review is conducted pursuant to Section 2001.039 of the Government Code.

In conducting its review, the Board will determine whether the reasons for the rules continue to exist. The review will also determine whether the rules are obsolete, whether the rules reflect current legal and policy considerations, and whether the rules reflect current procedures of the Board.

Any comments pertaining to this notice of intention to review may be submitted within the next 120 days to General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701. Any proposed changes to the rules as a result of this review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

- Chapter 501 - Rules of Professional Conduct
- Chapter 502 - Peer Assistance
- Chapter 505 - The Board
- Chapter 507 - Employees of the Board
- Chapter 509 - Rulemaking Procedures
- Chapter 511 - Eligibility
- Chapter 512 - Certification by Reciprocity
- Chapter 513 - Registration
- Chapter 514 - Certification as a CPA

Chapter 515 - Licenses
Chapter 517 - Practice by Certain Out of State Firms and Individuals
Chapter 518 - Unauthorized Practice of Public Accountancy
Chapter 519 - Practice and Procedure
Chapter 520 - Provisions for the Fifth-Year Accounting Students Scholarship Program
Chapter 521 - Fee Schedule
Chapter 523 - Continuing Professional Education
Chapter 525 - Criminal Background Investigations
Chapter 526 - Board Opinions
Chapter 527 - Peer Review
TRD-202000293
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Filed: January 24, 2020

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Adopted Rule Reviews

State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 230, Professional Educator Preparation and Certification, pursuant to the Texas Government Code (TGC), §2001.039. The SBEC proposed the review of 19 TAC Chapter 230 in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6381).

Relating to the review of 19 TAC Chapter 230, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. The SBEC received comments relating to the review of Chapter 230. The following is a summary of the public comments received and the responses.

Comment: Texas Tech University (TTU) commented that the SBEC should consider a change to the language in §230.21(b) that states a candidate may take the appropriate certification examinations when approved by the educator preparation program (EPP) or upon successful completion of the EPP, whichever comes first. In addition, TTU stated that EPPs would like to be able to require students to take coursework or to require a study program before authorizing the student to take an exam that did not exist at the time of their completion of the program.

Response: The SBEC agrees, but it is beyond the scope of the proposed amendments to 19 TAC Chapter 230 being considered as a separate action item in the December 6, 2019, SBEC agenda. The SBEC believes Texas Education Agency should obtain additional stakeholder feedback to propose rules at a future opportunity that would address issues raised by EPPs and certification candidates.

Comment: iteachTEXAS commented that the Science of Teaching Reading (STR) test should be required for issuance of the standard classroom teacher certification. iteachTEXAS stated that requiring the STR for issuance of an intern and/or probationary certificate exceeds what statute intends.

Response: The SBEC disagrees. The TEC, §21.048(a-2), states, "to teach any grade level from prekindergarten through grade six a person must demonstrate proficiency in the science of teaching reading." The requirement to complete the STR test applies to any educator teaching reading at any grade level under any type of certification. Exempting probationary and intern certificates from the STR test requirement would allow an educator to teach reading for up to three years without demonstrating proficiency in the science of teaching reading. This would thoroughly undermine the legislative intent that all reading teachers in all classes from prekindergarten to sixth grade be proficient in the science of teaching reading.

Comment: An elementary teacher with 30 years of experience and a reading specialist certification commented that while there is a close alignment of competencies for the STR and the reading specialist examinations, the reading specialist certification was only awarded to experienced teachers with real classroom experience - experience deemed useful, if not essential, to mastering the science of teaching reading. The commenter expressed concern that upon initial certification, new teacher candidates will be unable to demonstrate the same level of proficiency on the STR examination as that of more experienced educators.

Response: The SBEC disagrees. The SBEC has no discretion to delay the STR examination until an educator has attained years of experience because the Texas Legislature has determined that a teacher must learn to teach reading prior to entering a classroom. TEC, §21.048(a-2), states, "to teach any grade level from prekindergarten through grade six a person must demonstrate proficiency in the science of teaching reading." The requirement to complete the STR test applies to any educator teaching reading at any grade level under any type of certification. While time in a classroom is undoubtedly useful to perfecting the skill of teaching reading, it is vital that teachers understand how to teach reading before they enter the classroom so that all Texas students have the benefit of a teacher who knows how to teach reading.

This concludes the review of 19 TAC Chapter 230.

TRD-202000274
Cristina De La Fuente Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: January 22, 2020

◆ ◆ ◆
The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 232, General Certification Provisions, pursuant to the Texas Government Code (TGC), §2001.039. The SBEC proposed the review of 19 TAC Chapter 232 in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6381).

Relating to the review of 19 TAC Chapter 232, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. No public comments were received.

This concludes the review of 19 TAC Chapter 232.

TRD-202000275
Cristina De La Fuente Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: January 22, 2020

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §313.409(c)

Purse	Winning Mount	Second Mount	Third Mount	Fourth Mount	Losing Mount
Up to \$4,999	10% Win Purse	\$75 [70]	\$70 [60]	\$68 [58]	\$60 [50]
\$5,000-\$9,999	10% Win Purse	Larger of \$85 or 5% of Place Purse [80]	\$75 [65]	\$73 [63]	\$65 [55]
\$10,000-\$14,999	10% Win Purse	5% Place Purse	\$85 [75]	\$78 [68]	\$70 [60]
\$15,000-\$24,999	10% Win Purse	5% Place Purse	Larger of \$90 or 5% Show Purse	\$85 [75]	\$80 [70]
\$25,000-\$49,999	10% Win Purse	5% Place Purse	5% Show Purse	\$90 [80]	\$85 [75]
\$50,000-\$99,999	10% Win Purse	5% Place Purse	5% Show Purse	5% Fourth Place Purse	\$100 [90]
\$100,000 and up	10% Win Purse	5% Place Purse	5% Show Purse	5% Fourth Place Purse	\$120 [110]



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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/03/20 - 02/09/20 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/03/20 - 02/09/20 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-202000338

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: January 28, 2020

◆ ◆ ◆
Court of Criminal Appeals

Order Amending Texas Rule of Evidence 103(c)

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

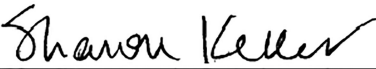
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Misc. Docket No. 20-001
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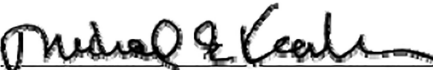
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ORDER AMENDING TEXAS RULE OF EVIDENCE 103(c)
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ORDERED that:

1. The Court approves the following amendments to Rule 103(c) of the Texas Rules of Evidence.
2. The amendments take effect June 1, 2020.
3. The amendments may be changed before June 1, 2020 in response to public comments. Written comments should be sent to rulescomments@txcourts.gov. The Court requests that comments be sent by May 1, 2020.
4. The Clerk is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this order to each elected member of the Legislature; and
 - d. submit a copy of the order for publication in the *Texas Register*.

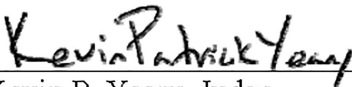
Dated: January 22, 2020


Sharon Keller, Presiding Judge

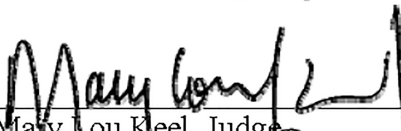

Michael Keasler, Judge

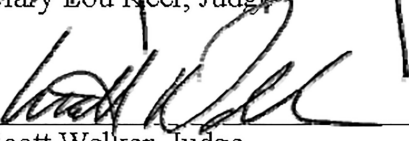

Barbara P. Hervey, Judge

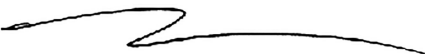

Bert Richardson, Judge


Kevin P. Yeary, Judge


David Newell, Judge


Mary Lou Keel, Judge


Scott Walker, Judge


Michelle M. Slaughter, Judge

Rule 103. Rulings on Evidence

- (c) **Court's Statement About the Ruling; Directing an Offer of Proof.** The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court must allow a party to make an offer of proof ~~outside the jury's presence~~ as soon as practicable.— In a jury trial, the court must allow a party to make the offer outside the jury's presence and before the court reads its charge to the jury. ~~The court may make any statement about the character or form of the evidence, the objection made, and the ruling.~~ At a party's request, the court must direct that an offer of proof be made in question-and-answer form. Or the court may do so on its own.

◆ ◆ ◆
Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 10, 2020**. 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 **March 10, 2020**. 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: American Midstream (Lavaca), LLC; DOCKET NUMBER: 2019-1573-AIR-E; IDENTIFIER: RN107820987; LOCATION: Moulton, Lavaca County; TYPE OF FACILITY: natural gas compressor station; 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 the discovery of an emissions event; and 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 148263, Air Quality Standard Permit for Oil and Gas Handling and Production Facilities, Special Conditions Number (a)(3), and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$4,138; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: American TieTek, LLC; DOCKET NUMBER: 2019-0714-WQ-E; IDENTIFIER: RN104613401; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: industrial manufacturing facility; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with

industrial activities; and 30 TAC §305.125(1) and (4), and TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of an industrial waste into or adjacent to water in the state; PENALTY: \$30,001; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: ARSH FOODSTORE, INCORPORATED dba First Stop Foodstore; DOCKET NUMBER: 2019-1454-PST-E; IDENTIFIER: RN108931775; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 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 underground storage tank (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. Also, failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$6,841; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Blue Cube Operations LLC; DOCKET NUMBER: 2019-1429-AIR-E; IDENTIFIER: RN108772245; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O2207, General Terms and Conditions and Special Terms and Conditions Number 20, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$3,375; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$1,350; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Callahan County Water Supply Corporation; DOCKET NUMBER: 2019-1424-PWS-E; IDENTIFIER: RN101206522; LOCATION: Clyde, Callahan 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 average; PENALTY: \$232; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: City of Edinburg; DOCKET NUMBER: 2019-1079-MWD-E; IDENTIFIER: RN102080603; LOCATION: Edinburg, Hidalgo County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010503002, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (4), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010503002, Permit Conditions Number 2.d, by failing to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment; 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010503002, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010503002, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of sludge into or adjacent to any

water in the state (first violation); and 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010503002, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of sludge into or adjacent to any water in the state (second violation); PENALTY: \$35,938; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: Cotton Center Water Supply Corporation; DOCKET NUMBER: 2019-1147-PWS-E; IDENTIFIER: RN101435873; LOCATION: Hale Center, Hale County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's Well Number 1; 30 TAC §290.43(c)(6), by failing to ensure that clearwells and potable water storage tanks, including associated appurtenances such as valves, pipes, and fittings, are thoroughly tight against leakage; 30 TAC §290.46(f)(2) and (3)(A)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; and 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzers at least once every 90 days using chlorine solutions of known concentrations; PENALTY: \$300; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(8) COMPANY: Firestone Polymers, LLC; DOCKET NUMBER: 2019-1398-AIR-E; IDENTIFIER: RN100224468; LOCATION: Orange, Orange County; TYPE OF FACILITY: rubber manufacturing; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 292, Special Conditions Number 1, Federal Operating Permit Number O1271, General Terms and Conditions and Special Terms and Conditions Number 12, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$6,151; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Greenwood Utility District; DOCKET NUMBER: 2019-1113-MWD-E; IDENTIFIER: RN101526093; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011061001, Interim I Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$14,625; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: H & A BUSINESS INC dba Bigs 303; DOCKET NUMBER: 2019-0701-PST-E; IDENTIFIER: RN101905974; LOCATION: Dilley, Frio County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.6(b)(2), by failing to file a written notification with the TCEQ within at least 30 days prior to initiating construction activity; 30 TAC §334.7(e)(2), by failing to fill out an underground storage tank (UST) registration form completely and accurately; 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight; 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to ensure the UST corrosion protection system was operated and maintained in a

manner that will ensure continuous corrosion protection; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every 30 days; PENALTY: \$20,715; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Halepaska Property Management, LLC dba Halepaska Country Lots, LLC; DOCKET NUMBER: 2019-0846-PWS-E; IDENTIFIER: RN106599905; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(D), by failing to ensure that livestock in pastures are not allowed within 50 feet of the facility's well; PENALTY: \$276; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(12) COMPANY: HERITAGE OAKS PROPERTY, LLC dba Columbia Lakes Country Club; DOCKET NUMBER: 2019-1153-AIR-E; IDENTIFIER: RN102782257; LOCATION: West Columbia, Brazoria County; TYPE OF FACILITY: public golf course; RULES VIOLATED: 30 TAC §111.201 and §111.219(7) and Texas Health and Safety Code, §382.085(b), by failing to not cause, suffer, allow, or permit outdoor burning within the State of Texas; PENALTY: \$2,166; ENFORCEMENT COORDINATOR: Alain Elegbe, (512)239-6924; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Manvel Utilities Limited Partnership; DOCKET NUMBER: 2019-1270-MWD-E; IDENTIFIER: RN102754504; LOCATION: Manvel, Brazoria 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 WQ0014188001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$5,750; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: R.D. WALLACE OIL CO., INCORPORATED dba Petro Products 2 Card System; DOCKET NUMBER: 2019-1353-PST-E; IDENTIFIER: RN101856938; LOCATION: Morton, Cochran County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3) and §334.8(c)(4), by failing to ensure that an amended registration and self-certification form is submitted to TCEQ within 30 days from the date on which the ownership changed; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ Delivery Certificate before delivery of a regulated substance into the underground storage tanks; PENALTY: \$1,926; ENFORCEMENT COORDINATOR: Tyler Smith, (512) 239-3421; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(15) COMPANY: R.D. WALLACE OIL CO., INCORPORATED dba Petro Products Corp.; DOCKET NUMBER: 2019-1481-PST-E; IDENTIFIER: RN101786978; LOCATION: Levelland, Hockley County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to make available to a common carrier a valid, current TCEQ Delivery Certificate before delivery of a regulated substance into the underground storage tank; PENALTY: \$5,671; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414, (806) 796-7092.

(16) COMPANY: Rainbow Rider Enterprises, Incorporated; DOCKET NUMBER: 2018-1751-WQ-E; IDENTIFIER: RN107687121; LOCATION: Brookshire, Walker County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR05DH87, Part III, Section A.4(f), by failing to conduct employee training as required; 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR05DH87, Part III, Section B.4, by failing to conduct annual hazardous metals testing; 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR05DH87, Part III, Section D.5, by failing to maintain monitoring records and to make them readily available for review upon request by authorized TCEQ personnel; 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR05DH87, Part III, Section E.4(b) and Part IV, Section B.1, by failing to conduct benchmark monitoring; and 30 TAC §281.25(a)(4) and §307.4(b)(5), TWC, §26.121(a)(2), and TPDES General Permit Number TXR05DH87, Part III, Sections A.1 and A.4, by failing to implement all pollution prevention practices that are necessary to protect the water quality in receiving water, or that are necessary to remain compliant with TPDES General Permit Number TXR05DH87; PENALTY: \$10,724; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Robert Lynn Goodloe and Roy King Carrell dba Rock Ridge Dairy; DOCKET NUMBER: 2019-0451-AGR-E; IDENTIFIER: RN102336682; LOCATION: Godley, Johnson County; TYPE OF FACILITY: dairy farm; RULES VIOLATED: 30 TAC §305.125(1) and §321.39(b)(5), and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG921362, Part III.A.10.(f)(3), by failing to prevent trees from growing on the retention control structure (RCS) embankment, allowing for the root zone to intrude or compromise the structure of the liner or embankment; 30 TAC §305.125(1) and §321.39(g)(3), and TPDES General Permit Number TXG921362, Part III.A.11(c), by failing to collect carcasses within 24 hours of death and properly dispose of within three days of death; 30 TAC §305.125(1) and §321.44(a), and TPDES General Permit Number TXG921362, Part IV.B.5, by failing to notify the appropriate regional office and the Enforcement Division in writing within 14 business days of the discharge from the RCS; 30 TAC §305.125(1) and §321.46(d), and TPDES General Permit Number TXG921362, Part IV.A, by failing to maintain records on-site for a minimum of five years from the date the record was created and submit records within five days of a written request; 30 TAC §305.125(1) and (4) and §321.31(a), TWC, §26.121(a)(1), and TPDES General Permit Number TXG921362, Part III, A.5.(a)(2) and Part III, A.10.(c), by failing to prevent the unauthorized discharge of agricultural waste into or adjacent to any water in the state; and 30 TAC §305.125(1) and (5) and §321.36(b), and TPDES General Permit Number TXG921362, Part V.D, by failing to at all times properly operate and maintain all facilities and systems of treatment and control installed or used by the permittee to achieve compliance with the permit conditions; PENALTY: \$9,187; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: San Antonio Water System; DOCKET NUMBER: 2019-1408-EAQ-E; IDENTIFIER: RN109828459; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: construction staging area; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: Silvirly Mitchell; DOCKET NUMBER: 2019-1488-MSW-E; IDENTIFIER: RN110561677; LOCATION: Woodville, Tyler County; TYPE OF FACILITY: non-permitted municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; PENALTY: \$1,312; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(20) COMPANY: Texas Regional Bank; DOCKET NUMBER: 2019-1482-EAQ-E; IDENTIFIER: RN110814373; LOCATION: Dripping Springs, Hays County; TYPE OF FACILITY: commercial construction site; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Contributing Zone; PENALTY: \$938; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

TRD-202000331
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 28, 2020

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Enforcement Orders

An agreed order was adopted regarding DM CUSTOM HOMES, LLC., Docket No. 2015-1675-WQ-E on January 28, 2020, assessing \$3,679 in administrative penalties with \$735 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Ledingham, 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 Moody, Docket No. 2016-1581-MWD-E on January 28, 2020, assessing \$5,325 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Angelina County Water Control and Improvement District No. 4, Docket No. 2017-0726-WQ-E on January 28, 2020, assessing \$6,700 in administrative penalties with \$6,700 deferred. Information concerning any aspect 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 Alsa Group, LLC dba Shell Gas Station, Docket No. 2017-1028-PST-E on January 28, 2020, assessing \$3,375 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 SAA Enterprises Inc dba TL Mart, Docket No. 2018-0432-PST-E on January 28, 2020, assessing \$4,200 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 J. D. Timber & Land, LLC, Docket No. 2018-0724-WQ-E on January 28, 2020, assessing \$3,937 in administrative penalties. Information concerning any aspect of this

order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Dosani Real Estate Inc., Docket No. 2018-1371-PWS-E on January 28, 2020, assessing \$190 in administrative penalties with \$38 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 AMISTAD LAGO VILLA HOMEOWNER'S ASSOCIATION, INC., Docket No. 2018-1382-PWS-E on January 28, 2020, assessing \$549 in administrative penalties with \$109 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 WOODRIDGE HOMES I, LP, Docket No. 2018-1408-WQ-E on January 28, 2020, assessing \$3,125 in administrative penalties with \$625 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 Natgasoline LLC, Docket No. 2018-1635-AIR-E on January 28, 2020, assessing \$7,350 in administrative penalties with \$1,470 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 Sanger Circle Property, LP, Docket No. 2018-1652-MLM-E on January 28, 2020, assessing \$2,750 in administrative penalties with \$550 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 114th Mobile Home Park, LLC, Docket No. 2018-1709-PWS-E on January 28, 2020, assessing \$54 in administrative penalties with \$10 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 Phillips 66 Company, Docket No. 2019-0067-AIR-E on January 28, 2020, assessing \$6,300 in administrative penalties with \$1,260 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 Orange County Water Control and Improvement District No. 1, Docket No. 2019-0071-MWD-E on January 28, 2020, assessing \$4,125 in administrative penalties with \$825 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 City of Aransas Pass, Docket No. 2019-0286-PWS-E on January 28, 2020, assessing \$231 in administrative penalties with \$46 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 JOLLYVILLE CAR WASH dba Arbor Car Wash & Lube Center, Docket No. 2019-0291-PST-E on January 28, 2020, assessing \$2,503 in administrative penalties with \$500 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 City of Sonora, Docket No. 2019-0417-PWS-E on January 28, 2020, assessing \$4,467 in administrative penalties with \$893 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 Perry Hostetler dba Allrounder Dairy, Docket No. 2019-0507-AGR-E on January 28, 2020, assessing \$3,125 in administrative penalties with \$625 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 Tyler Allen Turner, Docket No. 2019-0518-WR-E on January 28, 2020, assessing \$4,500 in administrative penalties with \$900 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 Aqua Utilities, Inc., Docket No. 2019-0536-PWS-E on January 28, 2020, assessing \$1,713 in administrative penalties with \$342 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 Orangefield Water Supply Corporation, Docket No. 2019-0570-MWD-E on January 28, 2020, assessing \$4,125 in administrative penalties with \$825 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 Stephen P. Krebs dba Timber Ridge Section 2, Docket No. 2019-0588-PWS-E on January 28, 2020, assessing \$60 in administrative penalties with \$12 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 Richland Fuel Interests, LLC dba Charge Up 32, Docket No. 2019-0644-PST-E on January 28, 2020, assessing \$5,332 in administrative penalties with \$1,066 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 Midland Odessa Urban Transit District, Docket No. 2019-0663-PST-E on January 28, 2020, assessing \$3,750 in administrative penalties with \$750 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 TAKHAR & SON, L.L.C. dba Texas Oasis, Docket No. 2019-0671-PST-E on January 28, 2020, assessing \$3,375 in administrative penalties with \$675 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 City of Cranfills Gap, Docket No. 2019-0737-MWD-E on January 28, 2020, assessing \$2,875 in administrative penalties with \$575 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 Targa Midstream Services LLC, Docket No. 2019-0752-AIR-E on January 28, 2020, assessing \$7,050 in administrative penalties with \$1,410 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 KICKER 13 LLC dba Weatherford KOA, Docket No. 2019-0760-PWS-E on January 28, 2020, assessing \$2,220 in administrative penalties with \$444 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 Swifty Mart, LLC dba Tommys 29, Docket No. 2019-0787-PST-E on January 28, 2020, assessing \$3,375 in administrative penalties with \$675 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 Fort Gates Water Supply Corporation, Docket No. 2019-0812-PWS-E on January 28, 2020, assessing \$426 in administrative penalties with \$85 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 American Chrome & Chemicals Inc., Docket No. 2019-0826-AIR-E on January 28, 2020, assessing \$2,663 in administrative penalties with \$532 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, 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 Syed Amjad Ali Shah dba MN Grocery & Hardware, Docket No. 2019-0837-PST-E on January 28, 2020, assessing \$6,517 in administrative penalties with \$1,303 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 City of Troy, Docket No. 2019-0849-MWD-E on January 28, 2020, assessing \$2,500 in administrative penalties with \$500 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 Ticer Properties, LLC, Docket No. 2019-0855-PST-E on January 28, 2020, assessing \$6,250 in administrative penalties with \$1,250 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 LYNDELL BRAZORIA REALTY, LLC dba Salt Grass Kountry 1, Docket No. 2019-0888-PWS-E on January 28, 2020, assessing \$54 in administrative penalties with \$10 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 Juan Martin Villarreal dba El Chore Pit 2, Docket No. 2019-0922-MSW-E on January 28, 2020, assessing \$1,000 in administrative penalties with \$200 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 City of Leona, Docket No. 2019-0928-PWS-E on January 28, 2020, assessing \$75 in administrative penalties with \$15 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 NORTHWEST HIGHWAY VALERO LLC dba Grapevine Valero, Docket No. 2019-0937-PST-E on January 28, 2020, assessing \$3,375 in administrative penalties with \$675 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 Sportsman's World Municipal Utility District, Docket No. 2019-0943-IWD-E on January 28, 2020, assessing \$3,525 in administrative penalties with \$705 deferred. Information concerning any aspect of this order 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.

An agreed order was adopted regarding Everest Motors, Inc., Docket No. 2019-0960-AIR-E on January 28, 2020, assessing \$2,626 in administrative penalties with \$525 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 City of Groesbeck, Docket No. 2019-0980-MWD-E on January 28, 2020, assessing \$3,938 in administrative penalties with \$787 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 Air Products LLC, Docket No. 2019-1005-AIR-E on January 28, 2020, assessing \$2,485 in administrative penalties with \$497 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann,

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 Lake Amistad Rentals, L.L.C., Docket No. 2019-1013-PWS-E on January 28, 2020, assessing \$50 in administrative penalties with \$10 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Fort Worth, Docket No. 2019-1015-PST-E on January 28, 2020, assessing \$3,750 in administrative penalties with \$750 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 Duvelsa L. Hernandez dba La-los Mini Mart, Docket No. 2019-1042-PST-E on January 28, 2020, assessing \$852 in administrative penalties with \$170 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 Centex Materials LLC, Docket No. 2019-1044-EAQ-E on January 28, 2020, assessing \$1,150 in administrative penalties with \$230 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, 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 ANDERSON COLUMBIA CO., INC., Docket No. 2019-1060-EAQ-E on January 28, 2020, assessing \$1,125 in administrative penalties with \$225 deferred. Information concerning any aspect of this order 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.

An agreed order was adopted regarding Atmos Energy Corporation, Docket No. 2019-1093-AIR-E on January 28, 2020, assessing \$3,937 in administrative penalties with \$787 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 City of Raymondville, Docket No. 2019-1135-PWS-E on January 28, 2020, assessing \$562 in administrative penalties with \$112 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 Lark United Manufacturing of Texas LLC, Docket No. 2019-1137-AIR-E on January 28, 2020, assessing \$1,312 in administrative penalties with \$262 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 J & J CSTORE 3 LLC dba EZ Stop 10, Docket No. 2019-1145-PST-E on January 28, 2020, assessing \$4,488 in administrative penalties with \$897 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 PCI Nitrogen, LLC, Docket No. 2019-1158-AIR-E on January 28, 2020, assessing \$7,500 in administrative penalties with \$1,500 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 CHRISTIAN LIFE CENTER, INC., Docket No. 2019-1207-PWS-E on January 28, 2020, assessing \$52 in administrative penalties with \$10 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 ESPERANZA WATER SERVICE COMPANY, INC., Docket No. 2019-1242-PWS-E on January 28, 2020, assessing \$180 in administrative penalties with \$36 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.

TRD-202000351

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 29, 2020



Enforcement Orders

A default order was adopted regarding DEL RIO MANAGEMENT CO., LLC, Docket No. 2017-1250-PWS-E on January 29, 2020, assessing \$234 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 Alex Mendez dba Mendez Tire Shop 3, Docket No. 2017-1582-MSW-E on January 29, 2020, assessing \$19,500 in administrative penalties with \$3,900 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 Juan de Dios Perez dba La Blanca Recycling, Docket No. 2018-0059-MLM-E on January 29, 2020, assessing \$12,262 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jake Marx, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Amanson Enterprises LLC dba Bar-G-Store, Docket No. 2018-0259-PST-E on January 29, 2020, assessing \$20,294 in administrative penalties with \$4,058 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.

A default order was adopted regarding Superior Advantage GP, LLC, Docket No. 2018-0289-PST-E on January 29, 2020, assessing \$3,937 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.

An agreed order was adopted regarding Linda Davis, Docket No. 2018-0495-MLM-E on January 29, 2020, assessing \$2,684 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Haskell, Docket No. 2018-1023-PWS-E on January 29, 2020, assessing \$1,002 in administrative penalties with \$501 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 Mitsubishi Caterpillar Forklift America Inc., Docket No. 2018-1068-AIR-E on January 29, 2020, assessing \$74,458 in administrative penalties with \$14,891 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 Jeffrey H. Brennan dba P & B Water, Docket No. 2018-1217-PWS-E on January 29, 2020, assessing \$1,649 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Adam Taylor, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding North Texas Epitaxy, LLC, Docket No. 2018-1260-AIR-E on January 29, 2020, assessing \$24,066 in administrative penalties with \$16,701 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.

A default order was adopted regarding LAKESHORE UTILITY COMPANY, Docket No. 2018-1277-PWS-E on January 29, 2020, assessing \$6,579 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 the City of Garland Power & Light, Docket No. 2018-1307-AIR-E on January 29, 2020, assessing \$31,275 in administrative penalties with \$6,255 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.

A default and shutdown order was adopted regarding Hugh Espy Howard Jr., Executor of the Estate of Hugh Espy Howard, Deceased, Docket No. 2018-1483-PST-E on January 29, 2020, assessing \$7,141 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 WOODS CREEK WATER SUPPLY CORPORATION, Docket No. 2018-1643-PWS-E on January 29, 2020, assessing \$1,079 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Adam Taylor, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Exxon Mobil Corporation, Docket No. 2018-1747-AIR-E on January 29, 2020, assessing \$11,738

in administrative penalties with \$2,347 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 Ysleta ISD, Docket No. 2019-0035-PST-E on January 29, 2020, assessing \$13,538 in administrative penalties with \$2,707 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 Ronald E. Coffey dba TCC Tire Disposal, Docket No. 2019-0053-MSW-E on January 29, 2020, assessing \$15,750 in administrative penalties with \$3,150 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 the Town of Flower Mound, Docket No. 2019-0056-WQ-E on January 29, 2020, assessing \$6,563 in administrative penalties. 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 Exxon Mobil Corporation, Docket No. 2019-0180-AIR-E on January 29, 2020, assessing \$40,500 in administrative penalties with \$8,100 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 the City of Zavalla, Docket No. 2019-0197-PWS-E on January 29, 2020, assessing \$396 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Granite Shoals, Docket No. 2019-0205-PWS-E on January 29, 2020, assessing \$1,910 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 PETROFUELS CORPORATION dba Paradise Seafood Market, Docket No. 2019-0212-PST-E on January 29, 2020, assessing \$10,526 in administrative penalties with \$2,105 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 Targa Midstream Services LLC, Docket No. 2019-0357-AIR-E on January 29, 2020, assessing \$3,826 in administrative penalties. 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 Laredo Petroleum, Inc., Docket No. 2019-0376-AIR-E on January 29, 2020, assessing \$57,563 in administrative penalties with \$11,512 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 Chevron U.S.A. Inc. dba Chevron M11270, Docket No. 2019-0405-PWS-E on January 29, 2020, assessing \$660 in administrative penalties with \$660 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 Texas Facilities Commission, Docket No. 2019-0413-PST-E on January 29, 2020, assessing \$9,375 in administrative penalties with \$1,875 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 Laredo Petroleum, Inc., Docket No. 2019-0421-AIR-E on January 29, 2020, assessing \$165,750 in administrative penalties with \$33,150 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 Alvin Chemical, Inc., Docket No. 2019-0449-AIR-E on January 29, 2020, assessing \$9,187 in administrative penalties with \$1,837 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, 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 Texas Department of Transportation, Docket No. 2019-0541-PWS-E on January 29, 2020, assessing \$660 in administrative penalties with \$660 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 Quail Run Services, LLC, Docket No. 2019-0569-MWD-E on January 29, 2020, assessing \$10,963 in administrative penalties with \$2,192 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 SOUTHWESTERN PUBLIC SERVICE COMPANY, Docket No. 2019-0655-WDW-E on January 29, 2020, assessing \$8,726 in administrative penalties with \$1,745 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 Nerro Supply, LLC, Docket No. 2019-0683-PWS-E on January 29, 2020, assessing \$420 in administrative penalties. 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.

TRD-202000352

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 29, 2020



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 **March 10, 2020**. 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 March 10, 2020**. 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: BIN ENTERPRISES INC; DOCKET NUMBER: 2017-1007-PST-E; TCEQ ID NUMBER: RN102443694; LOCATION: 11150 Huffmeister Road, Houston, Harris County; TYPE OF FACILITY: property with an out-of-service underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; TWC, §26.3475(d) and 30 TAC §334.49(a)(1) and §334.54(b)(3), by failing to adequately protect a temporarily out-of-service UST system from corrosion; and 30 TAC §334.7(d)(3) and (e)(2) and §334.54(e)(2), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the UST system operational status had not been updated; PENALTY: \$5,250; STAFF ATTORNEY: Ben Warms, Litigation Division, MC 175, (512) 239-5144; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Judy K. Sharp dba Forest Oaks Mobile Home Park and Williams L. J. Sharp dba Forest Oaks Mobile Home Park; DOCKET NUMBER: 2018-1714-PWS-E; TCEQ ID NUMBER: RN101194652; LOCATION: east of the intersection of Chole Lane and Riverview Road near Kerrville, Kerr County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(n)(3), by failing to keep copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's well; and 30 TAC §290.44(d) and §290.46(r),

by failing to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and 20 psi during emergencies such as firefighting. Specifically, on October 4, 2018, a pressure check in the distribution system found that the pressure was 30 psi; PENALTY: \$230; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Lewis Eugene Roland; DOCKET NUMBER: 2018-1391-MSW-E; TCEQ ID NUMBER: RN109296038; LOCATION: 10816 Cameron Road, Manor, Travis County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$3,375; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

TRD-202000321
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 27, 2020



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 **March 10, 2020**. 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 March 10, 2020**. 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: Anthony Reed; DOCKET NUMBER: 2019-0653-LII-E; TCEQ ID NUMBER: RN110064995; LOCATION: 6302 Hedge Maple Court, Humble, Harris County; TYPE OF FACILITY: irrigation system; RULES VIOLATED: TWC, §37.003, Texas Occupations Code, §1903.251, and 30 TAC §30.5(a), by failing to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system; TWC, §37.003 and 30 TAC §30.5(b), by failing to refrain from advertising or representing to the public that it can perform services for which a license is required unless it holds a current license, or unless it employs an individual who holds a current license; PENALTY: \$1,243; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: FATIMA ALI LLC dba F & A Food Mart; DOCKET NUMBER: 2018-0092-PST-E; TCEQ ID NUMBER: RN101793776; LOCATION: 401 State Highway 110 North, Whitehouse, Smith 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 the pressurized piping associated with the UST system; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$5,394; STAFF ATTORNEY: John S. Mercuriel II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202000322
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 27, 2020



Notice of Public Meeting for TPDES Permit for Municipal Wastewater: New Permit No. WQ0015784001

APPLICATION. HK Real Estate Development LLC, 24607 Fairway Springs, San Antonio, Texas 78260 has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015784001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. TCEQ received this application on April 10, 2019.

The facility will be located approximately 4,600 feet northeast of the intersection of Old Bastrop Road and Staples Road, in Hays County, Texas 78666. The treated effluent will be discharged to an unnamed tributary of the San Marcos River, thence to an unnamed impoundment, thence to John F. Baugh Reservoir, thence to an unnamed tributary of the San Marcos River, thence to Lower San Marcos River in Segment No. 1808 of the Guadalupe River Basin. The unclassified receiving water uses are limited aquatic life use for both the unnamed tributary and unnamed impoundment as well as high aquatic life use for the John F. Baugh Reservoir. The designated uses for Segment No. 1808 are primary contact recreation, public water supply, and high aquatic life use. 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.ar>

cgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bb-ddd360f8168250f&marker=-97.897222%2C29.846666&level=12

In accordance with 30 Texas Administrative Code §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 John F. Baugh Reservoir and the San Marcos River, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT/PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, March 3, 2020 at 7:00 p.m.

Holiday Inn San Marcos

105 Bintu Drive

San Marcos, Texas 78666

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you

need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the San Marcos Public Library, 625 East Hopkins Street, San Marcos, Texas. Further information may also be obtained from HK Real Estate Development LLC at the address stated above or by calling Mr. Daniel Ryan, P.E., LJA Engineering, at (512) 439-4700.

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: January 24, 2020

TRD-202000344

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 29, 2020



Notice of Rate Change to the Low-Level Radioactive Waste Maximum Disposal Rates and Opportunity for a Contested Case Hearing

In a letter dated October 4, 2019, Waste Control Specialists LLC (WCS) submitted a request to the Texas Commission on Environmental Quality (TCEQ or commission) to adjust the maximum disposal rates found in 30 Texas Administrative Code §336.1310 for commercial low-level radioactive waste (LLRW) at the Compact Waste Disposal Facility (CWF) in Andrews County, Texas. The CWF is owned by the state of Texas and operated by WCS. The land disposal facility for LLRW disposal is located at 9998 State Highway 176 West in Andrews County, Texas. The following link to an electronic map of the facility's general location is provided as a public courtesy: <https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.4425&lng=-103.063055&zoom=13&type>.

WCS proposes to reduce the price of the Curie Inventory Charge to offset the expected decrease in the volume of waste received for disposal due to the surcharges on disposal of non-compact waste changing from 16.25% to 31.25% effective September 1, 2019. This proposed rate adjustment will benefit compact generators and is based upon market conditions, historical performance, and operations experience.

The proposed changes to the Disposal Rates for the Compact Waste Disposal Facility are reflected in Figure 1. Note that in the figure, language underlined designates new language, and language struck through designates language to be removed.

Figure 1

Disposal Rate for the Compact Waste Disposal Facility

1. Base Disposal Charge:

1A. Waste Volume Charge: Charge per cubic foot (\$/ft³)

Class A Low-Level Radioactive Waste (LLRW) ~~HLW~~ - \$100

Class B and C LLRW ~~HLW~~: \$1,000

Sources - Class A: \$500

1B. Radioactivity Charge

Curie Inventory Charge (\$/mCi): \$0.05 ~~\$0.40~~

Maximum Curie Charge (per shipment) (excluding C-14): \$220,000/shipment

2. Surcharges to the Base Disposal Charge:

2A. Weight Surcharge - Weight (lbs) of Container: Surcharge (\$/container)

Greater than 50,000 lbs: \$20,000

2B. Dose Rate Surcharge - Surface Dose Rate (R/hour) of Container: Surcharge per cubic foot (\$/ft³)

Greater than 500 R/hour: \$400

2C. Irradiated Hardware Surcharge

Surcharge for special handling per shipment: \$75,000/shipment

OPPORTUNITY FOR A CONTESTED CASE HEARING (CCH).

A CCH is a legal proceeding similar to a civil trial in a state district court. The TCEQ may grant a CCH on this request if a written hearing request is timely submitted by the licensee or a party state compact generator. If the commission receives a timely hearing request from the licensee or a party state compact generator, a hearing will be scheduled to determine if the rate adjustments requested by WCS are fair, just, and reasonable.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST:

your name, mailing address, phone number, a clear and concise statement that you are requesting a CCH, and if you are a compact generator, provide the generator's licensing numbers indicating the location or locations where the compact waste is generated. Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. **All requests should reference Non-Rule Project Number 2020-029-OTH-NR.** Requests must be received by **March 10, 2020**, which is at least 30 days after this notice was published in the *Texas Register*. Generators must initiate a request

for a CCH by filing individual requests rather than joint requests. Following the close of all applicable request periods, if the executive director (ED) receives a hearing request, the ED will directly refer the application to the State Office of Administrative Hearings (SOAH) for a CCH.

EXECUTIVE DIRECTOR ACTION. Unless a hearing request is received from the licensee or an eligible generator, no hearing will be held and the ED will issue final approval of the ED's recommended rates. Upon the commissioners' approval for rulemaking, the final approved rates will be established by rule as the maximum disposal rates for disposal of compact LLRW. If a timely hearing request is filed, the ED will not adopt the revised rates and will forward the matter to SOAH for a hearing.

AGENCY CONTACTS AND INFORMATION. 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. Further information may also be obtained from TCEQ's Radioactive Materials Division, MC-233, P.O. Box 13087, Austin, Texas 78711-3087 or by calling Mr. Ron Thomas, Radioactive Materials Section Manager, at (512) 239-1923.

TRD-202000296

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 24, 2020



Notice of Water Quality Application

The following notice was issued on January 16, 2020.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment for Inteplast Group Corporation to amend the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003477000, which authorizes the discharge of contact cooling water, non-contact cooling water, cooling tower blowdown, reverse osmosis reject and regenerate water, and previously monitored effluent (treated domestic wastewater from Outfall 101) at a daily average flow not to exceed 533,000 gallons per day via Outfall 001, and storm water runoff, raw water from fire water systems, air conditioning condensate, potable water, landscape drainage, and facility (buildings and pavement) washwater on an intermittent and flow-variable basis via Outfalls 002 and 003. The draft permit restores the residual chlorine requirement in Internal Outfall 101. The facility is located at 101 Inteplast Boulevard, near the City of Lolita, in Jackson County, Texas 77971.

TRD-202000345
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 29, 2020



Notice of Water Rights Application

Notice issued January 24, 2019

APPLICATION NO. 13404; The City of Wichita Falls, 1300 7th Street, Wichita Falls, Texas 76307, Applicant, seeks authorization to construct and maintain a 275,000 acre-foot capacity reservoir, Lake Ringgold, on the Little Wichita River, Red River Basin. Applicant also seeks to divert 65,000 acre-feet of water per year from Lake Ringgold for multiple purposes within its service area. Applicant further seeks to use the bed and banks of the Little Wichita River (Lake Arrowhead) to convey return flows and the 65,000 acre-feet of water for subsequent diversion and use. The application and partial fees were received on June 27, 2017. Additional information and fees were received July 7, July 10, and August 7, 2017. The application was declared administratively complete and filed with the Office of the Chief Clerk on August 10, 2017. Additional information was received on October 13, October 16, 2017, October 23, November 16, 2018, and June 4, 2019. The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to, mitigation, monitoring, and accounting plan requirements. The application and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at

the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results. A public meeting is intended for the taking of public comment, and is not a contested case hearing. The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns.

Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202000346
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 29, 2020



Request for Nominations - Water Utility Operator Licensing Advisory Committee (WUOLAC)

The Texas Commission on Environmental Quality (TCEQ or commission) is requesting nominations for a total of seven individuals to serve on the TCEQ Water Utility Operator Licensing Advisory Committee (committee).

The committee membership represents various geographic areas of the state, ethnicities, businesses, governments, associations, and industries. If you have served on this advisory committee, nominated someone, or self-nominated in the past, you may do so again. When members' terms expire, the committee representation changes and individuals with varying backgrounds and geographic locations are needed to fill the vacancies.

The authority for the committee is found in 30 TAC Chapter 5, Advisory Committees and Groups. The 13-member committee's sole duty is to advise the commission regarding water and wastewater operator licensing and training issues and facilitate communication between the commission and the water and wastewater utility industries. The main objectives are to: 1) review training and educational materials to promote quality education and training; 2) review Job Task Analysis exam

validations and advise and assist regarding licensing requirements; 3) assist with the review of rules, regulations, guidance documents, and policy statements; 4) represent a diversity of viewpoints; and 5) promote interaction with outside organizations.

All appointments will be made by the TCEQ commissioners. The committee meets, as needed, usually four times a year. Meetings are held at the TCEQ offices located at 12100 Park 35 Circle in Austin, Texas, and last approximately two to four hours. No financial compensation is available. Additional information regarding the Committee is available at the following website: https://www.tceq.texas.gov/licensing/groups/wuoc_comm.html.

To nominate an individual or to self-nominate, download and complete the Water Utility Operator Licensing Advisory Committee application from our website (previously listed), or contact us directly to request an application be mailed to you. You may submit a resume in addition to the application, but not in lieu of the application.

DEADLINE: Completed applications must be received at TCEQ by 5:00 p.m. on March 10, 2020. Applications may be delivered by email to licenses@tceq.texas.gov with the Subject line "WUOLAC Nomination"; faxed to (512) 239-6272; or via United States mail to: Training Specialist, Occupational Licensing Section, MC 178, Texas Commission on Environmental Quality, P.O. Box 13087, Austin Texas, 78711-3087.

TRD-202000295
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 24, 2020



Update to the Water Quality Management Plan (WQMP)

The Texas Commission on Environmental Quality (TCEQ or commission) requests comments from the public on the draft January 2020 Update to the WQMP for the State of Texas.

Download the draft January 2020 WQMP Update at https://www.tceq.texas.gov/permitting/wqmp/WQmanagement_updates.html or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

The WQMP is developed and promulgated in accordance with the requirements of Federal Clean Water Act, §208. The draft update includes projected effluent limits of specific domestic dischargers, which may be useful for planning in future permit actions. The draft update may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load revisions.

Once the commission certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

Deadline

All comments must be received at the TCEQ no later than **5:00 p.m. March 10, 2020**.

How to Submit Comments

Comments must be submitted in writing to:

Nancy Vignali

Texas Commission on Environmental Quality

Water Quality Division, MC 150

P.O. Box 13087

Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420, but must be followed up with written comments by mail within three working days of the fax date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at Nancy.Vignali@tceq.texas.gov.

TRD-202000332

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: January 28, 2020



General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 13, 2020, to January 24, 2020. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, January 31, 2020. The public comment period for this project will close at 5:00 p.m. on Sunday March 1, 2020.

FEDERAL AGENCY ACTIONS:

Applicant: Prestige Oysters

Location: The project site is located on the south bank of the Gulf Intracoastal Waterway (GIWW) on the west side of Farm-to-Market Road 2031, in Matagorda, Matagorda County, Texas.

Latitude & Longitude (NAD 83): 28.685648, -95.965536

Project Description: The applicant proposes to develop a commercial dock facility by excavating a marina in uplands bordered by the construction of a bulkhead and a 25-foot-wide concrete work area around the perimeter of the marina. The marina will be excavated to -10 feet Mean High Tide (MHT). An entrance channel connecting the marina to the GIWW will be excavated to the equivalent depth in the GIWW. All improvements will be placed above the MHT line on the site except for the entrance channel. No structures or fill will be placed in the GIWW and only excavation of the entrance channel will extend below the MHT line into the GIWW. Approximately 375 cubic yards of material will be removed below the MHT. All dredged material will be placed on site.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2019-00189. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act and Section 404 of the Clean Water Act. Note: The consistency review for this project

may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 20-1125-F1

Applicant: Chevron Phillips Chemical Company LP

Location: The project site is located in Cow Bayou, adjacent wetlands, and in unnamed jurisdictional tributaries, on a tract of land south of the intersection of Western Avenue and Foreman Road, in Orange, Orange County, Texas.

Latitude & Longitude (NAD 83): 30.065863, -93.784248

Project Description: The applicant proposes to discharge approximately 506,403.63 cubic yards of earthen and concrete fill material into approximately 284.19 acres of wetlands to construct a petrochemical facility. The applicant proposed to temporarily impact 0.88 acres of wetlands.

The entire project site is approximately 1,810 acres in size. Construction will include the following features: Ethane Cracking Unit; Polyethylene Units; Rail and Truck Loading/Unloading; Storage in Transit Rail Yard; Wastewater Treatment Plant; Wastewater outfall and pipe; Borrow Pit; Office Buildings; Facility Access Roads; Storm Water Management Features; Pipeline Metering Station; Utilities; Construction Support Facilities - Laydown Areas, Contractor Service Areas, Parking and Access Roads, Barge slip, Dock, and Heavy Haul Road.

The construction barge slip is proposed to be excavated from uplands, and mechanically dredged in a section of Cow Bayou. The slip is proposed to be 75-foot-wide and 260-foot-long and dredged to a depth of -12.89 feet below mean lower low water, with a 2-foot overdrudge. A 500-foot sheet pile bulkhead will be constructed at the shoreline, around the edge of the slip. Approximately 21,298 cubic yards of material, will be dredged from Cow Bayou. Approximately 10,914 cubic yards of fill, will be excavated from uplands to construct the barge slip. No maintenance dredging is proposed. Dredged material will initially be placed into an onshore decant area to dewater. Once dewatered, the material will be placed in a dredge material placement area on the CP Chem site, if it is suitable for placement. If it is not suitable for placement, it will be transported to an authorized disposal facility.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2018-00957. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 20-1077-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202000350

Mark A. Havens

Chief Clerk and Deputy Land Commissioner
General Land Office

Filed: January 29, 2020

Official Notice to Vessel Owner/Operator

Authority

This preliminary report and notice of violation was issued by the Deputy Director, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on October 18, 2018.

Facts

Based on an investigation conducted by Texas General Land Office-Region 2 staff on October 18, 2018, the Commissioner of the General Land Office (GLO), has determined that an approximately 77' fiberglass recreational vessel identified as GLO Vessel Tracking Number 2-1770 is in a wrecked, derelict and substantially dismantled condition without the consent of the commissioner. The vessel is located north of the Surfside bridge, Freeport, TX. The last registered owner(s) of this vessel is unknown. The GLO determined that pursuant to OSPRA §40.254(b)(2)(B), that the vessel does not have intrinsic value. The GLO has also determined that, because of the vessel's location and condition, the vessel poses a THREAT TO NAVIGATION HAZARD AND A THREAT TO PUBLIC HEALTH, SAFETY, OR WELFARE.

Violation

YOU ARE HEREBY GIVEN NOTICE, pursuant to the provisions of § 40.254 of the Texas Natural Resources Code, (OSPRA) that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in an actual or threatened unauthorized discharge of oil; a threat to the public health, safety, and welfare; a threat to the environment; or a navigational hazard. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Deputy Director has determined that the person(s) responsible for abandoning this vessel (GLO Tracking Number 2-1770) is unknown and recommends that the Commissioner order the abandoned vessel be disposed of in accordance with OSPRA §40.108.

The owner or operator of this vessel can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, TX 78711. Failure to request a hearing may result in the removal and disposal of the vessel by the GLO. If the GLO removes and disposes of the vessel, the GLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator. For additional information contact (512) 463-2613.

TRD-202000333

Mark A. Havens

Chief Clerk and Deputy Land Commissioner
General Land Office

Filed: January 28, 2020

Health and Human Services Commission

Criminal History Requirements for Child Care Operations

(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 charts are not included in the print version of the Texas Register. The figures are

available in the on-line version of the February 7, 2020, issue of the *Texas Register*.)

26 TAC §745.661 (relating to What types of criminal convictions may affect a person's ability to be present at an operation?) states that the three charts listed in subsection (a) of the section will be updated annually and published every January for public comment in the *Texas Register* as an "In Addition" document. Questions or comments about the content of the proposed changes may be directed to Child Care Licensing's Centralized Background Check Unit at cbcubackgroundchecks@hhsc.state.tx.us. Written comments may be submitted to:

Neva Ward, CBCU Program Specialist

Child Care Licensing, Health and Human Services Commission

P.O. Box 149030

Mail Code 121-7

Austin, Texas 78714-9030

Any comments must be received within 30 days of publication in the *Texas Register*.

The three charts are entitled: (1) Licensed or Certified Child Care Operations: Criminal History Requirements; (2) Foster or Adoptive Placements: Criminal History Requirements; and (3) Registered Child Care Homes and Listed Family Homes: Criminal History Requirements. Each chart has three parts to it: an introduction that explains the types of operations each chart covers, defines certain terms used in the chart, and clarifies certain assumptions; a Table of Contents; and the actual chart.

There have been changes made to each chart, which include: (1) Updating the Table of Contents and Headings based on changes; (2) Adding newly implemented Penal Code offenses and associated presence requirements to all three charts based on the 86th Legislature, Regular Session, 2019: Sections 20.07 "Operation Of A Stash House," 21.19 "Unlawful Electronic Transmission Of Sexually Explicit Visual Material," 22.012 "Indecent Assault" 31.20 "Mail Theft," 32.315 "Fraudulent Use Or Possession Of Credit Card Or Debit Card Information," 37.082 "Misrepresenting Child As Family Member At Port Of Entry," 43.031 "Online Promotion Of Prostitution," and 43.041 "Aggravated Online Promotion Of Prostitution;" (3) Adding a newly implemented Texas Education Code offense and associated presence requirements to all three charts based on the 86th Legislature, Regular Session, 2019: Section 51.255 "Failure To Report Or False Report; Offenses;" (4) Updating the following Penal Code offenses on all three charts based on the 86th Legislature, Regular Session, 2019: Sections 25.07 "Violation of Certain Court Orders or Conditions of Bond in a Family Violence, Child Abuse or Neglect, Sexual Assault or Abuse, Indecent Assault, Stalking, or Trafficking Case," 25.072 "Repeated Violation of Certain Court Orders or Conditions of Bond in Family Violence, Child Abuse or Neglect, Sexual Assault or Abuse, Indecent Assault, Stalking, or Trafficking Case," and 35A.02 "Health Care Fraud;" (5) Adding the following Penal Code offenses and presence requirements to all three charts based on Child Care Licensing's review and assessment: Sections 42.062 "Interfere with Emergency Request for Assistance" and 46.05 "Prohibited Weapons;" (6) Revising the presence requirements to the *Licensed or Certified Child Care Operations: Criminal History Requirements* and the *Registered Child Care Homes and Listed Family Homes: Criminal History Requirements* charts for the following Penal Code offenses based on Child Care Licensing's review and assessment and changes made during the 86th Legislature, Regular Session, 2019: Sections 43.02 "Prostitution" and 43.03 "Promotion of Prostitution;" (7) Adding a footnote regarding Texas Penal Code sections 43.03 and 43.031 to clarify that if the crime involves a person under the age of 18, the offense is an absolute bar and a risk evaluation is never available;

(8) Changing Title 40 to Title 26 as appropriate; (9) correcting references to 42 USC 9858f.658H in applicable footnotes on the *Licensed or Certified Child Care Operations: Criminal History Requirements* and the *Registered Child Care Homes and Listed Family Homes: Criminal History Requirements* charts; and (10) Removing a footnote to indicate future change from Title 40 to Title 26.

Figure 1: Licensed or Certified Child Care Operations: Criminal History Requirements

Figure 2: Foster or Adoptive Placements: Criminal History Requirements

Figure 3: Registered Child Care Homes and Listed Family Homes: Criminal History Requirements

TRD-202000347

Karen Ray

Chief Counsel

Health and Human Services Commission

Filed: January 29, 2020



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Long Acting Reversible Contraceptives (LARCs) Fee Review

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 21, 2020, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Long Acting Reversible Contraceptives (LARCs) Fee Review.

The public hearing will be held in the HHSC Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing; the broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the LARCs Fee Review are proposed to be effective April 1, 2020.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps);

§355.8581, which addresses the reimbursement methodology for Family Planning Services; and

§355.8641, which addresses the reimbursement methodology for the Women's Health Program.

Briefing Packet. A briefing packet describing the proposed payments rates will be available at <https://rad.hhs.texas.gov/rate-packets> on or after February 7, 2020. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing packet will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202000356

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: January 29, 2020



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Continuous Glucose Monitoring

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 21, 2020, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Continuous Glucose Monitoring.

The public hearing will be held in the HHSC Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing; the broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medical Policy Review of Continuous Glucose Monitoring are proposed to be effective April 1, 2020.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code, §355.8023, which addresses the reimbursement methodology for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS).

Briefing Packet. A briefing packet describing the proposed payment rates will be available at <https://rad.hhs.texas.gov/rate-packets> on or after February 7, 2020. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing packet will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475;

or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202000353

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: January 29, 2020



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Fetal Magnetic Resonance Imaging (MRI)

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 21, 2020, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Fetal Magnetic Resonance Imaging (MRI).

The public hearing will be held in the HHSC Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing; the broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medical Policy Review of Fetal MRI are proposed to be effective April 1, 2020.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8061, which addresses outpatient hospital reimbursement;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Briefing Packet. A briefing packet describing the proposed payments rates will be available at <https://rad.hhs.texas.gov/rate-packets> on or after February 7, 2020. Interested parties may obtain a copy of the briefing packet prior on or after that date by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing packet will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas

Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202000355

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: January 29, 2020



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Percutaneous Liver Biopsy

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 21, 2020, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Percutaneous Liver Biopsy.

The public hearing will be held in the HHSC Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing; the broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medical Policy Review of Percutaneous Liver Biopsy are proposed to be effective April 1, 2020.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Briefing Packet. A briefing packet describing the proposed payment rates will be available at <https://rad.hhs.texas.gov/rate-packets> on or after February 7, 2020. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing packet will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202000357

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: January 29, 2020



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Quarterly Healthcare Common Procedure Coding System (HCPCS) Updates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 21, 2020, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Quarterly Healthcare Common Procedure Coding System (HCPCS) Updates.

The public hearing will be held in the HHSC Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing; the broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Quarterly HCPCS Updates are proposed to be effective April 1, 2020.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Briefing Packet. A briefing packet describing the proposed payments rates will be available at <https://rad.hhs.texas.gov/rate-packets> on or after February 7, 2020. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing packet will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-

7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202000354

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: January 29, 2020

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Department of State Health Services

Correction of Error

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopted amendments to 25 TAC §133.41 in the January 24, 2020, issue of the *Texas Register* (45 TexReg 556). Due to an error by the *Texas Register*, the text of subsection (o) was published incorrectly. The text of the subsection should have been published as follows:

(o) Nursing services. The hospital shall have an organized nursing service that provides 24-hour nursing services as needed.

(1) Organization. The hospital shall have a well-organized service with a plan of administrative authority and delineation of responsibilities for patient care.

(A) Nursing services shall be under the administrative authority of a chief nursing officer (CNO) who shall be an RN and comply with one of the following:

(i) possess a master's degree in nursing;

(ii) possess a master's degree in health care administration or business administration;

(iii) possess a master's degree in a health-related field obtained through a curriculum that included courses in administration and management; or

(iv) be progressing under a written plan to obtain the nursing administration qualifications associated with a master's degree in nursing. The plan shall:

(I) describe efforts to obtain the knowledge associated with graduate education and to increase administrative and management skills and experience;

(II) include courses related to leadership, administration, management, performance improvement and theoretical approaches to delivering nursing care; and

(III) provide a time-line for accomplishing skills.

(B) The CNO in hospitals with 100 or fewer licensed beds and located in counties with a population of less than 50,000, or in hospitals that have been certified by the Centers for Medicare and Medicaid Services as critical access hospitals in accordance with the Code of Federal Regulations, Title 42, Volume 3, Part 485, Subpart F, §485.606(b), shall be exempted from the requirements in subparagraph (A)(i) - (iv) of this paragraph.

(C) The CNO shall be responsible for the operation of the services, including determining the types and numbers of nursing personnel and staff necessary to provide nursing care for all areas of the hospital.

(D) The CNO shall report directly to the individual who has authority to represent the hospital and who is responsible for the operation of the hospital according to the policies and procedures of the hospital's governing board.

(E) The CNO shall participate with leadership from the governing body, medical staff, and clinical areas, in planning, promoting and conducting performance improvement activities.

(2) Staffing and delivery of care.

(A) The nursing services shall adopt, implement and enforce a procedure to verify that hospital nursing personnel for whom licensure is required have valid and current licensure.

(B) There shall be adequate numbers of RNs, licensed vocational nurses (LVNs), and other personnel to provide nursing care to all patients as needed.

(C) There shall be supervisory and staff personnel for each department or nursing unit to provide, when needed, the immediate availability of an RN to provide care for any patient.

(D) An RN shall be on duty in each building of a licensed hospital that contains at least one nursing unit where patients are present. The RN shall supervise and evaluate the nursing care for each patient and assign the nursing care to other nursing personnel in accordance with the patient's needs and the specialized qualifications and competence of the nursing staff available.

(E) The nursing staff shall develop and keep current a nursing plan of care for each patient which addresses the patient's needs.

(F) The hospital shall establish a nurse staffing committee as a standing committee of the hospital. The committee shall be established in accordance with Health and Safety Code (HSC), §§161.031 - 161.033, to be responsible for soliciting and receiving input from nurses on the development, ongoing monitoring, and evaluation of the staffing plan. As provided by HSC, §161.032, the hospital's records and review relating to evaluation of these outcomes and indicators are confidential and not subject to disclosure under Government Code, Chapter 552 and not subject to disclosure, discovery, subpoena or other means of legal compulsion for their release. As used in this subsection, "committee" or "staffing committee" means a nurse staffing committee established under this subparagraph.

(i) The committee shall be composed of:

(I) at least 60% registered nurses who are involved in direct patient care at least 50% of their work time and selected by their peers who provide direct care during at least 50% of their work time;

(II) at least one representative from either infection control, quality assessment and performance improvement or risk management;

(III) members who are representative of the types of nursing services provided at the hospital; and

(IV) the chief nursing officer of the hospital who is a voting member.

(ii) Participation on the committee by a hospital employee as a committee member shall be part of the employee's work time and the hospital shall compensate that member for that time accordingly. The hospital shall relieve the committee member of other work duties during committee meetings.

(iii) The committee shall meet at least quarterly.

(iv) The responsibilities of the committee shall be to:

(I) develop and recommend to the hospital's governing body a nurse staffing plan that meets the requirements of subparagraph (G) of this paragraph;

(II) review, assess and respond to staffing concerns expressed to the committee;

(III) identify the nurse-sensitive outcome measures the committee will use to evaluate the effectiveness of the official nurse services staffing plan;

(IV) evaluate, at least semiannually, the effectiveness of the official nurse services staffing plan and variations between the plan and the actual staffing; and

(V) submit to the hospital's governing body, at least semiannually, a report on nurse staffing and patient care outcomes, including the committee's evaluation of the effectiveness of the official nurse services staffing plan and aggregate variations between the staffing plan and actual staffing.

(G) The hospital shall adopt, implement and enforce a written official nurse services staffing plan. As used in this subsection, "patient care unit" means a unit or area of a hospital in which registered nurses provide patient care.

(i) The official nurse services staffing plan and policies shall:

(I) require significant consideration to be given to the nurse staffing plan recommended by the hospital's nurse staffing committee and the committee's evaluation of any existing plan;

(II) be based on the needs of each patient care unit and shift and on evidence relating to patient care needs;

(III) require use of the official nurse services staffing plan as a component in setting the nurse staffing budget;

(IV) encourage nurses to provide input to the nurse staffing committee relating to nurse staffing concerns;

(V) protect from retaliation nurses who provide input to the nurse staffing committee; and

(VI) comply with subsection (o) of this section.

(ii) The plan shall:

(I) set minimum staffing levels for patient care units that are:

(-a-) based on multiple nurse and patient considerations including:

(-1-) patient characteristics and number of patients for whom care is being provided, including number of admissions, discharges and transfers on a unit;

(-2-) intensity of patient care being provided and variability of patient care across a nursing unit;

(-3-) scope of services provided;

(-4-) context within which care is provided, including architecture and geography of the environment, and the availability of technology; and

(-5-) nursing staff characteristics, including staff consistency and tenure, preparation and experience, and the number and competencies of clinical and non-clinical support staff the nurse must collaborate with or supervise.

(-b-) determined by the nursing assessment and in accordance with evidence-based safe nursing standards; and

(-c-) recalculated at least annually, or as necessary;

(II) include a method for adjusting the staffing plan shift to shift for each patient care unit based on factors, such as, the intensity of patient care to provide staffing flexibility to meet patient needs;

(III) include a contingency plan when patient care needs unexpectedly exceed direct patient care staff resources;

(IV) include how on-call time will be used;

(V) reflect current standards established by private accreditation organizations, governmental entities, national nursing professional associations, and other health professional organizations and should be developed based upon a review of the codes of ethics developed by the nursing profession through national nursing organizations;

(VI) include a mechanism for evaluating the effectiveness of the official nurse services staffing plan based on patient needs, nursing sensitive quality indicators, nurse satisfaction measures collected by the hospital and evidence based nurse staffing standards. At least one from each of the following three types of outcomes shall be correlated to the adequacy of staffing:

(-a-) nurse-sensitive patient outcomes selected by the nurse staffing committee, such as, patient falls, adverse drug events, injuries to patients, skin breakdown, pneumonia, infection rates, upper gastrointestinal bleeding, shock, cardiac arrest, length of stay, or patient readmissions;

(-b-) operational outcomes, such as, work-related injury or illness, vacancy and turnover rates, nursing care hours per patient day, on-call use, or overtime rates; and

(-c-) substantiated patient complaints related to staffing levels;

(VII) incorporate a process that facilitates the timely and effective identification of concerns about the adequacy of the staffing plan by the nurse staffing committee established pursuant to subparagraph (F) of this paragraph. This process shall include:

(-a-) a prohibition on retaliation for reporting concerns;

(-b-) a requirement that nurses report concerns timely through appropriate channels within the hospital;

(-c-) orientation of nurses on how to report concerns and to whom;

(-d-) encouraging nurses to provide input to the committee relating to nurse staffing concerns;

(-e-) review, assessment, and response by the committee to staffing concerns expressed to the committee;

(-f-) a process for providing feedback during the committee meeting on how concerns are addressed by the committee established under subparagraph (F) of this paragraph; and

(-g-) use of the nurse safe harbor peer review process pursuant to Occupations Code, §303.005;

(VIII) include policies and procedures that require:

(-a-) orientation of nurses and other personnel who provide nursing care to all patient care units to which they are assigned on either a temporary or permanent basis;

(-b-) that the orientation of nurses and other personnel and the competency to perform nursing services is documented in accordance with hospital policy;

(-c-) that nursing assignments be congruent with documented competency; and

(IX) be used by the hospital as a component in setting the nurse staffing budget and guiding the hospital in assigning nurses hospital wide.

(iii) The hospital shall make readily available to nurses on each patient care unit at the beginning of each shift the official nurse services staffing plan levels and current staffing levels for that unit and that shift.

(iv) There shall be a semiannual evaluation by the staffing committee of the effectiveness of the official nurse services staffing plan and variations between the staffing plan and actual staffing. The evaluation shall consider the outcomes and nursing-sensitive indicators as set

out in clause (ii)(VI) of this subparagraph, patient needs, nurse satisfaction measures collected by the hospital, and evidence based nurse staffing standards. This evaluation shall be documented in the minutes of the committee established under subparagraph (F) of this paragraph and presented to the hospital's governing body. Hospitals may determine whether this evaluation is done on a unit or facility level basis. To assist the committee with the semiannual evaluation, the hospital shall report to the committee the variations between the staffing plan and actual staffing. This report of variations shall be confidential and not subject to disclosure under Government Code, Chapter 552 and not subject to disclosure, discovery, subpoena or other means of legal compulsion for their release.

(v) The staffing plan shall be retained for a period of two years.

(H) Nonemployee licensed nurses who are working in the hospital shall adhere to the policies and procedures of the hospital. The CNO shall provide for the adequate orientation, supervision, and evaluation of the clinical activities of nonemployee nursing personnel which occur within the responsibility of the nursing services.

(I) The hospital shall annually report to the department on:

(i) whether the hospital's governing body has adopted a nurse staffing policy;

(ii) whether the hospital has established a nurse staffing committee that meets the membership requirements of subparagraph (F) of this paragraph;

(iii) whether the nurse staffing committee has evaluated the hospital's official nurse services staffing plan and has reported the results of the evaluation to the hospital's governing body; and

(iv) the nurse-sensitive outcome measures the committee adopted for use in evaluating the hospital's official nurse services staffing plan.

(3) Mandatory overtime. The hospital shall adopt, implement and enforce policies on use of mandatory overtime.

(A) As used in this subsection:

(i) "on-call time" means time spent by a nurse who is not working but who is compensated for availability; and

(ii) "mandatory overtime" means a requirement that a nurse work hours or days that are in addition to the hours or days scheduled, regardless of the length of a scheduled shift or the number of scheduled shifts each week. Mandatory overtime does not include prescheduled on-call time or time immediately before or after a scheduled shift necessary to document or communicate patient status to ensure patient safety.

(B) A hospital may not require a nurse to work mandatory overtime, and a nurse may refuse to work mandatory overtime.

(C) This section does not prohibit a nurse from volunteering to work overtime.

(D) A hospital may not use on-call time as a substitute for mandatory overtime.

(E) The prohibitions on mandatory overtime do not apply if:

(i) a health care disaster, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affects the county in which the nurse is employed or affects a contiguous county;

(ii) a federal, state, or county declaration of emergency is in effect in the county in which the nurse is employed or is in effect in a contiguous county;

(iii) there is an emergency or unforeseen event of a kind that:

(I) does not regularly occur;

(II) increases the need for health care personnel at the hospital to provide safe patient care; and

(III) could not prudently be anticipated by the hospital; or

(iv) the nurse is actively engaged in an ongoing medical or surgical procedure and the continued presence of the nurse through the completion of the procedure is necessary to ensure the health and safety of the patient. The nurse staffing committee shall ensure that scheduling a nurse for a procedure that could be anticipated to require the nurse to stay beyond the end of his or her scheduled shift does not constitute mandatory overtime.

(F) If a hospital determines that an exception exists under subparagraph (E) of this paragraph, the hospital shall, to the extent possible, make and document a good faith effort to meet the staffing need through voluntary overtime, including calling per diems and agency nurses, assigning floats, or requesting an additional day of work from off-duty employees.

(G) A hospital may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to work mandatory overtime.

(4) Drugs and biologicals. Drugs and biologicals shall be prepared and administered in accordance with federal and state laws, the orders of the individuals granted privileges by the medical staff, and accepted standards of practice.

(A) All drugs and biologicals shall be administered by, or under supervision of, nursing or other personnel in accordance with federal and state laws and regulations, including applicable licensing rules, and in accordance with the approved medical staff policies and procedures.

(B) All orders for drugs and biologicals shall be in writing, dated, timed, and signed by the individual responsible for the care of the patient as specified under subsection (f)(6)(A) of this section. When telephone or verbal orders must be used, they shall be:

(i) accepted only by personnel who are authorized to do so by the medical staff policies and procedures, consistent with federal and state laws;

(ii) dated, timed, and authenticated within 96 hours by the prescriber or another practitioner who is responsible for the care of the patient and has been credentialed by the medical staff and granted privileges which are consistent with the written orders; and

(iii) used infrequently.

(C) There shall be a hospital procedure for immediately reporting transfusion reactions, adverse drug reactions, and errors in administration of drugs to the attending physician and, if appropriate, to the hospital-wide quality assessment and performance improvement program.

(5) Blood transfusions.

(A) Transfusions shall be prescribed in accordance with hospital policy and administered in accordance with a written protocol for the administration of blood and blood components and the use of infusion devices and ancillary equipment.

(B) Personnel administering blood transfusions and intravenous medications shall have special training for this duty according to written, adopted, implemented and enforced hospital policy.

(C) Blood and blood components shall be transfused through a sterile, pyrogen-free transfusion set that has a filter designed to retain particles potentially harmful to the recipient.

(D) The patient must be observed during the transfusion and for an appropriate time thereafter for suspected adverse reactions.

(E) Pretransfusion and posttransfusion vital signs shall be recorded.

(F) When warming of blood is indicated, this shall be accomplished during its passage through the transfusion set. The warming system shall be equipped with a visible thermometer and may have an audible warning system. Blood shall not be warmed above 42 degrees Celsius.

(G) Drugs or medications, including those intended for intravenous use, shall not be added to blood or blood components. A 0.9% sodium chloride injection, United States Pharmacopeia, may be added to blood or blood components. Other solutions intended for intravenous use may be used in an administration set or added to blood or blood components under either of the following conditions:

(i) they have been approved for this use by the Federal Drug Administration; or

(ii) there is documentation available to show that addition to the component involved is safe and efficacious.

(H) There shall be a system for detection, reporting and evaluation of suspected complications of transfusion. Any adverse event experienced by a patient in association with a transfusion is to be regarded as a suspected transfusion complication. In the event of a suspected transfusion complication, the personnel attending the patient shall notify immediately a responsible physician and the transfusion service and document the complication in the patient's medical record. All suspected transfusion complications shall be evaluated promptly according to an established procedure.

(I) Following the transfusion, the blood transfusion record or a copy shall be made a part of the patient's medical record.

(6) Reporting and peer review of a vocational or registered nurse. A hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with the Occupations Code §§301.401 - 301.403, 301.405 and Chapter 303 (relating to Grounds for Reporting Nurse, Duty of Nurse to Report, Duty of Peer Review Committee to Report, Duty of Person Employing Nurse to Report, and Nursing Peer Review respectively), and with the rules adopted by the Board of Nurse Examiners in 22 TAC §217.16 (relating to Minor Incidents), §217.19 (relating to Incident-Based Nursing Peer Review and Whistleblower Protections), and §217.20 (relating to Safe Harbor Peer Review for Nurses and Whistleblower Protections).

(7) Policies and procedures related to workplace safety.

(A) The hospital shall adopt, implement and enforce policies and procedures related to the work environment for nurses which:

(i) improve workplace safety and reduce the risk of injury, occupational illness, and violence; and

(ii) increase the use of ergonomic principles and ergonomically designed devices to reduce injury and fatigue.

(B) The policies and procedures adopted under subparagraph (A) of this paragraph, at a minimum, must include:

(i) evaluating new products and technology that incorporate ergonomic principles;

(ii) educating nurses in the application of ergonomic practices;

(iii) conducting workplace audits to identify areas of risk of injury, occupational illness, or violence and recommending ways to reduce those risks;

(iv) controlling access to those areas identified as having a high risk of violence; and

(v) promptly reporting crimes committed against nurses to appropriate law enforcement agencies.

(8) Safe patient handling and movement practices.

(A) The hospital shall adopt, implement and enforce policies and procedures to identify, assess, and develop strategies to control risk of injury to patients and nurses associated with the lifting, transferring, repositioning, or movement of a patient.

(B) The policies and procedures shall establish a process that, at a minimum, includes the following:

(i) analysis of the risk of injury to both patients and nurses posed by the patient handling needs of the patient populations served by the hospital and the physical environment in which patient handling and movement occurs;

(ii) education of nurses in the identification, assessment, and control of risks of injury to patients and nurses during patient handling;

(iii) evaluation of alternative ways to reduce risks associated with patient handling, including evaluation of equipment and the environment;

(iv) restriction, to the extent feasible with existing equipment and aids, of manual patient handling or movement of all or most of a patient's weight to emergency, life-threatening, or otherwise exceptional circumstances;

(v) collaboration with and annual report to the nurse staffing committee;

(vi) procedures for nurses to refuse to perform or be involved in patient handling or movement that the nurse believes in good faith will expose a patient or a nurse to an unacceptable risk of injury;

(vii) submission of an annual report to the governing body on activities related to the identification, assessment, and development of strategies to control risk of injury to patients and nurses associated with the lifting, transferring, repositioning, or movement of a patient; and

(viii) development of architectural plans for constructing or remodeling a hospital or a unit of a hospital in which patient handling and movement occurs, with consideration of the feasibility of incorporating patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date.

TRD-202000330



Order Placing Cyclopropyl Fentanyl, Methoxyacetyl Fentanyl, *ortho*-Fluorofentanyl and *para*-Fluorobutyryl Fentanyl Including Their Isomers, Esters, Ethers, Salts, and Salts of Isomers, Esters and Ethers, into Schedule I

The Acting Administrator of the Drug Enforcement Administration maintains the placement of the substances cyclopropyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopropanecarboxamide), methoxyacetyl fentanyl (2-methoxy-*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide), *ortho*-fluorofentanyl (*N*-(2-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide), and *para*-fluorobutyryl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide), including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers, in schedule I of the Controlled Substances Act (CSA) effective October 25, 2019. This final order was published in the *Federal Register*, Volume 84, Number 207, pages 57323-57326. This order was based on the following:

1. Cyclopropyl fentanyl, methoxyacetyl fentanyl, *ortho*-fluorofentanyl and *para*-fluorobutyryl fentanyl were added to schedule I of the CSA in response to the United States' obligation to similarly control a substance placed into schedule I of the Single Convention on Narcotic Drugs (1961); and

2. Cyclopropyl fentanyl, methoxyacetyl fentanyl, *ortho*-fluorofentanyl and *para*-fluorobutyryl fentanyl have no currently accepted medical use in treatment in the United States.

Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the *Federal Register*. In the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., does hereby order that the substances cyclopropyl fentanyl, methoxyacetyl fentanyl, *ortho*-fluorofentanyl and *para*-fluorobutyryl fentanyl be placed permanently into schedule I. Additionally, schedule I temporarily listed substances are re-numbered to reflect the change.

- Schedule I opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetyl-*alpha*-methylfentanyl (*N*-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-*N*-phenylacetamide);
- (2) Acetylmethadol;
- (3) Acetyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide);
- (4) Acryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacrylamide) (Other name: acryloylfentanyl);
- (5) AH-7921 (3,4-dichloro-*N*-[1-(dimethylamino) cyclohexymethyl]benzamide);
- (6) Allylprodine;
- (7) Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-*alpha*-acetylmethadol, levomethadyl acetate, or LAAM);
- (8) *alpha*-methylfentanyl or any other derivative of fentanyl;
- (9) *alpha*-methylthiofentanyl (*N*-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl] *N*-phenylpropanamide);
- (10) Benzethidine;
- (11) *beta*-hydroxyfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-*N*-phenylpropanamide);
- (12) *beta*-hydroxy-3-methylfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-*N*-phenylpropanamide);
- (13) *beta*-hydroxythiofentanyl (Other names: *N*-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-*N*-phenylpropanamide or *N*-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-*N*-phenylpropanamide);
- (14) Betaprodine;
- (15) Butyryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylbutanamide);
- (16) Clonitazene;
- * (17) Cyclopropyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopropanecarboxamide);
- (18) Diampromide;
- (19) Diethylthiambutene;
- (20) Difenoxin;
- (21) Dimenoxadol;

- (22) Dimethylthiambutene;
- (23) Dioxaphetyl butyrate;
- (24) Dipipanone;
- (25) Ethylmethylthiambutene;
- (26) Etonitazene;
- (27) Etoxadrine;
- (28) 4-Fluoroisobutyryl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide) (Other name: *para*-fluoroisobutyryl fentanyl);
- (29) Furanyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylfuran-2-carboxamide);
- (30) Furethidine;
- (31) Hydroxypethidine;
- (32) Ketobemidone;
- (33) Levophenacymorphan;
- (34) Meprodine;
- (35) Methadol;
- * (36) Methoxyacetyl fentanyl (2-methoxy-*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide);
- (37) 3-methylfentanyl (*N*-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-*N*-phenylpropanamide);
- (38) 3-methylthiofentanyl (*N*-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide);
- (39) Moramide;
- (40) Morpheridine;
- (41) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (42) MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine);
- (43) Noracymethadol;
- (44) Norlevorphanol;
- (45) Normethadone;
- (46) Norpipanone;
- (47) Ocfentanil (*N*-(2-fluorophenyl)-2-methoxy-*N*-(1-phenethylpiperidin-4-yl)acetamide);
- * (48) *ortho*-fluorofentanyl (*N*-(2-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide) (Other name: 2-fluorofentanyl);
- * (49) *para*-fluorobutyryl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide);
- (50) *para*-fluorofentanyl (*N*-(4-fluorophenyl)-*N*-[1-(2-phenethyl)-4-piperidinyl] propanamide);
- (51) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- (52) Phenadoxone;
- (53) Phenampromide;
- (54) Phencyclidine;
- (55) Phenomorphan;
- (56) Phenoperidine;
- (57) Piritramide;

- (58) Proheptazine;
- (59) Properidine;
- (60) Propiram;
- (61) Tetrahydrofuranyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenyltetrahydrofuran-2-carboxamide);
- (62) Thiofentanyl (*N*-phenyl-*N*-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
- (63) Tilidine;
- (64) Trimeperidine; and
- (65) U-47700 (3,4-dichloro-*N*-[2-(dimethylamino)cyclohexyl]-*N*-methylbenzamide).

-Schedule I temporarily listed substances subject to emergency scheduling by the United States Drug Enforcement Administration.

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's salts, isomers, optical, positional, and geometric isomers, esters, ethers, and salts of isomers, esters and ethers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation.

- (1) methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-ADB, 5F-MDMB-PINACA);
- (2) methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate (Other names: 5F-AMB);
- (3) *N*-(adamantan-1-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other names: 5F-APINACA, 5F-AKB48);
- (4) *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other names: ADB-FUBINACA);
- (5) methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: MDMB-CHMICA, MMB-CHMINACA);
- (6) methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: MDMB-FUBINACA);
- (7) methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate (Other names: FUB-AMB, MMB-FUBINACA, AMB-FUBINACA);
- (8) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylpentanamide (Other name: valeryl fentanyl);
- (9) *N*-(4-methoxyphenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide (Other name: *para*-methoxybutyryl fentanyl);
- (10) *N*-(4-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide (Other name: *para*-chloroisobutyryl fentanyl);
- (11) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylisobutyramide (Other name: isobutyryl fentanyl);
- (12) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopentanecarboxamide (Other name: cyclopentyl fentanyl);
- (13) Fentanyl-related substances.

(13-1) Fentanyl-related substance means any substance not otherwise listed under another Administration Controlled Substance Code Number, and for which no exemption or approval is in effect under section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355], that is structurally related to fentanyl by one or more of the following modifications:

- (13-1-1) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;
- (13-1-2) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxy, hydroxyl, halo, haloalkyl, amino or nitro groups;
- (13-1-3) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxy, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;
- (13-1-4) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or
- (13-1-5) Replacement of the *N*-propionyl group by another acyl group;
- (13-2) This definition includes, but is not limited to, the following substances:
- (13-2-1) *N*-(1-(2-fluorophenethyl)piperidin-4-yl)-*N*-(2-fluorophenyl)propionamide (2'-fluoro *ortho*-fluorofentanyl);
- (13-2-2) *N*-(2-methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)acetamide (*ortho*-methyl acetylfentanyl);
- (13-2-3) *N*-(1-phenethylpiperidin-4-yl)-*N*,3-diphenylpropanamide (*beta*'-phenyl fentanyl, hydrocinnamoyl fentanyl);
- (13-2-4) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylthiophene-2-carboxamide (thiofuranyl fentanyl);
- (13-2-5) (*E*)-*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylbut-2-enamide (crotonyl fentanyl);
- (14) Naphthalen-1-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (Other name: NM2201, CBL2201);
- (15) *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other name: 5F-AB-PINACA);
- (16) 1-(4-cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 4-CN-CUMYL-BUTINACA, 4-cyano-CUMYL-BUTINACA, 4-CN-CUMYL BINACA, CUMYL-4CN-BINACA; SGT-78);
- (17) methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate (Other names: MMB-CHMICA, AMB-CHMICA);
- (18) 1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-*b*]pyridine-3-carboxamide (Other name: 5F-CUMYL-P7AICA);
- (19) *N*-ethylpentylone (Other names: ephylone, 1-(1,3-benzodioxil-5-yl)-2-(ethylamino)-pentan-1-one);
- (20) ethyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5FEDMB-PINACA);
- (21) methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-MDMB-PICA);
- (22) *N*-(adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other names: FUB-AKB48, FUB-APINACA), AKB48 *N*-(4-FLUOROBENZYL));
- (23) 1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 5F-CUMYL-PINACA, SGT-25);
- (24) (1-(4-fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other name: FUB-144);
- (25) *N*-ethylhexedrone (Other name: 2-(ethylamino)-1-phenylhexan-1-one);

(26) *alpha*-pyrrolidinohexanophenone (Other names: *alpha*-PHP, *alpha*-pyrrolidinohexiophenone, 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one);

(27) 4-methyl-*alpha*-ethylaminopentiophenone (Other names: 4-MEAP, 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one);

(28) 4-methyl-*alpha*-pyrrolidinohexiophenone (Other names: MPHP, 4'-methyl-*alpha*-pyrrolidinohexanophenone, 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one);

(29) *alpha*-pyrrolidinoheptaphenone (Other names: PV8, 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one); and

(30) 4-chloro-*alpha*-pyrrolidinovalerophenone (Other names: 4-chloro-*alpha*-PVP, 4-chloro-*alpha*-pyrrolidinopentiophenone, 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one).

Changes are marked by an asterisk(*)

TRD-202000360

Barbara L. Klein

General Counsel

Department of State Health Services

Filed: January 29, 2020

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Texas Higher Education Coordinating Board

Notice of Public Hearing - State of Texas College Student Loan Bonds and State of Texas College Student Loan Refunding Bonds

NOTICE IS HEREBY GIVEN of a public hearing to be held by the Texas Higher Education Coordinating Board (the "Issuer") on February 19, 2020, at 9:00 a.m., at the offices of the Issuer, 1200 East Anderson Lane, Room 1.170/Board Room, Austin, Texas, 78752, with respect to the issuance by the Issuer of one or more series of State of Texas College Student Loan Bonds ("Loan Bonds") and State of Texas College Student Loan Refunding Bonds ("Refunding Bonds") (collectively, the "Bonds") in an aggregate amount of not more than (i) \$140,000,000 in Loan Bonds, the proceeds of which will be used by the Issuer to originate student loans to student borrowers at eligible institutions of higher education in the State of Texas under Chapter 52, Texas Education Code (the "Loan Program") and (ii) \$90,000,000 in Refunding Bonds, the proceeds of which will be used by the Issuer to refund certain student loan bonds that were previously issued by the Issuer for the Loan Program to achieve a debt service savings. Descriptions of the Loan Program, the Bonds and the particular bonds to be refunded have been and will be kept on file at the office of the Issuer at the address set forth above. The Bonds will be general obligations of the State of Texas.

All interested persons are invited to attend such public hearing to express their views with respect to the Loan Program and the proposed issuance of the Bonds. Questions or requests for additional information may be directed to Ken Martin, Assistant Commissioner - Financial Services/Chief Financial Officer, 1200 East Anderson Lane, Austin, Texas, 78752.

Persons who plan to attend are encouraged, in advance of the public hearing, to inform the Issuer either in writing or by telephone at (512) 427-6173. Any interested persons unable to attend the hearing may submit their views in writing to the Issuer prior to the date scheduled for the hearing.

This notice is published and the above described hearing is to be held in satisfaction of the requirements of section 147(f) of the Internal Revenue Code of 1986, as amended, regarding the public hearing prerequi-

site to the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

Individuals who may require auxiliary aids or services should contact Glenn Tramel, ADA Coordinator, at (512) 427-6193 at least five days before the meeting so that appropriate arrangements can be made.

Texas Penal Code Section 46.035(c) states: "A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, in the room or rooms where a meeting of a governmental entity is held and if the meeting is an open meeting subject to Chapter 551, Government Code, and the entity provided notice as required by that chapter." Thus, no person can carry a handgun and enter the room or rooms where a meeting of the THECB is held if the meeting is an open meeting subject to Chapter 551, Government Code.

Please Note that this governmental meeting is, in the opinion of counsel representing THECB, an open meeting subject to Chapter 551, Government Code and THECB is providing notice of this meeting as required by Chapter 551. In addition, please note that the written communication required by Texas Penal Code Sections 30.06 and 30.07, prohibiting both concealed and open carry of handguns by Government Code Chapter 411 licensees, will be posted at the entrances to this governmental meeting.

TRD-202000294

William Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: January 24, 2020

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Texas Department of Housing and Community Affairs

Notice of Public Hearing: Multifamily Housing Revenue Bonds, FishPond at Corpus Christi Apartments

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at the Corpus Christi Public Library - La Retama Branch, 805 Comanche Street, Corpus Christi, Texas 78401 at 4:00 p.m. on February 25, 2020. The hearing is regarding an issue of tax-exempt bonds in an aggregate principal amount not to exceed \$10,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The Bonds will be issued as exempt facility bonds for a qualified residential rental project (the "Development") pursuant to section 142(a)(7) of the Internal Revenue Code of 1986, as amended (the "Code"). The Development will be known as FishPond at Corpus Christi Apartments and will be located at 1006 Sixth Street, Nueces County, Corpus Christi, Texas 78404. The initial legal owner and principal user of the Development will be Fish Pond Living at Corpus Christi, LP, a Texas limited partnership, or a related person or affiliate thereof.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Shannon Roth at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3929; and/or shannon.roth@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Shannon Roth in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their

views in writing to Shannon Roth prior to the date scheduled for the hearing. Individuals who require a language interpreter for the public hearing should contact Elena Peinado at (512) 475-3814 at least five days prior to the hearing date so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this hearing should contact Shannon Roth, ADA Responsible Employee, at (512) 475-3929 or Relay Texas at (800) 735-2989 at least five days before the hearing so that appropriate arrangements can be made.

This notice is published and the hearing is to be held in satisfaction of the requirements of section 147(f) of the Code.

<http://www.tdhca.state.tx.us/multifamily/communities.htm>

TRD-202000334
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 28, 2020



Notice of Public Hearing: Multifamily Housing Revenue Bonds, Oaks on Clark Apartments

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at the City of San Antonio Public Library McCreless Branch, 1023 Ada Street, San Antonio, Texas 78223 at 6:00 PM on March 5, 2020. The hearing is regarding an issue of tax-exempt bonds in an aggregate principal amount not to exceed \$12,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The Bonds will be issued as exempt facility bonds for a qualified residential rental project (the "Development") pursuant to section 142(a)(7) of the Internal Revenue Code of 1986, as amended (the "Code"). The Development will be known as Oaks on Clark and will be located at 4622 Clark Avenue, San Antonio, Bexar County, Texas 78223. The initial legal owner and principal user of the Development will be THF Oaks on Clark, LP, a Texas limited partnership, or a related person or affiliate thereof.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Shannon Roth, at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3929; and/or shannon.roth@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Shannon Roth in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Shannon Roth prior to the date scheduled for the hearing. Individuals who require a language interpreter for the public hearing should contact Elena Peinado at (512) 475-3814 at least five days prior to the hearing date so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this hearing should contact Shannon Roth, ADA Responsible Employee, at (512) 475-3929 or Relay Texas at (800) 735-2989 at least five days before the hearing so that appropriate arrangements can be made.

This notice is published and the hearing is to be held in satisfaction of the requirements of section 147(f) of the Code.

<http://www.tdhca.state.tx.us/multifamily/communities.htm>

TRD-202000335
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 28, 2020



Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for Westlake Specialty Insurance Company, a domestic fire and/or casualty company. The home office is in Austin, Texas.

Application for incorporation in the state of Texas for DHI Title Insurance Company, a domestic title company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202000349
James Person
General Counsel
Texas Department of Insurance
Filed: January 29, 2020



Texas Lottery Commission

Scratch Ticket Game Number 2209 "\$250 MILLION CASH PARTY"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2209 is "\$250 MILLION CASH PARTY". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2209 shall be \$30.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2209.

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, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, 30X SYMBOL, \$30.00, \$50.00, \$100, \$300, \$500, \$3,000, \$30,000 and \$3,000,000.

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. 2209 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON

42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY
2X SYMBOL	WINX2
5X SYMBOL	WINX5
10X SYMBOL	WINX10
30X SYMBOL	WINX30
\$30.00	TRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$300	THHN
\$500	FVHN
\$3,000	THTH
\$30,000	30 TH
\$3,000,000	TPPZ

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 (2209), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2209-0000001-001.

H. Pack - A Pack of the "\$250 MILLION CASH PARTY" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$250 MILLION CASH PARTY" Scratch Ticket Game No. 2209.

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 "\$250 MILLION CASH PARTY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eighty-one (81) Play Symbols. BONUS PLAY AREA: If the player reveals 3 matching BONUS prize amounts, the player wins that amount. MAIN PLAY AREA: If the player's YOUR NUMBER Play Symbol matches the WINNING NUMBER Play Symbol in the same ROW across, the player wins the PRIZE for that ROW. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the PRIZE for that ROW. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that ROW. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that ROW. If the player reveals a "30X" Play Symbol, the player wins 30 TIMES the PRIZE for that ROW. 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 eighty-one (81) 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 eighty-one (81) 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 eighty-one (81) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eighty-one (81) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to twenty (20) times.

D. GENERAL: On winning and Non-Winning Tickets, the top cash prizes of \$3,000, \$30,000 and \$3,000,000 will each appear at least once.

E. BONUS PLAY AREA: A Ticket can win up to one (1) time in the BONUS play area.

F. BONUS PLAY AREA: Non-Winning Tickets will not contain more than two (2) matching Prize Symbols.

G. BONUS PLAY AREA: The "2X" (WINX2), "5X" (WINX5), "10X" (WINX10), and "30X" (WINX30) Play Symbols will never appear in this play area.

H. MAIN PLAY AREA: A Ticket can win up to twenty (20) times in the main play area.

I. MAIN PLAY AREA: If a Ticket wins twenty (20) times in the main play area, it will not win in the BONUS pay area.

J. MAIN PLAY AREA: No matching non-winning YOUR NUMBER Play Symbols will appear on a Ticket.

K. MAIN PLAY AREA: Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

L. MAIN PLAY AREA: On all Tickets, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.

M. MAIN PLAY AREA: No matching WINNING NUMBER Play Symbols will appear on a Ticket.

N. MAIN PLAY AREA: On all Tickets, a WINNING NUMBER Play Symbol will not match a YOUR NUMBER Play Symbol from a different ROW.

O. MAIN PLAY AREA: YOUR NUMBER Play Symbols will never equal the corresponding Prize Symbol (i.e., 50 and \$50).

P. MAIN PLAY AREA: The "2X" (WINX2) Play Symbol will never appear as a WINNING NUMBER Play Symbol.

Q. MAIN PLAY AREA: The "2X" (WINX2) Play Symbol will never appear on a Non-Winning Ticket.

R. MAIN PLAY AREA: The "2X" (WINX2) Play Symbol will win DOUBLE the PRIZE for that ROW as indicated by the prize structure.

S. MAIN PLAY AREA: The "2X" (WINX2) Play Symbol will never appear more than twice on a Ticket.

T. MAIN PLAY AREA: The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBER Play Symbol.

U. MAIN PLAY AREA: The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

V. MAIN PLAY AREA: The "5X" (WINX5) Play Symbol will win 5 TIMES the PRIZE for that ROW as indicated by the prize structure.

W. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBER Play Symbol.

X. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

Y. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will win 10 TIMES the PRIZE for that ROW as indicated by the prize structure.

Z. MAIN PLAY AREA: The "30X" (WINX30) Play Symbol will never appear as a WINNING NUMBER Play Symbol.

AA. MAIN PLAY AREA: The "30X" (WINX30) Play Symbol will never appear on a Non-Winning Ticket.

BB. MAIN PLAY AREA: The "30X" (WINX30) Play Symbol will win 30 TIMES the PRIZE for that ROW as indicated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$250 MILLION CASH PARTY" Scratch Ticket Game prize of \$30.00, \$50.00, \$100, \$150, \$300 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$100, \$150, \$300 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with

a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$250 MILLION CASH PARTY" Scratch Ticket Game prize of \$3,000 or \$30,000, the claimant must sign the winning Scratch Ticket and may 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. To claim a "\$250 MILLION CASH PARTY" Scratch Ticket Game top level prize of \$3,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers in Austin, Dallas, Fort Worth, Houston or San Antonio, Texas. 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 and proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Alien). 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.

D. As an alternative method of claiming a "\$250 MILLION CASH PARTY" Scratch Ticket Game prize, including the top level prize of \$3,000,000, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If claiming a top prize of \$3,000,000, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all 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.

E. 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.

F. 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 "\$250 MILLION CASH PARTY" 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 "\$250 MILLION CASH PARTY" 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 12,000,000 Scratch Tickets in Scratch Ticket Game No. 2209. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2209 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$30	1,560,000	7.69
\$50	840,000	14.29
\$100	600,000	20.00
\$150	288,000	41.67
\$300	160,000	75.00
\$500	30,000	400.00
\$3,000	600	20,000.00
\$30,000	50	240,000.00
\$3,000,000	4	3,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.45. 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. 2209 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. 2209, 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-202000342

Bob Biard

General Counsel

Texas Lottery Commission

Filed: January 28, 2020



Scratch Ticket Game Number 2245 "MILLION DOLLAR LOTERIA"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2245 is "MILLION DOLLAR LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2245 shall be \$20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2245.

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:

THE ARMADILLO SYMBOL, THE BAT SYMBOL, THE BICYCLE SYMBOL, THE BLUEBONNET SYMBOL, THE BOAR SYMBOL, THE BUTTERFLY SYMBOL, THE CACTUS SYMBOL, THE CARDINAL SYMBOL, THE CHERRIES SYMBOL, THE CHILE PEPPER SYMBOL, THE CORN SYMBOL, THE COVERED WAGON SYMBOL, THE COW SYMBOL, THE COWBOY SYMBOL, THE COWBOY HAT SYMBOL, THE DESERT SYMBOL, THE FIRE SYMBOL, THE FOOTBALL SYMBOL, THE GEM SYMBOL, THE GUITAR SYMBOL, THE HEN SYMBOL, THE HORSE SYMBOL, THE HORSESHOE SYMBOL, THE JACKRABBIT SYMBOL, THE LIZARD SYMBOL, THE LONE STAR SYMBOL, THE MARACAS SYMBOL, THE MOCKINGBIRD SYMBOL, THE MOONRISE SYMBOL, THE MORTAR PESTLE SYMBOL, THE NEWSPAPER SYMBOL, THE OIL RIG SYMBOL, THE PECAN TREE SYMBOL, THE PIÑATA SYMBOL, THE RACE CAR SYMBOL, THE RATTLESNAKE SYMBOL, THE ROADRUNNER SYMBOL, THE SADDLE SYMBOL, THE SHIP SYMBOL, THE SHOES SYMBOL, THE SOCCERBALL SYMBOL, THE SPEAR SYMBOL, THE SPUR SYMBOL, THE STRAWBERRY SYMBOL, THE SUNSET SYMBOL, THE WHEEL SYMBOL, THE WINDMILL SYMBOL, CHECK SYMBOL, COINS SYMBOL, HEART SYMBOL, MONEYBAG SYMBOL, STAR SYMBOL, ARMORED CAR SYMBOL, BANK SYMBOL, GOLD BAR SYMBOL, STACK OF BILLS SYMBOL, VAULT SYMBOL, \$10.00, \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$200, \$500, \$1,000, \$5,000, \$20,000 and \$1,000,000.

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. 2245 - 1.2D

PLAY SYMBOL	CAPTION
THE ARMADILLO SYMBOL	THEARMADILLO
THE BAT SYMBOL	THE BAT
THE BICYCLE SYMBOL	THE BICYCLE
THE BLUEBONNET SYMBOL	THEBLUEBONNET
THE BOAR SYMBOL	THE BOAR
THE BUTTERFLY SYMBOL	THEBUTTERFLY
THE CACTUS SYMBOL	THE CACTUS
THE CARDINAL SYMBOL	THECARDINAL
THE CHERRIES SYMBOL	THECHERRIES
THE CHILE PEPPER SYMBOL	THECHILEPEPPER
THE CORN SYMBOL	THE CORN
THE COVERED WAGON SYMBOL	THECOVEREDWAGON
THE COW SYMBOL	THE COW
THE COWBOY SYMBOL	THECOWBOY
THE COWBOY HAT SYMBOL	THECOWBOYHAT
THE DESERT SYMBOL	THE DESERT
THE FIRE SYMBOL	THE FIRE
THE FOOTBALL SYMBOL	THEFOOTBALL
THE GEM SYMBOL	THE GEM
THE GUITAR SYMBOL	THE GUITAR
THE HEN SYMBOL	THE HEN
THE HORSE SYMBOL	THE HORSE
THE HORSESHOE SYMBOL	THEHORSESHOE
THE JACKRABBIT SYMBOL	THEJACKRABBIT
THE LIZARD SYMBOL	THELIZARD
THE LONE STAR SYMBOL	THELONESTAR
THE MARACAS SYMBOL	THEMARACAS
THE MOCKINGBIRD SYMBOL	THEMOCKINGBIRD
THE MOONRISE SYMBOL	THE MOONRISE
THE MORTAR PESTLE SYMBOL	THEMORTARPESTLE
THE NEWSPAPER SYMBOL	THENEWSPAPER
THE OIL RIG SYMBOL	THEOILRIG

THE PECAN TREE SYMBOL	THEPECANTREE
THE PIÑATA SYMBOL	THE PIÑATA
THE RACE CAR SYMBOL	THERACECAR
THE RATTLESNAKE SYMBOL	THERATTLESNAKE
THE ROADRUNNER SYMBOL	THEROADRUNNER
THE SADDLE SYMBOL	THESADDLE
THE SHIP SYMBOL	THE SHIP
THE SHOES SYMBOL	THE SHOES
THE SOCCERBALL SYMBOL	THESOCCERBALL
THE SPEAR SYMBOL	THE SPEAR
THE SPUR SYMBOL	THE SPUR
THE STRAWBERRY SYMBOL	THESTRAWBERRY
THE SUNSET SYMBOL	THE SUNSET
THE WHEEL SYMBOL	THE WHEEL
THE WINDMILL SYMBOL	THEWINDMILL
CHECK SYMBOL	CHECK
COINS SYMBOL	COINS
HEART SYMBOL	HEART
MONEYBAG SYMBOL	MONEYBAG
STAR SYMBOL	STAR
ARMORED CAR SYMBOL	ARMCAR
BANK SYMBOL	BANK
GOLD BAR SYMBOL	GOLD BAR
STACK OF BILLS SYMBOL	STACKOFBILLS
VAULT SYMBOL	VAULT
\$10.00	TEN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$40.00	FRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH

\$5,000	FVTH
\$20,000	20TH
\$1,000,000	TPPZ

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 (2245), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2245-0000001-001.

H. Pack - A Pack of the "MILLION DOLLAR LOTERIA" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "MILLION DOLLAR LOTERIA" Scratch Ticket Game No. 2245.

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 "MILLION DOLLAR LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 78 (seventy-eight) Play Symbols. PLAYBOARD 1: 1) The player scratches the CALLER'S CARD area to reveal 27 symbols. 2) The player scratches ONLY the symbols on the PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. 3) If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. PLAYBOARD 2: The player scratches ONLY the symbols on each PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals all 4 symbols in a column, the player wins the PRIZE for that column. PLAY AREA 3 (BONUS GAMES): The player scratches ONLY the symbols on the BONUS GAMES that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals 2 symbols in any one GAME, the player wins the PRIZE for the GAME. PLAY AREA 4 (BONUS): If the player reveals 2 matching symbols in the BONUS \$100, the player wins \$100. If the player reveals 2 matching symbols in the BONUS \$200, the player

wins \$200. TABLA DE JUEGO 2: El jugador SOLAMENTE raspa los símbolos en cada de las TABLAS DE JUEGO que son exactamente iguales a los símbolos revelados in la CARTA DEL GRITÓN. Si el jugador revela todos los 4 símbolos en una columna, el jugador gana el PREMIO para esa columna. ÁREA DE JUEGO 3 (JUEGOS DE BONO): El jugador SOLAMENTE raspa los símbolos en los JUEGOS DE BONO que son exactamente iguales a los símbolos revelados in la CARTA DEL GRITÓN. Si el jugador revela 2 símbolos en un mismo JUEGO, el jugador gana el PREMIO para ese JUEGO. ÁREA DE JUEGO 4 (BONO): Si el jugador revela 2 símbolos iguales en el área de BONO \$100, el jugador gana \$100. Si el jugador revela 2 símbolos iguales en el área de BONO \$200, el jugador gana \$200. 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:

- Exactly 78 (seventy-eight) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
- 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;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The Scratch Ticket shall be intact;
- The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
- The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- The Scratch Ticket must not be counterfeit in whole or in part;
- The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
- 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;
- The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
- The Scratch Ticket must be complete and not miscut, and have exactly 78 (seventy-eight) 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;
- 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 78 (seventy-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 78 (seventy-eight) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to fourteen (14) times in accordance with the approved prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. PLAYBOARD 1/TABLA DE JUEGO 1: No matching Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

D. PLAYBOARD 1/TABLA DE JUEGO 1: At least eight (8) but no more than twelve (12) CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will match a Play Symbol on the PLAYBOARD 1/TABLA DE JUEGO 1 play area.

E. PLAYBOARD 1/TABLA DE JUEGO 1: CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will have a random distribution on the Ticket, unless restricted by other parameters, play action or prize structure.

F. PLAYBOARD 1/TABLA DE JUEGO 1: No matching Play Symbols are allowed on the same PLAYBOARD 1/TABLA DE JUEGO 1 play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "MILLION DOLLAR LOTERIA" Scratch Ticket Game prize of \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$150, \$200, \$250 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch

Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$40.00, \$50.00, \$100, \$150, \$200, \$250 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MILLION DOLLAR LOTERIA" Scratch Ticket Game prize of \$1,000, \$5,000, \$20,000 or \$1,000,000, 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 "MILLION DOLLAR LOTERIA" 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 lia-

bility 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 "MILLION DOLLAR LOTERIA" 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 "MILLION DOLLAR LOTERIA" 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 12,000,000 Scratch Tickets in Scratch Ticket Game No. 2245. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2245 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$20	1,440,000	8.33
\$30	840,000	14.29
\$40	240,000	50.00
\$50	480,000	25.00
\$100	472,000	25.42
\$150	96,000	125.00
\$200	62,900	190.78
\$250	31,200	384.62
\$500	5,600	2,142.86
\$1,000	800	15,000.00
\$5,000	160	75,000.00
\$20,000	20	600,000.00
\$1,000,000	6	2,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.27. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2245 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. 2245, 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-202000327

Bob Biard

General Counsel

Texas Lottery Commission

Filed: January 27, 2020



North Central Texas Council of Governments

Request for Proposals for the Harry Hines Boulevard Corridor Study

The North Central Texas Council of Governments (NCTCOG), in coordination with the City of Dallas, is requesting written proposals from consulting firms to produce a transportation master plan for Harry Hines Boulevard from Loop 12 to downtown Dallas.

The purpose of the study is to develop a plan to modernize and define the Harry Hines corridor by improving connectivity, accessibility, and safety. Various transportation elements such as number of lanes, sidewalks, bicycle accommodations, transit, automated transportation systems (e.g., people mover), automated vehicles, access management, and parking management will be considered. The goal is to provide multimodal transportation options for all users, support existing and future land uses, enhance the environmental quality and definition of the corridor, and the incorporation of technology. The study will include community/stakeholder outreach, conceptual design, traffic operations modeling, urban design, and cost estimates. The anticipated result will be a corridor plan to guide future transportation investments and development of the corridor.

Proposals must be received no later than 5:00 p.m., Central Standard Time, on Friday, March 6, 2020, to Berrien Barks, Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. The Request for Proposals will be available at www.nctcog.org/rfp by the close of business on Friday, February 7, 2020.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202000339

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: January 28, 2020



Texas Parks and Wildlife Department

Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit

Camp Mystic, Inc. has applied to the Texas Parks and Wildlife Department (TPWD) for a General Permit pursuant to Texas Parks and Wildlife Code, Chapter 86 to remove or disturb approximately 100 cubic yards of sedimentary material within Cypress Creek, a tributary of South Fork Guadalupe River between the Seago Crossing and Mystic Crossing, in Kerr County. The purpose is to build a swim dock and pedestrian walkway. The location is approximately 0.75 miles upstream from the confluence of Cypress Creek with the South Fork Guadalupe River. Notice is being published pursuant to 31 TAC 69.105(d).

TPWD will hold a public comment hearing regarding the application at 11:00 a.m. on February 21, 2020, at TPWD headquarters, 4200 Smith School Road, Austin, TX 78744. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comments will be accepted at the hearing.

Written comments may also be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register* or a newspaper, whichever is later. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: Tom Heger, TPWD, by mail: 4200 Smith School Road, Austin, TX 78744; fax (512) 389-4405; or e-mail tom.heger@tpwd.texas.gov.

TRD-202000286

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Filed: January 23, 2020



Plateau Water Planning Group

Vacancy Notice - Public Interest (Bandera-Kerr-Real Counties)

Please be advised that the Plateau Water Planning Group (PWPG), Region "J" is currently seeking nominations to fill one vacancy on the Regional Planning Group. This vacancy represents the "Public" interests. The PWPG and Texas Water Development Board (TWDB) believe it is important to maintain balanced geographic representation on the PWPG. Please note that the referenced vacancy is for Bandera, Kerr or Real County. However, residents of all counties are encouraged to submit applications. Geographic distribution will be taken into account during selection.

The Plateau Water Planning Group is a voluntary organization, and no funds are available for reimbursement of expenses associated with service to or participation in the planning group. Successful nominees must represent the vacant interest ("Public") for which the member is sought, be willing to actively participate in the regional water planning process and abide by the PWPG By-Laws. Written nominations must be filed with the Plateau Water Planning Group at the address listed below no later than April 17, 2020.

Submit written nominations to:

Plateau Water Planning Group (PWPG)

Attention: Mr. Gene Williams

c/o: Jody Grinstead

700 Main Street, Ste. 101

Kerrville, TX 78028

Fax: (830) 792-2218

E-Mail: jgrinstead@co.kerr.tx.us

If you have any questions regarding the nomination process or requirements for nominations, please contact Jonathan Letz at (830) 792-2216.

TRD-202000320

Jonathan Letz

PWPG Chairman

Plateau Water Planning Group

Filed: January 24, 2020



Public Utility Commission of Texas

Notice of Application to Adjust High Cost Support Under 16 TAC §26.407(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on January 27, 2020, to adjust the high-cost support it receives from the Small and Rural Incumbent Local Exchange Company Universal Service Plan without effect to its current rates.

Docket Title and Number: Application of Industry Telephone Company to Adjust High Cost Support under 16 Texas Administrative Code §26.407(h), Docket Number 50486.

Industry Telephone Company requests a high-cost support adjustment increase of \$334,392. The requested adjustment complies with the cap of 140% of the annualized support the provider received in the 12 months ending June 1, 2019, as required by 16 Texas Administrative Code §26.407(g)(1).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 as a deadline to intervene may be imposed. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 50486.

TRD-202000343

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Filed: January 29, 2020



South Plains Association of Governments

Llano Estacado Regional Water Planning Group Public Notice of Solicitation of Nominations

Regional Water Planning in the State of Texas is the local process which guides conservation and water projects. The Regional Water Plans, upon approval by the Texas Water Development Board (TWDB), are used to help develop the State Water Plan, which guides state funding of water projects.

The South Plains Association of Governments (SPAG), is the designated political subdivision (Administrative Agency) approved by the Llano Estacado Regional Water Planning Group (LERWPG) and encompasses the following counties: Bailey, Briscoe, Castro, Cochran, Crosby, Dawson, Deaf Smith, Dickens, Floyd, Gaines, Garza, Hale,

Hockley, Lamb, Lubbock, Lynn, Motley, Parmer, Swisher, Terry, and Yoakum.

Notice is hereby given that the Llano Estacado Regional Water Planning Group (LERWPG) is soliciting nominations for persons to serve as voting members on the Llano Estacado RWPG representing **Agriculture (2 memberships available), Municipalities (medium) 10-30,000, Water Districts, and Water Utilities.** The selected representatives will serve the remainder of a five-year term ending December 31, 2025, and will be eligible to re-apply for the following five-year term.

–**Agriculture (2 memberships available)**, defined as those persons or entities associated with production or processing of plant or animal products.

–**Municipalities (medium) Pop. 10-30,000**, defined as governments of cities created or organized under the general, home-rule, or special laws of the state.

–**Water Districts**, defined as any districts or authorities, created under authority of either Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including districts having the authority to regulate the spacing of or production from water wells, but not including river authorities.

–**Water Utilities**, defined as any persons, corporations, cooperative corporations, or any combination thereof that provide water supplies for compensation except for municipalities, river authorities, or water districts.

To qualify for voting membership on the Llano Estacado Regional Water Planning Group (LERWPG), nominees must represent the interest group category for which a member is sought within the Region O planning area, be willing to participate in the regional water planning process, and abide by the Bylaws of Llano Estacado RWPG.

Deadline for submission of nominations is Friday, February 7, 2020. A nomination packet for candidates should include a cover letter from the nominee explaining how the nominee is qualified to serve on the LERWPG, a resume, and a minimum of two (and a maximum of six) letters of support. At least one support letter should be from a member of the Llano Estacado RWPG. Appointment of a voting member to represent the above mentioned interest may be considered by the Llano Estacado RWPG at a future meeting as determined by the RWPG.

Nominations may be mailed or emailed. For more information, or to submit nominations, please contact the administrative agency:

South Plains Association of Governments

Attention: Kelly Davila

P.O. Box 3730

Lubbock, Texas 79452

(806) 762-8721

kdavila@spag.org

TRD-202000328

Kelly Davila

Director of Regional Services and Economic Development

South Plains Association of Governments

Filed: January 27, 2020



Supreme Court of Texas

IN THE SUPREME COURT OF TEXAS

=====
Misc. Docket No. 20-9011
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ORDER AMENDING TEXAS RULE OF EVIDENCE 103(c)
=====

ORDERED that:

1. The Court approves the following amendments to Rule 103(c) of the Texas Rules of Evidence.
2. The amendments take effect June 1, 2020.
3. The amendments may be changed before June 1, 2020 in response to public comments. Written comments should be sent to rulescomments@txcourts.gov. The Court requests that comments be sent by May 1, 2020.
4. The Clerk is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this order to each elected member of the Legislature; and
 - d. submit a copy of the order for publication in the *Texas Register*.

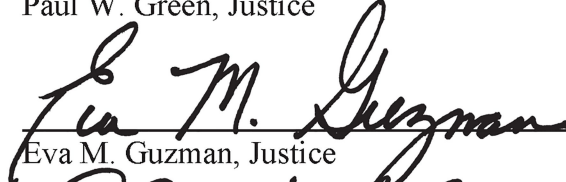
Dated: January 22, 2020




Nathan L. Hecht, Chief Justice



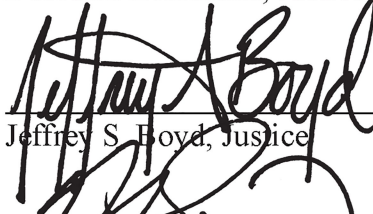
Paul W. Green, Justice



Eva M. Guzman, Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice

Rule 103. Rulings on Evidence

- (c) **Court's Statement About the Ruling; Directing an Offer of Proof.** The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court must allow a party to make an offer of proof outside the jury's presence as soon as practicable.— In a jury trial, the court must allow a party to make the offer outside the jury's presence and before the court reads its charge to the jury. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. At a party's request, the court must direct that an offer of proof be made in question-and-answer form. Or the court may do so on its own.

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Texas Department of Transportation

Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Monday, February 24, 2020, at 10:00 a.m. at 118 East Riverside Drive, First Floor, Room 1B.A in Austin, Texas to receive public comments on the February 2020 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2019-2022.

The STIP reflects the federally funded transportation projects in the FY 2019-2022 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Dallas-Fort Worth, El Paso, Houston and San Antonio. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed February 2020 Quarterly Revisions to the FY 2019-2022 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the

department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5003, and on the department's website at: <http://www.txdot.gov/government/programs/stips.html>.

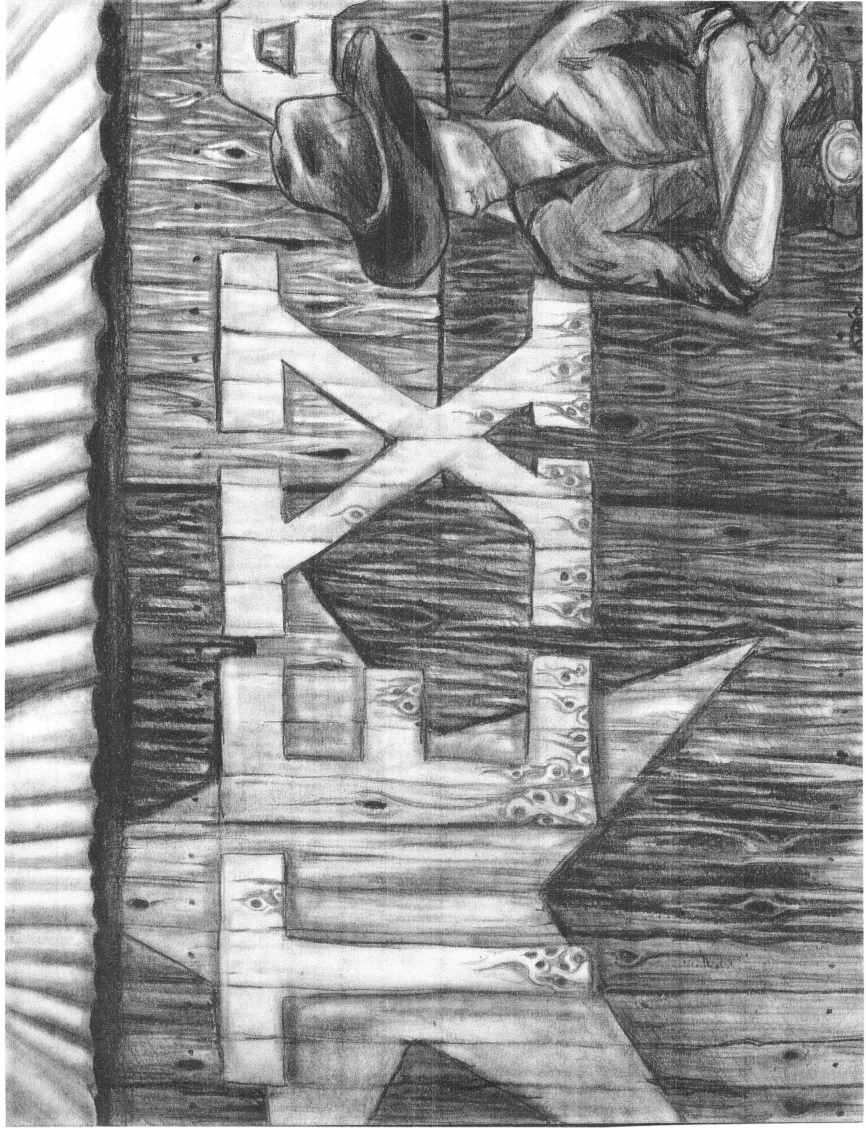
Persons wishing to speak at the hearing may register in advance by notifying Angela Erwin, Transportation Planning and Programming Division, at (512) 416-2187 no later than Friday, February 21, 2020, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

The public hearing will be conducted in English. Persons who have special communication or accommodation needs and who plan to attend the hearing are encouraged to contact the Transportation Planning and Programming Division, at 118 East Riverside Drive Austin, Texas 78704-1205, (512) 486-5003. Requests should be made at least three working days prior to the public hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed February 2020 Quarterly Revisions to the FY 2019-2022 STIP to Peter Smith, P.E., Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, March 9, 2020.

TRD-202000300
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: January 24, 2020

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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
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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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