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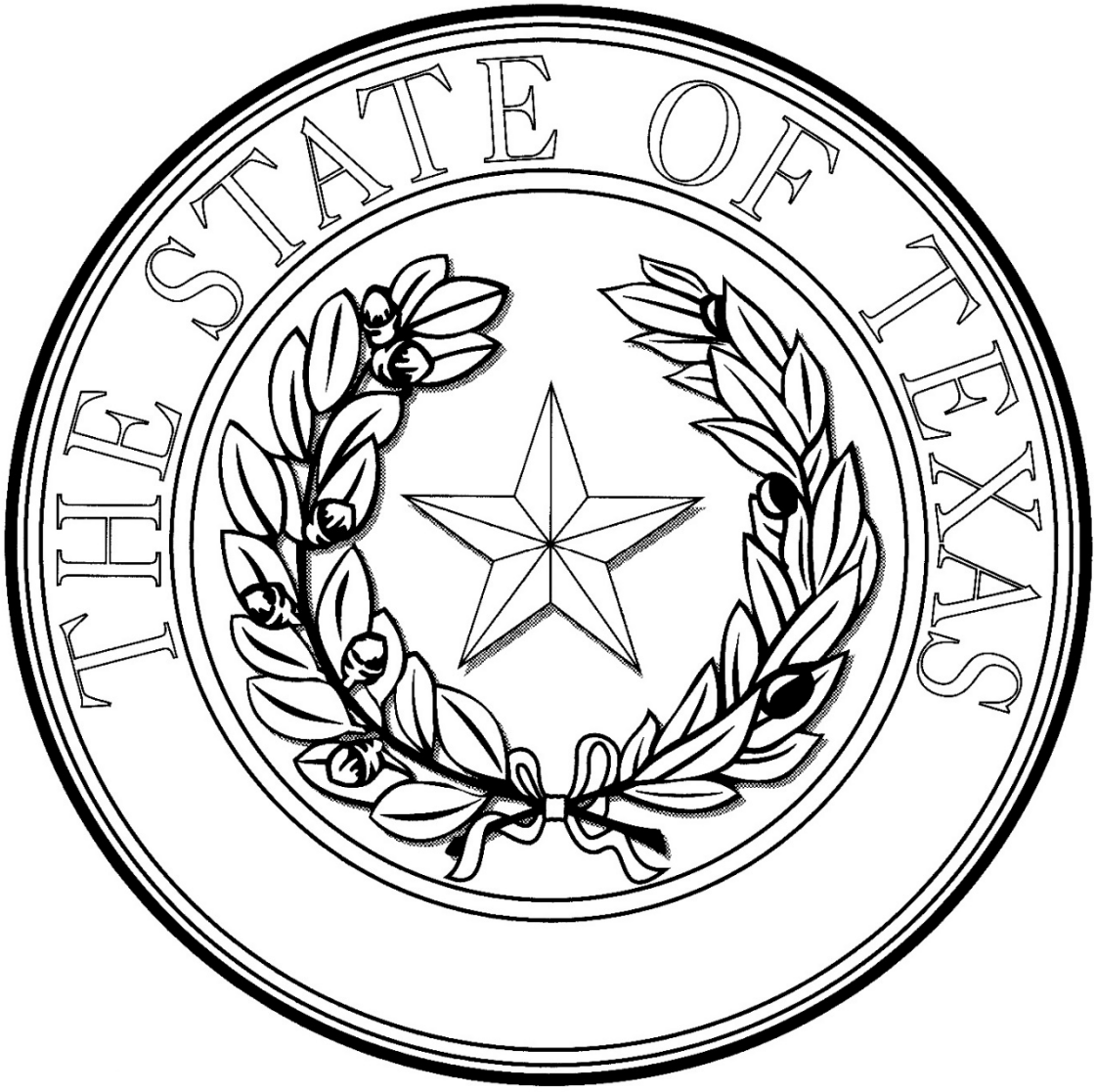

a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, Texas 78711
(512) 463-5561
FAX (512) 463-5569

https://www.sos.texas.gov
register@sos.texas.gov

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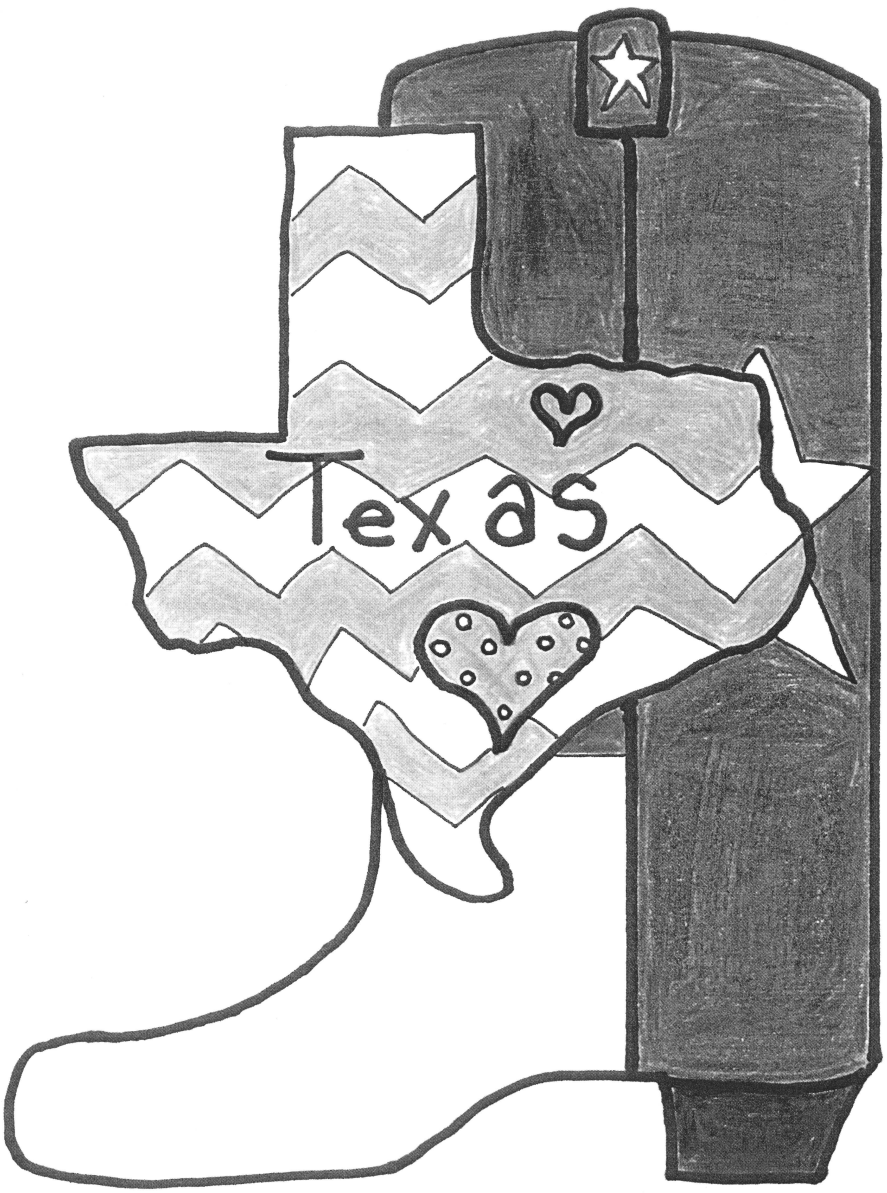
Texas

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.)

Opinions

Opinion No. KP-0289

The Honorable Donna Campbell, M.D.

Chair, Committee on Veteran Affairs & Border Security

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a depreciation benefit product purchased solely with cash is regulated by Occupations Code chapter 1304 (RQ-0302-KP)

S U M M A R Y

Occupations Code chapter 1304 defines a depreciation benefit optional member program, in part, as a service contract financed under Chapters 348 and 353, Finance Code. A depreciation benefit product that is leased or purchased solely with cash and not on an installment basis is not "financed under chapter 348 or chapter 353" and does not satisfy the definition in subsection 1304.003(a)(3). The product you describe, therefore, is distinct from the one regulated by chapter 1304.

Opinion No. KP-0290

Mr. Mark Wolfe

Executive Director

Texas Historical Commission

Post Office Box 12276

Austin, Texas 78711-2276

Re: Whether a nonprofit organization leasing a publicly-owned property may qualify for and obtain the state tax credit for certified rehabilitation of certified historic structures on behalf of the public owner (RQ-0303-KP)

S U M M A R Y

A nonprofit lessee applicant may generally qualify for and obtain a state tax credit for certified rehabilitation of certified historic structures pursuant to chapter 171, subchapter S, of the Tax Code, but the qualifying costs and expenses must be borne directly by the applicant. An applicant's status as a nonprofit tax-exempt entity and a lessee does not generally disqualify the applicant from eligibility for the tax credit pursuant to sections 171.901(4) and 171.903, provided the applicant meets certain requirements, including the length of time remaining on the lease when the rehabilitation is completed.

Opinion No. KP-0291

The Honorable Isidro R. Alaniz

49th Judicial District Attorney

Post Office Box 1343

Laredo, Texas 78042

Re: Whether a school district may purchase real property outside its boundaries for the purpose of constructing and operating a school (RQ-0304-KP)

S U M M A R Y

A court would likely conclude that section 11.167 of the Education Code does not expressly permit a school district to purchase land outside of its boundaries for the purpose of building and operating a middle school. Given the constitutional and statutory language referencing the construction and maintenance of public school buildings "in the district," we cannot predict with certainty whether a court would conclude that section 11.167 implies the power to do so.

Opinion No. KP-0292

The Honorable Lisa L. Peterson

Nolan County Attorney

100 East 3rd Street, Suite 106A

Sweetwater, Texas 79556

Re: Authority to establish salaries of the staff of a multicounty court at law (RQ-0305-KP)

S U M M A R Y

Under section 25.2702 of the Government Code, the judge of the 1st Multicounty Court at Law does not possess the authority to set the salaries of the official court reporter and the court administrator.

The commissioners court may reduce salaries of the court reporter and the court administrator of the multicounty court at law without giving the judge specific notice before adopting the budget.

The commissioners court must set reasonable salaries for the court reporter and the court administrator, subject to judicial review in district court for abuse of discretion.

Opinion No. KP-0293

The Honorable Rodney W. Anderson

Brazos County Attorney

300 East 26th Street, Suite 1300

Bryan, Texas 77803-5359

Re: Whether the Texas Pawnshop Act preempts municipal regulation of dealers in secondhand personal property who also transact business as a pawnshop (RQ-0306-KP)

S U M M A R Y

The Pawnshop Act generally vests the Legislature with exclusive authority regarding the operation of pawnshops. The Legislature included a pawnbroker's purchase of personal property, without condition of future redemption by the seller, within the scope of pawnshop operations preempted by the Act.

As part of its exclusive governance, the Pawnshop Act creates procedures for pawnshops to record the sale of personal property and cooperate with law enforcement to prevent transactions in stolen property. A municipality therefore has no authority to create its own procedures for that purpose.

A municipality does have authority to reduce the amount of time pawnbrokers must retain purchased goods to a period of less than 20 days.

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

TRD-202001065
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: March 10, 2020

♦ ♦ ♦

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.112, concerning Attendant Compensation Rate Enhancement.

BACKGROUND AND PURPOSE

The purpose of the proposed amendment to §355.112 is to implement Rider 44 of the 2020-21 General Appropriations Act, Article II, House Bill 1, 86th Legislature, Regular Session, 2019 (Rider 44). Rider 44(a)(4) appropriates funds for the creation of separate categories in the Attendant Compensation Rate Enhancement (rate enhancement) programs which serve individuals with intellectual and developmental disabilities in order to increase participation in those rate enhancement programs. The rider directs that the groupings be based on the number of attendant hours included in the billing unit. The proposed amendment to §355.112 would create separate rate enhancement categories for day habilitation (DH) services and non-DH services for the Home and Community-Based Services (HCS) and Texas Home Living (TxHmL) programs and for services in a residential setting for the HCS program. The proposed change allows flexibility in the rate enhancement program for HCS and TxHmL providers of services that do not utilize an hourly unit of service.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.112 makes clarifying edits to improve readability in subsections (a), (b)(1) - (3), (e), (f)(1)(A), (j), (l)(1)(A), (l)(2), and (t)(1) - (2).

The proposed amendment to §355.112(b) clarifies the definition of "attendant" under this section.

The proposed amendment to §355.112(f)(2) separates rate enhancement for HCS and TxHmL programs into three categories (residential services, DH services, and non-DH services) and specifies that the participating provider must choose the categories to which rate enhancement will apply.

The proposed amendment to §355.112(f)(7) specifies that Intermediate Care Facilities for Individuals with Intellectual Disability or Related Conditions (ICF/IID), HCS, and TxHmL providers must request to modify their enrollment status during the 2021 enrollment period.

The proposed amendment to §355.112(h) removes language that is no longer applicable in paragraph (2)(A) and renumbers the remaining subparagraphs.

The proposed amendment to §355.112(l)(2) creates new subparagraph (F) which provides that, as of January 1, 2020, the HCS supervised living and residential support services (SL/RSS) rate component will be calculated using cost data from the most recently audited cost report multiplied by a factor of 1.07.

The proposed amendment to §355.112(s)(4) provides that recoupment will be calculated for SL/RSS services pursuant to §355.727(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. Enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rule is in effect is an estimated cost of $0 in General Revenue (GR) ($0 in All Funds (AF)) in fiscal year (FY) 2020, $6,664,450 in GR ($17,414,293 AF) in FY 2021, $6,800,967 GR ($17,808,240 AF) in FY 2022, $6,861,685 GR ($17,967,230 AF) in FY 2023, and $6,922,946 6,874,001 GR ($18,127,640 AF) in FY 2024.

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 an existing rule;

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

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

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. However, participation in the rate enhancement program is voluntary. HHSC estimates there are currently 121 small businesses, 361 micro-businesses, and 17 rural communities that may be subject to the proposed rule. Those who choose to participate may have an increase in administrative costs, if an additional cost report is required. However, it is anticipated that rate enhancements will offset these potential costs. HHSC lacks sufficient data to provide an estimate of the economic impact.

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, safety, environmental, and economic welfare of the state.

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 implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Rate Analysis, has determined that for each year of the first five years the rule is in effect, the public benefit will be improvements to the rate enhancement program as a result of complying with Rider 44(a)(4). The proposed amendment to §355.112 will allow HHSC to create a new category for residential services in the rate enhancement programs and provide increased compensation for attendant staff in programs serving individuals with intellectual and developmental disabilities.

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 due to an increase in administrative costs, if an additional cost report is required. However, participation is voluntary, and it is anticipated that rate enhancements will potentially offset costs to comply. HHSC lacks sufficient data to estimate the cost to comply for each provider.

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 March 30, 2020, at 10:00 a.m., in Public Hearing Room 100 of the Moreton Building located at 1100 W 49th St, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact the HHSC Rate Analysis 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 149030, Austin, TX 78714-9030, 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 issues 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 e-mailed by 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 20R036" 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 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.

§355.112. Attendant Compensation Rate Enhancement.

(a) Eligible programs. Providers contracted in the following programs are eligible to participate in the attendant compensation rate enhancement: [~~Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) ("Related Conditions" has the same meaning as in 40 TAC §9.203 (relating to Definitions)), Home and Community-based Services (HCS), Texas Home Living (TxHmL), Primary Home Care (PHC); Day Activity and Health Services (DAHS); Residential Care (RC); Community Living Assistance and Support Services (CLASS)--Direct Service Agency (DSA); Community Based Alternatives (CBA)--Home and Community Support Services (HCSS); Deaf-Blind with Multiple Disabilities Waiver (DBMD); and CBA--Assisted Living/Residential Care (AL/RC) programs are eligible to participate in the attendant compensation rate enhancement.~~]

(1) Community Based Alternatives (CBA)--Assisted Living/Residential Care (AL/RC);

(2) CBA-Home and Community Support Services (HCSS);

(3) Community Living Assistance and Support Services (CLASS)--Direct Service Agency (DSA);

(4) Day Activity and Health Services (DAHS);

(5) Deaf-Blind with Multiple Disabilities Waiver (DBMD);

(6) Home and Community-based Services (HCS);

(7) Intermediate Care Facilities for Individuals with Intellectual Disability or Related Conditions (ICF/IID) ("Related Conditions" has the same meaning as in 40 TAC §9.203 (relating to Definitions));

(8) Primary Home Care (PHC);

(9) RC; and

(10) Texas Home Living (TxHmL).

(b) Definition of attendant. For the attendant compensation rate enhancement, under this section, an [~~An~~] attendant is the unlicensed caregiver providing direct assistance to individuals with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL).

(1) For [~~In the case of~~] the ICF/IID, DAHS, RC, and CBA AL/RC programs and the HCS supervised living (SL)/residential support services [~~Supervised Living (SL)/Residential Support Services~~] (RSS) and HCS and TxHmL day habilitation [~~Day Habilitation~~] (DH) settings, the attendant may perform some nonattendant functions. In such cases, the attendant must perform attendant functions at least 80% of his or her total time worked. Staff in these settings not providing attendant services at least 80% of their total time worked are not considered attendants. Time studies must be performed in accordance with §355.105(b)(2)(B)(i) of this subchapter [~~title~~] (relating to General Reporting and Documentation Requirements, Methods, and Procedures) for staff in the ICF/IID, DAHS, RC, and CBA AL/RC programs and the HCS SL/RSS and HCS and TxHmL DH settings that are not full-time attendants but perform attendant functions to determine if a staff member meets this 80% requirement. Failure to perform the time studies for these staff will result in the staff not being considered [~~to be~~] attendants. Staff performing attendant functions in both the HCS SL/RSS and HCS and TxHmL DH settings that combine to equal at least 80% of their total hours worked would be included in this designation.

(2) Attendants do not include the director, administrator, assistant director, assistant administrator, clerical and secretarial staff, professional staff, other administrative staff, licensed staff, attendant supervisors, cooks and kitchen staff, maintenance and groundskeeping staff, activity director, DBMD Interveners I, II or III, Qualified Intellectual Disability Professionals (QIDPs) or assistant QIDPs, [~~(formerly known as Qualified Mental Retardation Professionals (QMRPs) or assistant QMRPs),~~] direct care worker supervisors, direct care trainer supervisors, job coach supervisors, foster care providers, and laundry and housekeeping staff. In the case of HCS supported home living (SHL) and HCS Community First Choice Personal Assistance Services/Habilitation (CFC PAS HAB), [~~Supported Home Living,~~] TxHmL community support services (CSS), and TxHmL CSS/CFC PAS HAB, PHC, CLASS, CBA--HCSS, and DBMD [~~Community Supports, PHC, CLASS, CBA--HCSS, and DBMD,~~], staff other than attendants may deliver attendant services and be considered an attendant if they must perform attendant services that cannot be delivered by another attendant to prevent a break in service.

(3) An attendant also includes the following:

(A) a driver who is transporting individuals in the CBA AL/RC, DAHS, ICF/IID, and RC [~~ICF/IID, DAHS, RC, and CBA AL/RC~~] programs and the HCS SL/RSS and HCS and TxHmL DH settings;[~~.~~]

(B) a medication aide in the HCS SL/RSS setting and the CBA AL/RC, ICF/IID, and RC programs; and

(C) direct care workers, direct care trainers, job coaches, employment assistance direct care workers, and supported employment direct care workers.

[~~(4) An attendant also includes a medication aide in the HCS SL/RSS setting and the ICF/IID, RC and CBA AL/RC programs.~~]

[~~(5) An attendant also includes direct care workers, direct care trainers, job coaches, supported employment direct care workers, and employment assistance direct care workers.~~]

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

(e) Open enrollment. Open enrollment begins on the first day of July and ends on the last day of that same July preceding the rate year for which payments are being determined. The Texas Health and Human Services Commission (HHSC) notifies providers of open enrollment via email sent [~~by electronic mail (e-mail)~~] to an authorized representative per the signature authority designation form applicable to the provider's contract or ownership type. If open enrollment has been postponed or cancelled, HHSC [~~the Texas Health and Human Services Commission (HHSC)~~] will notify providers by email [~~e-mail~~] before the first day of July. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(f) Enrollment contract amendment.

(1) For CBA--HCSS and AL/RC, CLASS--DSA, DBMD, DAHS, RC and PHC, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each contract a desire to participate or not to participate and a preferred participation level.

(A) For the PHC program, the participating provider must also specify whether the attendant compensation rate enhancement should apply to the provider's provision of [~~if he wishes to have~~] priority, nonpriority, or both priority and nonpriority services [~~participate in the attendant compensation rate enhancement~~].

(B) For providers delivering both RC and CBA AL/RC services in the same facility, participation includes both the RC and CBA AL/RC programs.

(2) For ICF/IID, HCS and TxHmL, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each component code a desire to participate or not to participate and a preferred participation level. All contracts of a component code within a specific program must either participate at the same level or not participate.

(A) For the ICF/IID program, the participating provider must also specify the services the provider [~~he~~] wishes to have participate in the attendant compensation rate enhancement. Eligible services are residential services and day habilitation services. The participating provider must specify whether the provider [~~he~~] wishes to participate for residential services only, day habilitation services only or both residential services and day habilitation services.

(B) For the HCS and TxHmL programs, eligible services are divided into three categories. The three categories of services eligible for rate enhancement are the following: [~~two categories: non-day habilitation services and day habilitation services. The non-day habilitation services category includes SL/RSS, supported home living/community supports, respite, supported employment and employment assistance. The day habilitation services category includes day habilitation. The participating provider must specify whether he wishes to participate for non-day habilitation services only, day habilitation services only or both non-day habilitation services and day habilitation services. For providers delivering services in both the HCS~~

and TxHmL programs, the categories selected for participation must be the same for their HCS and TxHmL programs.]

(i) non-day habilitation services:

(I) SHL/CFC PAS HAB/CSS;

(II) respite;

(III) supported employment; and

(IV) employment assistance;

(ii) day habilitation services; and

(iii) residential services:

(I) SL; and

(II) RSS.

(C) The participating provider must specify which combination of the three categories of services the attendant compensation rate enhancement will apply to. For providers delivering services in both the HCS and TxHmL programs, the selected categories must be the same for their HCS and TxHmL programs, except for residential services which are only available in the HCS program.

(3) After initial enrollment, participating and nonparticipating providers may request to modify their enrollment status during any open enrollment period as follows: [.]

(A) a [A] nonparticipant can request to become a participant;

(B) a participant can request to become a nonparticipant; or

(C) a participant can request to change its participation level.

(4) Providers whose prior year enrollment was limited by subsection (u) of this section who request to increase their enrollment levels will be limited to increases of three or fewer enhancement levels during the first open enrollment period after the limitation. Providers that were subject to an enrollment limitation may request to participate at any level during open enrollment beginning two years after limitation.

(5) Requests to modify a provider's enrollment status during an open enrollment period must be received by HHSC Rate Analysis by the last day of the open enrollment period as per subsection (e) of this section. If the last day of open enrollment is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted.

(6) For PHC, DAHS, RC, CLASS--DSA, CBA--HCSS, DBMD, and CBA--AL/RC, providers [Providers] from which HHSC Rate Analysis has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation in effect during the open enrollment period within available funds until the provider notifies HHSC in accordance with subsection (x) of this section that it no longer wishes to participate or until the provider's enrollment is limited in accordance with subsection (u) of this section.

(7) For ICF/IID, HCS, and TxHmL, all participating and nonparticipating providers must request to modify their enrollment status during the 2021 enrollment period.

(A) A nonparticipant can request to become a participant; a participant can request to become a nonparticipant; and a participant can request to change its participation level.

(B) This request to modify enrollment status will constitute a revised enrollment. Providers who have not submitted to HHSC Rate Analysis an acceptable revised enrollment by the last day of the open enrollment period will become non-participating providers.

(C) Once the revised enrollment has been completed, providers will continue to participate at the level of participation in effect during the last open enrollment period within available funds until the provider notifies HHSC in accordance with subsection (x) of this section that it no longer wishes to participate or until the provider's enrollment is limited in accordance with subsection (u) of this section.

(8) [(6)] To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized representative as per HHSC's signature authority designation form applicable to the provider's contract or ownership type, and legible.

(g) (No change.)

(h) Attendant Compensation Report submittal requirements.

(1) Annual Attendant Compensation Report. Providers [For services delivered on or before August 31, 2009, providers] must file Attendant Compensation Reports as follows. All participating contracted providers will provide HHSC Rate Analysis, in a method specified by HHSC Rate Analysis, an annual Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the rate year within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining compliance with the spending requirements and recoupment amounts as described in subsection (s) of this section. Contracted providers failing to submit an acceptable annual Attendant Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.

(A) When a participating provider changes ownership through a contract assignment, the prior owner must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the effective date of the contract assignment as determined by HHSC, or its designee. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit an Attendant Compensation Report covering the period from the day after the date recognized by HHSC, or its designee, as the contract-assignment effective date to the end of the rate year.

(B) Participating providers whose contracts are terminated voluntarily or involuntarily must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(C) Participating providers who voluntarily withdraw from participation, as described in subsection (x) of this section, must submit an Attendant Compensation Report within 60 days from the date

of withdrawal as determined by HHSC. This report must cover the period from the beginning of the rate year through the date of withdrawal as determined by HHSC and will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(D) Participating providers whose cost report year, as defined in §355.105(b)(5) of this subchapter [~~title~~], coincides with the state of Texas fiscal year, are exempt from the requirement to submit a separate Attendant Compensation Report. For these contracts, their cost report will be considered their Attendant Compensation Report.

(2) Cost [~~For services delivered on September 1, 2009, and thereafter, cost~~] reports as described in §355.105(b) - (c) of this subchapter [~~title~~] will serve as [~~replace~~] the Attendant Compensation Report with the following exceptions:

[~~(A) For services delivered from September 1, 2009, to August 31, 2010, participating providers may be required to submit Transition Attendant Compensation Reports in addition to required cost reports. The Transition Attendant Compensation Report reporting period will include those days in calendar years 2009 and 2010 not included in either the 2009 Attendant Compensation report or the provider's 2010 cost report. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the transition reporting period within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with transition reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section for the transition reporting period. Participating providers failing to submit an acceptable Transition Attendant Compensation Report within 60 days of the date of the HHSC request for the report will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.~~]

(A) [~~(B)~~] When a participating provider changes ownership through a contract assignment or change of ownership, the previous owner must submit an Attendant Compensation Report covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract-assignment or ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner must [~~will be required to~~] submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the contract-assignment or ownership-change effective date to the end of the provider's fiscal year.

(B) [~~(C)~~] When one or more contracts or, for the ICF/IID, HCS and TxHmL programs, component codes of a participating provider are terminated, either voluntarily or involuntarily, the provider must submit an Attendant Compensation Report for the terminated contract(s) or component code(s) covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract or component code termination date. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(C) [~~(D)~~] When one or more contracts or, for the ICF/IID, HCS and TxHmL programs, component codes of a participating provider are voluntarily withdrawn from participation as per subsection (x) of this section, the provider must submit an Attendant Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the provider's cost reporting period to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. These providers must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(D) [~~(E)~~] For new contracts as defined in subsection (g) of this section, the cost reporting period will begin with the effective date of participation in the enhancement.

(E) [~~(F)~~] Existing providers who become participants in the enhancement as a result of the open enrollment process described in subsection (e) of this section on any day other than the first day of their fiscal year must [~~are required to~~] submit an Attendant Compensation Report with a reporting period that begins on their first day of participation in the enhancement and ends on the last day of the provider's fiscal year. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. These providers must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(F) [~~(G)~~] A participating provider that is required to submit a cost report or Attendant Compensation Report under this paragraph will be excused from the requirement to submit a report if the provider did not provide any billable attendant services to HHSC recipients during the reporting period.

(3) Other reports. HHSC may require other reports from all contracts as needed.

(4) Vendor hold. HHSC, or its designee, will place on hold the vendor payments for any participating provider who does not submit a timely report as described in paragraph (1) of this subsection[~~, or for services delivered on or after September 1, 2009, a timely report as described in paragraph (2) of this subsection~~] completed in accordance with all applicable rules and instructions. This vendor hold will remain in effect until HHSC Rate Analysis receives an acceptable report.

(A) Participating contracts or, for the ICF/IID, HCS and TxHmL programs, component codes that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection or, for cost reports, the due dates described in §355.105(b) of this subchapter [~~title~~] will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the contractor for services provided during the reporting period in question. These contracts or component codes will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment from subsection (s) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(B) Participating contracts or, for the ICF/IID, HCS and TxHmL programs, component codes that have terminated or undergone a contract assignment or ownership-change from one legal entity to a different legal entity and do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the contract assignment, ownership-change or termination effective date will become nonparticipants retroactive to the first day of the reporting period in question. These contracts or component codes will

remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment under subsection (s) of this section. If an acceptable report is not received within 365 days of the contract assignment, ownership-change or termination effective date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(5) Provider-initiated amended Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports. Reports must be received before [~~prior to~~] the date the provider is notified of compliance with spending requirements for the report in question in accordance with subsection (s) of this section.

(i) (No change.)

(j) Completion of compensation reports. All Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this subchapter [~~title~~] (relating to General Principles of Allowable and Unallowable Costs; Specifications for Allowable and Unallowable Costs; Revenues; and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this subchapter [~~title~~] (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). All [~~Beginning with the rate year that starts September 1, 2002, all~~] Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed by preparers who have attended the required cost report training for the applicable program under §355.102(d) of this subchapter [~~title~~]. For the ICF/IID program, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.456 of this chapter [~~title~~] (relating to Reimbursement Methodology). For the HCS and TxHmL programs, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.722 of this chapter (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers) [~~title~~].

(k) (No change.)

(l) Determination of attendant compensation rate component for nonparticipating contracts.

(1) For the PHC; DAHS; RC; CLASS--DSA; CBA--HCSS; DBMD; and CBA--AL/RC programs, HHSC will calculate an attendant compensation rate component for nonparticipating contracts as follows.

(A) Determine for each contract included in the cost report database [~~data base~~] used in determination of rates in effect on September 1, 1999, the attendant compensation cost center from subsection (c) of this section.

(B) Adjust the cost center data from subparagraph (A) of this paragraph in order to account for inflation utilizing the inflation factors used in the determination of the September 1, 1999 rates.

(C) For each contract included in the cost report database used to determine rates in effect on September 1, 1999, divide the result from subparagraph (B) of this paragraph by the corresponding units of service. Provider projected costs per unit of service are rank-ordered from low to high, along with the provider's corresponding units of service. For DAHS, the median cost per unit of service is selected. For all other programs, the units of service are summed until the median unit of service is reached. The corresponding projected cost per unit of service is the weighted median cost component. The result is multiplied by 1.044 for PHC, CLASS--DSA, CBA--HCSS, and DBMD; and by 1.07 for RC, CBA--AL/RC, and DAHS. The result is the attendant compensation rate component for nonparticipating contracts.

(D) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.

(2) For ICF/IID DH, ICF/IID residential services, HCS SL/RSS, HCS DH, HCS SHL/CFC PAS HAB [~~supported home living~~], HCS respite, HCS supported employment, HCS employment assistance, TxHmL DH, TxHmL CSS and CFC PAS HAB [~~community supports~~], TxHmL respite, TxHmL supported employment, and TxHmL employment assistance, for each level of need (LON), HHSC will calculate an attendant compensation rate component for nonparticipating contracts for each service as follows:

(A) For each service, for each LON [~~level of need~~], determine the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants. For ICF/IID, the fully-funded model is the model as calculated under §355.456(d) of this chapter [~~title~~] (relating to Reimbursement Methodology) before [~~prior to~~] any adjustments made in accordance with §355.101 of this subchapter [~~title~~] (relating to Introduction) and §355.109 of this subchapter [~~title~~] (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs). For HCS and TxHmL, the fully-funded model is the model as calculated under §355.723(d) of this chapter [~~title~~] (relating to Reimbursement Methodology for Home and Community-based Services and Texas Home Living Programs) before [~~prior to~~] any adjustments made in accordance with §355.101 [~~of this title~~] and §355.109 of this subchapter [~~title~~] for the rate period.

(B) For each service, for each LON [~~level of need~~], multiply the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants from subparagraph (A) of this paragraph by the total adopted reimbursement rate for that service in effect on August 31, 2010. Effective September 1, 2019, the result is multiplied by 1.044 for HCS SHL/CFC PAS HAB [~~supported home living~~], HCS respite, HCS supported employment, HCS employment assistance, TxHmL CSS and CFC/PAS HAB [~~community support services~~], TxHmL respite, TxHmL supported employment, and TxHmL employment assistance and by 1.07 for HCS SL/RSS, HCS DH, TxHmL DH and ICF Residential and ICF DH [~~Day Habilitation~~]. The result is the attendant compensation rate component for that service for nonparticipating contracts.

(C) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature; and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.

(D) Effective July 1, 2017, the attendant compensation rate component for nonparticipating contracts for HCS SHL/CFC PAS HAB [~~supported home living~~] and TxHmL CSS and CFC PAS HAB [~~community supports~~] is equal to $14.52 per hour.

(E) Effective[,] September 1, 2019, the attendant compensation rate component for nonparticipating contracts for HCS SHL/CFC PAS HAB [~~Supported home living~~] is calculated using cost data from the most recently audited cost report multiplied by 1.044.

(F) Effective January 1, 2020, the attendant compensation rate component for nonparticipating contracts for HCS SL/RSS is calculated using cost data from the most recently audited cost report multiplied by 1.07.

(m) Determination of attendant compensation base rate for participating contracts.

(1) For each of the programs identified in subsection (a) of this section except for CBA AL/RC, the attendant compensation base rate is equal to the attendant compensation rate component for nonparticipating contracts from subsection (l) of this section.

(2) For CBA AL/RC, the attendant compensation base rate will be determined by taking into consideration quality of care, labor market conditions, economic factors, and budget constraints.

(n) - (r) (No change.)

(s) Spending requirements for participating contracts and component codes. HHSC will determine from the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report, as specified in subsection (h) of this section and other appropriate data sources, the amount of attendant compensation spending per unit of service delivered. The provider's compliance with the spending requirement is determined based on the total attendant compensation spending as reported on the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report for each participating contract or component code. Compliance with the spending requirement is determined separately for each program specified in subsection (a) of this section, except for providers delivering both RC and CBA AL/RC services in the same facility whose compliance is determined by combining both programs and providers delivering services in both the HCS and TxHmL programs whose compliance is determined by combining both programs. HHSC will calculate recoupment, if any, as follows.

(1) The accrued attendant compensation revenue per unit of service is multiplied by 0.90 to determine the spending requirement per unit of service. The accrued attendant compensation spending per unit of service will be subtracted from the spending requirement per unit of service to determine the amount to be recouped. If the accrued attendant compensation spending per unit of service is greater than or equal to the spending requirement per unit of service, there is no recoupment.

(2) The amount paid for attendant compensation per unit of service after adjustments for recoupment must not be less than the amount determined for nonparticipating contracts or component codes in subsection (l) of this section.

(3) In cases where more than one enhancement level is in effect during the reporting period, the spending requirement will be based on the weighted average enhancement level in effect during the reporting period calculated as follows:

(A) Multiply the first enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the first enhancement level was in effect.

(B) Multiply the second enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the second enhancement level was in effect.

(C) Sum the products from subparagraphs (A) and (B) of this paragraph.

(D) Divide the sum from subparagraph (C) of this paragraph by the sum of the most recently available, reliable Medicaid units of service utilization data for the entire reporting period used in subparagraphs (A) and (B) of this paragraph.

(4) Effective January 1, 2020, the recoupment for participating providers reporting HCS RSS/SL services will be determined pursuant to §355.727(f) of this chapter (relating to Add-on Payment Methodology for Home and Community-Based Services Supervised Living and Residential Support Services).

(t) Notification of recoupment and request for recalculation.

(1) Notification of recoupment. The estimated amount to be recouped is indicated in the State of Texas Automated Information Reporting System (STAIRS), the online application for submitting cost reports and Attendant Compensation reports. STAIRS will generate an email [~~e-mail~~] to the entity contact, indicating that the provider's estimated recoupment is available for review. The entity contact is the provider's authorized representative per the signature authority designation form applicable to the provider's contract or ownership type. If a subsequent review by HHSC or audit results in adjustments to the Attendant Compensation Report or cost reporting, as described in subsection (h) of this section, that change the amount to be repaid, the provider will be notified by email [~~e-mail~~] to the entity contact that the adjustments and the adjusted amount to be repaid are available in STAIRS for review. HHSC, or its designee, will recoup any amount owed from a provider's vendor payment(s) following the date of the initial or subsequent notification. For the HCS and TxHmL programs, if HHSC, or its designee, is unable to recoup owed funds in an automated fashion, the requirements detailed under subsection (dd) of this section apply.

(2) Request for recalculation. Providers notified of a recoupment based on an Attendant Compensation Report described in subsection (h)(2)(A) or (h)(2)(F) of this section may request that HHSC recalculate their recoupment after combining the Attendant Compensation Report with the provider's most recently available, audited full-year cost report. The request must be received by HHSC Rate Analysis no later than 30 days after the date on the email [~~e-mail~~] notification of recoupment. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the request will be accepted.

(A) The request must be made by email [~~e-mail~~] to the email [~~e-mail~~] address specified in STAIRS, hand delivery, United States (U.S.) mail, or special mail delivery. An email [~~e-mail~~] request must be typed on the provider's letterhead, signed by a person indicated in subparagraph (B) of this paragraph, then scanned and sent by email [~~e-mail~~] to HHSC.

(B) The request must be signed by an individual legally responsible for the conduct of the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable signature authority designation form for the provider at the time of the request, or a legal representative for the provider. The administrator or director of a facility or program is not authorized to sign the request unless the administrator or director holds one of these positions. HHSC will not accept a request that is not signed by an individual responsible for the conduct of the provider.

(u) - (hh) 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 March 4, 2020.

TRD-202000994
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: April 19, 2020
For further information, please call: (512) 424-6637

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 153. SCHOOL DISTRICT PERSONNEL

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING PROFESSIONAL DEVELOPMENT

The Texas Education Agency (TEA) proposes the repeal of §153.1011 and new §153.1011, concerning commissioner's rules on professional development. The proposed rule actions would repeal the existing teacher mentorship rule and add a new rule to implement the mentor program allotment enacted by House Bill (HB) 3, 86th Texas Legislature, 2019.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 153.1011 currently describes the program requirements for the Beginning Teacher Induction and Mentoring Program, an optional, grant-funded program to support mentorship that has been inactive due to lack of funding.

HB 3, 86th Texas Legislature, 2019, amended state law on mentorship requirements in Texas Education Code (TEC), §21.458, and created an optional mentor program allotment in TEC, §48.114. The new allotment is for eligible districts that implement a mentor training program in accordance with TEC, §21.458.

Because of these statutory changes, it is necessary to repeal §153.1011 as it relates to the Beginning Teacher Induction and Mentoring Program and replace it with a new rule related to the mentor program allotment for district mentor training programs.

The proposed new rule would clarify aspects of law related to mentor training programs for new teachers, as follows.

Proposed new subsection (a) would establish definitions related to the new rule.

Proposed new subsection (b) would specify how many beginning teachers a mentor teacher may be assigned, specific district- and school-based staff who must complete mentor training, and the timelines related to mentor training. Subsection (b) would also clarify the appropriate times of day and frequency with which meetings between mentors and beginning teachers should occur and the topics that mentor teachers and beginning teachers must cover.

Proposed new subsection (c) would address the application approval process for mentor program allotment funding.

Proposed new subsection (d) would specify compliance requirements for participating districts.

Proposed new subsection (e) would address permissible uses of mentor program allotment funds.

Proposed new subsection (f) would outline program review requirements.

Proposed new subsection (g) would specify the finality of commissioner decisions regarding mentor program allotment funds.

FISCAL IMPACT: Tim Regal, associate commissioner for instructional support, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal beyond what 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 repeal an existing regulation and create a new regulation by repealing the existing mentor program rule and adding a new rule to implement the mentor program allotment.

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 or limit an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Regal has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that rule language is based on current law and providing school districts with the requirements and process to apply for funding from the mentor program allotment. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have a data and reporting impact. Under the proposed new rule, school districts would be required to submit an application to be approved for mentor program allotment funds. In addition, school districts that receive mentor program allotment funds would be

required to submit information annually to verify program compliance and submit any information requested by TEA through activity/progress reports.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would require a written report or other paperwork but does not specifically require a principal or classroom teacher to complete the report or paperwork. However, local district decisions may vary. In such an instance, the proposal would impose the least burdensome requirement possible to achieve the objective of the rule.

PUBLIC COMMENTS: The public comment period on the proposal begins March 20, 2020, and ends April 20, 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 March 20, 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/. 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.

19 TAC §153.1011

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §21.458, which allows districts to assign mentor teachers to work with new teachers and provides requirements for mentor selection, assignment, and training and topics to be covered between the mentor teacher and the classroom teacher being mentored. TEC, §21.458(b), requires the commissioner to adopt rules necessary to administer this statute; and TEC, §48.114, which establishes a mentor program allotment to be used for funding eligible district mentor training programs; outlines permissible use of mentor program allotment funds, which include mentor teacher stipends, scheduled release time for mentoring activities, and mentor support through providers of mentor training; and requires the commissioner to adopt a formula to determine the amount to which eligible school districts are entitled.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §21.458 and §48.114.

§153.1011. Beginning Teacher Induction and Mentoring Program.

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 March 9, 2020.

TRD-202001035
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: April 19, 2020
For further information, please call: (512) 475-1497

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19 TAC §153.1011

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §21.458, which allows districts to assign mentor teachers to work with new teachers and provides requirements for mentor selection, assignment, and training and topics to be covered between the mentor teacher and the classroom teacher being mentored. TEC, §21.458(b), requires the commissioner to adopt rules necessary to administer this statute; and TEC, §48.114, which establishes a mentor program allotment to be used for funding eligible district mentor training programs; outlines permissible use of mentor program allotment funds, which include mentor teacher stipends, scheduled release time for mentoring activities, and mentor support through providers of mentor training; and requires the commissioner to adopt a formula to determine the amount to which eligible school districts are entitled.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §21.458 and §48.114.

§153.1011. Mentor Program Allotment.

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

(1) Beginning teacher--A new classroom teacher in Texas who has less than two years of teaching experience.

(2) Classroom teacher--An educator who is employed by a school district in Texas and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. The term does not include a teacher's aide or a full-time administrator.

(A) For a school district, a classroom teacher, as defined in this paragraph, must hold an appropriate certificate issued by the State Board for Educator Certification and must meet the specifications regarding instructional duties defined in this paragraph.

(B) For an open-enrollment charter school, a classroom teacher is not required to be certified but must meet the qualifications of the employing charter school and the specifications regarding instructional duties defined in this paragraph.

(3) Mentor teacher--A classroom teacher in Texas who provides effective support to help beginning teachers successfully transition into the teaching assignment.

(4) School district--For the purposes of this section, the definition of school district includes open-enrollment charter schools.

(5) Teacher of record--An educator who is employed by a school or district and who teaches in an academic instructional setting or a career and technical instructional setting and is responsible for evaluating student achievement and assigning grades.

(b) Program requirements. In order for a district mentor program to receive funds through the mentor program allotment, as described in Texas Education Code (TEC), §48.114, the program must be approved by the commissioner of education using the application and approval process described in subsection (c) of this section. To be approved by the commissioner, district mentor programs must comply with TEC, §21.458, and commit to meet the following requirements.

(1) Mentor selection. To qualify as a mentor teacher, a classroom teacher must:

(A) complete a research-based mentor and induction training program approved by the commissioner;

(B) complete a mentor training program provided by the district;

(C) have at least three complete years of teaching experience with a superior record of assisting students, as a whole, in

achieving improvement in student performance. Districts may use the master, exemplary, or recognized designations under TEC, §21.3521, to fulfill this requirement; and

(D) demonstrate interpersonal skills, instructional effectiveness, and leadership skills.

(2) Mentor assignment. School districts must agree to assign no more than:

(A) two beginning teachers to a mentor who serves as a teacher of record for, on average, six hours per instructional day; or

(B) four beginning teachers to a mentor who serves as a teacher of record for, on average, less than six hours per instructional day.

(3) District mentor training program. A school district must:

(A) provide training to mentor teachers and any appropriate district and campus employees, such as principals, assistant principals, and instructional coaches, who work with a beginning teacher or supervise a beginning teacher;

(B) ensure that mentor teachers and any appropriate district and campus employees are trained before the beginning of the school year;

(C) provide supplemental training that includes best mentorship practices to mentor teachers and any appropriate district and campus employees throughout the school year, minimally once per semester; and

(D) provide training for a mentor assigned to a beginning teacher who is hired after the beginning of the school year by the 45th day of employment of the beginning teacher.

(4) Mentor roles and responsibilities. A school district must designate a specific time during the regularly contracted school day for meetings between mentor teachers and the beginning teachers they mentor, which must abide by the mentor and beginning teachers' entitled planning and preparation requirements in TEC, §21.404.

(5) Meetings between mentors and beginning teachers. A mentor teacher must:

(A) meet with each beginning teacher assigned to the mentor not less than 12 hours each semester, with observations of the mentor teacher by the beginning teacher being mentored or observations of the beginning teacher being mentored by the mentor teacher counting toward the 12 hours each semester. No more than 2 of the 12 required hours per semester for mentor teachers and beginning teachers to meet or observe one another may happen outside the regularly contracted school day; and

(B) address the following topics in mentoring sessions with the beginning teacher being mentored:

(i) orientation to the context, policies, and practices of the school district, including:

(I) campus-wide student culture routines;

(II) district and campus teacher evaluation systems;

(III) campus curriculum and curricular resources, including formative and summative assessments; and

(IV) campus policies and practices related to lesson planning;

(ii) data-driven instructional practices;

(iii) specific instructional coaching cycles, including coaching regarding conferences between parents and the beginning teacher;

(iv) professional development; and

(v) professional expectations.

(c) Application approval process. Each year, TEA will provide an application and approval process for school districts to apply for mentor program allotment funding. Funding will be limited based on availability of funds, and, annually, the commissioner shall adopt a formula to determine the amount to which approved districts are entitled. The application shall address the requirements of TEC, §21.458, and include:

(1) the timeline for application and approval;

(2) approval criteria, including the minimum requirements necessary for an application to be eligible for approval; and

(3) criteria used to determine which districts would be eligible for funding.

(d) Ongoing verification of compliance with program requirements.

(1) Each year, participating districts will be required to submit or participate in a verification of compliance with program requirements through a process to be described in the application form.

(2) Failure to comply with TEC, §21.458, and this section after receiving an allotment may result in negative impact on a district's future mentor program allotment funding.

(e) Allowable expenditures. Mentor program allotment funds may only be used for the following:

(1) mentor teacher stipends;

(2) release time for mentor teachers and beginning teachers limited to activities in accordance with this section; and

(3) mentoring support through providers of mentor training.

(f) District mentor program review. School districts awarded mentor program allotment funds must agree to submit all information requested by TEA through periodic activity/progress reports, which will occur not more than once yearly. Reports will be due no later than 45 calendar days after receipt of the information request and must contain all requested information in the format prescribed by the commissioner.

(g) Final decisions. Commissioner decisions regarding eligibility for mentor program allotment funds are final and may not be appealed.

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 March 9, 2020.

TRD-202001036
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: April 19, 2020
For further information, please call: (512) 475-1497

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PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

The State Board for Educator Certification (SBEC) proposes amendments to §§232.1, 232.5, 232.7, 232.9, 232.15, 232.17, 232.19, 232.21, 232.31, and 232.35; the repeal of §§232.3, 232.11, 232.13, 232.23, and 232.25; and new §232.11 and §232.16, concerning general certification provisions. The proposed revisions would implement the statutory requirements of House Bills (HBs) 18 and 403 and Senate Bills (SBs) 11 and 37, 86th Texas Legislature, 2019. The proposed revisions would provide continuing professional education instruction regarding mental health and substance abuse training; training requirements for superintendents regarding sexual abuse and human trafficking; and the removal of student loan default as grounds to deny the renewal of a certificate. Technical changes would also clarify processes and reorganize current provisions to improve readability and align citations.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in Title 19 Texas Administrative Code (TAC) Chapter 232 are organized as follows: Subchapter A, Certificate Renewal and Continuing Professional Education Requirements, and Subchapter B, National Criminal History Record Information Review of Active Certificate Holders. These subchapters provide for rules that establish the requirements relating to types and classes of certificates issued, certificate renewal, continuing professional education (CPE), and national criminal history record information review.

There were several pieces of SBEC-related legislation regarding CPE as a result of the 86th Texas Legislature, 2019. To ensure aligned implementation of these bills for SBEC's consideration, Texas Education Agency (TEA) staff collaborated with other agency staff in the divisions of Special Populations and Special Education throughout the month of October 2019 and conducted a stakeholder meeting on October 24, 2019.

In addition to the following detailed descriptions, the proposed revisions would also remove outdated provisions; include technical edits to remove duplicity; provide technical clean-up and formatting edits for clarifications; and provide relettering/renumbering to conform with the *Texas Register* style and formatting requirements.

Subchapter A. Certificate Renewal and Continuing Professional Education Requirements.

§232.1. General Provisions.

The proposed amendment in §232.1(d) would strike the phrase, "The SBEC may deny renewal if the" and add the phrase, "An educator may not renew a certificate if the individual," to clarify that SBEC rules determine compliance for certificate renewal purposes.

The proposed amendment in §232.1(e) would delete the provision related to deadlines and fees for certificate renewals, as it is duplicative since it appears in other sections of the chapter.

The proposed amendment in §232.1(f) would delete the provision to comply with SB 37, 86th Texas Legislature, 2019, which prohibits the use of student loan default as grounds to deny the issuance or renewal of an educator certificate.

The proposed amendment in §232.1(g) would delete the provisions related to failure to pay child support as grounds to deny or cancel the renewal of a certificate as it is already covered in §232.7(c).

The proposed amendment in §232.1(h) would delete the provisions related to the reissuance of a Texas lifetime certificate surrendered in lieu of revocation or revoked as certificates are not reissued. If certificates are surrendered or revoked, a new application must be submitted, pursuant to Chapter 230, Professional Educator Preparation and Certification.

The proposed amendment in §232.1(i) would reletter the provision to subsection (e) and write out "Texas Education Code" for technical formatting purposes.

§232.3. Voluntary Renewal of Current Texas Educators.

Section 232.3 would be repealed as it is strictly voluntary and not enforceable.

§232.5. Renewal Date for Certificates.

The proposed amendment in §232.5(c) would delete the provision relating to educational aide certificate holders qualifying for standard certificate. Educational aide certificates can no longer be renewed and; therefore, the expiration date of an individual who qualifies for a standard certificate would not be affected by an educational aide certificate date.

The proposed amendment in §232.5(d) - (f) would reletter the provisions to subsections (c) - (e) for technical formatting purposes.

§232.7. Requirements for Certificate Renewal.

The proposed amendment in §232.7(a)(4) would strike the reference to paragraphs (2) - (6) to clarify all provisions in subsection (c) are required to be eligible for renewal.

The proposed amendment in §232.7(b)(4) would strike the phrase, "§232.25 of this title (relating to Fees Payable Upon Certificate Renewal or Reactivation)," and replace it with the phrase, "§230.101 of this title (relating to Schedule of Fees for Certification Services," to properly cross-reference the rule chapter regarding fees paid for certification purposes.

The proposed amendment in §232.7(c)(1) would provide a technical edit to align renewal requirements with the new provisions in §232.16(c).

The proposed amendment in §232.7(c)(5) would delete the provision to comply with SB 37, 86th Texas Legislature, 2019, which prohibits the use of student loan default as grounds to deny the issuance or renewal of an educator certificate.

The proposed amendment in proposed §232.7(c)(6) would strike the phrase, "pursuant to §232.25 of this title," and replace it with the phrase, "provided in §230.101 of this title," to properly cross-reference the rule chapter regarding fees paid for certification purposes.

The proposed amendment in §232.7(c)(6) - (8) would renumber the provisions to paragraphs (5) - (7) for technical formatting purposes.

§232.9. Inactive Status and Late Renewal.

The proposed amendment in §232.9(b) would strike the phrases, "no more than six months" and "and also pay a reactivation fee," regarding the additional payment of a reactivation fee if renewal is longer than six months, as this does not align with practice and

the language is in contradiction to §230.101, which prescribes that a reactivation fee cannot be incurred for late renewal purposes.

The proposed amendment in §232.9(d) would be deleted to move this provision regarding auditing compliance with renewal requirements to proposed new §232.16, Verification of Renewal Requirements.

§232.11. Number and Content of Required Continuing Professional Education Hours and §232.13. Number of Required Continuing Professional Education Hours by Classes of Certificates.

Sections 232.11 and 232.13 would be repealed to combine and organize these sections in proposed new §232.11. Proposed new §232.11 would reorganize current requirements for CPE training by each certificate class; remove duplicative language; and implement recent legislation. These changes would provide greater readability and distinguish the requirements of professional development for each certificate class.

Proposed new §232.11(a), (b), and (c) would reflect current requirements regarding clock-hours, the renewal period, and the focus of professional development on the standards required for issuance of certificate(s).

Proposed new §232.11(d) would maintain the current CPE requirements for classroom teachers to complete 150 hours of CPE for renewal every five years. Proposed new §232.11(d)(2) complies with HB 18 and SB 11, 86th Texas Legislature, 2019, that requires a minimum of 25% (37.5 hours) of total CPE hours in specific instructional areas, where two or more topics can be combined; elaborates on diverse student populations to include those in special education programs who receive services under the Rehabilitation Act of 1973, Section 504, students with mental health conditions or who engage in substance abuse, and students with intellectual or developmental disabilities; and includes how mental health conditions, including grief and trauma, affect student learning and behavior, with specific training requirements pursuant to TEC, §38.036(c)(1), and approved by the commissioner of education.

Proposed new §232.11(e) would maintain the current CPE requirements for principals and would add the requirement that a principal as instructional leader complete 200 hours of CPE for renewal every five years. Proposed new §232.11(e)(2) complies with HB 18, 86th Texas Legislature, 2019, that requires a minimum of 25% (50 hours) of total CPE hours in specific instructional areas; includes effective implementation of the Texas Model for Comprehensive School Counseling Programs; includes mental health programs addressing mental health conditions; elaborates on diverse student populations to include those in special education programs who receive services under the Rehabilitation Act of 1973, Section 504, students with mental health conditions or who engage in substance abuse, and students with intellectual or developmental disabilities; and includes how mental health conditions, including grief and trauma, affect student learning and behavior, with specific training requirements that are based on relevant best practice-based and research-based programs that are approved by the commissioner.

Proposed new §232.11(f) would maintain the current CPE requirements for school counselors to complete 200 hours of CPE for renewal every five years. Proposed new §232.11(f)(2) complies with HB 18, 86th Texas Legislature, 2019, that requires a minimum of 25% (50 hours) of total CPE hours in specific instructional areas; includes counseling students concerning mental health conditions and substance abuse, including through the use of grief-informed and trauma-informed interventions and crisis management and suicide prevention strategies; and includes effective implementation of the Texas Model for Comprehensive School Counseling Programs.

Proposed new §232.11(g) would maintain the current CPE requirements for superintendents to complete 200 hours of CPE for renewal every five years. Proposed new §232.11(g)(2) would comply with HB 403, 86th Texas Legislature, 2019, that requires individuals who hold a superintendent certificate that is renewed on or after January 1, 2021, to complete at least 2.5 hours of CPE on identifying and reporting potential victims of sexual abuse, human trafficking, and other maltreatment of children.

Proposed new §232.11(h) - (j) would maintain the current CPE requirements for school librarians and learning resources specialists, educational diagnosticians, and reading specialists to complete 200 hours of CPE for renewal every five years.

Proposed new §232.11(k) would maintain the current CPE requirements for educators who teach students with dyslexia.

Proposed new §232.11(l) would maintain the current CPE optional activities for educators. To comply with HB 18, training in mental health first aid training must be through a classroom setting with in-person attendance, and the educator will obtain twice the number of hours, not to exceed 16 hours.

Proposed new §232.11(m) and (n) would maintain the current provisions regarding renewal requirements for educators who hold multiple classes of certificates.

§232.15. Types of Acceptable Continuing Professional Education Activities.

The proposed amendment in §232.15(a)(1) and (2) would strike the phrase, "in content area knowledge and skills related to the certificate(s) being renewed," to provide clarity because some of the statutory requirements for CPE are not directly related to content area knowledge and skills.

The proposed amendment in §232.15(a)(4) would strike the phrase, "subsection or subsection (b) of this," to provide clarity that the phrase refers to the entire section.

§232.16. Verification of Renewal Requirements.

Proposed new §232.16(a), (b), and (d) would maintain the current provisions in §232.23 regarding the verification of CPE requirements for educators to provide clarity and readability for educators. The proposed amendment in §232.16(b) would provide a technical edit to align verification requirements with proposed new §232.16(c). Proposed new §232.16(c) would provide clarity to educators that they are not required to satisfy CPE requirements that are implemented within one year prior to the renewal date. This would provide educators with adequate time to comply with any new CPE requirements for renewal purposes.

§232.17. Pre-Approved Professional Education Provider or Sponsor.

The proposed amendment in §232.17 would add the word "Continuing" to the section title to clarify that the pre-approved providers or sponsors are for CPE purposes.

The proposed amendment in §232.17(a) would remove the word "Registration" to align with the proposed change to the section title of §232.21.

§232.19. Approval of Private Companies, Private Entities, and Individuals.

The proposed amendment in §232.19 would add the phrase, "as Continuing Professional Education Providers," to the section title to clarify the approval of these entities is for the purpose of providing continuing education training.

The proposed amendment in §232.19 would clarify that entities seeking approval to apply for registration as a CPE provider must comply with the provisions set out in §232.21 regarding provider requirements. The proposed amendment in §232.19(1) would maintain the current requirements for CPE provider approval in §232.21. These provisions have been reorganized into this section to reflect application provisions for CPE providers, which is only applicable to entities not pre-approved.

§232.21. Provider Requirements.

The proposed amendment in §232.21 would strike the word "Registration" in the section title to clarify the provider requirements are for pre-approved providers and entities that must apply for registration as CPE providers. This section maintains the current requirements for CPE providers and reorganizes the section for readability and clarity.

The proposed amendment in §232.21(a)(5) would delete the provision related to a CPE provider conducting a self-study due to vagueness and lack of enforceability of the provision.

The proposed amendment in §232.21(f) would change the reference from "section" to "chapter" to clarify that it would apply to related provisions in Chapter 232.

§232.23. Verification of Renewal Requirements.

Section 232.23 would be repealed as it has been reorganized as §232.16 to move these provisions earlier in the chapter for readability.

§232.25. Fees Payable Upon Certificate Renewal or Reactivation.

Section 232.25 would be repealed as it contradicts provisions in §230.101 regarding the schedule of fees for certification services.

Subchapter B. National Criminal History Record Information Review of Active Certificate Holders.

§232.31. Purpose.

The proposed amendment in §232.31(b)(4) would add a definition for *pre-enrollment* to provide clarification of the process for TEA to transmit identifiable information to the Texas Department of Public Safety (DPS) fingerprinting vendor for individuals to schedule a fingerprinting appointment.

The proposed amendment in §232.31(b)(4) and (5) would renumber the provisions to paragraphs (5) and (6) for technical formatting purposes.

§232.35. Submission of Required Information.

The proposed amendment in §232.35(a)(1) would strike the phrase, "mailing addresses," to clarify TEA does not require the mailing addresses of educators from the school district for the purposes of fingerprinting.

The proposed amendment in §232.35(a)(3) would clarify TEA staff uses the identifiable information to return fingerprinting statuses to the school entity and to the DPS or its vendor to pre-enroll educators for the purpose of a national criminal history record information review.

The proposed amendment in §232.35(a)(4) would strike the phrase, "after it submits the names of all its certified educators to the TEA staff," to clarify the process used for educators to submit the required information and would add clarification of the provisions in 19 TAC §230.11(b)(2) or 19 TAC Chapter 153, Subchapter DD, for cross-reference purposes.

The proposed amendment in §232.35(b)(3) - (5) would be deleted to align with current practice of the school districts and TEA no longer performing these activities as they are no longer relevant given all new educators must submit a criminal background check. These rules were put in place originally to provide criminal background checks on all current educators prior to the requirement that all educators applying for certification be fingerprinted.

The proposed amendment in §232.35(c)(1) would strike the phrase, "and shall electronically obtain an authorization form from the TEA staff," to clarify procedures that this practice is not required given updates to the technical process of submissions.

The proposed amendment in §232.35(c)(2) would be deleted as this process is no longer used given all new educators must submit a criminal background check.

The proposed amendment in §232.35(c)(3) would renumber the provision to paragraph (2) for technical formatting purposes.

FISCAL IMPACT: Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposal is in effect, there is no additional fiscal impact on state or local governments and there are no additional costs to entities 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: The 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, the proposed rule in 19 TAC §232.11(g) would create a new regulation and increase the number of individuals subject to the rule's applicability by requiring superintendents to complete CPE activities in certain topics, as required by HB 403, 86th Texas Legislature, 2019.

The proposed rule in 19 TAC §232.11(d) - (f) would expand an existing regulation to require individuals who hold standard classroom teacher, principal, and/or school counselor certificates to complete CPE activities in certain additional topics, as required by SB 11 and HB 18, 86th Texas Legislature, 2019.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Franklin has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of the proposal would be clear guidance for applicants, educators, school districts, and providers on CPE requirements. The TEA staff has determined there is no anticipated cost to persons 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 staff 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 March 20, 2020, and ends April 20, 2020. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/. The SBEC will take registered oral and written comments on the proposal at the May 1, 2020, meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on March 20, 2020.

SUBCHAPTER A. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

19 TAC §§232.1, 232.5, 232.7, 232.9, 232.11, 232.15 - 232.17, 232.19, 232.21

STATUTORY AUTHORITY. The amendments and new sections implement Texas Education Code (TEC), §21.003(a), which states a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.0031(f), which clarifies and places certain limits on provisions authorizing termination of an educator's contract for failure to maintain a valid certificate; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public-school educators; TEC, §21.041(b)(1)-(4), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; require the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(7)-(8), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Government Code, Chapter 2001; and provide for the adoption, amendment, and enforcement of an educator's code of ethics; TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; TEC, §21.054, as amended by SB 11 and HBs 18, 403, and 2424, 86th Texas Legislature, 2019, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; TEC, §21.0541, which requires the SBEC to propose rules that allow an educator to receive credit towards the educator's continuing education requirements for completion of an instructional course on the use of an automated external defibrillator; TEC, §21.0543, which requires the SBEC to propose rules that provide for continuing professional education (CPE) credit related to digital technology instruction; Texas Occupations Code (TOC), §55.002, which states a state agency that issues a license shall adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty for failing to renew the license in a timely manner if the individual establishes the individual failed to renew the license in a timely manner because the individual was serving as a military service member; and TOC, §55.003, which states a military service member who holds a license is entitled to two years of additional time to complete any continuing education requirements and any other requirement related to the renewal of the military service member's license.

CROSS REFERENCE TO STATUTE. The amendments and new sections are proposed under Texas Education Code, §§21.003(a); 21.0031(f); 21.031; 21.041(b)(1)-(4) and (7)-(9); 21.054, as amended by Senate Bill 11 and House Bills 18, 403, and 2424, 86th Texas Legislature, 2019; 21.0541; and 21.0543; and Texas Occupations Code, §55.002 and §55.003.

§232.1. General Provisions.

(a) All educators should model the philosophy of life-long learning; therefore, participation in professional development activities is expected of all educators. Activities must focus on the need of each educator to continually update his or her knowledge of current content, best practices, research, and technology that is relevant to his or her individual role as an educator. The State Board for Educator Certification (SBEC) shall ensure that requirements for renewal and continuing professional education are flexible to allow each individual educator to identify the activities he or she will complete to satisfy the SBEC's requirements.

(b) This chapter provides the minimum requirements necessary to renew any class of certificate issued by the SBEC.

(c) Each individual who holds a standard certificate(s) is responsible for renewing the certificate(s) and paying a fee for late renewal. Failure to receive notice of the renewal requirement or deadline does not excuse the individual's obligation to renew or pay applicable fees.

(d) [~~The SBEC may deny renewal if the~~] An educator may not renew a certificate if the individual fails to comply with the requirements of this subchapter.

[~~(e) The deadlines established for renewal, late renewals, and fees are established by procedures approved by the SBEC and are subject to change.~~]

[~~(f) The SBEC shall deny or cancel the renewal of an educator's certificate(s) if required by the Texas Education Code (TEC), §57.491, regarding defaults on guaranteed student loans, or pursuant to an interagency agreement with the Texas Higher Education Coordinating Board (THECB) relating to judgment debts for student loans owed to the THECB.~~]

[(g) The SBEC shall deny or cancel the renewal of an educator's certificate(s) as provided by the Texas Family Code, Chapter 232, regarding failure to pay child support.]

[(h) If reissued, Texas lifetime certificates surrendered in lieu of revocation or revoked at any time shall be reissued as standard certificates and subject to the requirements of this subchapter.]

(e)[(i)] Pursuant to the Texas Education Code [TEC], §21.003(a), an educator employed by a Texas public school district who fails to satisfy each of the requirements to renew his or her standard certificate(s) by the renewal date moves to inactive status and is ineligible for employment in a Texas public school district in a position for which a certificate is required until all appropriate requirements are satisfied. However, if an educator has completed the requirements for renewal and submitted a renewal application prior to the expiration date of the certificate, the certificate will not be considered to have expired.

§232.5. Renewal Date for Certificates.

(a) The renewal date of a standard certificate shall be five years after the last day of the certificate holder's next birth month.

(b) If an educator holds multiple certificates, all certificates will be renewed concurrently and are subject to renewal after the last day of the certificate holder's birth month in the year in which the earliest certificate was issued.

[(c) If an educator holds an educational aide certificate and qualifies for a standard classroom teaching certificate, the expiration date of the new standard teaching certificate shall be five years after the last day of the certificate holder's next birth month.]

(c)[(d)] Pursuant to the Texas Education Code, §21.0031(f), a certificate or permit is not considered to have expired if the educator has completed the renewal requirements of this subchapter and has applied for renewal prior to the expiration date of the certificate or permit. Pursuant to the Texas Government Code, §2001.054, if an educator makes timely and sufficient application for the renewal or extension of a certificate or permit that is not granted because of the pendency of a matter subject to notice and hearing pursuant to Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases), the existing certificate or permit does not expire until the application for renewal or extension has been finally determined by the State Board for Educator Certification (SBEC) and the last day for seeking review of the SBEC order has passed.

(d)[(e)] The renewal of a certificate that is delayed as a result of failure to meet the renewal requirements of this subchapter will not become effective until all renewal requirements have been satisfied.

(e)[(f)] If all renewal requirements have been satisfied and submitted to the Texas Education Agency (TEA), the effective renewal date of a certificate or permit will not be affected by any TEA processing delay.

§232.7. Requirements for Certificate Renewal.

(a) The Texas Education Agency (TEA) staff shall develop procedures to:

(1) notify educators at least six months prior to the expiration of the renewal period to the email address as specified in §230.91 of this title (relating to Procedures in General);

(2) confirm compliance with all renewal requirements pursuant to this subchapter;

(3) notify educators who are not renewed due to noncompliance with this section; and

(4) verify that educators applying for reactivation of certificate(s) under §232.9 of this title (relating to Inactive Status and Late Renewal) are in compliance with subsection (c)[(2)-(6)] of this section.

(b) The TEA staff shall administratively approve each hardship exemption request that meets the criteria specified in paragraphs (1)-(3) of this subsection.

(1) A hardship exemption must be due to one of the following circumstances that prevented the educator's completion of renewal requirements:

(A) catastrophic illness or injury of the educator;

(B) catastrophic illness or injury of an immediate family member; or

(C) military service of the educator.

(2) The request for a hardship exemption must include documentation from a licensed physician or verified military records.

(3) The request for the amount of time allowed for renewal is equal to:

(A) the amount of time that a licensed physician determined that the educator was not able to complete renewal requirements due to the educator's catastrophic illness or injury; or

(B) the amount of time that a licensed physician determined that the educator was not able to complete renewal requirements due to the catastrophic illness or injury of an immediate family member; or

(C) two years of additional time for a military service member, in accordance with the Texas Occupations Code, §55.003.

(4) If a hardship exemption request is approved, the educator must pay the appropriate renewal fee, pursuant to §230.101 of this title (relating to Schedule of Fees for Certification Services)[§232.25 of this title (relating to Fees Payable Upon Certificate Renewal or Reactivation)].

(c) To be eligible for renewal, an educator must:

(1) subject to §232.16(c) of this title (relating to Verification of Renewal Requirements), satisfy continuing professional education requirements, pursuant to §232.11 of this title (relating to Number and Content of Required Continuing Professional Education Hours);

(2) hold a valid standard certificate that is not currently suspended and has not been surrendered in lieu of revocation or revoked by lawful authority;

(3) not be a respondent in a disciplinary proceeding under Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases);

(4) successfully resolve any reported criminal history, as defined by §249.3 of this title (relating to Definitions);

[(5) not be in default on a guaranteed student loan reported by the Texas Guaranteed Student Loan Corporation or a judgment debt for a student loan owed to the Texas Higher Education Coordinating Board, unless repayment arrangements have been made;]

(5)[(6)] not be in arrears of child support, pursuant to the Texas Family Code, Chapter 232;

(6)[(7)] pay the renewal fee, provided in §230.101 of this title [pursuant to §232.25 of this title], which shall be a single fee regardless of the number of certificates being renewed; and

(7)[(8)] submit fingerprints in accordance with §232.35(c) of this title (relating to Submission of Required Information) and the TEC, §22.0831.

(d) The TEA staff shall renew the certificate(s) of an educator who meets all requirements of this subchapter.

§232.9. Inactive Status and Late Renewal.

(a) The certificate(s) of an educator holding a valid standard certificate who does not satisfy the requirements of this subchapter shall be placed on inactive status, subject to the requirements of the Texas Education Code, §21.0031(f). Texas Education Agency (TEA) staff shall notify a person by email of the reason(s) for denying the renewal and the actions or conditions required for removal from inactive status. At any time, the educator may apply to have his or her certificate(s) reactivated and submit the reactivation fee. The TEA staff shall administratively approve reactivation of the educator's certificate(s) subject to verification that the educator is in compliance with §232.7 of this title (relating to Requirements for Certificate Renewal). The renewal date of a reactivated certificate(s) shall be five years after the last day of the certificate holder's next birth month.

(b) A person who satisfies all requirements for renewal prior to the certificate expiration date and submits an application [no more than six months] after the expiration date of a certificate shall pay a late renewal fee in addition to the standard renewal fee. The certificate status will be set to valid, and the effective date of the certificate will be the day after the prior expiration date. A person whose certificate has become inactive longer than six months after the expiration date because of failure to renew shall pay a late renewal fee in addition to the standard renewal fee [and also pay a reactivation fee]. The certificate status will be set to valid, and the effective date of the certificate will be the date the educator completed continuing professional education (CPE) hours, provided it is not more than 60 days prior to the date of the application. If the application is submitted more than 60 days after CPE hours were completed, the effective date will be 60 days prior to the date of the application. The amount of these fees shall be as provided in §230.101 of this title (relating to Schedule of Fees for Certification Services).

(c) If a person does not satisfy the required CPE hours at the expiration of the renewal period, the person may have the certificate(s) removed from inactive status and reactivated by verifying through an affidavit whether he or she is in compliance with renewal requirements, including CPE hours, and paying any applicable fee(s).

[(d) The TEA staff shall be responsible for auditing compliance with renewal requirements. The TEA audit procedures shall be based on available resources and may include random audits. The TEA staff shall contact an educator selected for an audit of his or her renewal requirements and provide the educator with information needed to submit the documentation that supports certificate renewal. The TEA staff at any time may review the documentation required for renewal under this subchapter, which may include the documentation described in §232.15 of this title (relating to Types of Acceptable Continuing Professional Education Activities) and §232.21 of this title (relating to Provider Registration Requirements).]

§232.11. Number and Content of Required Continuing Professional Education Hours.

(a) The appropriate number of clock-hours of continuing professional education (CPE) must be completed during each five-year renewal period.

(b) One semester credit hour earned at an accredited institution of higher education is equivalent to 15 CPE clock-hours.

(c) Required Content. Other than hours earned to comply with subsections (d), (e), (f), (g), and (k) of this section, professional development activities shall be related to the certificate(s) being renewed and focus on the standards required for issuance of the certificate(s), including:

(1) content area knowledge and skills; and

(2) professional ethics and standards of conduct.

(d) Classroom Teacher.

(1) Classroom teacher certificate holders shall complete 150 clock-hours.

(2) A classroom teacher must attain at least 37.5 hours of CPE that includes training directly related to each of the following topics and may include two or more listed topics combined:

(A) collecting and analyzing information that will improve effectiveness in the classroom;

(B) recognizing early warning indicators that a student may be at risk of dropping out of school;

(C) digital learning, digital teaching, and integrating technology into classroom instruction;

(D) educating diverse student populations, including:

(i) students who are eligible to participate in special education programs under Texas Education Code (TEC), Chapter 29, Subchapter A;

(ii) students who are eligible to receive educational services required under the Rehabilitation Act of 1973, Section 504 (29 United States Code (USC), Section 794);

(iii) students with mental health conditions or who engage in substance abuse;

(iv) students with intellectual or developmental disabilities;

(v) students who are educationally disadvantaged;

(vi) students of limited English proficiency; and

(vii) students at risk of dropping out of school;

(E) understanding appropriate relationships, boundaries, and communications between educators and students; and

(F) how mental health conditions, including grief and trauma, affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma. The instruction must:

(i) comply with the training required by TEC, §38.036(c)(1); and

(ii) be approved by the commissioner of education.

(e) Principal and Principal as Instructional Leader.

(1) Principal and Principal as Instructional Leader certificate holders shall complete 200 clock-hours.

(2) A principal and principal as instructional leader must attain at least 50 hours of CPE that include training directly related to each of the following topics:

(A) effective and efficient management, including:

(i) collecting and analyzing information;

(ii) making decisions and managing time; and

(iii) supervising student discipline and managing behavior;

(B) recognizing early warning indicators that a student may be at risk of dropping out of school;

(C) digital learning, digital teaching, and integrating technology into campus curriculum and instruction;

(D) effective implementation of the Texas Model for Comprehensive School Counseling Programs under TEC, §33.005;

(E) mental health programs addressing a mental health condition;

(F) educating diverse student populations, including:

(i) students who are eligible to participate in special education programs under TEC, Chapter 29, Subchapter A;

(ii) students with intellectual or developmental disabilities;

(iii) students who are eligible to receive educational services required under the Rehabilitation Act of 1973, Section 504 (29 USC, Section 794);

(iv) students with mental health conditions or who engage in substance abuse;

(v) students who are educationally disadvantaged;

(vi) students of limited English proficiency; and

(vii) students at risk of dropping out of school;

(G) preventing, recognizing, and reporting any sexual conduct between an educator and student that is prohibited under Texas Penal Code, §21.12, or for which reporting is required under TEC, §21.006; and

(H) how mental health conditions, including grief and trauma, affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma. The instruction must be:

(i) based on relevant best practice-based programs and research-based practices; and

(ii) approved by the commissioner, in consultation with the Texas Health and Human Services Commission.

(f) School Counselor.

(1) School Counselor certificate holders shall complete 200 clock-hours.

(2) A school counselor must attain at least 50 hours of CPE that include training directly related to each of the following topics:

(A) assisting students in developing high school graduation plans;

(B) implementing dropout prevention strategies;

(C) informing students concerning:

(i) college admissions, including college financial aid resources and application procedures; and

(ii) career opportunities;

(D) counseling students concerning mental health conditions and substance abuse, including through the use of grief-informed and trauma-informed interventions and crisis management and suicide prevention strategies; and

(E) effective implementation of the Texas Model for Comprehensive School Counseling Programs under TEC, §33.005.

(g) Superintendent.

(1) Superintendent certificate holders shall complete 200 clock-hours.

(2) An individual who holds a superintendent certificate that is renewed on or after January 1, 2021, must complete at least 2.5 hours of training every five years on identifying and reporting potential victims of sexual abuse, human trafficking, and other maltreatment of children, in accordance with TEC, §21.054(h). For purposes of this subsection, "other maltreatment" has the meaning assigned by Human Resources Code, §42.002.

(h) School Librarian and Learning Resources Specialist certificate holders shall complete 200 clock-hours.

(i) Educational Diagnostician certificate holders shall complete 200 clock-hours.

(j) Reading Specialist certificate holders shall complete 200 clock-hours.

(k) The required CPE for educators who teach students with dyslexia must include training regarding new research and practices in educating students with dyslexia. The required training may be satisfied through an online course approved by Texas Education Agency staff.

(l) Professional development activities may include:

(1) an evidence-based mental health first aid training program or an evidence-based grief-informed and trauma-informed care program that is offered through a classroom instruction format that requires in-person attendance. A person receiving this training will receive twice the number of hours of instruction provided under that program, not to exceed 16 hours;

(2) suicide prevention training that meets the guidelines for suicide prevention training approved under the TEC, §21.451;

(3) an instructional course on the use of an automated external defibrillator (AED) that meets the guidelines for AED training approved under Texas Health and Safety Code, §779.002, in accordance with the TEC, §21.0541; and

(4) education courses that:

(A) use technology to increase the educator's digital literacy; and

(B) assist the educator in the use of digital technology in learning activities that improve teaching, assessment, and instructional practices.

(m) An educator holding multiple classes of certificates shall complete the higher number of required CPE clock-hours in the classes held during each five-year renewal period unless otherwise specified in applicable State Board for Educator Certification rules codified in the Texas Administrative Code, Title 19, Part 7.

(n) An educator eligible to renew multiple classes of certificates issued during the same renewal period may satisfy the requirements for any class of certificate issued for less than the full five-year period by completing a prorated number of the required CPE clock-hours. Educators must complete a minimum of one-fifth of the additional CPE clock-hours for each full calendar year that the additional class of certificate is valid.

§232.15. Types of Acceptable Continuing Professional Education Activities.

(a) The following are acceptable types of continuing professional education (CPE) activities:

(1) participating in institutes, workshops, seminars, conferences, interactive distance learning, video conferencing, online activities, and in-service or staff development activities given by an approved provider or sponsor, pursuant to §232.21 of this title (relating to Provider [~~Registration~~] Requirements) [~~, in content area knowledge and skills related to the certificate(s) being renewed~~] . Staff development activities completed through accredited public and private schools in other states, United States territories, and countries other than the United States may be accepted;

(2) completing undergraduate courses [~~in content area knowledge and skills related to the certificate(s) being renewed~~] , graduate courses, or training programs that are taken through an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board or as outlined in §230.1 of this title (relating to Definitions);

(3) participating in an independent study in content area knowledge and skills related to the certificate(s) being renewed, not to exceed 20% of the required clock-hours, which may include:

(A) self-study of relevant professional materials (e.g., books, journals, periodicals, video and audio tapes, computer software, interactive distance learning, video conferencing, or online activities);

(B) developing curriculum; or

(C) authoring a published work;

(4) developing, teaching, or presenting a CPE activity described in this [~~subsection or subsection (b) of this~~] section, not to exceed 10% of the required clock-hours; and

(5) providing professional guidance as a mentor to another educator, not to exceed 30% of the required clock-hours.

(b) Completion of each CPE activity should be evidenced by documentation (e.g., transcripts, certificates of completion, or attendance logs).

§232.16. Verification of Renewal Requirements.

(a) Written documentation of completion of all activities applied toward continuing professional education (CPE) requirements shall be maintained by each educator.

(b) Subject to subsection (c) of this section, by the date renewal is required, the educator shall verify through an affidavit in a manner determined by the Texas Education Agency (TEA) staff whether he or she is in compliance with renewal requirements, including CPE.

(c) Satisfaction of continuing professional education requirements, pursuant to §232.11 of this title (relating to Number and Content of Required Continuing Professional Education Hours), is not required by the renewal date if such requirements are implemented within one year prior to the renewal date.

(d) The TEA staff shall be responsible for auditing compliance with renewal requirements. The TEA audit procedures shall be based on available resources and may include random audits. The TEA staff shall contact an educator selected for an audit of his or her renewal requirements and provide the educator with information needed to submit the documentation that supports certificate renewal. The TEA staff at any time may review the documentation required for renewal under this subchapter, which may include the documentation described in §232.15 of this title (relating to Types of Acceptable Continuing Professional Education Activities) and §232.21 of this title (relating to Provider Requirements).

§232.17. Pre-Approved Continuing Professional Education Provider or Sponsor.

(a) The following entities may provide and/or sponsor continuing professional education (CPE) activities and must comply with the provisions of §232.21 of this title (relating to Provider [~~Registration~~] Requirements). Pre-approved providers include:

(1) State Board for Educator Certification;

(2) Texas Education Agency;

(3) accredited institutions of higher education that at the time were accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(4) regional education service centers;

(5) Texas public school districts and open-enrollment charter schools. To be creditable toward CPE requirements, school district in-service and/or staff development activities must be developed, approved, and conducted in accordance with the Texas Education Code, §21.451;

(6) private schools, as defined in §230.1 of this title (relating to Definitions); and

(7) professional membership associations or non-profits that have offered professional development in Texas for at least five years and have tax-exempt status under 26 United States Code, §501(c)(3)-(6), or a state association affiliated with a national association with tax-exempt status.

(b) If private companies, entities, and individuals provide CPE activities on behalf of a pre-approved provider, the pre-approved provider is responsible for ensuring compliance with quality and documentation requirements of §232.21 of this title.

§232.19. Approval of Private Companies, Private Entities, and Individuals as Continuing Professional Education Providers.

Private companies, private entities, and individuals seeking approval [~~who wish~~] to provide continuing professional education (CPE) for Texas educators on their own behalf must apply for registration [~~register~~] with the State Board for Educator Certification and must comply with the provisions of [~~be approved under~~] §232.21 of this title (relating to Provider [~~Registration~~] Requirements).

(1) The Texas Education Agency staff shall [~~develop procedures to~~] approve as a CPE provider [~~providers and/or sponsors~~] any [~~other~~] person, agency, or entity seeking to offer CPE activities that: [~~pursuant to the requirements of this subchapter.~~]

(A) submits provider information with types and methods of CPE activities;

(B) affirms compliance with all applicable statutes and rules; and

(C) prohibits discrimination in the provision of CPE activities to any certified educator.

(2) It is the responsibility of the educator to verify the approval status of any CPE provider prior to completion of the CPE activities.

§232.21. Provider [~~Registration~~] Requirements.

(a) All [~~Procedures adopted by the Texas Education Agency (TEA) staff require all pre-approved and all other~~] continuing professional education (CPE) providers must [~~or sponsors to register with the~~

~~State Board for Educator Certification (SBEC) by submitting the relevant sections of the provider registration form designated by the TEA staff in order to accomplish any or all of the following, as applicable~~]:

(1) comply with applicable State Board for Educator Certification (SBEC) rules codified in Texas Administrative Code, Title 19, Part 7 [~~notify the TEA staff of the intent to offer CPE activities~~];

(2) contribute to the advancement of professional knowledge and skills identified by the commissioner's rules for teacher and administrator standards in Chapter 149 of this title (relating to Commissioner's Rules Concerning Educator Standards), the Texas Essential Knowledge and Skills adopted by the State Board of Education, and standards adopted by the SBEC for each certificate [~~affirm compliance with all applicable statutes and rules~~];

(3) ensure that all CPE offered: [~~prohibit discrimination in the provision of CPE activities to any certified educator;~~]

(A) is developed and presented by persons who are appropriately knowledgeable in the subject matter of the training being offered; and

(B) specifies the content under §232.11 of this title (relating to Number and Content of Required Continuing Professional Education Hours) and number of creditable CPE clock-hours.

[~~(4) document that each CPE activity:~~]

[~~(A) complies with applicable SBEC rules codified in the Texas Administrative Code, Title 19, Part 7;~~]

[~~(B) contributes to the advancement of professional knowledge and skills identified by standards adopted by the SBEC for each certificate;~~]

[~~(C) is developed and presented by persons who are appropriately knowledgeable in the subject matter of the training being offered; and~~]

[~~(D) specifies the content under §232.11 of this title (relating to Number and Content of Required Continuing Professional Education Hours) and number of creditable CPE clock-hours; and~~]

[~~(5) on a biennial or more frequent basis, conduct a comprehensive, in-depth self-study to assess the CPE needs and priorities of educators served by the provider as well as the quality of the CPE activities offered.~~]

(b) At the conclusion of each activity offered for CPE credit, the provider or sponsor must provide to each educator in attendance written documentation listing, at a minimum, the provider's name and provider number, the educator's name, the date and content of the activity, and the number of clock-hours that count toward satisfying CPE requirements.

(c) All providers are required to maintain a record of CPE activities that includes a list of attendees, the date and content of the activity, and the number of clock-hours that count toward satisfying CPE requirements. Providers shall retain a record of CPE activity for a period of seven years after the activity is completed.

(d) A provider or sponsor that is not granted approval or has its approval withdrawn by the TEA staff is not entitled to a contested-case hearing before the SBEC or a person designated by the SBEC to conduct contested-case hearings.

(e) The TEA staff shall investigate complaints against a provider or sponsor alleging noncompliance with this section. If the investigation determines that the provider or sponsor is operating in violation of any applicable provision under this chapter, the TEA staff may withdraw the approval granted under this section to the provider or sponsor until the provider or sponsor can demonstrate compliance.

(f) The TEA staff at any time may review the documentation required for provider registration under this chapter [~~section~~]. If a review determines that the provider or sponsor is operating in violation of any applicable provision under this chapter, the TEA staff may withdraw the approval granted under this section to the provider or sponsor until the provider or sponsor can demonstrate compliance.

(g) Before withdrawing approval under subsection (e) or (f) of this section, TEA staff will notify the provider or sponsor in writing that an alleged violation has occurred, provide a summary of the allegation, and request that the provider or sponsor respond to the allegation.

(1) A provider or sponsor shall:

(A) cooperate fully with any TEA investigation or review; and

(B) respond within 21 business days of receipt of requests for information regarding the allegation and other requests for information from the TEA, except where:

(i) TEA staff imposes a different response date; or

(ii) the provider or sponsor is unable to meet the initial response date and requests and receives a different response date from TEA staff.

(2) TEA staff may request further information from the provider or sponsor.

(3) If a provider or sponsor fails to comply with paragraph (1)(B) of this subsection, the TEA may deem admitted the violation of rules under this chapter.

(4) Upon completion of an investigation or review, TEA staff will notify the provider or sponsor in writing of the findings.

(A) If TEA staff finds that a violation occurred, the notice will specify each rule that was violated and that the approval granted under this section has been withdrawn until the provider or sponsor can demonstrate compliance.

(B) If TEA staff finds that no violation has occurred, the notice will specify that no rule was violated.

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

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Cristina De La Fuente-Valadez
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State Board for Educator Certification
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For further information, please call: (512) 475-1497

19 TAC §§232.3, 232.11, 232.13, 232.23, 232.25

STATUTORY AUTHORITY. The repeals implement Texas Education Code (TEC), §21.003(a), which states a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.0031(f), which

clarifies and places certain limits on provisions authorizing termination of an educator's contract for failure to maintain a valid certificate; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public-school educators; TEC, §21.041(b)(1)-(4), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; require the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(7)-(8), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; and provide for the adoption, amendment, and enforcement of an educator's code of ethics; TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; TEC, §21.054, as amended by Senate Bill 11 and House Bills 18, 403, and 2424, 86th Texas Legislature, 2019, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; TEC, §21.0541, which requires the SBEC to propose rules that allow an educator to receive credit towards the educator's continuing education requirements for completion of an instructional course on the use of an automated external defibrillator; TEC, §21.0543, which requires the SBEC to propose rules that provide for continuing professional education (CPE) credit related to digital technology instruction; Texas Occupations Code (TOC), §55.002, which states a state agency that issues a license shall adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty for failing to renew the license in a timely manner if the individual establishes the individual failed to renew the license in a timely manner because the individual was serving as a military service member; and TOC, §55.003, which states a military service member who holds a license is entitled to two years of additional time to complete any continuing education requirements and any other requirement related to the renewal of the military service member's license.

CROSS REFERENCE TO STATUTE. The repeals are proposed under Texas Education Code, §§21.003(a); 21.0031(f); 21.031; 21.041(b)(1)-(4) and (7)-(9); 21.054, as amended by Senate Bill 11 and House Bills 18, 403, and 2424, 86th Texas Legislature, 2019; 21.0541; and 21.0543; and Texas Occupations Code, §55.002 and §55.003.

§232.3. Voluntary Renewal of Current Texas Educators.

§232.11. Number and Content of Required Continuing Professional Education Hours.

§232.13. Number of Required Continuing Professional Education Hours by Classes of Certificates.

§232.23. Verification of Renewal Requirements.

§232.25. Fees Payable Upon Certificate Renewal or Reactivation.

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

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SUBCHAPTER B. NATIONAL CRIMINAL HISTORY RECORD INFORMATION REVIEW OF ACTIVE CERTIFICATE HOLDERS

19 TAC §232.31, §232.35

STATUTORY AUTHORITY. The amendments implement Texas Education Code (TEC), §21.041(c), which states the State Board for Educator Certification (SBEC) may adopt fees for the issuance and maintenance of an educator certification to adequately cover the cost of the administration; and TEC, §22.0831(f)(1) and (2), which state the SBEC may propose rules regarding the deadline for the national criminal history check and implement sanctions for persons failing to comply with the requirements.

CROSS REFERENCE TO STATUTE. The amendments are proposed under Texas Education Code, §21.041(c) and §22.0831(f).

§232.31. Purpose.

(a) This subchapter provides rules for the implementation of the criminal history record information review under the Texas Education Code, Chapter 22, Subchapter C.

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

(1) Certified educator--An employee or applicant for employment at a school entity who holds a Texas educator certification issued under the Texas Education Code (TEC), Chapter 21, Subchapter B, as required by the TEC, Chapter 22, Subchapter C, to whom the TEC, §22.0831, and this subchapter apply.

(2) Criminal History Clearinghouse--An electronic clearinghouse and subscription service established by the Texas Department of Public Safety, as defined by the Texas Government Code, §411.0845.

(3) National criminal history record information--Criminal history record information obtained from both the Texas Department of Public Safety and the Federal Bureau of Investigation, as defined by the Texas Education Code, §22.081.

(4) Pre-enrollment--The process by which the Texas Education Agency transmits personal identifiers for an applicant for certification, a certified educator, or a non-certified employee to the Texas Department of Public Safety or its fingerprinting vendor, who then provides the individual with a scheduling email that allows for the scheduling of a fingerprinting appointment.

(5)[~~(4)~~] School entity--A school district, open-enrollment charter school, or shared services arrangement.

(6)[~~(5)~~] Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.

(c) A certified educator shall submit fingerprint, photograph, and identification information to the Texas Department of Public Safety

(DPS) in the form the DPS requires for the purpose of entering the person's national criminal history record information into the Criminal History Clearinghouse.

(d) A certified educator may not be employed by a school entity on or after September 1, 2011, unless the certified educator's national criminal history record information has been entered into the Criminal History Clearinghouse and made available to the Texas Education Agency and the school entity by which the certified educator is employed.

§232.35. Submission of Required Information.

(a) Notice to school entity.

(1) Upon notice from the Texas Education Agency (TEA) staff, a school entity shall provide, no later than 15 calendar days from the date the school entity receives the notice, the names, e-mail addresses, [~~mailing addresses,~~] and any other requested identifying information for all certified educators employed by the school entity at that time.

(2) All certified educators shall provide the school entity by which they are employed an e-mail address at which the certified educator can receive notices and authorizations required by this subchapter. A school entity e-mail address or an Internet e-mail address is acceptable for this purpose.

(3) The TEA staff shall use the identifying information to return a fingerprinting status [~~send notices~~] to the school entity. The TEA will also submit the identifying information to the Texas Department of Public Safety (DPS) or its vendor to pre-enroll [~~and its~~] certified educators [~~notifying those educators~~] who must submit fingerprint, photograph, and identification information for the purpose of a national criminal history record information review.

(4) All certified educators hired by a school entity [~~after it submits the names of all its certified educators to the TEA staff~~] shall submit fingerprint, photograph, and identification information required by this subchapter before the certified educator begins employment with the school entity. This requirement will not apply if the certified educator has already submitted such information to the DPS [~~Texas Department of Public Safety (DPS)~~] in the form the DPS requires for the purposes of fingerprinting under §230.11(b)(2) of this title (relating to General Requirements) or Chapter 153, Subchapter DD, of this title (relating to Criminal History Record Information Review).

(b) Notice to certified educator to submit required information.

(1) The TEA staff shall notify the certified educator by e-mail, at the address specified by the school entity, that the certified educator must submit fingerprint, photograph, and identification information to the DPS in the form the DPS requires for the purpose of entering the certified educator's national criminal history record information into the Criminal History Clearinghouse.

(2) The notice shall specify the date, which shall be at least 80 calendar days from the date the notice is sent via e-mail, that the certified educator's national criminal history record information must be received by the TEA staff as required by this section and by the Texas Education Code (TEC), §22.083.

[~~(3) The TEA staff shall e-mail the employing school entity a copy of each notice.~~]

[~~(4) Within ten calendar days of the date on which each notice was sent, the school entity shall ensure that all affected certified educators have received the notice by obtaining written acknowledgment from each certified educator, or by delivering a copy of the notice to the certified educator. The school entity shall maintain a record of the proof of delivery of each notice.~~]

[~~(5) Twenty-five calendar days before the date on which an educator's criminal history information must be submitted, the TEA staff shall send a reminder notice, by e-mail only, to any certified educator whose information has not yet been received and to his or her employing school entity.~~]

(c) Authorization to submit required information.

(1) Each certified educator shall pay the required national criminal history review fee, which shall be in the same amount as the national criminal history check fee for applicants for certification in §230.101of this title (relating to Schedule of Fees for Certification Services) [~~, and shall electronically obtain an authorization form from the TEA staff~~] . This provision does not prohibit another entity from paying the national criminal history review fee on behalf of the educator.

[~~(2) The authorization form shall be used to submit fingerprint, photograph, and identification information to the DPS and its contractors in the form that the DPS requires to obtain national criminal history record information required by the TEC, §22.0831, which shall be entered into the Criminal History Clearinghouse, and made available to the TEA staff and the school entity.~~]

(2)[~~(3)~~] Only fingerprint information that has been properly authorized by the TEA staff shall satisfy the requirements of the TEC, §22.0831, and shall be accepted and entered in the Criminal History Clearinghouse.

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

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 175. FEES AND PENALTIES

22 TAC §175.1, §175.2

The Texas Medical Board (Board) proposes amendments to 22 TAC §175.1, concerning Application and Administrative Fees, and §175.2, concerning Registration and Renewal Fees.

Sections 175.1 and 175.2 are amended to add application, registration and renewal fees for Radiology Assistance, a new certificate type mandated by and in accordance with House Bill 1504 (86th Regular Session).

Proposed amendments under §175.1 regarding fees for processing an application for a certificate, add an application and certificate fee for a Radiologist Assistant Certificate in the amount of $140.00, and also add a fee for an application for a temporary certificate in the amount of $140.00.

Proposed amendments under §175.2 provide the fee amount for biennial renewal of a Radiologist Assistant Certificate, in the amount of $100.00.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years these sections, as proposed, are in effect, the public benefit anticipated as a result of enforcing this proposal will be to establish reasonable and necessary fees to carry out the Board's mandated function as it relates to the new radiologist assistant certificate type.

Mr. Freshour has determined that for the first five-year period these rules are in effect, there will be no effect to individuals required to comply with these rules as proposed with the exception of paying the certificate fee. There will be no effect on small businesses, micro businesses, or rural communities.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and has determined that for each year of the first five years the proposed amendments will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that the agency has determined that for each year of the first five years these rule amendments, as proposed, are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rules;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rules;

(3) there is an increase in revenue to the state or to local governments as a result of enforcing or administering the rules.

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rules.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed amendment will be in effect, Mr. Freshour has determined the following:

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

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

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

(4) The proposed rules do require an increase in fees paid to the agency with the creation of a new certificate type as described above.

(5) The proposed rules do create a new regulation.

(6) The proposed rules do expand, but do not limit or repeal an existing regulation as described above.

(7) The proposed rules do increase the number of individuals subject to the rule's applicability.

(8) The proposed rules do positively affect this state's economy.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed in accordance with House Bill 1504 (86th Regular Session) and under the authority of the Texas Occupations Code Annotated, §601.057, which allow the board to set and collect fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing Chapter 601.

No other statutes, articles or codes are affected by this proposal.

§175.1. Application and Administrative Fees.

The board shall charge the following fees for processing an application for a license or permit:

(1) Physician Licenses:

(A) Full physician license--$817.

(B) Out-of-State Telemedicine license--$817.

(C) Administrative medicine license--$817.

(D) Distinguished Professor Temporary License--$817.

(E) Conceded Eminence--$817.

(F) Reissuance of license following revocation--$817.

(G) Temporary license:

(i) State health agency--$50.

(ii) Visiting physician--$-0-.

(iii) Visiting professor--$167.

(iv) National Health Service Corps--$-0-.

(v) Faculty temporary license--$552.

(vi) Postgraduate Research Temporary License--$-0-.

(vii) Provisional license--$107.

(H) Licenses and Permits relating to Graduate Medical Education:

(i) Initial physician in training permit--$200.

(ii) Physician in training permit for program transfer--$141.

(iii) Evaluation or re-evaluation of postgraduate training program--$250.

(iv) Physician in training permit for applicants performing rotations in Texas--$131.

(I) In accordance with §554.006 of the Texas Occupations Code, for those physician license types that confer the authority to prescribe controlled substances and access the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code, the Board shall charge an additional reasonable and necessary fee sufficient to cover the Board's responsible portion for costs related to the Texas Pharmacy Board's establishment and implementation of the drug monitoring program. The fee amount will be calculated in accordance with the Texas General Appropriations Act.

(2) Physician Assistants:

(A) Physician assistant license--$220.

(B) Reissuance of license following revocation--$220.

(C) Temporary license--$107.

(D) In accordance with §554.006 of the Texas Occupations Code, the Board shall charge an additional reasonable and necessary fee sufficient to cover the Board's responsible portion for costs related to the Texas Pharmacy Board's establishment and implementation of the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code. The fee amount will be calculated in accordance with the Texas General Appropriations Act.

(3) Acupuncturists/Acudetox Specialists/Continuing Education Providers:

(A) Acupuncture licensure--$320.

(B) Temporary license for an acupuncturist--$107.

(C) Acupuncturist distinguished professor temporary license--$50.

(D) Acudetox specialist certification--$52.

(E) Continuing acupuncture education provider--$50.

(F) Review of a continuing acupuncture education course--$25.

(G) Review of continuing acudetox acupuncture education courses--$50.

(4) Non-Profit Health Organization initial certification--$2,500.

(5) Surgical Assistants:

(A) Surgical assistant licensure--$315.

(B) Temporary license--$50.

(6) Criminal History Evaluation Letter--$100.

(7) Certifying board evaluation--$200.

(8) Physician/Physician Assistant Jointly-Owned Entity Annual Report--$18.

(9) Perfusionists:

(A) Application and full license--$180.

(B) Application and provisional license--$180.

(10) Respiratory Care Practitioners:

(A) Application and certificate--$125.

(B) Application and temporary permit--$55.

(11) Medical Radiologic Technologists/Non-Certified Technicians/Training Programs/Instructors.

(A) Application and general or limited certificate--$80.

(B) Application and temporary general or limited certificate--$30.

(C) Non-certified technician application and placement on the General Registry--$60.

(D) Training program approval application fee--$500.

(E) Training program site inspection fee--A fee equal to the board's round trip travel expenses, not to exceed $1000.

(F) Training program instructor approval application fee--$50.

(12) Medical Physicists:

(A) Application and initial licensing fee:

(i) first specialty on initial application--$130.

(ii) additional specialties on application--$50.

(B) Temporary license application and temporary licensing fee:

(i) first specialty on application--$130.

(ii) additional specialties on application--$50 each.

(13) Radiologist Assistant Certificate:

(A) Application and certificate--$140.

(B) Application and temporary certificate--$140.

§175.2. Registration and Renewal Fees.

The board shall charge the following fees to continue licenses and permits in effect:

(1) Physician Registration Permits:

(A) Initial biennial permit--$456.

(B) Subsequent biennial permit--$452.

(C) Additional biennial registration fee for office-based anesthesia--$210.

(D) In accordance with §554.006 of the Texas Occupations Code, for those physician license types that confer the authority to prescribe controlled substances and access the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code, the board shall charge an additional reasonable and necessary fee sufficient to cover the board's responsible portion for costs related to the Texas Pharmacy board's establishment and implementation of the drug monitoring program. The fee amount will be calculated in accordance with the Texas General Appropriations Act.

(2) Physician Assistant Registration Permits:

(A) Initial biennial permit--$541.00.

(B) Subsequent biennial permit--$537.00.

(C) In accordance with §554.006 of the Texas Occupations Code, the board shall charge an additional reasonable and necessary fee sufficient to cover the board's responsible portion for costs related to the Texas Pharmacy Board's establishment and implementation of the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code. The fee amount will be calculated in accordance with the Texas General Appropriations Act.

(3) Acupuncturists/Acudetox Specialists Registration Permits:

(A) Initial biennial permit for acupuncturist--$671.

(B) Subsequent biennial permit for acupuncturist--$667.

(C) Annual renewal for acudetox specialist certification--$87.50.

(4) Training Program and Instructor Approval Renewal:

(A) Training program instructor approval triennial renewal fee--$50.

(B) Training program site visit fee--A fee equal to the board's round trip travel expenses, not to exceed $1000.

(C) Training program approval triennial renewal fee--$500.

(5) Non-Profit Health Organization biennial recertification--$1,125.

(6) Surgical Assistants registration permits:

(A) Initial biennial permit--$561.

(B) Subsequent biennial permit--$557.

(7) Certifying board evaluation renewal--$200.

(8) Perfusionists - License biennial renewal--$362.

(9) Respiratory Care Practitioners - Certificate renewal--$106.

(10) Medical Radiologic Technologist - General or limited certificate biennial renewal--$66.00.

(11) Non-Certified Technician - Registry biennial renewal--$56.00.

(12) Medical Physicists: License biennial renewal:

(A) First specialty--$260.

(B) Additional specialties--$50 each.

(13) Radiologist Assistant - Certificate biennial renewal--$100.

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

Filed with the Office of the Secretary of State on March 9, 2020.

TRD-202001038
Scott Freshour
General Counsel
Texas Medical Board
Earliest possible date of adoption: April 19, 2020
For further information, please call: (512) 305-7016

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.2

The Texas Board of Nursing (Board) proposes amendments to §217.2, relating to *Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions.* The amendments are being proposed under the authority of the Occupations Code §301.2511 and §301.151.

The proposed amendments require applicants to submit fingerprints for a complete criminal background check prior to licensure, in compliance with the Occupations Code §301.2511, and eliminate subsection (f) of the section because military programs, like the U.S. Army Practical Nurse Course, are reviewed and approved by the Board in the same manner as all other nursing programs, and military courses other than the U.S. Army Practical Nurse Course are approved by the Board.

Section by Section Overview. Proposed amended §217.2(a)(5) clarifies that applicants for initial licensure by examination must submit fingerprints for a complete criminal background check. The proposal eliminates §217.2(f) from the section in its entirety.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of a rule that is consistent with statutory requirements. The Board does not anticipate any associated costs of compliance with the proposal because applicants are required by the Occupations Code §301.2511 to submit their fingerprints for a complete background check prior to licensure. The Board utilizes a third party vendor for all criminal background checks prior to licensure. The proposal does not change this statutorily required licensure requirement; only the required method of compliance; instead of submitting a fingerprint card, an applicant must submit his/her fingerprints directly to the Board's third party vendor. The Board does not anticipate any new costs of compliance associated with this requirement.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis. Additionally, as required by the Government Code §2006.001, the Board has determined that there will not be an adverse economic impact on rural communities.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not expected to have an effect on existing agency positions; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal does not implement new legislation; (vi) the proposal does not expand, limit, or repeal an existing regulation, but it does modify an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of govern-

ment action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted within thirty days of publication to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.2511 and §301.151.

Section 301.2511(a) provides that an applicant for a registered nurse license must submit to the Board, in addition to satisfying the other requirements of the subchapter, a complete and legible set of fingerprints, on a form prescribed by the Board, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. Section §301.2511(b) provides that the Board may deny a license to an applicant who does not comply with the requirement of subsection (a). Issuance of a license by the Board is conditioned on the Board obtaining the applicant's criminal history record information under the section. Finally, §301.2511(c) states that the Board by rule shall develop a system for obtaining criminal history record information for a person accepted for enrollment in a nursing educational program that prepares the person for initial licensure as a registered or vocational nurse by requiring the person to submit to the Board a set of fingerprints that meets the requirements of subsection (a). The Board may develop a similar system for an applicant for enrollment in a nursing educational program. The Board may require payment of a fee by a person who is required to submit a set of fingerprints under this subsection.

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

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §301.2511 and §301.151.

§217.2. Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions.

(a) All applicants for initial licensure by examination shall:

(1) - (4) (No change.)

(5) submit fingerprints [~~FBI fingerprint cards provided by the Board~~] for a complete criminal background check; and

(6) (No change.)

(b) - (e) (No change.)

[~~(f) The U.S. Army Practical Nurse Course (formerly the 91C Clinical Specialist Course) is the only military program acceptable for vocational nurse licensure by examination.~~]

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 March 5, 2020.

TRD-202001003
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Earliest possible date of adoption: April 19, 2020
For further information, please call: (512) 305-6822

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22 TAC §217.3

The Texas Board of Nursing (Board) proposes amendments to §217.3, relating to Temporary Authorization to Practice/Temporary Permit. The amendments are being proposed under the authority of the Occupations Code §301.2511, §301.252(a), and §301.151.

First, the proposed amendments require new graduates seeking temporary authorization to practice as a graduate nurse or graduate vocational nurse to submit fingerprints for a complete criminal background check prior to licensure, in compliance with the Occupations Code §301.2511, and pass the jurisprudence exam, in compliance with the Occupations Code §301.252, prior to receiving a graduate nurse or graduate vocational nurse permit. Graduate nurses who are issued graduate permits may practice nursing if appropriately supervised. As such, the public needs to be assured that these nurses have undergone background checks to ensure safe practice and have demonstrated competency by passing the Board's jurisprudence and ethics exam. Second, the proposed amendments make non-substantive changes to paragraph (3) to increase the readability of the paragraph. Third, the proposed amendments clarify that a temporary permit may be re-issued if a nurse is unable to complete requirements that are necessary for the nurse's licensure reinstatement within a six-month period. Due to an individual's performance pace, it may take a nurse longer than six months to complete requirements necessary for licensure reinstatement. The intent of §217.3(c) is to provide a mechanism for nurses to demonstrate their competency to return to nursing practice. Since they cannot practice nursing until they complete the Board's requirements, they pose no risk of harm to the public during this time. The proposed amendment merely allows the nurse a sufficient amount of time to re-establish current licensure after demonstrating he/she is safe and competent to do so. Further, this change is consistent with recent amendments to §217.3(b) that were adopted by the Board on January 27, 2020.

Section by Section Overview. Proposed amended §217.3(a)(1) corrects a typographical error. Proposed amended §217.3(a)(1)(E) requires individuals seeking temporary authorization to practice to submit fingerprints for a complete criminal background check prior to receipt of the permit. Proposed amended §217.3(a)(1)(F) requires individuals seeking temporary authorization to practice to obtain a passing score on the jurisprudence exam approved by the Board, effective September 1, 2009, prior to receipt of the permit. Proposed amended §217.3(a)(3) clarifies that a new graduate who has been authorized to practice nursing as a graduate vocational nurse pending the results of the licensing examination must work under the direct supervision of a licensed vocational nurse or a registered nurse who is physically present in the facility

or practice setting and who is readily available to the graduate vocational nurse for consultation and assistance. Further, a new graduate who has been authorized to practice nursing as a graduate nurse pending the results of the licensing examination must work under the direct supervision of registered nurse who is physically present in the facility or practice setting and who is readily available to the graduate nurse for consultation and assistance. Proposed §217.3(c) clarifies that a permit may be renewed beyond six months.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of a rule that is consistent with statutory requirements and is easier to read and understand. There may be some costs of compliance associated with submitting fingerprints for a complete background check and registering to take the jurisprudence and ethics exam. The total costs are not expected to exceed $75 in most circumstances. First, Board Rule 223.1(a)(17) provides that the Board's jurisprudence and ethics exam not exceed $25. Second, the Board utilizes a third party vendor, MorphoTrust (IdentoGo) for its fingerprinting services. The estimated costs associated with submitting an individual's fingerprints is approximately $40. However, these costs are authorized by the Occupations Code §301.252(a-1) and §301.2511(c) in order to implement the associated statutory requirements. Further, the Board finds that the provisions of the Government Code §2001.0045(b) do not apply to the proposal because the estimated costs associated with the proposal implement statutory requirements and are necessary to protect the health, safety, and welfare of the people of Texas, as provided for in §2001.0045(c)(6) and (9).

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that it is not required to prepare a regulatory flexibility analysis because the proposed amendments apply to individual nurses that do not meet the statutory definitions of a small or micro business or rural community, as set forth in §2006.001.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not expected to have an effect on existing agency positions; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal does not implement new legislation; (vi) the proposal does not expand, limit, or repeal an existing regulation, but it does make amendments to an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted within thirty days of publication to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.2511, §301.252(a), and §301.151.

Section 301.2511(a) provides that an applicant for a registered nurse license must submit to the Board, in addition to satisfying the other requirements of the subchapter, a complete and legible set of fingerprints, on a form prescribed by the Board, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. Section §301.2511(b) provides that the Board may deny a license to an applicant who does not comply with the requirement of subsection (a). Issuance of a license by the Board is conditioned on the Board obtaining the applicant's criminal history record information under the section. Finally, §301.2511(c) states that the Board by rule shall develop a system for obtaining criminal history record information for a person accepted for enrollment in a nursing educational program that prepares the person for initial licensure as a registered or vocational nurse by requiring the person to submit to the Board a set of fingerprints that meets the requirements of subsection (a). The Board may develop a similar system for an applicant for enrollment in a nursing educational program. The Board may require payment of a fee by a person who is required to submit a set of fingerprints under this subsection.

Section 301.252(a) provides that each applicant for a registered nurse license or a vocational nurse license must submit to the Board a sworn application that demonstrates the applicant's qualifications under this chapter, accompanied by evidence that the applicant: (1) has good professional character related to the practice of nursing; (2) has successfully completed a program of professional or vocational nursing education approved under §301.157(d); and (3) has passed the jurisprudence examination approved by the Board as provided by subsection (a-1).

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

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §301.2511, §301.252(a), and §301.151.

§217.3. Temporary Authorization to Practice/Temporary Permit.

(a) A new graduate who completes an accredited basic nursing education program within the United States, its Territories or Possessions and who applies for initial licensure by examination in Texas may be temporarily authorized to practice nursing as a graduate nurse (GN) or graduate vocational nurse (GVN) pending the results of the licensing examination.

(1) In order to receive temporary authorization to practice as a GN or GVN and obtain a permit [~~Permit~~], the new graduate must:

(A) - (B) (No change.)

(C) have never taken the NCLEX-PN or NCLEX-RN. Temporary authorization to practice as a GN will not be issued to any applicant who has previously failed the licensing examination; [~~and~~]

(D) have registered to take the NCLEX-PN or NCLEX-RN with the examination administration service; [~~.~~]

(E) submit fingerprints for a complete criminal background check; and

(F) obtain a passing score on the jurisprudence exam approved by the Board, effective September 1, 2009.

(2) (No change.)

(3) The new graduate who has been authorized to practice nursing as a GVN pending the results of the licensing examination must work under the direct supervision of a licensed vocational nurse or a registered nurse who is physically present in the facility or practice setting and who is readily available to the GVN for consultation and assistance. The new graduate who has been authorized to practice nursing as a GN pending the results of the licensing examination must work under the direct supervision of registered nurse who is physically present in the facility or practice setting and who is readily available to the GN for consultation and assistance. [~~The new graduate who has been authorized to practice nursing as a GN or GVN pending the results of the licensing examination must work under the direct supervision of either a licensed vocational or a registered professional nurse if a GVN or a registered professional nurse if a GN, who is physically present in the facility or practice setting and who is readily available to the GN or GVN for consultation and assistance.~~] If the facility is organized into multiple units that are geographically distanced from each other, then the supervising nurse must be working on the same unit to which the GN or GVN is assigned. The GN or GVN shall not be placed in supervisory or charge positions and shall not work in independent practice settings.

(4) (No change.)

(b) (No change.)

(c) A nurse whose license has been suspended, revoked, or surrendered through action by the board, may be issued a temporary permit for the limited purpose of meeting any requirement(s) imposed by the board in order for the nurse's license to be reissued. The permit is valid for six months [~~and is nonrenewable~~].

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 March 5, 2020.

TRD-202001006

Jena Abel
Deputy General Counsel
Texas Board of Nursing
Earliest possible date of adoption: April 19, 2020
For further information, please call: (512) 305-6822

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22 TAC §217.4

The Texas Board of Nursing (Board) proposes amendments to §217.4, relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction. The amendments are being proposed under the authority of the Occupations Code §§301.157(d), 301.252, 301.2511, and 301.151.

Rule 217.4 addresses applicants who graduated from nursing education programs outside the United States' jurisdiction and are seeking initial nurse licensure by examination in Texas. Under the current rule, these applicants must provide a credential evaluation service full education course-by-course report from the Commission on Graduates of Foreign Nursing Schools, Educational Records Evaluation Service, or the International Education Research Foundation. The proposed amendments, however, eliminate the requirement that an applicant must choose from these three specific credential evaluation services traditionally recognized by the Board, and, instead, allow applicants to utilize any credential evaluation service meeting the standards set by the Board. This proposed change is intended to provide additional options for applicants and additional opportunity for credential evaluation services seeking to do business in Texas.

Proposed §217.4(b) sets forth the minimum criteria credential evaluation services must meet in order to be approved by the Board. The Board utilizes credential evaluation service reports to inform its licensure decisions. Establishing approval criteria is important to ensure the Board receives reliable information from its credential evaluation services. For example, under the proposed requirements, a credential evaluation service must be a member of a national credentialing organization that sets performance standards for the industry, and the credential evaluation service must adhere to those standards. The credential evaluation service must also specialize in the evaluation of international nursing education and licensure and be able to demonstrate its ability to accurately analyze academic and licensure credentials and provide a course-by-course analysis of nursing academic records. In order to ensure reliable and efficient reports, credential evaluation services must also have at least five years' experience in the industry and be able to complete evaluation reports within a reasonable time period, not to exceed six weeks. Each credential evaluation service must also complete a form and affidavit required by the Board, as well as supporting documentation, evidencing the service's ability to meet the Board's requirements. Further, a credential evaluation service may not provide a report for Board consideration until the service has received Board approval. These standards are consistent with those required by other state boards of nursing and with industry standards established for credential evaluation services evaluating international education.

The current rule also requires verification of a high school diploma or equivalent educational credentials, as established by the General Education Development Equivalency Test (GED). Because credential evaluation services ensure that an applicant has obtained a high school diploma or equivalent educational credentials, as established by the General Education Devel-

opment Equivalency Test (GED), as part of their full education course-by-course report, the proposed amendments eliminate this unnecessarily redundant requirement from the section.

The remaining proposed amendments make editorial and typographical corrections and eliminate obsolete provisions from the text. Specifically, the proposed amendments require applicants to submit their fingerprints to the Board for a complete criminal background check, in compliance with the Occupations Code §301.2511, and because the Board's fingerprinting process has changed over time and is now automated through a third party vendor. Second, the proposed amendments eliminate the fee associated with a six month accustomation permit, which the Board no longer charges.

Section by Section Overview.

The proposed amendments to §217.4(a)(1) first eliminate the requirement that a licensed vocational nurse applicant must provide evidence of a high school diploma issued by an accredited secondary school or equivalent educational credentials as established by the General Education Development Equivalency Test (GED). The proposed amendments to §217.4(a)(1) and (2) require an applicant to provide a credential evaluation service full education course-by-course report from a credential evaluation service approved by the Board. Section 217.4(a)(5) requires applicants to submit fingerprints for a complete background check. The proposed amendments to §217.4(d)(1) eliminates the fee formerly associated with an accustomation permit. The remaining proposed amendments correct editorial and typographical errors.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of a rule that conforms to statutory requirements; provides applicants for licensure additional choices among credential evaluation services; and provides additional opportunities for credential evaluation services in Texas. There are no new anticipated costs of compliance. Currently, applicants are required to provide a credential evaluation service full education course-by-course report to the Board, at their own expense. The proposed amendments are not anticipated to increase these costs. On the contrary, the proposed amendments may reduce the costs borne by applicants by permitting applicants to choose among any Board approved credential evaluation service and by offering additional credential evaluation services the opportunity to do business in Texas. The current rule requires applicants to choose among three credential evaluation services; the Board anticipates that the proposed amendments will result in more credential evaluation services being approved by the Board, thereby, offering applicants the most cost efficient option. Further, applicants must already submit fingerprints for a complete background check prior to licensure, and at their own expense, in compliance with the Occupations Code §301.2511. The Board utilizes a third party vendor for all criminal background checks prior to licensure. The proposal does not change this statutorily required licensure requirement; only the required method of compliance; instead of submitting a fingerprint card, an applicant must submit his/her fingerprints directly to the Board's third party vendor. The Board does not anticipate any new costs of compliance associated with this requirement. Finally, the remainder of the amendments correct typographical errors and are not expected to result in any costs of compliance.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis. Additionally, as required by the Government Code §2006.001, the Board has determined that there will not be an adverse economic impact on rural communities.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Tex. Admin. Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not expected to have an effect on existing agency positions; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal does not implement new legislation; (vi) the proposal modifies an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted within thirty days of publication to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §§301.157(d), 301.2511, 301.252, and 301.151.

Section 301.157(d) provides that a person may not be certified as a graduate of any school of nursing or educational program unless the person has completed the requirements of the prescribed course of study, including clinical practice, of a school of nursing or educational program that: (1) is approved by the board; (2) is accredited by a national nursing accreditation agency determined by the Board to have acceptable standards; or (3) is approved by a state board of nursing of another state and the Board, subject to Subsection (d-4).

Section 301.2511 provides that an applicant for a registered nurse license must submit to the Board, in addition to satisfying the other requirements of the subchapter, a complete and legible set of fingerprints, on a form prescribed by the Board, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. Section §301.2511(b) provides that the Board may deny a license to an applicant who does not comply with the requirement of subsection (a). Issuance of a license by the Board is conditioned on the Board obtaining the applicant's criminal history record information under the section. Finally, §301.2511(c) states that the Board by rule shall develop a system for obtaining criminal history record information for a person accepted for enrollment in a nursing educational program that prepares the person for initial licensure as a registered or vocational nurse by requiring the person to submit to the Board a set of fingerprints that meets the requirements of subsection (a). The Board may develop a similar system for an applicant for enrollment in a nursing educational program. The Board may require payment of a fee by a person who is required to submit a set of fingerprints under this subsection.

Section 301.252(a) states that each applicant for a registered nurse license or a vocational nurse license must submit to the Board a sworn application that demonstrates the applicant's qualifications under this chapter, accompanied by evidence that the applicant: (1) has good professional character related to the practice of nursing; (2) has successfully completed a program of professional or vocational nursing education approved under Section 301.157(d); and (3) has passed the jurisprudence examination approved by the Board as provided by Subsection (a-1).

Section 301.252(b) provides that Board may waive the requirement of Subsection (a)(2) for a vocational nurse applicant if the applicant provides satisfactory sworn evidence that the applicant has completed an acceptable level of education in: (1) a professional nursing school approved under Section 301.157(d); or (2) a school of professional nurse education located in another state or a foreign country.

Section 301.252(c) provides that the Board by rule shall determine acceptable levels of education under Subsection (b).

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

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §§301.157(d), 301.2511, 301.252, and 301.151.

§217.4. Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction.

(a) Criteria for nurse applicants for initial licensure applying under this section.

(1) A licensed vocational nurse applicant must:

[~~(A) hold a high school diploma issued by an accredited secondary school or equivalent educational credentials as established by the General Education Development Equivalency Test (GED);~~]

(A) [~~(B)~~] have either:

(i) successfully completed an approved program for educating vocational/practical (second level general nurses) nurses within the four years immediately preceding the filing of an application for initial licensure in Texas by providing a credential evaluation service full education course-by-course report [~~Credential Evaluation Service Full Education Course-by-Course Report~~] from a credential evaluation service approved by the Board [~~the Commission on Graduates of Foreign Nursing Schools (CGFNS), Educational Records Evaluation Service (ERES), or the International Education Research Foundation (IERF)~~]; or

(ii) successfully completed an approved program for educating vocational/practical (second level general nurses) nurses by providing a credential evaluation service full education course-by-course report [~~Credential Evaluation Service Full Education Course-by-Course Report~~] from a credential evaluation service approved by the Board [~~the Commission on Graduates of Foreign Nursing Schools (CGFNS), Educational Records Evaluation Service (ERES), or the International Education Research Foundation (IERF)~~] and practiced as a second level general nurse within the four years immediately preceding the filing of an application for initial licensure in Texas; and

(B) [~~(C)~~] have achieved an approved score on an English proficiency test acceptable to the Board, unless a substantial portion of the applicant's nursing program of study, as determined by the Board, was conducted in English.

(2) A registered nurse applicant must either:

(A) have successfully completed an approved program for educating registered (first level general nurses) nurses within the four years immediately preceding the filing of an application for initial licensure in Texas by providing a credential evaluation service full education course-by-course report [~~Credential Evaluation Service Full Education Course-by-Course Report~~] from a credential evaluation service approved by the Board [~~the Commission on Graduates of Foreign Nursing Schools (CGFNS), Educational Records Evaluation Service (ERES), or the International Education Research Foundation (IERF)~~], which verifies that the applicant:

(i) - (iii) (No change.)

(B) have practiced as a first level general nurse within the four years immediately preceding the filing of an application for initial licensure in Texas and have successfully completed an approved program for educating registered (first level general nurses) nurses by providing a credential evaluation service full education course-by-course report [~~Credential Evaluation Service Full Education Course-by-Course Report~~] from a credential evaluation service approved by the Board [~~the Commission on Graduates of Foreign Nursing Schools (CGFNS), Educational Records Evaluation Service (ERES), or the International Education Research Foundation (IERF)~~], which verifies that the applicant:

(i) - (iii) (No change.)

(3) All applicants must file a complete application for registration containing data required by the Board [~~board~~] attesting that all information contained in, or referenced by, the application is complete and accurate and is not false or misleading, and the required application processing fee which is not refundable.

(4) (No change.)

(5) All nurse applicants must submit fingerprints [~~FBI fingerprint cards provided by the Board~~] for a complete criminal background check.

(6) All nurse applicants must pass the jurisprudence exam approved by the Board [~~board~~], effective September 1, 2008.

(b) Credential evaluation service (CES).

(1) A CES wishing to be approved by the Board must meet the following requirements:

(A) The CES must be a member of a national credentialing organization that sets performance standards for the industry. The CES must adhere to the prevailing standards for the industry.

(B) The CES must specialize in the evaluation of international nursing education and licensure.

(C) The CES must be able to demonstrate its ability to accurately analyze academic and licensure credentials for purposes of United States comparison, with course-by-course analysis of nursing academic records.

(D) The CES must be able to manage the translation of original documents into English.

(E) The CES must inform the Board in the event applicant documents are found to be fraudulent.

(F) The CES must have been in the business of evaluating nursing education for a minimum of five years.

(G) The CES must cite all references used in its evaluation in its credentials report.

(H) The CES report must identify the language of nursing instruction and the language of textbooks for nursing education.

(I) The CES must use only original source documentation in evaluating nursing education.

(J) The CES report must describe the comparability of the foreign education to United States standards.

(K) The CES report must detail course clock hours for theory and clinical components of nursing education.

(L) The CES must be able to issue an evaluation report within a reasonable time period, not to exceed six weeks.

(M) The CES must have an efficient and accessible process for answering customer queries.

(N) The CES must be able to provide client references/reviews upon request.

(O) The CES must have an established record retention policy.

(P) The CES must be able to provide testimony for Board hearings, if required.

(2) The CES must complete the form(s) and affidavit required by the Board, submit all required documentation, and receive approval from the Board before providing a report for Board consideration. The Board will maintain a list of approved CES providers.

(c) [~~(b)~~] An applicant who has not passed the NCLEX-PN or NCLEX-RN within four years of completion of the requirements for graduation or within four years of the date of eligibility must complete an appropriate nursing education program in order to be eligible to take or retake the examination.

(d) [~~(c)~~] Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue determined by way of a petition for declaratory order pursuant to the Occupations Code §301.257, then the application will be treated and processed as a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure), and the applicant will be treated as a petitioner under that section and will be required to pay the non-refundable fee required by that section.

(e) [~~(d)~~] Accustomation Permit.

(1) An applicant who has graduated from an accredited nursing program outside the United States may apply to the Board for a six month accustomation permit by completing an application [~~and paying a fee~~]. An applicant holding an accustomation permit under this subsection may participate in nursing education courses and clinical experiences.

(2) An applicant is eligible to apply for an accustomation permit under this subsection only if the applicant has:

(A) - (B) (No change.)

(C) successfully completed a credential evaluation service course-by-course report from a Board [~~board~~] approved credential evaluation service [~~credentialing agency~~].

(3) (No change.)

(f) [~~(e)~~] Upon initial licensure by examination, the license is issued for a period ranging from six months to 29 months depending on the birth month. Licensees born in even-numbered years shall renew their licenses in even-numbered years; licensees born in odd-numbered years shall renew their licenses in odd-numbered 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 March 9, 2020.

TRD-202001026
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Earliest possible date of adoption: April 19, 2020
For further information, please call: (512) 305-6822

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22 TAC §217.5

The Texas Board of Nursing (Board) proposes amendments to §217.5, relating to Temporary License and Endorsement. The amendments are being proposed under the authority of the Occupations Code and §301.151 and §301.259.

Rule 217.5 addresses applicants who have been licensed in another state or Canadian province and are seeking nurse licensure by endorsement in Texas. Under the current rule, these applicants must provide a credential evaluation service full education course-by-course report from the Commission on Graduates of Foreign Nursing Schools, Educational Records Evaluation Service, or the International Education Research Foundation. The proposed amendments, however, eliminate the requirement that an applicant must choose from these three specific credential evaluation services traditionally recognized by the Board, and, instead, allow applicants to utilize any credential evaluation service meeting the standards set by the Board. This proposed change is intended to provide additional options for ap-

plicants and additional opportunity for credential evaluation services seeking to do business in Texas.

Proposed subsection 217.5(b) sets forth the minimum criteria credential evaluation services must meet in order to be approved by the Board. The Board utilizes credential evaluation service reports to inform its licensure decisions. Establishing approval criteria is important to ensure the Board receives reliable information from its credential evaluation services. For example, under the proposed requirements, a credential evaluation service must be a member of a national credentialing organization that sets performance standards for the industry, and the credential evaluation service must adhere to those standards. The credential evaluation service must also specialize in the evaluation of international nursing education and licensure and be able to demonstrate its ability to accurately analyze academic and licensure credentials and provide a course-by-course analysis of nursing academic records. In order to ensure reliable and efficient reports, credential evaluation services must also have at least five years' experience in the industry and be able to complete evaluation reports within a reasonable time period, not to exceed six weeks. Each credential evaluation service must also complete a form and affidavit required by the Board, as well as supporting documentation, evidencing the service's ability to meet the Board's requirements. Further, a credential evaluation service may not provide a report for Board consideration until the service has received Board approval. These standards are consistent with those required by other state boards of nursing and with industry standards established for credential evaluation services evaluating international education.

The rule also currently requires individuals who have not taken the NCLEX examination or practiced nursing within the four years preceding an application by endorsement to complete the online Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; or a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course *in addition to* completing a refresher course, extensive orientation, or program of study. Fifteen percent (15%) of the required content of a Board approved refresher course, extensive orientation, or program of study must include the review of the Nursing Practice Act, Rules, Position Statements. This is the same content that is included in the online Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; and a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course. The Board recognizes that the existing requirements of the rule may be unnecessarily redundant in this regard. The proposed amendments, therefore, eliminate these redundant requirements from the rule. Individuals will still be required to complete a Board approved refresher course, extensive orientation, or program of study, which must include an adequate focus on nursing jurisprudence and ethics. Further, because a nurse will still be required to successfully pass the Board's nursing jurisprudence exam, the public can be adequately assured that the nurse has successfully mastered this content prior to renewal of licensure.

The remaining proposed amendments re-number the section appropriately.

Section by Section Overview.

Section 217.5(a) requires an applicant who has graduated from a nursing education program outside of the United States or National Council jurisdictions to submit verification of licensure from the country of education or as evidenced in a credential evaluation service full education course by course report from a credential evaluation service approved by the Board, as well as meeting all other requirements in paragraphs (2) and (3) of the subsection. Proposed §217.5(b) sets forth the requirements that a credential evaluation service must meet in order to be approved by the Board. The proposed amendments to §217.5(c)(3) eliminate the requirement that an applicant submit to the Board a course completion form from the online Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; or a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course. The remaining proposed amendment re-number the section appropriately.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of a rule that removes unnecessary redundancy from the rule; provides applicants for licensure additional choices among credential evaluation services; and provides additional opportunities for credential evaluation services in Texas. There are no new anticipated costs of compliance. Currently, applicants are required to provide a credential evaluation service full education course-by-course report to the Board, at their own expense. The proposed amendments are not anticipated to increase these costs. On the contrary, the proposed amendments may reduce the costs borne by applicants by permitting applicants to choose among any Board approved credential evaluation service and by offering additional credential evaluation services the opportunity to do business in Texas. The current rule requires applicants to choose among three credential evaluation services; the Board anticipates that the proposed amendments will result in more credential evaluation services being approved by the Board, thereby, offering applicants the most cost efficient option. The proposed amendments may also result in cost savings to nurses who will no longer have to pay for a Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; or a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis. Additionally, as required by the Government Code §2006.001, the Board has determined that there will not be an adverse economic impact on rural communities.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Tex. Admin. Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency

positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not expected to have an effect on existing agency positions; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal does not implement new legislation; (vi) the proposal modifies an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted within thirty days of publication to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.259 and §301.151.

Section 301.259 provides that, on payment of a fee established by the Board, the Board may issue a license to practice as a registered nurse or vocational nurse in this state by endorsement without examination to an applicant who holds a registration certificate as a registered nurse or vocational nurse, as applicable, issued by a territory or possession of the United States or a foreign country if the Board determines that the issuing agency of the territory or possession of the United States or foreign country required in its examination the same general degree of fitness required by this state.

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

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §301.259 and §301.151.

§217.5. Temporary License and Endorsement.

(a) A nurse who has practiced nursing in another state within the four years immediately preceding a request for temporary licensure and/or permanent licensure by endorsement may obtain a non-renewable temporary license, which is valid for 120 days, and/or a permanent license for endorsement by meeting the following requirements:

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

(4) For an applicant who has graduated from a nursing education program outside of the United States or National Council jurisdictions--verification of LVN licensure as required in §217.4(a)(1) of this chapter or verification of RN licensure must be submitted from the country of education or as evidenced in a credential evaluation service full education course by course report [~~Credential Evaluation Service (CES) Full Education Course-by-Course Report~~] from a credential evaluation service approved by the Board [~~the Commission on Graduates of Foreign Nursing Schools (CGFNS), Educational Records Evaluation Service (ERES), or the International Education Research Foundation (IERF)~~], as well as meeting all other requirements in paragraphs (2) and (3) of this subsection;

(5) - (8) (No change.)

(b) Credential evaluation service (CES).

(1) A CES wishing to be approved by the Board must meet the following requirements:

(A) The CES must be a member of a national credentialing organization that sets performance standards for the industry. The CES must adhere to the prevailing standards for the industry.

(B) The CES must specialize in the evaluation of international nursing education and licensure.

(C) The CES must be able to demonstrate its ability to accurately analyze academic and licensure credentials for purposes of United States comparison, with course-by-course analysis of nursing academic records.

(D) The CES must be able to manage the translation of original documents into English.

(E) The CES must inform the Board in the event applicant documents are found to be fraudulent.

(F) The CES must have been in the business of evaluating nursing education for a minimum of five years.

(G) The CES must cite all references used in its evaluation in its credentials report.

(H) The CES report must identify the language of nursing instruction and the language of textbooks for nursing education.

(I) The CES must use only original source documentation in evaluating nursing education.

(J) The CES report must describe the comparability of the foreign education to United States standards.

(K) The CES report must detail course clock hours for theory and clinical components of nursing education.

(L) The CES must be able to issue an evaluation report within a reasonable time period, not to exceed six weeks.

(M) The CES must have an efficient and accessible process for answering customer queries.

(N) The CES must be able to provide client references/reviews upon request.

(O) The CES must have an established record retention policy.

(P) The CES must be able to provide testimony for Board hearings, if required.

(2) The CES must complete the form(s) and affidavit required by the Board, submit all required documentation, and receive approval from the Board before providing a report for Board consideration. The Board will maintain a list of approved CES providers.

(c) [~~(b)~~] A nurse who has not practiced nursing in another state within the four years immediately preceding a request for temporary licensure and/or permanent licensure by endorsement will be required to:

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

[(3) submit to the Board a course completion form from one of the following:]

[(A) the online Texas Board of Nursing Jurisprudence Prep Course;]

[(B) the Texas Board of Nursing Jurisprudence and Ethics Workshop; or]

[(C) a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course; and]

(3) [(4)] after completing the requirements of paragraphs (1) - (2) [(3)] of this subsection, submit to the Board verification of the completion of the requirements of subsection (a)(1) - (8) of this section.

(d) [(c)] The Board adopts by reference the following forms, which comprise the instructions and requirements for a refresher course, extensive orientation to the practice of nursing, and a nursing program of study required by this section, and which are available at http://www.bon.state.tx.us/olv/forms.html:

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

(e) [(d)] A nurse who has had disciplinary action at any time by any licensing authority is not eligible for temporary licensure until completion of the eligibility determination.

(f) [(e)] Upon initial licensure by endorsement, the license is issued for a period ranging from six months to 29 months depending on the birth month. Licensees born in even-numbered years shall renew their licenses in even-numbered years; licensees born in odd-numbered years shall renew their licenses in odd-numbered years.

(g) [(f)] Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue determined by way of a petition for declaratory order pursuant to the Occupations Code §301.257, then the application will be treated and processed as a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure), and the applicant will be treated as a petitioner under that section and will be required to pay the non-refundable fee required by that section.

(h) [(g)] Out-of-State Licensure of Military Spouse.

(1) - (4) (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 March 9, 2020.

TRD-202001027
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Earliest possible date of adoption: April 19, 2020
For further information, please call: (512) 305-6822

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22 TAC §217.6

The Texas Board of Nursing (Board) proposes amendments to §217.6, relating to Failure to Renew License. The amendments are being proposed under the authority of the Occupations Code §301.301(d) and §301.151.

Board §217.6(b) addresses the licensure renewal of a nurse who is not currently practicing nursing and who has failed to maintain current licensure from any licensing authority for four or more years. The rule currently sets out the criteria that an individual must meet in order to renew his/her license under these circumstances. Among the various requirements, an individual must currently complete the online Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; or a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course *in addition to* completing a refresher course, extensive orientation, or program of study. Fifteen percent (15%) of the required content of a Board approved refresher course, extensive orientation, or program of study must include the review of the Nursing Practice Act, Rules, Position Statements. This is the same content that is included in the online Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; and a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course. The Board recognizes that the existing requirements of the rule may be unnecessarily redundant in this regard. The proposed amendments, therefore, eliminate these redundant requirements from the rule. Individuals will still be required to complete a Board approved refresher course, extensive orientation, or program of study, which must include an adequate focus on nursing jurisprudence and ethics. Further, because a nurse will still be required to successfully pass the Board's nursing jurisprudence exam, the public can be adequately assured that the nurse has successfully mastered this content prior to renewal of licensure.

Section by Section Overview. Proposed amended §217.6(b)(3) is eliminated from the section. The remaining proposed amendments re-number the section accordingly.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of a rule that eliminates unnecessary and redundant requirements and is easier for nurses to comply with. There are no anticipated costs of compliance. To the contrary, the proposed amendments may result in cost savings to nurses who will no longer have to pay for a Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; or a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course. Finally, the remainder of the amendments re-number the section and are not expected to result in any costs of compliance.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis. Additionally, as required by the Government Code §2006.001, the Board has determined that there will not be an adverse economic impact on rural communities.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact

statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not expected to have an effect on existing agency positions; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal does not implement new legislation; (vi) the proposal does not expand, limit, or repeal an existing regulation, but it does modify an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted within thirty days of publication to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.301(d) and §301.151.

Section 301.301(d) provides that the Board by rule shall set a length of time beyond which an expired license may not be renewed. The Board by rule may establish additional requirements that apply to the renewal of a license that has been expired for more than one year but less than the time limit set by the Board beyond which a license may not be renewed. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

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

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §301.301(d) and §301.151.

§217.6. Failure to Renew License.

(a) (No change.)

(b) A nurse who is not practicing nursing and who fails to maintain a current license from any licensing authority for four or more years will be required to:

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

~~[(3) submit to the Board a course completion form from one of the following:]~~

~~[(A) the online Texas Board of Nursing Jurisprudence Prep Course;]~~

~~[(B) the Texas Board of Nursing Jurisprudence and Ethics Workshop; or]~~

~~[(C) a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course;]~~

(3)[~~(4)~~] submit to the Board a certificate of completion from the Texas Nursing Jurisprudence Exam;

(4)[~~(5)~~] submit to the Board a completed reactivation application;

(5)[~~(6)~~] submit to the Board the current, non-refundable licensure fee, plus a late fee and any applicable fines which are not refundable; and

(6)[~~(7)~~] submit to the Board evidence of completion of 20 contact hours of acceptable continuing education for the two years immediately preceding the application for reactivation that meets the requirements of Chapter 216 of this title.

(c) (No change.)

(d) A nurse who fails to maintain a current Texas license for four years or more and who is licensed and has practiced in another state during the previous four years preceding the application for reactivation in Texas must comply with the requirements of subsection (b)(3) -(6)[~~(7)~~] of this section.

(e) - (j) (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 March 5, 2020.

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Jena Abel
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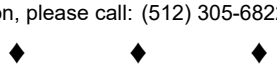

22 TAC §217.8

The Texas Board of Nursing (Board) proposes the repeal of §217.8, relating to Duplicate or Substitute Credentials. The amendments are being proposed under the authority of the Occupations Code §301.151.

The proposed repeal eliminates the section in its entirety, as the Board's processes have changed over time, and the current section is now obsolete. Because an individual may now verify his/her license and print a wall certificate directly from the Board's website, the Board has stopped printing duplicate wall certificates for licensees whose original wall certificate was lost or destroyed. Additionally, the Board no longer issues wallet-sized licenses to any licensee. Further, when an individual changes his/her name and notifies the Board, the Board's online licensure verification system will reflect the name change, but the individual is not able to print a new wall certificate reflecting

the name change. The wall certificate will continue to reflect the name of the individual as it was issued on the original wall certificate. As such, the processes outlined in Board §217.8 are no longer applicable.

Section by Section Overview. The proposed amendments to §217.8 eliminate the section in its entirety.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of a rule that eliminates obsolete processes. There are no anticipated associated costs of compliance with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis. Additionally, as required by the Government Code §2006.001, the Board has determined that there will not be an adverse economic impact on rural communities.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not expected to have an effect on existing agency positions; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal does not implement new legislation; (vi) the proposal repeals an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted within thirty days of publication to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The repeal is proposed under the authority of the Occupations Code §301.151.

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

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §301.151.

§217.8. Duplicate or Substitute Credentials.

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 March 5, 2020.

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Jena Abel
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22 TAC §217.9

The Texas Board of Nursing (Board) proposes amendments to §217.9, relating to Inactive and Retired Status. The amendments are being proposed under the authority of the Occupations Code §301.261(d) and §301.151.

Board Rule 217.9 addresses a nurse who has not practiced nursing and whose license has been in inactive status for four or more years. The rule currently sets out the criteria that an individual must meet in order to reactivate his/her license under these circumstances. Among the various requirements, an individual must currently complete the online Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; or a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course *in addition to* completing a refresher course, extensive orientation, or program of study. Fifteen percent (15%) of the required content of a Board approved refresher course, extensive orientation, or program of study must include the review of the Nursing Practice Act, Rules, and Position Statements. This is the same content that is included in the online Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; and a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course. The Board recognizes that the existing requirements of the rule may be unnecessarily redundant in this regard. The proposed amendments, therefore, eliminate these redundant requirements from the rule. Individuals will still be required to complete a Board approved refresher course, extensive orientation, or program of study, which must include an adequate focus on nursing jurisprudence and ethics. Further, because a nurse will still be required to successfully pass the Board's nursing jurisprudence exam, the public can be adequately assured that the nurse has successfully mastered this content prior to reactivation of licensure.

Section by Section Overview. The proposed amendments eliminate §217.9(g)(4) in its entirety and renumber the remaining paragraphs accordingly.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of a rule that eliminates unnecessary and redundant requirements and is easier for nurses to comply with. There are no anticipated costs of compliance. To the contrary, the proposed amendments may result in cost savings to nurses who will no longer have to pay for a Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; or a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course. Finally, the remainder of the amendments re-number the section and are not expected to result in any costs of compliance.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis. Additionally, as required by the Government Code §2006.001, the Board has determined that there will not be an adverse economic impact on rural communities.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Tex. Admin. Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not expected to have an effect on existing agency positions; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal does not implement new legislation; (vi) the proposal modifies an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted within thirty days of publication to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.261(d) and §301.151.

Section 301.261(d) provides that the Board shall remove a person's license from inactive status if the person: (1) requests that the Board remove the person's license from inactive status; (2) pays each appropriate fee; and (3) meets the requirements determined by the Board.

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

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §301.261(d) and §301.151.

§217.9. Inactive and Retired Status.

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

(g) A nurse who has not practiced nursing and whose license has been in an inactive status for four or more years must submit to the Board:

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

~~[(4) a successful course completion form from one of the following:]~~

~~[(A) the online Texas Board of Nursing Jurisprudence Prep Course;]~~

~~[(B) the Texas Board of Nursing Jurisprudence and Ethics Workshop; or]~~

~~[(C) a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course;]~~

(4) [~~(5)~~] a certificate of successful completion from the Texas Nursing Jurisprudence Exam; and

(5) [~~(6)~~] the required reactivation fee, plus the current licensure fee, which are non-refundable.

(h) (No change.)

(i) A nurse whose license has been in an inactive status for four years or more and who is licensed and has practiced in another state during the previous four years preceding the application for reactivation in Texas must comply with the requirements of subsection (g)(1) and (3) - (5) [~~(6)~~] 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 March 5, 2020.

TRD-202000999

Jena Abel
Deputy General Counsel
Texas Board of Nursing
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For further information, please call: (512) 305-6822

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CHAPTER 222. ADVANCED PRACTICE REGISTERED NURSES WITH PRESCRIPTIVE AUTHORITY

22 TAC §222.3

The Texas Board of Nursing (Board) proposes amendments to §222.3, relating to Renewal of Prescriptive Authority. The amendments are being proposed under the authority of the Texas Occupations Code §301.151 and §157.0513, the Texas Health and Safety Code §481.0764 and §481.07635, and House Bills (HB) 2454, 2059, 3285, and 2174, enacted by the 86th Texas Legislature.

The proposed amendments are necessary for consistency with adopted changes to §216.3, pertaining to *Continuing Competency.* Section 216.3 was amended on November 19, 2019, in order to implement the requirements of HB 2454, HB 2059, HB 3285, and HB 2174.

Prior to its amendment in November 2019, §216.3 required advanced practice registered nurses holding prescriptive authority to complete at least three contact hours of continuing education related to prescribing controlled substances each biennium, in addition to at least five contact hours of continuing education in pharmacotherapeutics within the same licensing period. The Board originally adopted this requirement in November 2013, following the passage of SB 406, enacted by the 83rd Texas Legislature, Regular Session, effective November 1, 2013. SB 406 expanded the scope of advanced practice registered nurses by authorizing the ordering/prescribing of Schedule II controlled substances in certain settings. The additional targeted continuing education adopted by the Board at that time was reasonably related to the expanded scope of practice authorized by SB 406. Further, the requirement was also adopted during a time when the Board began seeing an increase in the number of its non-therapeutic prescribing cases related to the then up-and-coming opioid crisis.

The new continuing education requirements enacted during the 86th Legislative Session, however, were designed to provide specific education regarding many of the issues affecting the opioid crisis. The Board found many of its prior concerns to be adequately addressed by the new continuing education course requirements. Further, the Board recognized the potential overlap between the new continuing education courses and the existing education requirements for advanced practice registered nurses. As such, the Board eliminated the potentially duplicative requirements to only require advanced practice registered nurses holding prescriptive authority to complete at least five contact hours of continuing education in pharmacotherapeutics each biennium. The Board believed this change could reduce some of the financial burden associated with required continuing education courses without sacrificing the safety of the public or the competency of its practitioners.

The proposed amendments to §222.3 are now necessary to conform the section to the amendments adopted by the Board in November 2019.

Section by Section Overview. Proposed amended §222.3(b) requires an advanced practice registered nurse seeking to maintain prescriptive authority to attest, on forms provided by the Board, to completing at least five contact hours of continuing education in pharmacotherapeutics within the preceding biennium. The other requirements of the subsection have been eliminated.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of rules that are consistent with one another, eliminate unnecessary and redundant requirements, and that comply with the statutory mandates of the Texas Occupations Code Chapters 157 and 301 and the Texas Health and Safety Code Chapter 481. There are no anticipated costs of compliance. To the contrary, the proposed amendments may result in cost savings to advanced practice registered nurses holding prescriptive authority who will no longer have to complete three additional contact hours of continuing education related to prescribing controlled substances prior to renewing their licenses.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis. Additionally, as required by the Government Code §2006.001, the Board has determined that there will not be an adverse economic impact on rural communities.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Tex. Admin. Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not expected to have an effect on existing agency positions; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal modifies an existing regulation for consistency with other Board rules that implemented the requirements of new legislation enacted during the 86th Texas Legislative Session that mandated continuing education for nurses; (vi) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (vii) the proposal does not have an effect on the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal

and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted within thirty days of publication to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the Texas Occupations Code §301.151 and §157.0513, the Texas Health and Safety Code §481.0764 and §481.07635, and House Bills (HB) 2454, 2059, 3285, and 2174, enacted by the 86th-Texas Legislature.

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

Section 157.0513(a) provides that the board, the Texas Board of Nursing, and the Texas Physician Assistant Board shall jointly develop a process to exchange information regarding the names, locations, and license numbers of each physician, APRN, and physician assistant who has entered into a prescriptive authority agreement; by which each board shall immediately notify the other boards when a license holder of the board becomes the subject of an investigation involving the delegation and supervision of prescriptive authority, as well as the final disposition of any such investigation; by which each board shall maintain and share a list of the board 's license holders who have been subject to a final adverse disciplinary action for an act involving the delegation and supervision of prescriptive authority; and to ensure that each APRN or physician assistant who has entered into a prescriptive authority agreement authorizing the prescribing of opioids is required to complete not less than two hours of continuing education annually regarding safe and effective pain management related to the prescription of opioids and other controlled substances, including education regarding reasonable standards of care; the identification of drug-seeking behavior in patients; and effectively communicating with patients regarding the prescription of an opioid or other controlled substance.

Section 481.0764(f) provides that a prescriber or dispenser whose practice includes the prescription or dispensation of opioids shall annually attend at least one hour of continuing education covering best practices, alternative treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments. The board shall adopt rules to establish the content of continuing education described by this subsection. The board may collaborate with private and public institutions of higher education and hospitals in establishing the content of the continuing education. This subsection expires August 31, 2023.

Section 481.07635(a) provides that a person authorized to receive information under Section 481.076(a)(5) shall, not later than the first anniversary after the person is issued a license, certification, or registration to prescribe or dispense controlled substances under this chapter, complete two hours of professional education related to approved procedures of prescribing and monitoring controlled substances.

Section 481.07635(b) states that a person authorized to receive information may annually take the professional education course under this section to fulfil hours toward the ethics education requirement of the person 's license, certification, or registration.

Section 481.07635(c) states that the regulatory agency that issued the license, certification, or registration to a person authorized to receive information under Section 481.076(a)(5) shall approve professional education to satisfy the requirements of this section.

Cross Reference To Statute. This proposal affects the Texas Occupations Code §301.151 and §157.0513, the Texas Health and Safety Code §481.0764 and §481.07635, and House Bills (HB) 2454, 2059, 3285, and 2174, enacted by the 86th Texas Legislature.

§222.3. Renewal of Prescriptive Authority.

(a) (No change.)

(b) The APRN seeking to maintain prescriptive authority shall attest, on forms provided by the Board, to completing at least five contact hours of continuing education in pharmacotherapeutics within the preceding biennium. [~~In every licensure cycle after January 1, 2015, those APRNs seeking to maintain prescriptive authority who order or prescribe controlled substances shall attest, on forms provided by the Board, to completing at least three additional contact hours of continuing education related to prescribing controlled substances within the preceding biennium.~~]

(c) (No change.)

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

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Jena Abel
Deputy General Counsel
Texas Board of Nursing
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 265. GENERAL SANITATION
SUBCHAPTER B. TEXAS YOUTH CAMPS SAFETY AND HEALTH

25 TAC §§265.11 - 265.13, 265.15, 265.16, 265.23, 265.24, 265.27, 265.28

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes amendments to

§265.11, concerning Definitions; §265.12, concerning Directors, Supervisors, and Staff; §265.13, concerning Site and Physical Facilities; §265.15, concerning Medical and Nursing Care; §265.16, concerning Waterfront Safety; §265.23, concerning Application and Denial of a New License; Non-transferable; §265.24, concerning Application and Denial of a Renewal License; §265.27, concerning Revocation, Administrative Penalties, and Hearings; and §265.28, concerning Fees.

BACKGROUND AND PURPOSE

Texas Health and Safety Code, §141.006 establishes DSHS as the principal authority on matters relating to health and safety conditions at youth camps. Texas Health and Safety Code, §141.008 authorizes the Executive Commissioner of HHSC to adopt rules to implement the Texas Youth Camp Safety and Health Act.

The purpose of this proposal is to amend §265.12 and §265.15 to address the requirements in House Bill (H.B.) 4372, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code, Chapter 141. H.B. 4372 requires that DSHS consider whether a youth camp employs an individual who was convicted of an act of sexual abuse in making a determination on issuance, renewal, or revocation of a youth camp operator's license and requires that DSHS forward a report of alleged abuse of a camper received by DSHS to the Department of Family and Protective Services or another appropriate agency. H.B. 4372 also creates a new retention period for camp staff records related to an investigation of, or conviction of, an act of sexual abuse; and requires a written policy for youth camps reporting suspected abuse.

The proposed amendments revise definitions and clarify the requirements for a criminal background check and completion of a sexual abuse and child molestation awareness training and examination program for an individual having unsupervised contact with campers. The amendments update the requirements concerning preclusion of persons at a youth camp by excluding Class C assault misdemeanors under Texas Penal Code, §22.01 from the types of criminal convictions and deferred adjudications requiring preclusion, and allow for the employment of persons with Class C assault misdemeanors under Texas Penal Code, §22.01 committed within the past ten years at the discretion of the youth camp. The amendments also update license application sections to reflect changes to youth camp definitions and simplify the rule language. The amendments update the references to Texas statutes throughout the subchapter to include the word "Texas."

SECTION-BY-SECTION SUMMARY

The proposed amendments to §265.11(6), (14), (19), (25), and (26) clarify the definitions of a "day camp," "playground," "supervisor/counselor," "youth camp," and "youth camp specialized activity." The definition of "youth camp, general characteristics of--A youth camp" in §265.11(27) is consolidated with the definition of "youth camp" in §265.11(25).

The proposed amendment to §265.12(b) clarifies the ratio of supervisors to campers required for sedentary activity.

The proposed amendments to §265.12(c), §265.13(t)(5) and (21), §265.15(h), and §265.16(h) eliminate unnecessary language and correct grammatical and syntax changes for clarity.

The proposed amendment to §265.12(f) clarifies the requirement of an annual criminal background check and sex offender registration check for all adults who have unsupervised contact with campers.

The proposed amendments to §265.12(g) and (h)(1)(A) remove preclusion of persons with Class C assault misdemeanors under Texas Penal Code, §22.01 (Assault) and allow for the employment of persons with Class C assault misdemeanors under Texas Penal Code, §22.01 within the past ten years at the discretion of the camp.

The proposed amendments to §265.12(i)(1) remove an outdated effective date and clarify that anyone who will have unsupervised contact with campers must complete a sexual abuse and child molestation awareness training and examination program.

The proposed amendment to §265.12(i)(3) clarifies the record retention requirements for sexual abuse and child molestation awareness training and examination documents.

The proposed amendment to §265.12(k) creates an additional record retention period for documents related to a sexual abuse investigation and or a conviction of youth camp staff. DSHS will notify the youth camp when the record retention is no longer required.

The proposed amendment to §265.15(d)(3) creates a requirement that youth camps develop and maintain a written policy regarding the method for reporting suspected abuse or neglect of a minor occurring at the camp to DSHS.

The proposed amendment to §265.15(d)(4) creates a procedure by which DSHS will forward a report of alleged abuse of a camper to the Department of Family Protective Services or another appropriate agency.

The proposed amendment to §265.15(e) specifically references DSHS to avoid confusion as other Texas state agencies are also referenced in this section.

The proposed amendment to §265.16(f)(1) updates the requirement for lifesaving equipment concerning the required length of a throwing rope from "20 feet or longer" to "at least two-thirds the maximum width of the pool."

The proposed amendment to §265.16(f)(3) revises the current title of the rule reference for §265.15 to "Medical and Nursing Care."

The proposed amendment to §265.23(a)(3) clarifies that DSHS shall issue a youth camp license subject to subsection (j), which allows DSHS to deny a youth camp license application if an applicant fails to meet the required standards.

The proposed amendments to §265.23(a)(3)(B), (j)(2) and (3), (k)(1) and (2), and §265.24(c)(3)(B), (k)(2) and (3), and (l)(1) and (2) remove the references to the definition of "youth camp, general characteristics of" due to the definition being moved to the definition of "youth camp" in §265.11(25).

The proposed amendment to §265.23(j)(1) clarifies that DSHS may deny a youth camp license to applicants that fail to meet the standards established by both the Texas Youth Camp Safety and Health Act and the subchapter, and in doing so, must consider any violations by the applicant of the Texas Youth Camp Safety and Health Act and the subchapter, including employment of an individual convicted of an act of sexual abuse that occurred at the camp.

The proposed amendment to §265.24(c)(3) clarifies that DSHS shall renew a youth camp license subject to subsection (k), which

allows DSHS to deny a youth camp renewal application if an applicant fails to meet the required standards.

The proposed amendment to §265.24(k) clarifies that DSHS may deny a youth camp renewal application to applicants that fail to meet the standards established by both the Texas Youth Camp Safety and Health Act and the subchapter, and in doing so, must consider any violations by the applicant of the Texas Youth Camp Safety and Health Act and the subchapter, including employment of an individual convicted of an act of sexual abuse that occurred at the camp.

The proposed amendment to §265.27(a)(2) updates the phrase "notice to cease" with "notice of violation."

The proposed amendment to §265.28(c) removes the phrase "by the Internet" as applications for a license are submitted electronically through texas.gov.

FISCAL NOTE

Donna Shepard, Chief Financial Officer, has determined that for each year of the first five years that the sections are in effect, there will not be any fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

(4) the proposed rules will not affect fees paid to DSHS;

(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

Donna Shepard, Chief Financial Officer, has also determined that there will be no adverse impact on small businesses, micro-businesses or rural communities required to comply with the sections as proposed. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Stephan Pahl, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years that the rules are in effect, the public benefit will be to better ensure the health and safety of children attending youth camps.

Donna Sheppard has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

REGULATORY ANALYSIS

DSHS has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the DSHS Exchange Building, 8407 Wall Street, Austin, TX 78754. The meeting date and time will be posted on the DSHS Youth Camp website at www.dshs.state.tx.us/youthcamp/default.shtm. Please contact Jeff Mantia by phone at (512) 231-5753 or by email at Jeffrey.Mantia@dshs.texas.gov if you have questions.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Jeff Mantia at (512) 231-5753 in DSHS Consumer Protection Division.

Written comments on the proposal may be submitted to Jeff Mantia, Consumer Protection Division, Texas Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347; by fax to (512) 834-6707; or by email to CPDRuleComments@dshs.texas.gov.

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 e-mailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Chapter 265 Youth Camp Rules" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Health and Safety Code, §141.008, which authorizes the Executive Commissioner

of HHSC to adopt rules to implement the Youth Camp Safety and Health Act; and by Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The amendments implement Texas Health and Safety Code, Chapters 141 and 1001; and Texas Government Code, Chapter 531.

§265.11. Definitions.

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

(1) Act--Texas Youth Camp Safety and Health Act, Texas Health and Safety Code, Chapter 141.

(2) Adult--A person at least 18 years of age or older.

(3) Camper--A minor child, under 18 years of age, who is attending a youth camp on either a day or boarding basis.

(4) Challenge course--Activity designed for educational purposes or team building, which may offer a variety of challenges, including zip lines, high and low rope courses, rappelling, and climbing walls.

(5) Commissioner--The Commissioner of the Department of State Health Services.

(6) Day camp--A camp that operates during the day or any portion of the day between 7:00 a.m. and 10:00 p.m. for four or more consecutive days and that offers no more than two overnight stays during each camp session. To be eligible to be licensed as a youth camp, the camp's schedule shall be structured so that each camper attends for [~~more than~~] four hours or more per day for four consecutive days. The term does not include a facility that is required to be licensed with the Department of Family and Protective Services.

(7) Department--Department of State Health Services.

(8) Executive Commissioner--Executive Commissioner of the Health and Human Services Commission.

(9) Firearm--Any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or a burning substance, or any device readily convertible to that use.

(10) Municipal water supply--A public water supply owned or operated by or for a city or a corporation having the right of administering local government.

(11) Pellet gun--Any device designed, made, or adapted to expel a projectile through a barrel by using compressed air or carbon dioxide. This definition includes air guns, air rifles, BB guns, and paintball guns.

(12) Permanent structure--Man-made buildings such as dining halls, dormitories, cabins, or other buildings that are constructed to remain stationary.

(13) Person--An individual, partnership, corporation, association, or organization. In rules for this subchapter, a person does not include a government or governmental subdivision.

(14) Playground--A designated area designed for campers to play freely on equipment as defined in the U.S. Consumer Product Safety Commission Publication Number 325, "Handbook for Public Playground Safety," December 2015 [~~(https://www.cpsc.gov//PageFiles/122149/325.pdf)~~] as amended.

(15) Primitive camp--A youth camp that does not provide either permanent structures or utilities for camper use.

(16) Public water system--A public water system, as defined in 30 Texas Administrative Code (TAC) §290.38(71) is a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water (30 TAC §290.38(23)). Such a system shall have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

(17) Resident camp--A camp that for a period of four or more consecutive days continuously provides residential services to each camper, including overnight accommodations for at least three consecutive nights.

(18) Supervised--A person is supervised if the person is within sight, except for infrequent momentary periods such as restroom breaks, and within reasonable hearing distance of a camper's outcry, of an adult with an obligation to report inappropriate or dangerous activities or behavior who has been made aware that the obligation is in effect at that time and who has willingly accepted the obligation. This definition is applicable only to rules relating to unsupervised contact with campers.

(19) Supervisor/counselor--A person [~~Camp personnel or youth group leader~~], at least 18 years of age or older, who is responsible for the immediate supervision of campers.

(20) Swim test--A formalized test, specific to the body of water utilized, to determine each child's swimming ability. A swim test includes a skill evaluation, or some equivalent method of determining swimming ability, such as:

(A) Non-swimmer: Get into the shallow water, sit down, stand up, and exit the water.

(B) Intermediate swimmer: Jump feet first into water at least twelve inches deeper than the height of the child. Level off, swim 25 feet, turn around and swim back. Exit the water.

(C) Swimmer: Jump feet-first into water at least twelve inches deeper than the height of the child and swim 75 yards in a strong stroke on your stomach or side (breaststroke, sidestroke, crawl, trudgen, or any combination). Then swim 25 yards on your back (elementary back stroke), then float and rest on your back for one minute. Exit the water.

(21) TCEQ--Texas Commission on Environmental Quality.

(22) Travel camp--A day or resident camp, lasting for four or more consecutive days, that begins and ends at a fixed location, but may move from location to location on a daily basis.

(23) Waterfront--A natural or artificial body of water that includes a lake, ocean, bay, pond, river, swimming pool, or spa, which is the site of any water activity.

(24) Waterfront activity--A recreational or instructional activity, occurring in, on, or near a waterfront. Waterfront activity includes swimming, boating, water skiing, scuba diving, rafting, tubing, synchronized swimming or sailing.

(25) Youth camp--A facility or property, other than a facility required to be licensed by the Department of Family and Protective Services that:

(A) has the general characteristics of a day camp, resident camp, or travel camp;

(B) provides supervision, and instruction in [~~is used for~~] recreational, athletic, religious, or educational activities;

(C) during a camp session, offers at least two youth camp specialized activities in an outdoor setting;

(D) [~~(C)~~] accommodates at least five minors during each camp session who attend or temporarily reside at the camp, apart from parents or guardians, for all or part of at least four consecutive days; [~~and~~]

(E) operates as a youth camp for four consecutive hours or more per day;

(F) operates as a youth camp only during school vacation periods;

(G) operates as a youth camp for no more than 120 days each calendar year; and

(H) [~~(D)~~] is not a facility or program operated by or on the campus of an institution of higher education or a private or independent institution of higher education as those terms are defined by the Texas Education Code, §61.003, that is regularly inspected by one or more local governmental entities for compliance with health and safety standards.

(26) Youth camp specialized activity--A camp activity such as waterfront activities, archery, horseback riding, challenge courses, or riflery that requires special technical skills, equipment, or safety regulations, and a high level of adult supervision at all times.

[~~(27) Youth camp, general characteristics of--A youth camp:~~]

[~~(A) provides supervision, instruction, and recreation;~~]

[~~(B) accommodates at least five minors during each camp session;~~]

[~~(C) operates as a youth camp for no more than 120 days each calendar year;~~]

[~~(D) hosts children who are apart from parents or guardians;~~]

[~~(E) operates as a youth camp for a period of four or more consecutive days;~~]

[~~(F) operates as a youth camp for more than four consecutive hours per day;~~]

[~~(G) operates as a youth camp only during school vacation periods; and~~]

[~~(H) offers at least two youth camp specialized activities in an outdoor setting such as waterfront activities, archery, horseback riding, challenge courses, or riflery that requires special technical skills, equipment, or safety regulations.~~]

(27) [~~(28)~~] Youth camp operator--Any person who owns, operates, controls, or supervises a youth camp, whether or not for profit.

§265.12. Directors, Supervisors, and Staff.

(a) On-site director required. Each youth camp shall be under the on-site direction of a qualified adult with at least two years of experience working with children. The director shall be knowledgeable in camp administrative practices and shall have at least one year of leadership experience with an organized youth camp, school or other youth-serving organization, such as the Boy Scouts of America or Young Men's Christian Association (YMCA).

(b) Adult supervisors. Each youth camp shall have at least one adult supervisor who is responsible for the supervision of no more than ten children in the camp. For any youth camp specialized activity, the supervisor(s) shall be in the immediate vicinity (within sight and/or hearing) of the campers. An "all camp" sedentary activity, not requiring physical activity must have at least [~~, may require less supervision, and each camp shall establish its own guidelines, but not less than~~] one adult supervisor to every 25 campers. The camp director shall not be included in the supervisor to camper ratio in camps serving over 50 campers at one time.

(c) Supervision of youth camp specialized activity. Youth camp specialized activities shall be conducted by and under the direct supervision of a qualified adult capable of implementing safety standards established by the department or the camp who shall have either [~~. The specialist shall also have~~] documented training or at least two years documented experience in conducting the activity.

(d) Written personnel policies and practices. A camp shall have written personnel policies and practices for both campers and staff. Supervisors shall be informed of these policies and practices prior to assuming responsibility for campers.

(e) Staff member character and integrity records. The camp management shall ascertain and have on record information, such as a letter of reference, attesting to the character and integrity of each staff member, and information, such as training certificates, attesting to the ability of each staff member to perform the tasks required in his or her position.

(f) Criminal conviction and sex offender background check requirements. The camp management shall have on file a record of any criminal conviction and a sex offender registration check for all adult staff members and all adult volunteers working at the camp before the staff member or volunteer has unsupervised contact with children at the camp. A criminal background check and sex offender registration check must be on file for any other adult that will have unsupervised contact with campers, other than their own children. If the records are located off-site, a letter from the national or regional headquarters of the camp organization stating the names of individuals at the camp site for whom background checks have been conducted, shall be available at the camp site. All records of criminal convictions and written evaluations for a camp or camping organization shall be made available to department personnel within two business days upon request. Youth camps are responsible for ensuring that criminal and sex offender background checks have been conducted for international staff obtained through the J-1 visa process, and that documentation of these checks are located with other staff background checks. Records of criminal convictions and sex offender status shall be obtained by:

(1) performing an annual criminal background check using a criminal history database for each adult staff member's and each adult volunteer's permanent residence. If the staff member or adult volunteer has a temporary or an educational residence, an annual criminal background check shall include searching under the permanent, temporary and educational address, as applicable. The criminal history database used for the criminal background check is to be based on the individual's residences, and may include state, national or international databases. Documentation of the search results, whether or not the results are positive, shall be maintained with the sex offender background documentation; and

(2) performing an annual background check using a sex offender registration database for each adult staff member's and each adult volunteer's permanent residence and educational residence if applicable, such as the TXDPS - Sex Offender Registry, which may be accessed at Texas Department of Public Safety - Crime Records Service. Documentation of the search results, whether or not the results are positive, shall be maintained with the criminal background documentation.

(g) Persons whose presence at a youth camp shall be precluded. Youth camps shall not employ paid or unpaid staff members or volunteers at a youth camp, or permit any person to have unsupervised contact with campers other than their own children, if the person has the following types of criminal convictions or deferred adjudications: a misdemeanor or felony under Texas Penal Code, Title 5 (Offenses Against the Person) excluding a Class C misdemeanor under §22.01 (Assault), Title 6 (Offenses Against the Family), Chapter 29 (Robbery) of Title 7, Chapter 43 (Public Indecency) or §42.072 (Stalking) of Title 9, §15.031 (Criminal Solicitation of a Minor) of Title 4, §38.17 (Failure to Stop or Report Aggravated Sexual Assault of Child) of Title 8, or any like offense under the law of another state or under federal law.

(h) Persons whose presence at a youth camp may be precluded.

(1) Youth camps may preclude a person from being a paid or unpaid staff member or volunteer at a youth camp, or may preclude a person from having unsupervised contact with campers other than the person's own children, if the person has the following types of criminal convictions or deferred adjudications:

(A) a Class C misdemeanor committed within the past ten years under §22.01 (Assault) of Title 5 of the Texas Penal Code, or any like offense under the law of another state or under federal law;

(B) [~~(A)~~] a misdemeanor or felony committed within the past ten years under §46.13 (Making a Firearm Accessible to a Child) or Chapter 49 (Intoxication and Alcoholic Beverage Offenses) of Title 10 of the Texas Penal Code, or any like offense under the law of another state or under federal law; or

(C) [~~(B)~~] any other felony under the Texas Penal Code or any like offense under the law of another state or under federal law that the person committed within the past ten years.

(2) Camp management shall have on file a written evaluation by two or more camp executive staff for any staff member or volunteer whose presence at the youth camp may be precluded under this subsection showing that management has determined the person is suitable for a position at the youth camp despite a criminal conviction or deferred adjudication.

(i) Sexual abuse and child molestation awareness training and examination program.

(1) A [~~Effective June 1, 2006, a~~] youth camp licensee may not employ or accept the volunteer service of an individual for a position involving contact with campers at a youth camp, or permit any person to have unsupervised contact with campers, unless:

(A) the individual submits to the licensee or the youth camp has on file documentation that verifies the individual within the preceding two years has successfully completed the training and examination program required by this subsection; or

(B) the individual successfully completes the youth camp's training and examination program approved by the department during the individual's first workweek, and prior to any contact with campers unless supervised during the first workweek by an adult who has successfully completed the program.

(2) For purposes of this subsection, the term "contact with campers" does not include visitors such as a guest speaker, an entertainer, or a parent who visits for a limited purpose or a limited time if the visitor has no direct and unsupervised contact with campers. A visitor may have direct and unsupervised contact with a camper to whom the visitor is related. A camp may require training and an examination for visitors if it chooses.

(3) A youth camp licensee shall retain in the person's personnel record a copy of the documentation required or issued under paragraph (1)(A) and (B) of this subsection for each employee or volunteer until the second anniversary of the examination date.

(4) Prior to their use, the department may approve training and examination programs offered by trainers under contract with youth camps, by online training organizations, or programs offered in another format, such as a videotape, authorized by the department.

(5) A training and examination program on sexual abuse and child molestation approved by the department shall at a minimum include training and an examination on:

(A) the definitions and effects of sexual abuse and child molestation;

(B) the typical patterns of behavior and methods of operation of child molesters and sex offenders that put children at risk;

(C) the warning signs and symptoms associated with sexual abuse or child molestation, recognition of the signs and symptoms, and the recommended methods of reporting suspected abuse;

(D) the recommended rules and procedures for youth camps to implement to address, reduce, prevent, and report suspected sexual abuse or child molestation;

(E) the need to minimize unsupervised encounters between adults and minors; and

(F) the potential for consensual and nonconsensual sexual activity between campers, steps to prevent sexual activity between campers, and how to respond if sexual activity between campers occurs.

(6) The training program shall last for a minimum of one hour and discuss each of the topics described in paragraph (5) of this subsection.

(7) The examination shall consist of a minimum of 25 questions which shall cover each of the topics described in paragraph (5) of this subsection.

(8) To successfully complete the training program, each employee or volunteer shall achieve a score of 70% or more correct on an individual examination. If the examination is taken on-line, the employee or volunteer shall retain a certificate of completion indicating they successfully completed the course.

(9) The department may assess a fee of $125 to each applicant to cover the costs of the department's initial review and each follow-up review of a training and examination program.

(10) Applications and fees shall be mailed to the Environmental and Sanitation Licensing Group, Department of State Health Services, Mail Code 2003, P.O. Box 149347, Austin, Texas 78714-9347. Applications may be obtained by calling the Environmental and Sanitation Licensing Group at (512) 834-6600 or may be downloaded from http://www.dshs.state.tx.us/youthcamp/default.shtm.

(11) The department, at least every five years from the date of initial approval, shall review each training and examination program approved by the department to ensure the program continues to meet the criteria and guidelines established under this subsection.

(j) Supervised contact with campers.

(1) A person supervising another person who is prohibited from having unsupervised contact with campers:

(A) may include one or more paid or unpaid members of camp staff or management; law enforcement officers; security personnel; lifeguards or other responsible staff at any off-site facility; or parents or other adults;

(B) must be charged with responsibility to monitor, oversee, or supervise the person on behalf of the licensee or camp management; and

(C) must have the ability and means to summon competent assistance at all times while remaining within sight and hearing distance of the supervised person.

(2) A person who is prohibited from having unsupervised contact with campers must be supervised at all times during which that person has or might have any contact with one or more campers, whether intentional or unintentional, and whether part of scheduled camp activities or not. The potential for contact with campers by a person is presumed at all times during which one or more campers are present at the facility at which the person is present unless there is an impassable barrier between them.

(k) Records retention. All applications, background check reports, training documentation, and other required personnel documentation required by this subchapter shall be maintained in hard copy or electronic format for a minimum of two years following a person's last day of service. If the youth camp is notified of an investigation or conviction of a camp staff member for an act of sexual abuse, as defined by §21.02 of the Texas Penal Code, which occurred at the camp, the camp shall retain all records related to the investigation or conviction until the department notifies the camp that the record retention is no longer required.

§265.13. Site and Physical Facilities.

(a) Safety of camp facility. The buildings, structures, and grounds shall not present a fire, health, or safety hazard.

(b) Accumulation of refuse and debris. The premises of each camp shall be kept free of accumulations of refuse and debris.

(c) Compliance with building, plumbing, electrical and life safety codes. All camp buildings shall comply with applicable building, plumbing, electrical, life safety, and similar codes.

(d) Permanent living or sleeping structures. All permanent structures used for living or sleeping purposes in the camp shall be provided with walls, floors, and ceilings that shall be kept clean and in good repair.

(e) Separate beds, bunks or cots. A separate bed, bunk, or cot shall be required for each person. Beds shall be spaced in a manner that is free of obstruction for entering and exiting.

(f) Bunk bed guardrails. In all rooms housing campers, all bunk beds shall have at least two guardrails, one on each side of the bed for each bed having the underside of its foundation more than 30 inches from the floor in accordance with the Code of Federal Regulations (CFR), 16 CFR, Part 1513.3. Bunk beds securely attached to a wall may utilize the wall as one guardrail.

(g) Location of sleeping quarters. Sleeping shall not be permitted in kitchens or in rooms used for food preparation, storage, or service.

(h) Bedding provided by the camp. All articles of bedding provided by the camp, including mattresses and mattress covers, shall be kept clean and in good repair. Any bedroll provided by the camp and used by campers must be properly cleaned between use by different individuals.

(i) Toilets and urinals. The camp shall provide at least one toilet for every 15 females and one toilet for every 15 males. In each male toilet facility, up to 70% of the toilets required may be urinals. In facilities with more than one toilet, some means of privacy must be provided for each toilet.

(j) Lavatories. The camp shall provide at least one lavatory adjacent to toilet facilities. In facilities with more than five toilets or urinals in a room, there must be a minimum of two lavatories.

(k) Hand cleanser required. Each lavatory shall be equipped with one of the following methods to sanitize hands:

(1) lavatories with hot and cold running water shall have soap or hand cleanser available at all times;

(2) lavatories with only cold running water shall have hand sanitizer or anti-bacterial soap available at all times; or

(3) portable toilet facilities not equipped with lavatories providing water shall have waterless hand sanitizer available at all times.

(l) Shower facilities. Resident youth camps shall provide at least one shower for every 15 females and one shower for every 15 males. Each shower shall be equipped with water to meet the needs of the campers. There shall be soap or body cleanser available at all times.

(m) Cleanliness and sanitation of toilets, lavatories and bathing facilities. All toilets, lavatories, and bathing facilities shall be maintained in good repair and kept clean at all times. Every shower room floor shall be washed daily with a suitable detergent or sanitizing agent.

(n) Availability of toilet tissue. Toilet tissue shall be available at all times for each toilet.

(o) Lighting and ventilation in toilet and bathing facilities. All permanent toilets and bathing structures shall be adequately ventilated and properly lighted.

(p) Public water supply. If a youth camp water supply meets the definition of a public water system, then all water used for human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings, or which is used for bathing, swimming in a pool or spa, or any other use in which incidental ingestion may occur, shall come from a Texas Commission on Environmental Quality (TCEQ) approved drink-

ing water source that meets all applicable standards of 30 TAC Chapter 290, Subchapter D (relating to Rules and Regulations for Public Water Systems) and Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality And Reporting Requirements for Public Water Systems), as amended.

(q) Private water supply. Youth camps having water supplies that do not meet the definition of a public water system or that are not regulated by the TCEQ shall comply with the following requirements when the camp is open or operational unless otherwise indicated.

(1) Water supply. An adequate supply of water shall be available at all times in each camp in accordance with the following table.

Figure: 25 TAC §265.13(q)(1) (No change.)

(2) Water pressure. The system shall be designed to maintain a minimum pressure of 35 pounds per square inch (psi) at all points within the distribution network at flow rates of at least 1.5 gallons per minute per connection. When the system is intended to provide fire fighting capability, it shall also be designed to maintain a minimum pressure of 20 psi under combined fire and drinking water flow conditions. Minimum distribution pressure shall not be less than 20 psi at any time.

(3) Bacteriological properties.

(A) Water systems serving camps shall submit a minimum of one water sample for testing for total coliform, fecal coliform, *E. coli,* or other fecal indicator organisms, for the month prior to camp opening and each month the camp is in operation.

(B) Testing for microbial contaminants shall be performed at a laboratory certified by TCEQ.

(C) If a routine distribution coliform sample is coliform-positive, then the camp shall issue a written boil water notification to all camp staff and volunteers. The notification shall state, "To ensure destruction of all harmful bacteria and other microbes, water for drinking, cooking, and ice making shall be boiled and cooled prior to consumption. The water shall be brought to a vigorous rolling boil and then boiled for two minutes. In lieu of boiling, purchased bottled water, water obtained from some other suitable source, or ice obtained from an approved source may be used."

(D) The boil water notification shall remain in effect until a repeat distribution coliform sample is coliform-negative.

(E) Records of all bacteriological tests and of any boil water notification shall be kept on site.

(4) Chemical properties.

(A) Camps shall submit a water sample obtained from the entry point to the distribution system to a laboratory for chemical analysis at least once every three years.

(B) The chemical analysis shall be for secondary constituent levels.

(C) Maximum secondary constituent levels are as described in the following table.

Figure: 25 TAC §265.13(q)(4)(C) (No change.)

(D) Records of all chemical testing shall be kept on site.

(5) Minimum residual disinfectant concentrations and maximum residual disinfectant levels (MRDLs).

(A) The minimum residual disinfectant concentration in the water entering the distribution system and the water within the distribution system shall be 0.2 milligrams per liter (mg/L) free chlorine or 0.5 mg/L chloramine.

(B) The MRDL of chlorine dioxide in the water entering the distribution system shall be 0.8 mg/L.

(C) The MRDL of free chlorine or chloramine in the water within the distribution system shall be 4.0 mg/L based on a running annual average.

(6) Backflow prevention. The plumbing system shall preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use, including on a hose bib, by:

(A) providing an air gap between the water supply inlet and the flood level rim of a plumbing fixture, equipment, or nonfood equipment that is at least twice the diameter of the water supply inlet and not less than 25 mm (1 inch); or

(B) installing an approved backflow prevention device that meets the American Society of Sanitary Engineering (ASSE) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device.

(7) Disinfection of new or repaired water system facilities.

(A) When repairs are made to existing mains or when new main extensions are installed, they shall be disinfected using such amounts of chlorine compounds as to fill the repaired or new mains and appurtenances with water containing 50 ppm chlorine.

(B) After the water containing this amount of chlorine, which is greater than that normally present in drinking water, has been in contact with the pipe and appurtenances for at least 24 hours, the main shall be flushed until the free chlorine or chloramine in the water within the new or repaired distribution system is less than 4.0 mg/L.

(C) A sample of water from the new or repaired main shall be submitted to a laboratory certified by TCEQ for bacteriological examination so as to be assured that the disinfection procedure was effective.

(8) Calcium hypochlorite. A supply of calcium hypochlorite disinfectant shall be kept on hand for use when making repairs and repairing line breaks.

(9) Lead control. Use of pipes and pipe fittings that contain more than 8.0% lead or solders and flux that contain more than 0.2% lead is prohibited for installation or repair of any water supply and for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption. This requirement may be waived for lead joints that are necessary for repairs to cast iron pipe.

(10) Flushing of water system mains. All dead-end mains should be flushed at monthly intervals or more frequently to maintain water quality.

(11) Collection system location.

(A) No sanitary sewers or septic tanks shall be allowed within a distance of 50 feet of any well used for drinking water. No cesspool or septic tank open-jointed drain field shall be allowed within a distance of 150 feet of any well used for drinking water.

(B) Storm sewers located within specified distances for sanitary sewers shall be constructed so as to prevent leakage from them.

(C) Water lines and sanitary sewers shall be installed no closer to each other than nine feet.

(12) Well logs. Copies of well material setting data, geological log, sealing information (pressure cementing and surface pro-

tection), disinfection information, bacteriological sample results, and a chemical analysis report of a representative sample of water from the well shall be kept on file.

(13) Interconnection. No physical connection between the distribution system of a camp water supply and that of any other water supply shall be permitted.

(14) Abandoned wells. Abandoned water supply wells owned by the camp shall be plugged with cement according to 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers). Wells that are not in use and are non-deteriorated as defined in those rules shall be tested every five years to demonstrate that they are in a non-deteriorated condition. Deteriorated wells shall be either plugged with cement or repaired to a non-deteriorated condition.

(r) Disposal of youth camp wastewater. All camp wastewater shall be disposed of into a community sanitary sewage system or an approved On-site Sewage Facility in accordance with 30 TAC Chapter 285 (relating to On-Site Sewage Facilities). In remote areas, the use of chemical toilets is allowed, if the facilities are built and maintained in accordance with manufacturer designs.

(s) Disposal of solid waste. Solid wastes shall be disposed of at a TCEQ approved sanitary landfill or other disposal facility approved by TCEQ under 30 TAC Chapter 330 (relating to Municipal Solid Waste).

(t) Permanent food preparation, storage and service areas. Permanent food preparation, storage and service areas shall be maintained in compliance with Chapter 228 of this title (relating to Retail Food). Items inspected may include, but are not limited to:

(1) proper cooling for cooked/prepared food;

(2) cold hold (41 degrees Fahrenheit/45 degrees Fahrenheit);

(3) hot hold (135 degrees Fahrenheit);

(4) proper cooking temperatures;

(5) rapid reheating (165 degrees Fahrenheit in 2 hours [~~hrs~~]);

(6) personnel with infections restricted/excluded;

(7) proper/adequate hand washing;

(8) good hygienic practices (eating/drinking/smoking/other);

(9) approved source/labeling;

(10) sound condition - food is not from unapproved sources or in unsound condition;

(11) proper handling of ready-to-eat foods;

(12) no cross-contamination of raw/cooked foods/other;

(13) approved systems (HACCP (Hazard Analysis and Critical Control Points) plans/time as public health control);

(14) water supply - approved sources/sufficient capacity/hot and cold water under pressure;

(15) equipment adequate to maintain product temperature;

(16) hand wash facilities adequate and accessible;

(17) hand wash facilities equipped with soap and towels;

(18) no evidence of insect contamination;

(19) no evidence of rodents/other animals;

(20) toxic items properly labeled/stored/used;

(21) manual/mechanical ware washing [~~warewashing~~] and sanitizing at proper ppm/temperature;

(22) manager demonstration of knowledge of safe food handling procedures;

(23) approved sewage/wastewater disposal system, proper disposal;

(24) thermometers provided/accurate/properly calibrated (±2 degrees Fahrenheit);

(25) food contact surfaces of equipment and utensils cleaned/sanitized/good repair; and

(26) posting of consumer advisories (abdominal thrust/disclosure/reminder/buffet plate).

(u) Playgrounds and equipment. Playgrounds and playground equipment shall meet the standards set forth in the U.S. Consumer Product Safety Commission Publication Number 325, "Public Playground Safety Handbook," November 2010. Equipment that does not meet these standards may not be used by campers.

§265.15. Medical and Nursing Care.

(a) Record of an on-call physician required. Documentation shall be kept on file of a physician licensed to practice in Texas who is available to be on call at all times to advise health service personnel on all first aid and nursing services provided by the camp.

(b) Emergency transportation. Transportation shall be available at all times to transport any sick or injured camper in an emergency.

(c) Medical staffing requirements. A physician, registered nurse, licensed vocational nurse, or a person with an American Red Cross Emergency Response certificate, or its equivalent, shall be in the camp and on call at all times, and will be considered the Camp Health Officer. For camps having documented evidence, such as a letter from the local emergency medical services (EMS), that the camp is located within a 20-minute community EMS response time, a person certified in American Red Cross Community First Aid and Safety, or its equivalent, shall be in the camp and on call at all times, and will be considered the Camp Health Officer.

(d) Requirement to report incidents of abuse or neglect of a minor.

(1) Requirement to report incidents of abuse or neglect of a minor at a youth camp.

(A) If a person, including any member of camp staff, a camp counselor, or camp director has cause to believe that a minor has been or may have been abused or neglected as those terms are defined in the Texas Family Code, Chapter 261, and the abuse or neglect occurred at the youth camp, then that person shall immediately make a report, in accordance with Texas Family Code, §261.101(a) to one of the appropriate agencies designated by Texas Family Code, §261.103. Accordingly, a report shall be made to:

(i) any local or state law enforcement agency;

(ii) the Department of Family and Protective Services Abuse Hotline, which may be contacted at (800) 252-5400 or through the secure web site http://www.txabusehotline.org/; or

(iii) the Department of State Health Services.

(B) If a person making a report in accordance with subparagraph (A) of this paragraph has not already notified the Department of State Health Services as part of such a report, the person shall also

immediately notify the Department of State Health Services' Policy, Standards, and Quality Assurance Unit by phone at (512) 834-6788, by fax at (512) 834-6707, or by email at PHSCPS@dshs.texas.gov that a minor has been or may have been abused or neglected at a youth camp.

(2) Requirement to report incidents of abuse or neglect of a minor other than at a youth camp. If a person, including any member of camp staff, a camp counselor, or camp director has cause to believe that a minor has been or may have been abused or neglected as those terms are defined in the Texas Family Code, Chapter 261, and the abuse or neglect did not occur at the youth camp, then that person shall immediately make a report, in accordance with Texas Family Code, §261.103.

(A) Except as provided by subparagraphs (B), (C) and (D) of this paragraph, a report shall be made to:

(i) any local or state law enforcement agency;

(ii) the Department of Family and Protective Services Abuse Hotline, which may be contacted at (800) 252-5400 or through the secure web site http://www.txabusehotline.org/; or

(iii) the agency designated by the court to be responsible for the protection of children.

(B) A report may be made to the Texas Juvenile Justice Department instead of the entities listed under subparagraph (A) of this paragraph if the report is based on information provided by a child while under the supervision of the Texas Juvenile Justice Department concerning the child's alleged abuse of another child.

(C) Notwithstanding subparagraph (A) of this paragraph, a report, other than a report under subparagraph (D) of this paragraph, shall be made to the Department of Family and Protective Services if the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child.

(D) A report of alleged abuse, neglect, or exploitation in any juvenile justice program or facility shall be made to the Texas Juvenile Justice Department and a local law enforcement agency for investigation.

(3) The youth camp must develop and maintain a written policy regarding the method for reporting to the Department of State Health Services suspected abuse or neglect of a minor occurring at the camp. This policy must be maintained on-site.

(4) The Department of State Health Services, by policy, shall forward a report of alleged abuse of a camper that is received by the Department of State Health Services to the Department of Family and Protective Services or another appropriate agency.

(e) Requirement to report camper death or communicable diseases. Camper death or confirmed cases of waterborne or foodborne diseases, such as cholera, dysentery, typhoid, salmonellosis, shigellosis, or infectious hepatitis, shall be reported to the Department of State Health Services' [~~department's~~] Policy, Standards, and Quality Assurance Unit, within 24 hours of occurrence (or confirmation in the case of disease) by fax at (512) 834-6707, or by email at PHSCPS@dshs.texas.gov.

(f) Designation of a first aid area. A first aid area, used exclusively to handle health and emergency cases, shall be designated and suitably equipped. Supplies should be in single use packaging. A first aid kit containing at the minimum the items listed in this subsection shall be available in the first aid area.

(1) Sterile adhesive bandages in assorted sizes.

(2) Sterile gauze pads in assorted sizes.

(3) Hypoallergenic adhesive tape.

(4) Triangular bandages.

(5) Sterile roller bandages in assorted sizes.

(6) Scissors.

(7) Tweezers.

(8) Moistened towelettes.

(9) Antiseptic.

(10) Thermometer.

(11) Splints.

(12) Petroleum jelly or other lubricant.

(13) Cleansing agent/soap.

(14) Exam quality gloves.

(15) Eye wash solution.

(g) Isolation of a child with a communicable disease. A child ill with a confirmed or suspected case of a communicable disease shall be isolated to provide safety to other children and quiet to the patient. Any child that is isolated shall be supervised as determined by the Camp Health Officer. A child with a staphylococcal skin infection is not required to be isolated, if the infection is kept completely covered by a bandage.

(h) Medical [~~Bound medical~~] log required. A bound medical log, or other unalterable record keeping system, listing date, name of the patient, ailment, name of the Camp Health Officer, and the treatment prescribed shall be kept in the first aid area for the duration of the camp year for which the license is issued.

(i) Camper health records shall be kept on file. The first aid area shall keep a health record on each child with the child's name, allergies, immunizations, parent's name, address, and telephone number, and parent or guardian authorization for emergency medical care.

(j) Availability of an emergency telephone. The camp shall have a telephone readily available, preferably in the first aid area, for emergency use.

(k) Emergency plans required. A written plan of procedures to be implemented in case of a disaster, serious accident, epidemic, or fatality shall be formulated and posted in the camp's administrative on-site office or location and in each permanent and semi-permanent occupied building. The plan shall include procedures for emergency shelter and for evacuation of each occupied building and the facility. Campers shall be instructed as to their actions in the event of fire, disaster, or the need to evacuate. These procedures shall be reviewed by the staff with specific assignments made to each staff member and counselor. All camp staff and volunteers shall be made aware of this plan during the staff-training program or volunteer briefing. Documentation of this training shall be kept at the camp's administrative on-site office or location.

(l) Storing and dispensing prescription medication to campers. If a child is taking a prescription medication when he or she reports to camp, the medication shall be in the original container with the prescription label, and the medical staff shall place that medication, sharps, and related paraphernalia or devices in a lockable cabinet or other secure location that is not accessible to campers. The medication shall be administered by the Camp Health Officer or camp counselor, if authorized in writing by the Camp Health Officer. At no time shall the child be allowed to self-administer the medication without adult supervision. Medications needed for immediate use for life-threatening conditions (e.g., bee-sting medication, inhaler) and limited medications approved for use in first-aid kits may be carried by a camper or staff person. The

camp shall have on file a written statement of medical necessity from the prescribing doctor or the written approval of the Camp Health Officer for any camper to carry medication and related paraphernalia or devices.

(m) Camp trip first aid kits. First aid kits containing at the minimum the items listed in subsection (f) of this section shall be taken on all out-of-camp trips.

§265.16. Waterfront Safety.

(a) Adult waterfront director required at youth camps. An adult waterfront director, who holds a current lifeguard certificate or its equivalent, shall be in charge of all waterfront activities. While waterfront activities are in progress, the waterfront director or an adult certified lifeguard assistant shall be in the immediate vicinity (within sight and/or hearing) of the campers, supervising the program.

(b) Responsibilities of the waterfront director. The waterfront director is to be responsible for all waterfront supervision procedures and is responsible for ensuring that the waterfront procedures are strictly enforced. The waterfront staff shall not engage in personal recreational swimming, boating or any other waterfront activity while on waterfront duty. For every 35 campers, or fraction thereof, engaged in waterfront activities, there shall be one certified lifeguard and one additional person (either a certified lifeguard or trained adult lookout) on duty. Camps utilizing natural bodies of water such as rivers, lakes, or creeks may need to increase this ratio.

(c) Maintenance and operation of swimming areas.

(1) Swimming areas shall be maintained and operated in a safe and clean condition. Youth camp swimming pools are class C pools, and shall be built, operated, and maintained in accordance with 25 Texas Administrative Code (TAC), Chapter 265, General Sanitation, Subchapter L, Standards for Public Pools and Spas.

(2) Interactive water features and fountains at youth camps shall be maintained and operated in a safe and clean condition. Interactive water features and fountains at youth camps shall be built, operated, and maintained in accordance with 25 TAC, Chapter 265, General Sanitation, Subchapter M, Interactive Water Features and Fountains.

(d) Camper's swimming ability shall be determined in accordance with the camp's written swimming test policy. Camps shall test to determine each child's swimming ability. Children shall then be confined to the limits of swimming skills for which they have been classified. Also, the swimming area shall have areas for non-swimmers, intermediate swimmers, and swimmers clearly marked.

(e) Checking campers in and out of the water. A method of checking campers in and out of the water shall be established and enforced.

(f) Waterfront lifesaving equipment shall be provided. Lifesaving equipment suitable for the waterfront activity shall be provided at the waterfront activity area and placed so the equipment is immediately available in case of an emergency. All lifesaving equipment shall be kept in good repair and ready condition. At a minimum, this equipment shall include the following.

(1) A rescue tube or rescue buoy with strap, or a ring buoy that is approved by the United States Coast Guard that has an outside diameter of 15 to 24 inches attached to a throwing rope that is at least two-thirds the maximum width of the pool [~~20 feet or longer~~] with a diameter of 1/4-inch to 3/8-inch.

(2) One or more backboards with a minimum of 3 tie down straps and head immobilizer for back and neck injuries.

(3) A first aid kit that includes the items listed in §265.15(f) of this title (relating to Medical and Nursing Care [~~Waterfront Safety~~]).

(g) Providing a personal flotation device. A Coast Guard approved Personal Flotation Device (PFD) shall be readily available for each occupant of a watercraft. Each occupant of a watercraft 12 years of age and under shall wear a United States Coast Guard (USCG) approved inherently buoyant Type II PFD, or Near-Shore Buoyancy Vest at all times while in the watercraft. A non-swimmer shall wear a USCG approved inherently buoyant Type II PFD, or Near-Shore Buoyancy Vest and not be permitted in a watercraft unless accompanied by a counselor. A camper shall wear a vest type USCG approved preserver before entering and while in white water or before entering and while on a lake when the water is rough or while waterskiing.

(h) Location of swimming areas. Swimming areas shall be used exclusively for swimming while swimming is occurring. A watercraft docking area shall not be allowed in the swimming area and water skiers [~~waterskiers~~] shall not launch, cross, or stop in the swimming area while swimming is occurring.

§265.23. Application and Denial of a New License; Non-transferable.

(a) License required. A person shall possess a valid youth camp license prior to operating a youth camp.

(1) Submitting an application. An application is made by submitting:

(A) a completed youth camp application;

(B) an activity schedule showing dates and detailed information about the activities that are conducted both at the camp and at other locations;

(C) any other requested documents and information; and

(D) paying the license fee as described in §265.28 of this title (relating to Fees).

(2) Obtaining an application. A blank application may be obtained by calling the Environmental and Sanitation Licensing Group at (512) 834-6600 or may be downloaded from the website at www.dshs.state.tx.us/youthcamp/default.shtm. Applications may be submitted to the Environmental and Sanitation Licensing Group, Department of State Health Services, Mail Code 2003, P.O. Box 149347, Austin, Texas 78714-9347.

(3) Qualifying for a youth camp license. Subject to subsection (j) of this section, the [~~The~~] department shall issue a license if the facility:

(A) meets the definition of a "Youth camp" as described in §265.11(25) of this title (relating to Definitions); and

[~~(B) meets the definition of "Youth camp, general characteristics of" in §265.11(27) of this title; and~~]

(B) [~~(C)~~] is in compliance, or has demonstrated a plan for compliance, with all provisions of the Act and the rules prior to operation as determined by:

(i) submitting a complete application as described in paragraph (1) of this subsection; and

(ii) passing a pre-licensing inspection conducted by the department, using the standard youth camp inspection form that may be found at http://www.dshs.state.tx.us/youthcamp/forms.shtm.

(b) Processing applications.

(1) Applications for a new license issued under this chapter shall be submitted to the Environmental and Sanitation Licensing Group at least 90 calendar days prior to camp operation.

(2) The department shall issue the new license or a written notice that the application is complete or that the application is deficient within the following periods of time. The department shall identify deficiencies in the notice, provide a deadline by which the deficiencies shall be corrected, and inform the applicant of the need for a pre-licensing inspection. Deficiencies may include the failure to provide required information, documents, or fees. An application is not considered complete until all required documentation, information, and fees have been received.

(A) Letter of acceptance of application for licensure approving the license and authorizing operation after successfully passing the pre-licensing inspection - within 30 days after the date of passing the pre-licensing inspection. The original license may serve as the letter of acceptance.

(B) Letter of application deficiency - within 30 days after receipt of a deficient application.

(C) Letter of pre-licensing inspection deficiency - a notice of deficiency will be issued to the camp representative on site at the conclusion of the pre-licensing inspection if any deficiencies were noted during the inspection. The camp shall provide documentation that all deficiencies have been corrected within 10 days after the inspection or prior to camp operation, whichever comes first.

(3) In the event that an application for a new license is not processed within the timeframe established in paragraph (2)(A) of this subsection, and no good cause exists for the delay, the applicant has the right to request reimbursement of all fees paid in that particular application process so long as a complete application was submitted at least 90 calendar days prior to camp operation. Requests for reimbursement shall be made in writing to the Environmental and Sanitation Licensing Group. Good cause for exceeding the time period is considered to exist if the number of applications for licensure exceeds by 15% or more the number of applications processed the same calendar quarter of the preceding year or any other condition exists giving the department good cause for exceeding the time period.

(4) If the request for reimbursement as authorized by paragraph (3) of this subsection is denied, the applicant may then appeal to the commissioner for a resolution of the dispute. The applicant shall give written notice to the commissioner requesting reimbursement of the fee paid because the application was not processed within the established time period. The department shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner shall make the final decision and provide written notification of the decision to the applicant and to the department.

(c) Record availability. All records, except criminal background and sex offender registration database checks (including any written evaluation for any staff member or volunteer with a criminal conviction or deferred adjudication), required by this subchapter shall be made available to the department immediately upon request. Criminal background and sex offender registration database checks (including any written evaluation for any staff member or volunteer with a criminal conviction or deferred adjudication) shall be made available to the department within two business days upon request.

(d) Term of license. The term of a youth camp license shall be one year, beginning on the date of issuance.

(e) License non-transferable. A youth camp license is not transferable and may not be sold, assigned, or otherwise transferred. Any new entity that acquires the operation of a youth camp through sale, assignment, or other transfer shall obtain a new license.

(f) Ownership change. A new application, fee, pre-licensing inspection, and license is required if there is a change in ownership.

(g) Name change. If a camp changes its name during operation, but does not change location or ownership, then a new license certificate may be issued if requested using the form designated by the department, available at http://www.dshs.state.tx.us/youthcamp/forms.shtm, accompanied by a nonrefundable fee of $20.

(h) Location change. A new application, fee, pre-licensing inspection, and license is required if there is a change in physical camp location.

(i) Duplicate license. A duplicate license may be issued if requested using the form designated by the department, available at http://www.dshs.state.tx.us/youthcamp/forms.shtm, accompanied by a nonrefundable fee of $20.

(j) Denials.

(1) The department may deny an application for licensing to those who fail to meet the standards established by the Act and [~~rules in~~] this subchapter. In making this determination, the department shall consider any violation by the applicant of the Act or this subchapter, including whether the youth camp employs an individual who was convicted of an act of sexual abuse, as defined by §21.02 of the Texas Penal Code, that occurred at the camp. When the department proposes to deny an application, it shall give notice of the proposed action in writing and shall provide information on how to request an administrative hearing. The applicant shall make a written request for a hearing within 30 days from the date on the notice letter sent by the department. The hearing shall be conducted in accordance with the Act, the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures of the department at 25 Texas Administrative Code, §1.21 *et seq.*

(2) A letter of denial of licensure may be issued within 60 days after the receipt of application if the applicant does not meet the requirements of subsection (a)(3)(A) [~~or (B)~~] of this section.

(3) A letter of denial of licensure may be issued if the applicant does not meet the requirements of subsection (a)(3)(B) [~~(a)(3)(C)~~] of this section:

(A) within 60 days following the first scheduled date of camp operations if a pre-licensing inspection has not been completed; or

(B) within 60 days following the first scheduled date of camp operations if the camp does not pass the pre-licensing inspection.

(4) A license holder whose license has been denied or revoked may not reapply for a new license for two years from the date of final denial or revocation.

(k) Refunds.

(1) If the applicant does not meet the requirements of subsection (a)(3)(A) [~~or (B)~~] of this section, the application may be denied and the license fee, less a handling fee of $50, may be refunded. If an application is denied because the facility does not meet the requirements of subsection (a)(3)(A) [~~or (B)~~] of this section, the applicant should determine if a license from another agency is required.

(2) If the applicant does not meet the requirements of subsection (a)(3)(B) [~~(a)(3)(C)~~] of this section, the application may be denied and the license fee may not be refunded.

§265.24. Application and Denial of a Renewal License.

(a) Renewal of a youth camp license. A person holding a license under the Act shall renew the license annually before the license expires.

(b) Renewal notice. At least 60 days before a license expires, the department, as a service to the licensee, may send a renewal notice to the licensee or registrant to the last known address of the licensee. It remains the responsibility of the licensee to keep the department informed of the licensee's current address and to take action to renew the license whether or not they have received the notification from the department. The renewal notice shall state:

(1) the type of license requiring renewal;

(2) the time period allowed for renewal; and

(3) the amount of the renewal fee.

(c) Renewal requirements. Renewal applications and fees shall be submitted to the department prior to the license's annual expiration date.

(1) Submitting an application. A renewal application is made by submitting:

(A) a completed youth camp renewal application;

(B) an activity schedule showing dates and detailed information about the activities that are conducted both at the camp and at other locations;

(C) any other requested documents and information; and

(D) paying the renewal license fee as described in §265.28 of this title (relating to Fees).

(2) Obtaining an application. A blank renewal application may be obtained by calling the Environmental and Sanitation Licensing Group at (512) 834-6600 or may be downloaded from the website at www.dshs.state.tx.us/youthcamp/default.shtm. Renewal applications may be submitted to the Environmental and Sanitation Licensing Group, Department of State Health Services, Mail Code 2003, P.O. Box 149347, Austin, Texas 78714-9347.

(3) Qualifying for renewal of a youth camp license. Subject to subsection (k) of this section, the [~~The~~] department shall issue a renewal license if the facility:

(A) meets the definition of a "Youth camp" as described in §265.11(25) of this title (relating to Definitions); and

[~~(B) meets the definition of "Youth camp, general characteristics of" in §265.11(27) of this title; and~~]

(B) [~~(C)~~] is in compliance with all provisions of the Act and the rules prior to operation as determined by:

(i) submitting a complete renewal application as described in this subsection;

(ii) passing a pre-licensing inspection conducted by the department, if required; and

(iii) complying with all final orders resulting from any violations of this subchapter before the application for renewal is submitted.

(d) Processing renewal applications.

(1) Applications for license renewal under this subchapter shall be received by the Environmental and Sanitation Licensing Group prior to the expiration date of the license or 45 days prior to camp operation, whichever is earlier.

(2) The department shall issue the renewal license or a written notice that the renewal application is complete or that the renewal application is deficient within the following periods of time from the date of receipt of the renewal application. The department shall identify deficiencies in the notice and provide a deadline by which the deficiencies shall be corrected in order for the department to renew the license or to schedule the pre-licensing inspection if required. Deficiencies may include the failure to provide required information, documents, or fees, or the failure to schedule or successfully pass the pre-licensing inspection if required. An application is not considered complete until all required documentation, information, and fees have been received. If a camp is subject to pre-licensing inspection, the time period for issuing a letter of acceptance of application for license renewal begins upon successfully passing inspection.

(A) Letter of acceptance of application for license renewal approving the license and authorizing operation - within 30 days. The original license may serve as the letter of acceptance.

(B) Letter of renewal application deficiency - within 30 days after receipt of a deficient renewal application.

(C) Letter of pre-licensing inspection deficiency - a notice of deficiency will be issued to the camp representative on site at the conclusion of the pre-licensing inspection if any deficiencies were noted during the inspection. The camp shall provide documentation that all deficiencies have been corrected within 10 days after the inspection or prior to camp operation, whichever comes first.

(3) In the event that a timely and complete application for license renewal is not processed within timeframe established in paragraph (2)(A) of this subsection, and no good cause exists for the delay, the applicant has the right to request reimbursement of all fees paid in that particular application process. Requests for reimbursement shall be made in writing to the Environmental and Sanitation Licensing Group. Good cause for exceeding the time period is considered to exist if the number of applications for licensure exceeds by 15% or more the number of applications processed the same calendar quarter of the preceding year or any other condition exists giving the department good cause for exceeding the time period.

(4) If the request for reimbursement as authorized by paragraph (3) of this subsection is denied, the applicant may then appeal to the commissioner for a resolution of the dispute. The applicant shall give written notice to the commissioner requesting reimbursement of the fee paid because the application was not processed within the established time period. The department shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner shall make the final decision and provide written notification of the decision to the applicant and to the department.

(e) Late renewal. If a license is not renewed within one year after the expiration date, the license may not be renewed. A new license may be obtained by submitting a new application in compliance with §265.23 of this title (relating to Application and Denial of a New License; Non-transferable). If the license is renewed after its expiration date, the renewed license shall expire on the date the license would have expired had it been renewed timely.

(f) Non-renewal. The department may refuse to renew a license if the applicant has not complied with all final orders resulting from any violations of these sections. Eligibility for license renewal may be reestablished by meeting all conditions of the orders and complying with the requirements of this section. The department may not renew the license of a youth camp that has not corrected deficiencies identified in a final order before the application for renewal is submitted. Evidence of corrections, such as photography or documentation

satisfactory to the department, shall be submitted to and approved by the Environmental and Sanitation Business Filing and Verification Unit prior to submitting the renewal application to the Business Filing and Verification Section of the Consumer Protection Division.

(g) Application determination affecting license expiration. If a license holder makes timely and sufficient application for the renewal of a license, the existing license does not expire until the application has been finally determined by the department. If the application is denied, the existing license does not expire until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(h) Reapplication for license upon denial or revocation. A license holder whose license has been denied or revoked may not reapply for a new license for two years from the date of final denial or revocation.

(i) Opportunity for a hearing. When the department proposes to deny an initial or renewal application, it shall give notice of the proposed action in writing and shall provide information on how to request an administrative hearing. The applicant shall make a written request for a hearing within 30 days from the date on the notice letter sent by the department.

(j) Pre-licensing inspections. A youth camp applying for a license renewal may be subject to a pre-licensing inspection. Youth camps shall be in compliance with all provisions of the Act and the rules prior to operation.

(k) Denials.

(1) The department may deny a renewal application for licensing to those who fail to meet the standards established by the Act and this subchapter [~~these rules~~]. In making this determination, the department shall consider any violations by the youth camp of the Act and this subchapter, including whether the youth camp employs an individual who was convicted of an act of sexual abuse, as defined by §21.02 of the Texas Penal Code, that occurred at the camp. Prior to denying a renewal license, the department shall give the applicant an opportunity for a hearing. The hearing shall be conducted in accordance with the Act, the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures of the department at 25 Texas Administrative Code §1.21 *et seq.*

(2) A letter of denial of license renewal may be issued within 60 days of the receipt of application if the applicant does not meet the requirements of subsection (c)(3)(A) [~~or (B)~~] of this section.

(3) A letter of denial of license renewal may be issued within 60 days following the first scheduled date of camp operations if the applicant does not meet the requirements of subsection (c)(3)(B) [~~(c)(3)(C)~~] of this section.

(l) Refunds.

(1) If the applicant does not meet the requirements of subsection (c)(3)(A) [~~or (B)~~] of this section, the renewal application may be denied and the renewal license fee, less a handling fee of $50, may be refunded. If an applicant is denied because the facility does not meet the requirements of subsection (c)(3)(A) [~~or (B)~~] of this section, the applicant should determine if a license from another agency is required.

(2) If the applicant does not meet the requirements of subsection (c)(3)(B) [~~(c)(3)(C)~~] of this section, the renewal application may be denied and the renewal license fee may not be refunded.

§265.27. Revocation, Administrative Penalties, and Hearings.

(a) License revocation.

(1) If the department finds that a violation of the Act or of a rule has occurred or is occurring at a youth camp for which a license has been issued, the department shall give written notice to the licensee setting forth the nature of the violation and demanding that the violation cease.

(2) The department may initiate proceedings to revoke the license if the licensee fails to comply with the notice of violation [~~to cease~~] in the time and manner directed in the notice.

(b) Assessment of an administrative penalty. The Commissioner may assess an administrative penalty if a person violates the Act, a rule of the department, or an order of the commissioner issued under the Act or rules.

(c) Determination of the penalty amount. In determining the amount of the penalty, the commissioner shall consider:

(1) previous compliance history;

(2) the seriousness of the violation;

(3) any hazard to public health and safety;

(4) the person's demonstrated good faith; and

(5) any other matters as justice may require.

(d) Administrative penalty limits. The administrative penalty may not exceed $1,000 a day for each violation. Each day a violation continues may be considered a separate violation.

(e) Opportunity for a hearing. Prior to revoking a license or assessing an administrative penalty, the department shall give the person charged an opportunity for a hearing. The hearing shall be conducted in accordance with the Act, the Administrative Procedures Act, Texas Government Code, Chapter 2001, and the formal hearing procedures of the department at 25 Texas Administrative Code §1.21 *et seq.*

(f) Violation severity levels. Violations shall be categorized into severity levels I, II, and III. Administrative penalties may be imposed for:

(1) Critical violations. Severity level I violations have or could have a direct or immediate negative effect on the health, safety, and welfare of campers or the operation and management of a youth camp. These violations are assessed at $750 - $1,000 per violation per day. Examples of severity level I violations include, but are not limited to:

(A) operating a youth camp without a current license;

(B) failing to report an incident of camper abuse or neglect of a camper as required;

(C) providing drinking water from an unapproved source;

(D) policies or procedures not being followed in a way that has a direct negative impact on camper health or safety;

(E) unqualified or insufficient number of personnel staffing operations or activities;

(F) criminal conviction and sex offender records not on file;

(G) sexual abuse training and exam records not on file; and

(H) interfering with, denying, or delaying an inspection or investigation conducted by a department representative.

(2) Serious violations. Severity level II violations are those that could threaten the health, safety, and welfare of campers or the operation and management of a youth camp. These violations are as-

sessed at $500 - $750 per violation per day. Examples of severity level II violations include, but are not limited to:

(A) written personnel practices and policies regarding camp and staff are not available as required;

(B) staff members not informed regarding personnel and camp practice policies;

(C) proper sanitation of all food utensils not achieved;

(D) policies or procedures not being followed in a way that could threaten the health, safety, and welfare of campers or the operation and management of a youth camp;

(E) swimming areas not maintained in clean condition; or

(F) disaster and/or fire evacuation procedures are not posted properly.

(3) Significant violations. Severity level III violations are those of concern that if left uncorrected could lead to more serious circumstances. These violations are assessed at $250 - $500 per violation per day. Examples of severity level III violations include, but are not limited to:

(A) toilets and bathing facilities not adequately lighted and ventilated;

(B) docking and waterskiing permitted in the swimming area;

(C) vehicles used to transport staff or campers not equipped with a first aid kit;

(D) policies or procedures not being followed in a way that if left uncorrected could lead to more serious circumstances; and

(E) unauthorized nudity allowed.

§265.28. Fees.

(a) The schedule of annual fees is as follows:

(1) initial license day youth camp--$250;

(2) initial license residential youth camp--$750;

(3) renewal license day youth camps operating less than 10 days per year--$50;

(4) renewal license day youth camps operating 10 or more days per year--$150;

(5) renewal license residential youth camps operating less than 10 days per year--$100; and

(6) renewal license residential youth camps operating 10 or more days per year--$450.

(b) Miscellaneous fees are as follows:

(1) duplicate license fee--$20;

(2) camp name change during operation--$20; and

(3) non-sufficient fund fee--$20.

(c) Applicants may submit applications and renewal applications for a license under these sections electronically [~~by the Internet~~] through texas.gov at www.texas.gov. The department is authorized to collect fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through texas.gov.

(d) An applicant whose payment for the application and initial license fee is returned due to any reason including insufficient funds, account closed, or payment stopped shall be allowed to reinstate the application by remitting to the department a money order or check for guaranteed funds in the amount of the application and initial license fee plus the Non-Sufficient Fund Fee within 30 days after the date of receipt of the department's notice. An application is incomplete until the fee has been received and cleared through the appropriate financial institution.

(e) An applicant whose license has been approved and whose payment for the license fee is returned due to any reason including insufficient funds, account closed, or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the license fee plus the Non-Sufficient Fund Fee within 30 days after the date of receipt of the department's notice. Failure to comply with this subsection renders the application and the license approval invalid.

(f) A license holder whose payment for the renewal fee is returned due to any reason including insufficient funds, account closed, or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the renewal fee plus the Non-Sufficient Fund Fee within 30 days after the date of receipt of the department's notice. Failure to comply shall result in non-renewal of the license. If a renewal license has already been issued, it shall be invalid.

(g) Upon return unclaimed of the department's notice, as set out in subsections (c) - (e) of this section, the department shall mail the notice to the applicant or license holder by certified mail. If a money order or check for guaranteed funds is not received by the department's cashier within 30 days after the postmarked date on the certified mailing, the approval granted, or license issued shall be invalid.

(h) The department may notify the applicant or the license holder's owner that the person has failed to comply with this section and that any approval granted or license issued is invalid.

(i) Initial application or renewal fees shall be refunded only if the fee amounts paid are in excess of the correct fee amount or if there is a double payment. The department shall not refund fees if the application was abandoned due to the applicant's failure to respond within 90 days to a written request from the department.

(j) All fees shall be submitted in the form of personal checks, certified checks, money orders, or checks from state agencies, municipalities, counties, or other political subdivisions of the state made payable to the department.

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

Filed with the Office of the Secretary of State on March 4, 2020.

TRD-202000968
Barbara L. Klein
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 19, 2020
For further information, please call: (512) 231-5753

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.33

The Texas Board of Criminal Justice (board) proposes amendments to §163.33, concerning Community Supervision Staff. The amendments are proposed in conjunction with a proposed rule review of §163.33 as published in another section of the *Texas Register.* The proposed amendments clarify and codify current procedure regarding the duration of community supervision officer (CSO) and residential CSO certification. The proposed amendments specify that once the Community Justice Assistance Division (CJAD) has certified a CSO or residential CSO, the CSO or residential CSO will maintain certification and eligibility for certification provided they are in compliance with training hour requirements and are employed by a Community Supervision and Corrections Department (CSCD). The proposed amendments have been reviewed by legal counsel and found to be within the board's authority to adopt.

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

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

The anticipated public benefit, as a result of enforcing the rule, will be to clarify the requirements of community supervision staff. No cost will be imposed on regulated persons.

The rule will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed action will not constitute a taking.

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

The amendments are proposed under Texas Government Code §509.003, which gives the CJAD authority to propose rules to the board, and §492.013, which gives the board authority to adopt rules.

Cross Reference to Statutes: None.

§163.33. Community Supervision Staff.

(a) Purpose.

(1) The purpose of this Community Justice Assistance Division (CJAD) rule is to set forth the eligibility, professional training, certification, and record-keeping requirements for Community Supervision and Corrections Departments' (CSCDs) professional staff, direct care staff, and contract staff.

(2) Once the CJAD has certified a community supervision officer (CSO) or residential CSO in accordance with this rule, the CSO or residential CSO will maintain certification and eligibility for certification provided they are in compliance with training hour requirements and are employed by a CSCD.

(3) [~~(2)~~] CSCDs, CSOs [~~community supervision officers (CSOs)~~], residential CSOs, direct care staff, and contract staff members who work at CSCDs, Substance Abuse Felony Punishment Facilities (SAFPFs), CSCD residential facilities, or Community Correction Facilities (CCFs) must comply with this rule.

(4) [~~(3)~~] This rule specifies the certification and training requirements for professional staff and direct care staff based on their status as a new employee, an employee with less than four years of experience, an employee with more than four years of experience, a returning employee, or an employee who is exempt from certain certification requirements based upon their years of on-the-job experience.

(b) Definitions.

(1) Contract staff are staff working at a CSCD or one of its facilities pursuant to a contract rather than as permanent, full-time employees of the CSCD.

(2) CSOs are community supervision officers who provide direct supervision to offenders on community supervision.

(3) Direct care staff are staff providing direct care within a residential facility operated by a CSCD.

(4) Direct supervision refers to offenders who are legally on community supervision and who work or reside in the jurisdiction in which they are being supervised and receive a minimum of one face-to-face contact with a CSO every three months. Direct supervision begins at the time of initial face-to-face contact with an eligible CSO. Local CSCDs may maintain direct supervision of offenders living or working in adjoining jurisdictions if the CSCD has documented approval from the adjoining jurisdictions.

(5) Professional staff, for purposes of this rule, includes CSCD directors and assistant directors, CCF directors and assistant directors, CSO supervisory staff, CSOs, and residential CSOs.

(6) Professional training includes a formal presentation of specific behavioral learning objectives and skills or specific knowledge in actual day-to-day community supervision work and approved by the CSCD director, in writing, as professional training.

(7) Residential CSOs are community supervision officers who provide direct supervision to offenders sentenced to community supervision within a residential facility managed by a CSCD.

(c) Eligibility for employment as a CSO or residential CSO. To be eligible for employment as a CSO or residential CSO serving in a position of direct supervision of offenders, a person must:

(1) Have a bachelor's degree conferred by an institution of higher education accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(2) Not be a person employed or volunteering as a peace officer or work as a reserve or volunteer peace officer;

(3) Be eligible to supervise offenders in accordance with Texas Criminal Justice Information Services (CJIS) Access Policy; and

(4) Become certified and attend professional training in accordance with this rule.

(d) Newly hired CSO or residential CSO certification. A newly hired CSO or residential CSO shall complete the certification course and achieve a passing grade on the applicable CJAD certification examination within one year of the date of employment as a CSO or residential CSO. A CSO or residential CSO may complete course work and take examinations to achieve dual certification.

(1) A CSO or residential CSO who fails to achieve certification within the first year of employment shall not serve in a position of direct supervision over offenders until certification is achieved unless the CJAD grants an extension for the completion of course work and re-examination.

(2) A CSO or residential CSO who completes the certification course work but fails to pass the certification examination may take the examination a second time. A CSO or residential CSO who fails the examination a second time shall complete the certification course again before taking the examination for the third and final time.

(3) A CSO or residential CSO who has failed the certification examination three times is eligible to pursue certification no sooner than two years after the last failed examination in accordance with this rule and shall not serve in a position of direct supervision over offenders until certification is achieved.

(e) Exempt CSO and residential CSO certification. A CSO or residential CSO who has been continuously employed by any CSCD in Texas from on or before September 1, 1989, is exempt from the certification requirements. Certification courses and the certification examination, however, shall be available to exempt CSOs and residential CSOs. Exempt CSOs or residential CSOs who complete the certification course work but fail to pass the certification examination may take the examination a second time. An exempt CSO or residential CSO who fails the examination a second time may complete the certification course again before taking the examination for the third and final time. Although exempt from certification, exempt CSOs and residential CSOs are required to complete professional training each biennium in accordance with this rule.

(f) Recertification of professional staff upon re-employment. Professional staff subject to the certification provisions of this rule who have left the employment of a Texas CSCD for more than one year are required to become recertified in accordance with this rule. All professional staff employees who had less than one year of experience before leaving the employment of a CSCD must become certified or recertified in accordance with this rule.

(g) Professional training of professional staff.

(1) Professional staff with less than four years of experience shall complete at least 80 documented hours of professional training each biennium.

(A) Up to 40 hours in excess of the 80 required professional training hours may be carried over to the next biennium.

(B) Professional staff who fail to complete the required 80 hours of professional training within a biennium shall not serve in a position of direct supervision of offenders until the required professional training hours are completed.

(2) Professional staff with at least four years of experience shall complete at least 40 documented hours of professional training each biennium, beginning the biennium after which four years of experience is achieved.

(A) At least two of the required four years of experience shall have been earned as a full-time, wage-earning officer in Texas community supervision. Up to two of the four years of required experience may have been earned through work in juvenile probation or parole, adult parole, or similar work in other states. The required four years of experience is not required to be continuous.

(B) Up to 20 hours in excess of the 40 required professional training hours may be carried over to the next biennium.

(C) Professional staff who fail to complete the required 40 hours of professional training within a biennium shall not serve in a position of direct supervision over offenders until the required professional training hours are completed. Professional staff who are exempt from certification as defined in this rule and fail to complete the required 40 hours of professional training within a biennium shall not serve in a position of direct supervision over offenders until the required professional training hours are completed.

(h) Training of CSOs who supervise SAFPF program participants.

(1) CSOs who supervise participants in a SAFPF program shall complete the CJAD approved training designed for officers who supervise SAFPF program participants during the course of treatment in a SAFPF and in the continuum of care component of the SAFPF program.

(2) The training shall be completed within one year of being assigned supervision of SAFPF program participants, unless the CJAD grants an extension for completion of the course work.

(3) CSOs who supervise SAFPF program participants and who fail to complete the CJAD approved SAFPF training shall not serve in a position of direct supervision over SAFPF program participants until the required CJAD approved SAFPF training is completed, unless the CJAD grants an extension.

(i) Direct care staff certifications and professional training.

(1) Newly hired direct care staff certifications. Direct care staff working in a residential facility shall be required to complete the following types of training and obtain the required certifications within one year of their initial hire date as follows:

(A) Training in ethics, discrimination, and sexual harassment;

(B) Certification in first aid procedures, cardiopulmonary resuscitation (CPR) procedures, and HIV/AIDS education. Direct care staff shall maintain certification in first aid procedures, CPR procedures, and HIV/AIDS education in accordance with the training authority's guidelines for frequency of training and certification in first aid procedures, CPR procedures, and HIV/AIDS education;

(C) Residential staff certification training offered by the CJAD; and

(D) A defensive driving course and provide certification of completion with a passing grade from the course provider to the CSCD director or designee. Direct care staff shall take defensive driving courses in accordance with the training authority's guidelines for frequency of training and certification in defensive driving.

(2) Direct care staff working in a residential facility shall be required to complete professional training as follows:

(A) All residential direct care staff, including contract staff, with less than four years of experience at the close of business on August 31st of any biennium, shall be required to complete a minimum of 40 hours of documented professional training per biennium.

(B) A minimum of 20 professional training hours per biennium shall be specific to the needs of the offender population served by the facility.

(C) Up to 20 hours in excess of the 40 required professional training hours may be carried over to the next biennium.

(3) Direct care residential staff with four or more years of experience at the close of business on August 31st of any biennium, regardless of when the four years of experience is achieved, shall complete at least 20 documented hours of professional training each biennium.

(A) For purposes of this section, experience may include up to two years of prior employment as a correctional officer or direct care staff in a juvenile facility, jail, parole facility, state jail facility, prison, private vendor residential facility, or similar work in another state. At least two of the required four years of experience shall have been as a full-time, wage-earning direct care staff member in a CCF funded by the TDCJ CJAD in Texas. The required four years of experience is not required to be continuous.

(B) The reduced number of hours of required professional training for the direct care residential staff who have at least four years of experience shall not affect or reduce the training requirements regarding CPR, first aid, or defensive driving. A maximum of 10 hours earned in excess of the 20 required professional training hours may be carried over to the next biennium. Direct care residential staff who fail to complete the required 20 hours of training within a biennium shall not serve as direct care residential staff until the required hours are completed.

(j) Maintenance of records. Each CSCD director shall have a written policy that requires the maintenance of training records for each professional staff or direct care staff employee and contract staff member. The CSCD director or designee shall ensure that training records for staff identified in this rule are maintained and available for CJAD auditors. Those records shall include:

(1) The number of professional training hours completed and the dates of the training;

(2) The specific training programs attended with supporting documentation;

(3) The specific certifications obtained with supporting documentation;

(4) The number of completed professional training hours certified in writing by the CSCD director or designee as professional training; and

(5) The number of professional training hours carried over from one biennium to the next biennium in accordance with these 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.

Filed with the Office of the Secretary of State on March 9, 2020.

TRD-202001023
Erik Brown
Director of Legal Affairs
Texas Department of Criminal Justice
Earliest possible date of adoption: April 19, 2020
For further information, please call: (936) 437-6700

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37 TAC §163.35

The Texas Board of Criminal Justice (board) proposes amendments to §163.35, concerning Supervision. The amendments are proposed in conjunction with a proposed rule review of §163.35 as published in another section of the *Texas Register.* The proposed amendments clarify that a level of supervision for each offender based on the offender's criminogenic needs will be determined within 90 days, as opposed to two months, of placement on community supervision, acceptance of a transfer case, or discharge from any residential facility, and that a written individualized case supervision or treatment plan will be provided within 90 days, as opposed to two months. The proposed amendments codify current procedure. Other amendments are minor word changes, clarifications, and organizational changes. The proposed amendments have been reviewed by legal counsel and found to be within the board's authority to adopt.

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

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

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

The rule will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed action will not constitute a taking.

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

The amendments are proposed under Texas Government Code §509.003, which gives the Community Justice Assistance Division authority to propose rules to the board, and §492.013, which gives the board authority to adopt rules.

Cross Reference to Statutes: None.

§163.35. Supervision.

(a) Definitions. The following words and terms, when used in this rule [~~section~~], shall be defined as follows and apply to both felonies and misdemeanors, unless the context clearly indicates otherwise.

(1) Absconder [~~Absconders~~] refers to a person [~~persons~~] who is [~~are~~] known to have left the jurisdiction without authorization or who has [~~have~~] not had face-to-face contact with [~~personally contacted~~] their community supervision officer (CSO) within three months [~~or 90 days~~], and either:

(A) has [~~have~~] an active Motion to Revoke (MTR) or Motion to Adjudicate filed and an unserved capias for his or her arrest; or

(B) has [have] been arrested on a [an] MTR or Motion to Adjudicate, released from custody on bond, own recognizance, or conditional judicial agreement, but [have] failed to appear for the MTR or the Motion to Adjudicate hearing and a bond forfeiture warrant has been issued by the court.

(2) Case refers to an offender assigned to a CSO for supervision.

(3) Direct Supervision refers to an offender [offenders] who:

(A) is [are] legally on community supervision;

(B) as of the last day of the month, works or resides [and who work or reside] in the jurisdiction in which they are being supervised; and

(C) receives [receive] a minimum of one face-to-face contact with a CSO every three months. Direct supervision begins at the time of initial face-to-face contact with an eligible CSO; or[.]

(D) is under [Local community supervision and corrections departments (CSCDs) may maintain] direct supervision while [of offenders] living or working in adjoining jurisdictions if the community supervision and corrections department (CSCD) [CSCD] has documented approval from the adjoining jurisdictions.

(4) Face-to-face Contact is an in-person communication between a CSO and [when a CSO communicates in person with the] offender.

(5) Field Visit is an in-person communication between a CSO and [when a CSO communicates in person with the] offender at the offender's place of residence or at another location outside the CSCD office.

(6) Indirect Supervision is when an offender meets one of the following criteria:

(A) an offender who neither resides nor works within the jurisdiction of the CSCD and who is supervised in another jurisdiction;

(B) an offender who neither resides nor works within the jurisdiction but continues to submit written reports on a monthly basis because the offender is ineligible or unacceptable for supervision in another jurisdiction;

(C) an offender who has absconded or who has not had face-to-face contact with [contacted] the CSO [in person] within three months;

(D) an offender who resides or works in the jurisdiction, but who, while in compliance with the orders of the court, does not meet the criteria for direct supervision; or

(E) an offender who resides and works outside the jurisdiction but reports in person and who does not fall under paragraph (3) of this subsection.

(b) System of Offender Supervision. Each CSCD director [The CSCD directors] shall develop a system of offender supervision that is based upon [, but not limited to]:

(1) the jurisdiction's profile of revoked offenders;

(2) the jurisdiction's profile of offenders under direct community supervision;

(3) each individual [the] offender's identified risks [risk] and needs;

(4) availability of sanctions, programs, services, and community resources;

(5) applicable law and Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) [standards and] policies and procedures; [and]

(6) policies governing a CSO transporting offenders which ensure that CSOs do not transport an offender held in a county jail pursuant to an arrest warrant. All other transportation of an offender shall be in accordance with the CSCD's policies or pursuant to a court order; and

(7) [(6)] policies of the local judiciary.

(c) Supervision Process. Each CSO [CSOs] shall provide direct supervision for cases to include [, but not be limited to,] the following [tasks]:

(1) an [Orientation and Intake. An] orientation and intake session with each [the] offender [shall be conducted] after the court has placed the offender under supervision which [. This session] shall include a thorough discussion of the conditions of community supervision and terms of release. The CSO shall ensure that the offender has received a copy of the conditions of community supervision or terms of release ordered by the court as provided by law;[.]

(2) an [Assessments. An] assessment [process] that gathers relevant and valid information for [shall be completed on] every offender. This process shall specifically address the offender's criminogenic needs. The CSO shall request specialized assessments for offenders when criminogenic needs indicate such an assessment is necessary. Within 90 days [two months of the date] of placement on community supervision [placement], acceptance of a transfer case, or discharge from any residential facility, jail, or institution, the CSO, [or] Qualified Credentialed Counselor (QCC), or assessor who has successfully completed the Texas Risk Assessment training shall determine a level of supervision for each offender based on the offender's criminogenic needs.

(3) a written individualized case supervision or treatment plan provided within 90 days [Case Supervision or Treatment Plan. Within two months of the date] of the most recent community supervision placement. The plan should be [, the CSO shall develop a written individualized case supervision or treatment plan] based upon [on] the offender's criminogenic needs to address specific problem areas and assist the offender in achieving [to achieve] responsible behavior;[.]

(4) re-evaluation of criminogenic needs, factors, and supervision plans performed at least once every 12 months for all direct supervision cases by the CSO, [Reassessments. CSOs or a] QCC, or assessor [shall reevaluate criminogenic needs, factors, and supervision plans at least every 12 months for all direct cases]. An approved TDCJ CJAD reassessment shall be completed any time a significant change occurs in the status of the offender. Any necessary modification of the supervision plan shall be indicated in writing in the case file;[.]

(5) [Supervision Contacts. CSOs shall make] face-to-face, field visit, telephone, and collateral contacts with the offender, family, community resources, or other persons pursuant to and consistent with the offender's [a] supervision plan and the level of supervision on which the offender is being supervised by the CSO. Each CSCD director shall establish supervision contact and casework standards at a level appropriate for that jurisdiction. An offender [, but in all cases, offenders] at an increased level [levels] of supervision because of assessments of greater risk or special needs shall receive a higher level of contacts than an offender [offenders] at a lower level [levels] of supervision. The nature and extent of [for] supervision contacts with an

offender [~~offenders~~] shall be specified in the CSCD's written policies and procedures;[~~.~~]

(6) maintenance of [~~Documentation in Supervision Case Files. CSOs shall use~~] a problem oriented record keeping system by the CSO which documents [~~to document~~] all significant actions, decisions, services rendered, and periodic evaluations in the offender's case file, including [~~, but not limited to,~~] the offender's status regarding the level of supervision, compliance with the conditions of community supervision, progress with the supervision plan, and responses to intervention;[~~.~~]

(7) adherence to [~~Violations. CSCD directors shall establish~~] written policies and procedures established by each CSCD director that identify when [~~require~~] CSOs shall [~~to~~] make recommendations to the courts regarding violations of the conditions of community supervision, and [~~as well as~~] when violations may be handled administratively. The availability of incentives and progressive interventions and sanctions as alternatives to incarceration [~~and incentives~~] shall be considered by the CSO and recommended to the court in eligible cases as determined appropriate by the jurisdiction; and[~~.~~]

(8) adherence to [~~Intrastate Transfers. The~~] standards established by the CSCD director [~~strive~~] to ensure public safety during intrastate transfers by recognizing the need of the sending and receiving jurisdictions to continue control and supervision over these offenders, which include the following provisions;[~~.~~]

(A) Except in cases of non-CSCD residential facility placements, supervision shall be transferred if a direct supervision [~~an~~] offender [~~meeting the definition of direct supervision~~] will be in another jurisdiction for more than 30 days, except when the designated representatives of the two CSCDs agree there is good cause for the original jurisdiction to maintain supervision. Only the court retaining jurisdiction over an offender has the authority to modify or alter a condition of community supervision. Each CSCD director [~~The CSCD directors~~] shall ensure that a CSO [~~CSOs~~] providing direct supervision to an offender [~~offenders~~] transferred from another [~~other~~] Texas jurisdiction [~~jurisdictions shall~~] fully enforces [~~enforce~~] the order of the court that placed the offender [~~an individual~~] on community supervision. It is the responsibility of the offender to comply with the conditions of community supervision [~~as~~] imposed by the court. Each CSCD director [~~The CSCD directors~~] shall ensure that a CSO provides [~~CSOs provide~~] the same level of supervision to transferred [~~courtesy~~] cases as they do for the offenders in their jurisdiction. The documents necessary for transfer [~~shall~~] include the transfer form, the court order placing the offender on community supervision citing all conditions of community supervision, the offense report, written individualized case supervision or treatment plan [~~criminal history~~], state identification (SID) or personal identifier (PID) number within 90 days of transfer to the receiving jurisdiction, the pre and post-sentence investigation report as required, [~~where legally mandated~~] and any completed assessments [~~that have been completed~~]. A CSCD director [~~The CSCD directors~~] who declines or ceases [~~decline or cease~~] to provide transferred [~~courtesy~~] supervision to an offender [~~offenders~~] from another jurisdiction [~~other jurisdictions~~] shall immediately notify [~~, in writing,~~] the original jurisdiction in writing of the reasons for declining supervision. A CSCD that ceases [~~The CSCDs that cease~~] to provide transferred [~~courtesy~~] supervision to an offender [~~offenders~~] from another jurisdiction [~~other jurisdictions~~] for violations other than absconding shall consult with the original jurisdiction before closing supervision. The CSCD shall [~~They will~~] then notify the original jurisdiction, in writing, of the reason for closing supervision.

(B) [~~Dual Supervision.~~] The court retaining jurisdiction over an offender also may [~~also~~] order the offender to report to the original jurisdiction or [~~as well as~~] the jurisdiction where the offender resides or works.

[~~(9) Transporting Offenders. CSOs shall not transport offenders held in a county jail pursuant to an arrest warrant. All other transportation of offenders shall be in accordance with the CSCD's policies or pursuant to a court order.~~]

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 March 9, 2020.

TRD-202001025
Erik Brown
Director of Legal Affairs
Texas Department of Criminal Justice
Earliest possible date of adoption: April 19, 2020
For further information, please call: (936) 437-6700

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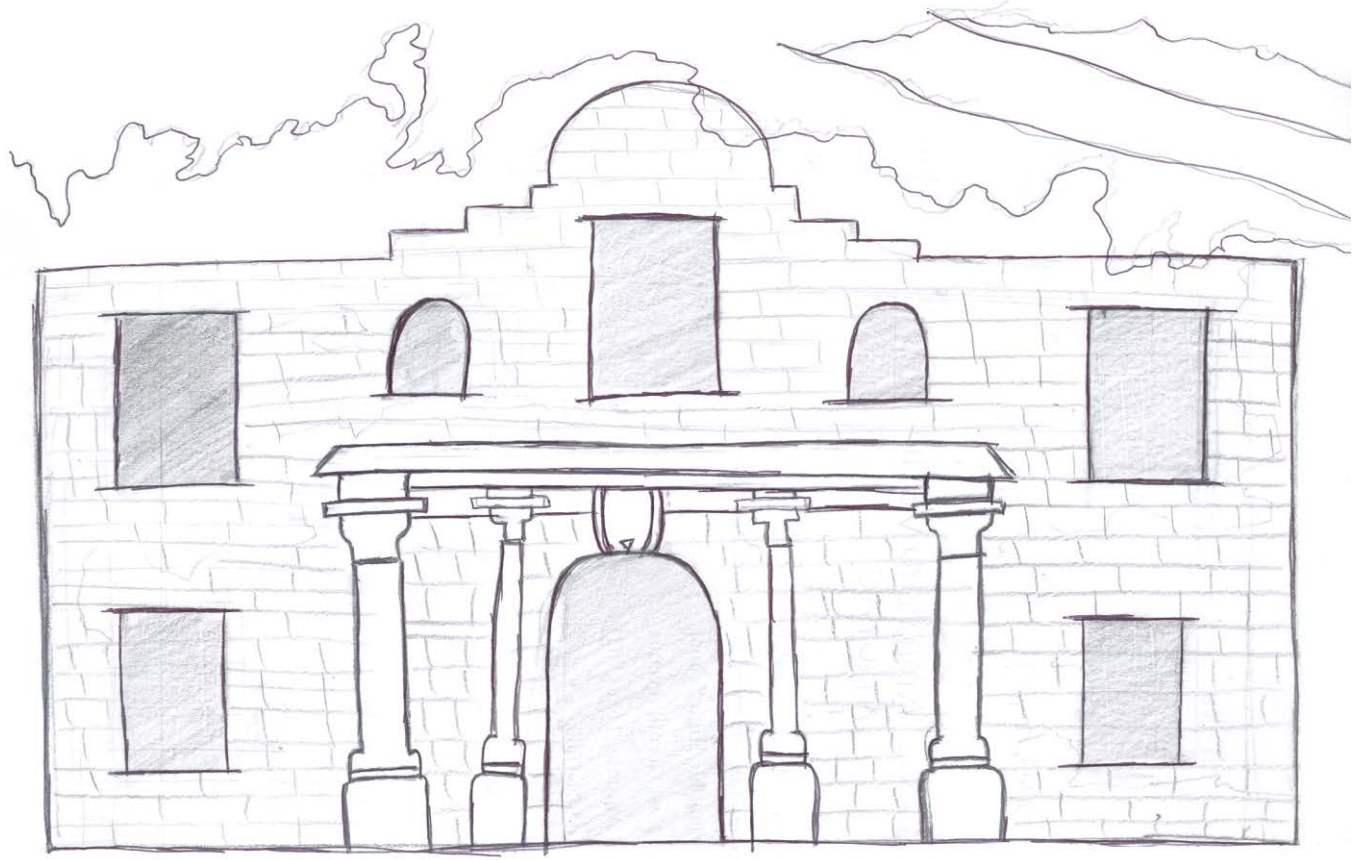

WITHDRAWN RULES

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 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 117. CONTROL OF AIR POLLUTION FROM NITROGEN COMPOUNDS

SUBCHAPTER B. COMBUSTION CONTROL AT MAJOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 4. DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MAJOR SOURCES

30 TAC §117.400

The Texas Commission on Environmental Quality withdraws the proposed amended §117.400, which appeared in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5582).

Filed with the Office of the Secretary of State on March 6, 2020.

TRD-202001014
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: March 6, 2020
For further information, please call: (512) 239-6812

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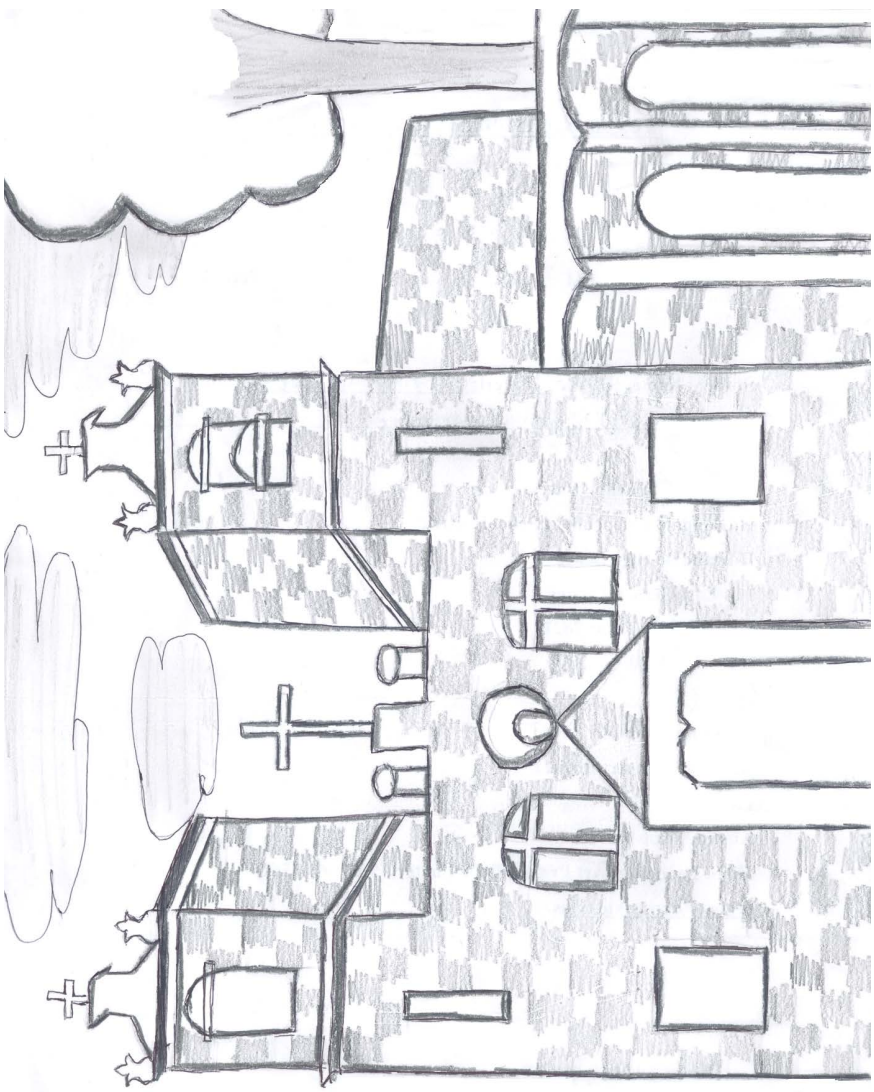

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 3. CRIMINAL JUSTICE DIVISION

SUBCHAPTER H. TEXAS CRIME STOPPERS PROGRAM

The Texas Crime Stoppers Council (Council) adopts the repeal of 1 TAC §3.9010 and §3.9013 and amendments to 1 TAC §§3.9000, 3.9005 - 3.9007, 3.9011, 3.9015, 3.9017, 3.9019, 3.9021, and 3.9025, concerning the functions of the Council under Chapter 414 of the Texas Government Code. §§3.9000, 3.9005, 3.9011, 3.9015, 3.9017, 3.9019, 3.9021, and 3.9025 are adopted with changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 17) and will be republished. Section 3.9006 and §3.9007 are adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 17). The rules will not be republished.

REASONED JUSTIFICATION

The Council is responsible for encouraging, advising, and assisting in the creation of crime stoppers organizations (organizations) and the implementation of their programs, as well as fostering the detection of crime and carrying out other duties described in Chapter 414 of the Texas Government Code. The primary purpose of the proposed amendments to the existing rules is to update policies and procedures to provide a smoother operating framework for the Council and certified organizations. The proposed amendments, as well as the new rule, are also in response to statutory revisions to the Texas Government Code enacted by the 86th Legislature, Regular Session, in House Bill 3316 (HB 3316).

The Council's rules at 1 TAC §3.9000 govern the process by which organizations are certified or given continued certification by the Council. The rule was amended to update references to the Texas Code of Criminal Procedure reflecting changes to statute. The rule was amended to better reflect statutory language that the Council must certify an organization that meets statutory requirements and that certifications must be for two years. The rule was amended to allow the Council to take action on an application for certification prior to the expiration of the certification because the Council sometimes goes months without holding regular meetings. The rule was amended to move certified organizations' financial reporting responsibilities into the annual reporting cycle to make reporting more practical for the organizations and to reduce administrative burden. The rule was amended to allow certified organizations more time to fulfill their training requirements to ease the burden of compliance. The rule was amended to allow the Council to specify further information to be collected in applications for certification and afford the director of the Council the ability to ask for follow-up information to clarify issues raised by the submission of initial materials so that the Council can be best informed in making certification decisions.

The Council's rules at 1 TAC §3.9005 were amended to update statutory references and to give the Council more practical tools in administering decertification in response to current administrative inefficiencies.

The Council's rules at 1 TAC §3.9006 and §3.9007 were amended to update statutory references and better reflect the duties of the Council and certified organizations established in statute.

The Council's rules at 1 TAC §3.9011 were amended to clean up language and merge reporting requirements from the repealed §3.9010 and §3.9013 to give flexibility and efficiency to the Council in administering certified organizations' reporting to the Council. The rules were amended to clarify that the Council only requires financial reporting involving funds authorized by the Council's certification and necessary to fulfill the Council's statutory duties. The rules were amended to clarify that the Council may add information requirements to the reporting, and that the director of the Council may request follow-up information from initial submissions by organizations to gain clarity and efficiency in reporting. The rules were amended to add records retention references and update procedures for reporting in response to stakeholder concerns. The rules were updated to include requirements that certified organizations update the Council on changes in key personnel in response to difficulties the Council has experienced in maintaining up-to-date contact information.

The Council's rules at 1 TAC §3.9015 were amended to create a corrective action plan process to assist certified organizations in addressing issues identified in reviews by the Criminal Justice Division.

The Council's rules at 1 TAC §§3.9017, 3.9019, and 3.9021 were amended to remove financial reporting from certification processes and allow more time for certified organizations to complete training requirements to reduce the administrative burden on certified organizations. They were also amended to specify that the Council may request further information during the certification process, and that the director of the Council may request clarifying information to address questions raised by initial submissions during the certification process.

The Council's rules at 1 TAC §3.9025 were created to address updates to the Texas Government Code enacted by HB 3316. The Legislature removed the formula for excess funds from statute and directed the Council to issue rules regarding excess funds. The new rule establishes the formula for determining the

amount of excess funds and offers more detailed guidance to organizations in the eligible and ineligible uses of excess funds.

SUMMARY OF COMMENTS AND COUNCIL RESPONSES

The Council accepted public comment on the proposals between January 3, 2020 and February 3, 2020. Comments regarding the proposals were accepted in writing and e-mail. A public hearing on the amendments was held at the offices of the Office of the Governor on January 28, 2020, at 1:00 p.m.

The Council received written comments or testimony from Williamson County Crime Stoppers (comments but not in opposition or support as a whole), New Braunfels Comal County Crime Stoppers (comments but not in opposition or support as a whole), Texas Association for Crime Stoppers (comments and opposed to immediate adoption as drafted), Crime Stoppers of Houston (comments but not in opposition or support as a whole), Robertson County Crime Stoppers (comments but not in opposition or support as a whole), Crime Stoppers of Southeast Texas (comments but not in opposition or support as a whole), Trinity County Crime Stoppers (comments but not in opposition or support as a whole), Lamar and Red River County Crime Stoppers (comments and opposition to immediate adoption), and six individuals, one of which who was opposed, some of which supported some provisions and opposed others, and some of which submitted comments.

Comments: The Texas Association for Crime Stoppers (TACS), Crime Stoppers of Southeast Texas, Trinity County Crime Stoppers, and individuals commented on the proposed "catch-all" clause in §3.9000(d)(8) that allows the Council or the director of the Council to request further information in the application for certification for private organizations, and the similar provisions in certification processes that are proposed in §3.9000(e)(7) (initial certification of public organizations), §3.9000(f)(6) (continuing certification of certified organizations), §3.9017(3)(L) (mergers of certified organizations), §3.9019(3)(N) (mergers of non-certified organizations to certified organizations), and §3.9021(a)(3)(K). Commenters said that, if the intent of the "catch-all" provision for further requested information is to avoid putting certification requirements in the TAC, then the TAC should include a requirement that the Council adopt a standard format for all applications and approve any changes, which would allow the Council to change the application process without applying a different standard to organizations on an application-by-application basis. Without such a provision, the rule could be used to apply different standards to different organizations and abused.

Response: Council and staff acknowledge these concerns and agree that additions to certification applications are best done through a Council vote. However, it is important for the director to have the ability to ask follow-up questions regarding concerns or discrepancies in the materials submitted to Council in certification applications in order to offer recommendations for certification to Council. The format of the application is also not specifically at issue in the concerns raised by commenters, so Council and staff do not support having the Council vote on the format of these forms, only the information to be specified within them. Council and staff also support specifying the type of information that can be requested by the Council, limiting it to the information Council needs to carry out its statutory responsibilities.

Council modifies §3.9000(d)(8) and §3.9000(e)(7) as shown below:

Additional information specified by a vote of the Council for inclusion in the application for certification that is necessary for the Council to make the determination for certification required by §414.011(a) of the Texas Government Code or to fulfill its duties under §414.005 of the Texas Government Code. The director of the Council may request further information needed to clarify a question raised in the examination of the materials submitted as part of the application.

Council similarly modifies §3.9000(f)(6), §3.9017(3)(L), §3.9019(3)(N), and §3.9021(a)(3)(K) as shown below:

Additional information specified by a vote of the Council for inclusion in the Application for Continuing Certification that is necessary for the Council to make the determination for certification required by §414.011(a) of the Texas Government Code or to fulfill its duties under §414.005 of the Texas Government Code. The director of the Council may request further information needed to clarify a question raised in the examination of the materials submitted as part of the application.

Comments: TACS commented that because the proposed rules would require training requirements be fulfilled during a current certification period and the application for continuing certification is due 180 days before certification expires, an organization would be required to fulfill their training requirements in an approximately 18-month window, versus the 12 months under current rules and the 24-month certification period.

One commenter objected to having applications due 6 months before an organization's certification expires and wondered whether it really took that long to process applications.

Response: Council and staff note the discrepancy between the 18-month training window and the 24-month certification period. The 6-month deadline proposed in the draft rule exists because Council sometimes does not meet for up to four or five months at a time and this deadline gives enough time not just for staff to process applications and clear up any discrepancies in applications, but also for Council to meet without any certifications expiring. However, Council will allow organizations to specify a date at which they would complete their training after an application is due (but before certification expires), thus allowing organizations to more completely take advantage of their 24-month certification period to complete their training requirements. In response to general comments expressing concern about administrative burden, Council will require that organizations submit only the date and location of their training, instead of "proof", because staff has training records on-file.

Council modifies §3.9000(d)(2), which governs initial certifications for private organizations, as shown below:

(2) The dates and locations that the following persons completed a training course provided by the Criminal Justice Division of the Office of the Governor (CJD) and the Council, or their designee, within the year prior to submission of the organization's application for certification:

(A) one member of the organization's board of directors, and

(B) one of the organization's law enforcement/civilian coordinators; and

(C) the executive director of the organization (if applicable);

Council similarly modifies §3.9000(e)(1), which governs initial certifications for public organizations, as shown below:

(1) The dates and locations that one of the organization's law enforcement/civilian coordinators completed a training course provided by CJD and the Council, or their designee, within the year prior to submission of the organization's application for certification;

Council modifies §3.9000(f)(5) (renumbered as §3.9000(f)(3) due to other modifications) as shown below:

(3) the dates and locations that the following persons completed, or plan to complete, a training course provided by CJD and the Council, or their designee, after the date of issuance or the effective date, as applicable, of the current certification:

(A) one member of a private, nonprofit organization's board of directors (if applicable);

(B) one of the organization's law enforcement/civilian coordinators; and

(C) the executive director of a private, nonprofit organization (if applicable); and

Council similarly extends the period by which training requirements can be met for organizations that are merging or expanding their territory, which is a form of continued certification. Council amends §3.9017(3)(H) (renumbered as §3.9017(3)(F)), §3.9019(3)(J) (renumbered as §3.9019(3)(H)), and §3.9021(a)(3)(G) (renumbered as §3.9021(a)(3)(E)) to allow training requirements to be met in the prior 24 months, rather than 12 months.

Comments: TACS, Crime Stoppers of Southeast Texas, Trinity County Crime Stoppers, and others commented that organizations are concerned over the proposed rule's inclusion of all accounts containing funds from Council-authorized, public sources in the required financial reporting, including the interest on those funds. TACS commented that this would include organizations' operating accounts, which it said the Council does not need access to, and that the proposed requirement could result in organizations creating two operations accounts - one with public funds and one with privately-raised funds.

One commenter said that the Attorney General is the appropriate authority to oversee administrative/operating accounts, not the Council. Commenters expressed concern over the administrative burden of reporting for operating accounts and that this was an intrusion by the Council into local affairs.

TACS noted that organizations are required by law to maintain financial reports for all accounts on-hand for three years for public inspection and questioned the need to file them with a government agency. TACS commented that if the Council wished to obtain reports for these accounts, they should publish schedules for records retention and procedures for updating the reports so Council records will not conflict with records obtained locally.

TACS, Crime Stoppers of Southeast Texas, Trinity County Crime Stoppers, and individual commenters said that requiring organizations to submit year-to-date financial information at the time of applications for continuing certification created an administrative burden and was not helpful to the Council in making a determination on certification. One commenter questioned why these year-to-date reports should be applied to already certified organizations seeking to merge or expand territory. One commenter thought the financial reporting at the time of certification was duplicative of that included in the annual Probation Fee and Repayment reports.

One commenter said the "catch-all" provision allowing the Council or the director of the Council to specify any further financial information was "open ended and is subject to abuse."

Response: Council and staff agree with the concerns raised about the administrative burden and usefulness of year-to-date financial reporting at the time of the various certification processes, and will move the financial reporting for certified organizations to the annual reports. This is done in part by clarifying the existing rules regarding probation fee and reward repayment reporting to specify which types of records will be included.

Accordingly, Council strikes the following existing TAC rules (and renumbers the rules accordingly) on financial reporting for certified organizations at time of continuing certification, merger, and expansion of territory: §3.9000(f)(1), §3.9000(f)(2), §3.9017(3)(E), §3.9017(3)(G), §3.9017(3)(I), §3.9019(3)(E), §3.9019(3)(I), §3.9019(3)(K), §3.9021(a)(3)(D), §3.9021(a)(3)(F), §3.9021(a)(3)(F) and §3.9021(a)(3)(H).

Council consolidates these financial reporting requirements in the Probation Fee and Repayment Report (PFRR). Council and staff support narrowing the scope of financial reporting from what is laid out in the current continuing certification application rules, which are open-ended and state they should cover "financial statements covering the two-year certification period on a form prescribed by the Council." This could be interpreted as including funds that are not drawn from probation fees or reward repayments, and Council and staff do not support financial reporting that extends beyond these public funds.

Council accordingly amends §3.9011(b)(5) as follows:

(5) A Probation Fee and Repayment Report for the prior calendar year. This report must include statements for all financial accounts containing funds originally obtained from repayments of rewards under Articles 37.073 and 42.152, Code of Criminal Procedure, or payments from a defendant under Chapter 42A of the Texas Code of Criminal Procedure, and documentation from the relevant courts or government agencies stating the amount of probation fees disbursed to the organization.

Council will also limit the ability to add items to the annual reporting to only the information necessary for Council to fulfill its statutory duties, but will allow the director to ask follow-up questions regarding issues raised during the submission of initial materials. Council also appreciates the comments about records retention and procedures for amending submissions, and will place the authority for those procedures with the director, since they are administrative in nature and records retention is also subject to state law and the policies of the Office of the Governor.

Council also amends §3.9011(b)(6) as follows:

(6) The Council will prescribe the specific or additional information to be included in reporting under this subsection that is necessary for the Council to make the determination for certification required by §414.011(a) of the Texas Government Code or to fulfill its duties under §414.005 of the Texas Government Code. The director of the Council may request further information needed to clarify a question raised in the examination of the materials submitted as part of the reporting under this subsection. The director of the Council will follow the records retention policies of the Office of the Governor and will publish procedures for organizations to submit updates or corrections to submitted information.

Finally, Council and staff respectfully disagree with the assertion that Council does not need to concern itself with administra-

tive/operating accounts. State law prescribes the allowed purpose of these public funds, and explicitly charges the Council with certifying that those funds "will be spent to further the crime prevention purposes of the organization." State law thus charges the Council with oversight of the administrative/operating funds that are drawn from probation fees and rewards repayments. It is possible that tracking such funds may result in some organizations maintaining separate accounts for privately-raised administrative funds.

Comments: TACS, Crime Stoppers of Southeast Texas, Trinity County Crime Stoppers, and others commented on the proposed rule allowing Council to consider and take action on an incomplete Application for Continuing Certification, as long as the organization meets the certification requirements under state law. They commented that this could create an "unlevel playing field" where organizations are judged using different criteria.

Response: State law does not allow an organization's certification to be extended, and requires organizations who are decertified to liquidate public funds within 60 days. Council and staff's intent was to provide a "safety net" for organizations who, due to extraordinary circumstances, were not able to complete their application and would under state law become decertified and be forced to liquidate their funds.

Accordingly, Council modifies §3.9000(i) as below to make that intent more clear:

(i) If an organization's certification is set to expire before the next anticipated Council meeting, subjecting the organization to the liquidation requirements of §414.010(c), Texas Government Code, and the Council determines that extraordinary circumstances have prevented an organization from submitting a completed Application for Continuing Certification, the Council may consider and take action to renew the organization's certification if it determines that the organization meets the certification requirements described in §414.011, Texas Government Code.

Staff also believes that some of these situations could be avoided by providing for continuing certification with adequate notice of the required application. Accordingly, Council modifies the rules by creating §3.9000(j) as below:

(j) The director of the Council will notify certified organizations of their requirements for continuing certification no less than 90 days prior to the deadline to submit the Application for Continuing Certification under subsection (f).

Comments: One commenter said the proposed §3.9011(c), which requires an organization to notify the director of the Council within 30 days if there is a change to the composition of its executive board, its law enforcement coordinator, or its executive director (if applicable) was unnecessary and the Council could take harsher measures if an organization did not respond to communications.

Response: Staff has had difficulty in maintaining up-to-date contact information for organizations, which has resulted in substantial administrative difficulties in assisting organizations in complying with state law and rules. The proposed rules do not cover the entire board, but only those board members or staff who are critical to the functioning of the organization. As such, Council and staff believe it is important to maintain current contact information for such critical personnel.

Comments: One person commented on the proposed §3.9011(d), stating that the current implementation of statistical reports was problematic.

Response: Staff has already addressed some of the technical issues raised by the comment, and believes any remaining issues are best addressed outside of the TAC.

Comments: Commenters stated that the proposed §3.9015(6), which establishes procedures for corrective action plans and ties them to decertification, places too much authority in the hands of the director of the Council and that the Council should have final say.

Response: Council and staff agree that it is not appropriate to link decertification to corrective action plans, which are meant to assist organizations in maintaining compliance with state law and rules, not punish organizations.

Council modifies §3.9015 as follows:

(6) The director of the Council may create a corrective action plan for a noncompliant organization to assist the organization in coming back into compliance, which must specify the actions to be taken by the organization and the time the organization has to complete them.

Council also modifies §3.9005(h), which has a similar provision for corrective action plans, as follows:

(h) The director of the Council may determine that a certified crime stoppers organization is at risk of no longer meeting the certification requirements or duties described in §3.9000 of this chapter. If the director of the Council makes such a determination, the director of the Council may create a corrective action plan to assist the organization in meeting those requirements or duties, including specifying the actions necessary to meet those requirements or duties and the time the organization has to complete them. If the organization no longer meets the certification requirements or duties described in §3.9000 of this chapter, the director of the Council must notify the Council.

Comments: TACS, Lamar and Red River Crime Stoppers, Williamson County Crime Stoppers, Crime Stoppers of Houston, Crime Stoppers of Southeast Texas, Trinity County Crime Stoppers, and individuals commented that the proposed rules for excess funds in §3.9025(d)(4), which state that it is not a valid use of excess funds when an organization "unnecessarily retains such excess funds for an extended period of time," was ambiguous and needed definition. TACS also commented that it could be read in combination with other sections to require excess funds to be turned over to CJD. Williamson County Crime Stoppers requested more guidance on how excess funds could be legally used. Another commenter supported the changes to the listed allowed uses of excess funds.

Response: Council and staff did not intend the proposed rules to facilitate the confiscation of excess funds. While it would still be a good practice for organizations to use large amounts of excess funds rather than holding on to them for an extended period of time, Council and staff do not support the confiscation of such funds. Council and staff hope the new rules offer substantially more guidance than state law did prior to the changes in 2019, and offer assistance to any organization with questions in that regard.

Council therefore removes §3.9025(d)(4) from the proposed rules and renumbers accordingly.

Comments: Individuals, Crime Stoppers of Southeast Texas, and Trinity County Crime Stoppers commented that they believed the Council had failed to record the December 16, 2019, meeting according to state law and requested the Council hold

a public hearing to discuss the proposed rule changes prior to taking further action. One commenter questioned how a public hearing for the rules held on January 28, 2020, can be a public hearing if the Council was not in attendance.

Response: The Office of the Governor substantially complied with state law regarding the recording of meetings. The hearing on January 28, 2020, was held by agency staff, with summaries of oral comments and the full text of written comments provided to the Council.

Comments: One commenter expressed disappointment in the process of revising the rules and the content of some of the rules, though they thought a good job was done on the majority of the changes. Some commenters complimented the rules and thought they were good improvements.

One commenter said the process seemed hasty at times and questioned whether it was the Council or staff who were guiding the process. Some commenters requested that the Council postpone action until all parties could come to the table and negotiate.

Response: The Texas Crime Stoppers Council is organized within the Office of the Governor. It is the role of the director of the Council and staff to assist the Council in all its duties, including rulemaking. The rulemaking process has involved discussion at multiple Council meetings as early as May 2019. Feedback was solicited and discussed via email and in-person at Council meetings, on multiple occasions over the space of ten months.

1 TAC §§3.9000, 3.9005 - 3.9007, 3.9011, 3.9015, 3.9017, 3.9019, 3.9021, 3.9025

STATUTORY AUTHORITY

The amendments and new rule are adopted under Texas Government Code §414.006, which provides that the Council may adopt rules to carry out its functions under that chapter.

Cross Reference to Statute: Chapter 414, Texas Government Code, as amended by House Bill 3316, 86th Legislature, Regular Session.

§3.9000. Certification.

(a) The Texas Crime Stoppers Council (Council) shall, on application by a crime stoppers organization as defined by §414.001(2) of the Texas Government Code (organization), determine whether the organization meets the requirements to be certified to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Chapter 42A of the Texas Code of Criminal Procedure.

(b) The Council shall certify a crime stoppers organization to receive those repayments or payments if, considering the organization, continuity, leadership, community support, and general conduct of the organization, the Council determines that the repayments or payments will be spent to further the crime prevention purposes of the organization.

(c) Certification is valid for two years from the date of issuance or, if applicable, the effective date of continued certification. The Council may take action on a crime stoppers organization's Application for Continuing Certification prior to the expiration of the organization's current certification, and specify the effective date of the continued certification, provided that the effective date is no later than the expiration date of the current certification. If a crime stoppers organization's certification expires, the organization is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Chapter 42A of the Texas Code of Criminal Procedure, until the organization obtains certification.

(d) A private, nonprofit crime stoppers organization must submit the following information to the director of the Council in order to obtain initial certification:

(1) Documentation from the Internal Revenue Service granting the organization tax-exempt status;

(2) The dates and locations that the following persons completed a training course provided by the Criminal Justice Division of the Office of the Governor (CJD) and the Council, or their designee, within the year prior to submission of the organization's application for certification:

(A) one member of the organization's board of directors; and

(B) one of the organization's law enforcement/civilian coordinators; and

(C) the executive director of the organization (if applicable);

(3) A completed and signed Conditions of Certification Form;

(4) The name, mailing address, email address, telephone number, occupation, and board position of each member of the organization's board of directors;

(5) The name, mailing address, email address, and telephone number of each of the organization's law enforcement/civilian coordinators;

(6) The name, mailing address, email address, telephone number, and occupation of the executive director (if applicable);

(7) The description of the geographic territory or jurisdiction to which the organization desires to provide services; and

(8) Additional information specified by a vote of the Council for inclusion in the application for certification that is necessary for the Council to make the determination for certification required by §414.011(a) of the Texas Government Code or to fulfill its duties under §414.005 of the Texas Government Code. The director of the Council may request further information needed to clarify a question raised in the examination of the materials submitted as part of the application.

(e) A public crime stoppers organization must submit the following information to the director of the Council in order to obtain initial certification:

(1) Proof that one of the organization's law enforcement/civilian coordinators completed a training course provided by CJD and the Council, or their designee, within the year prior to submission of the organization's application for certification;

(2) A completed and signed Conditions of Certification Form;

(3) The name, mailing address, email address, telephone number, occupation, and board position of each member of the organization's governing board;

(4) The name, mailing address, email address, and telephone number of each of the organization's law enforcement/civilian coordinators;

(5) The name, mailing address, email address, telephone number, and occupation of the organization's executive director (if applicable);

(6) The description of the geographic territory or jurisdiction to which the organization desires to provide services; and

(7) Additional information specified by a vote of the Council for inclusion in the application for certification that is necessary for the Council to make the determination for certification required by §414.011(a) of the Texas Government Code or to fulfill its duties under §414.005 of the Texas Government Code. The director of the Council may request further information needed to clarify a question raised in the examination of the materials submitted as part of the application.

(f) If the organization is currently certified by the Council, the organization must submit the documentation described in subsection (d) or (e) of this section, as applicable, with the exception of the training documentation required by subsections (d)(2) and (e)(1), and the following additional information as part of its Application for Continuing Certification, in each case no more than 240 days and no less than 180 days prior to the expiration of the current certification:

(1) any Crime Stoppers Program Annual Reports that have not been submitted to the director of the Council as required by §3.9011 of this chapter;

(2) any Statistical Reports that have not been submitted to the director of the Council or the Council's designee as required by §3.9011 of this chapter;

(3) the dates and locations that the following persons completed, or plan to complete, a training course provided by CJD and the Council, or their designee, after the date of issuance or the effective date, as applicable, of the current certification:

(A) one member of a private, nonprofit organization's board of directors (if applicable);

(B) one of the organization's law enforcement/civilian coordinators; and

(C) the executive director of a private, nonprofit organization (if applicable); and

(4) additional information specified by a vote of the Council for inclusion in the Application for Continuing Certification that is necessary for the Council to make the determination for certification required by §414.011(a) of the Texas Government Code or to fulfill its duties under §414.005 of the Texas Government Code. The director of the Council may request further information needed to clarify a question raised in the examination of the materials submitted as part of the application.

(g) Certification awarded to an organization is awarded only as to the specific geographic territory or jurisdiction described in the certification award.

(h) Decisions regarding the certification of crime stoppers organizations shall be made by the Council.

(i) If an organization's certification is set to expire before the next anticipated Council meeting, subjecting the organization to the liquidation requirements of §414.010(c), Texas Government Code, and the Council determines that extraordinary circumstances have prevented an organization from submitting a completed Application for Continuing Certification, the Council may consider and take action to renew the organization's certification if it determines that the organization meets the certification requirements described in §414.011, Texas Government Code.

(j) The director of the Council will notify certified organizations of their requirements for continuing certification no less than 90 days prior to the deadline to submit the Application for Continuing Certification under subsection (f) of this section.

§3.9005. Decertification.

(a) During the two-year certification period, the Council shall decertify a crime stoppers organization if it determines that the organization no longer meets the certification requirements described in §3.9000(b) of this chapter, which may result from a violation of state law, federal law, or Subchapter H of this chapter.

(b) If a crime stoppers organization is decertified by the Council, the organization is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Chapter 42A of the Texas Code of Criminal Procedure.

(c) The Council, or the Chairman of the Council, shall send written notification to the crime stoppers organization no later than 45 calendar days prior to the meeting at which the Council will consider the decertification of the organization. The written notification shall include the following:

(1) Reasons why the organization may no longer meet the certification requirements described in §3.9000(b) of this chapter; and

(2) The date, time, and location of the meeting at which the Council will consider the decertification of the organization.

(d) The crime stoppers organization shall submit a written response, which shall include an explanation and specific reasons why the organization believes that it should not be decertified. The written response must be received by the director of the Council at least 10 calendar days prior to the meeting at which the Council will consider the decertification of the organization.

(e) The Council shall render a decision regarding the decertification of the crime stoppers organization and shall notify the organization in writing of its decision.

(f) If a crime stoppers organization is decertified, the director of the Council shall notify the state comptroller, and the relevant courts, county auditors and community supervision and corrections departments in the organization's region, that the organization is decertified and is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Chapter 42A of the Texas Code of Criminal Procedure.

(g) Not later than the 60th day after the date of decertification of the organization, the decertified organization shall forward all unexpended money received pursuant to §414.010 of the Texas Government Code to the state comptroller.

(h) The director of the Council may determine that a certified crime stoppers organization is at risk of no longer meeting the certification requirements or duties described in §3.9000 of this chapter. If the director of the Council makes such a determination, the director of the Council may create a corrective action plan to assist the organization in meeting those requirements or duties, including specifying the actions necessary to meet those requirements or duties and the time the organization has to complete them. If the organization no longer meets the certification requirements or duties described in §3.9000 of this chapter, the director of the Council must notify the Council.

§3.9011. Crime Stoppers Program Reporting.

(a) A crime stoppers organization that is certified by the Council must submit to the director of the Council a Crime Stoppers Program Annual Report no later than January 31 of each calendar year.

(b) A Crime Stoppers Program Annual Report must include the following information:

(1) The name, mailing address, email address, and telephone number of the crime stoppers organization, and the internet address of any website operated by the organization;

(2) The name, mailing address, email address, telephone number, occupation, and board position of each member of the organization's governing board;

(3) The name, mailing address, email address, telephone number, and occupation of the organization's executive director (if applicable);

(4) The name, mailing address, email address, and telephone number of each of the organization's law enforcement/civilian coordinators;

(5) A Probation Fee and Repayment Report for the prior calendar year. This report must include statements for all financial accounts containing funds originally obtained from repayments of rewards under Articles 37.073 and 42.152, Code of Criminal Procedure, or payments from a defendant under Chapter 42A of the Texas Code of Criminal Procedure, and documentation from the relevant courts or government agencies stating the amount of probation fees disbursed to the organization; and

(6) The Council will prescribe the specific or additional information to be included in reporting under this subsection that is necessary for the Council to make the determination for certification required by §414.011(a) of the Texas Government Code or to fulfill its duties under §414.005 of the Texas Government Code. The director of the Council may request further information needed to clarify a question raised in the examination of the materials submitted as part of the reporting under this subsection. The director of the Council will follow the records retention policies of the Office of the Governor and will publish a schedule by which the Criminal Justice Division will retain records and will publish procedures for organizations to submit updates or corrections to submitted information.

(c) A crime stoppers organization that is certified by the Council must submit to the director of the Council an information update form prescribed by the director of the Council or the Council within 30 days if the organization has a change in the composition of its executive board or its executive director (if applicable) or law enforcement coordinator.

(d) A crime stoppers organization that is certified by the Council shall submit to the director of the Council, or the Council's designee, a Statistical Report on a form prescribed by the Council no later than January 31 and July 31 of each calendar year.

§3.9015. Review.

By accepting certification, a crime stoppers organization agrees to the following conditions of review:

(1) CJD will review the activities of a crime stoppers organization that is certified by the Council as necessary to ensure that the organization's finances and programs further the crime prevention purposes of the organization in compliance with the laws and rules governing crime stoppers organizations.

(2) CJD may perform a desk review or an on-site review at the organization's location. In addition, CJD may request that the organization submit relevant information to CJD to support any review.

(3) After a review, the organization shall be notified in writing of any noncompliance identified by CJD in the form of a preliminary report.

(4) The organization shall respond to the preliminary report within a time frame specified by CJD.

(5) The organization's response shall become part of the final report, which shall be submitted to the organization and the director of the Council.

(6) The director of the Council may create a corrective action plan for a noncompliant organization to assist the organization in coming back into compliance, which must specify the actions to be taken by the organization and the time the organization has to complete them.

(7) Any noncompliance, including an organization's failure to provide adequate documentation upon request, may serve as grounds for decertification or non-renewal of certification of the organization by the Council.

§3.9017. Mergers of Certified Organizations.

If a certified crime stoppers organization agrees with another certified crime stoppers organization to merge and form a multi-county or multi-jurisdictional (e.g., county and city) organization, the merged organization must apply for continuing certification, and the following procedures must be followed:

(1) The certified crime stoppers organizations that want to merge must have contiguous borders.

(2) The merging organizations must choose a name for the merged organization unless both organizations agree to operate under the name of one of the existing organizations.

(3) The merged organization must file the following documents with the director of the Council requesting certification under a new name (if applicable) and with the expanded geographic territory or jurisdiction:

(A) All required Texas Secretary of State, Texas Comptroller, and United States Internal Revenue Service (IRS) required forms and documentation for mergers and dissolutions, as applicable, or as specified by the director of the Council;

(B) IRS compliance documents for dissolution of a 501(c)(3) non-profit corporation and a 501(c)(3) letter authorizing the organization to operate under the new name (if applicable);

(C) Texas Secretary of State compliance documents for 501(c)(3) non-profit corporations, as applicable, or as specified by the director of the Council;

(D) Application for Continuing Certification under the new name (if applicable) and with an expanded geographic territory or jurisdiction;

(E) Copy of board of directors membership list of the merged organization, to include contact information for board members, the law enforcement coordinator, and the executive director (if applicable);

(F) The dates and locations that at least one board member (if applicable), the law enforcement coordinator, and an executive director (if applicable) received training as authorized by the Council within the 24-month period preceding the merger;

(G) Copies of the minutes of the boards of directors meetings of both certified crime stoppers organizations in which the boards voted to merge their organizations;

(H) Copy of a cooperative agreement or memorandum of understanding (MOU) between the merged organizations regarding the merger and a copy of each organization's minutes of the board of

directors for the meeting where the agreement or MOU is approved; and

(I) Additional information specified by a vote of the Council for inclusion in the application for continuing certification that is necessary for the Council to make the determination for certification required by §414.011(a) of the Texas Government Code or to fulfill its duties under §414.005 of the Texas Government Code. The director of the Council may request further information needed to clarify a question raised in the examination of the materials submitted as part of the application.

(4) If the director of the Council determines that the merged organization meets all requirements within paragraphs (1) - (3) of this section, the merged organization will be presented to the Council for determination as to whether the merged organization meets the requirements for certification at the Council's next regularly scheduled meeting.

(5) Once the Council grants certification, the merged organization may merge or consolidate the separate rewards accounts of both organizations. The merged organization will also be eligible to apply to the relevant CSCDs to receive court fees under the provisions of Articles 37.073 and 42.152 and Chapter 42A, Texas Code of Criminal Procedure.

(6) The merged organization's "Excess Funds Accounts," as described in §414.010(d) of the Texas Government Code, may only be comprised of those funds that were previously in each individual organization's "Excess Funds Accounts."

(7) The certification is valid for a period of two years.

§3.9019. Mergers of Non-certified Organizations to Certified Organizations.

If a certified crime stoppers organization agrees with a non-certified crime stoppers organization to merge and form a multi-county or multi-jurisdictional (e.g., county and city) organization, the merged organization must apply for continuing certification, and the following procedures must be followed:

(1) The certified crime stoppers organization that wants to merge with a non-certified 501(c)(3) crime stoppers organization must have contiguous borders.

(2) The merging organizations must choose a name for the merged organization unless both organizations agree to operate under the name of one of the existing organizations.

(3) The merged organization must file the following documents with the director of the Council requesting certification under a new name (if applicable) and with the expanded geographic territory or jurisdiction:

(A) All required Texas Secretary of State, Texas Comptroller, and United States Internal Revenue Service (IRS) required forms and documentation for mergers and dissolutions, as applicable, or as specified by the director of the Council;

(B) IRS compliance documents for dissolution of a 501(c)(3) non-profit corporation and a 501(c)(3) letter authorizing the organization to operate under the new name (if applicable);

(C) Texas Secretary of State compliance documents for 501(c)(3) non-profit corporations, as applicable, or as specified by the director of the Council;

(D) Application for Continuing Certification under the new name (if applicable) and with an expanded geographic territory or jurisdiction;

(E) Copies of financial reviews of all bank accounts held by the non-certified 501(c)(3) crime stoppers organization;

(F) If the financial review establishes that at any time the non-certified 501(c)(3) crime stoppers organization was certified by the Council and received court fees under Articles 37.073 and 42.152 and Chapter 42A, Texas Code of Criminal Procedure, and failed to return all court fees to the state comptroller within 60 days following the loss of certification, as required by §414.010(c), Texas Government Code, a copy of the check for the outstanding court fees, made payable to the Office of the Comptroller, or other satisfactory proof, must be submitted with the application for certification;

(G) Copy of board of directors membership list of the merged organization, to include contact information for board members, the law enforcement coordinator, and executive director (if applicable);

(H) The dates and locations that at least one board member (if applicable), the law enforcement coordinator, and an executive director (if applicable) received training as authorized by the Council within the 24-month period preceding the merger;

(I) Copies of the minutes of the boards of directors meetings of the certified crime stoppers organization and the non-certified 501(c)(3) crime stoppers organization in which the boards voted to merge their organizations;

(J) Copy of a cooperative agreement or memorandum of understanding (MOU) between the merged organizations regarding the merger and a copy of each organization's minutes of the board of directors for the meeting where the agreement or MOU is approved; and

(K) Additional information specified by a vote of the Council for inclusion in the application for continuing certification that is necessary for the Council to make the determination for certification required by §414.011(a) of the Texas Government Code or to fulfill its duties under §414.005 of the Texas Government Code. The director of the Council may request further information needed to clarify a question raised in the examination of the materials submitted as part of the application.

(4) If the director of the Council determines that the merged organization meets all requirements of this section, the merged organization will be presented to the Council for determination as to whether the merged organization meets the requirements for certification at the Council's next regularly scheduled meeting.

(5) Once the Council grants certification, the merged organization may merge or consolidate the separate rewards accounts of the merged organizations. The merged organization also will be eligible to apply to the relevant CSCDs to receive court fees under the provisions of Articles 37.073 and 42.152 and Chapter 42A, Texas Code of Criminal Procedure.

(6) The merged organization's "Excess Funds Accounts," as described in §414.010(d) of the Texas Government Code, may only be comprised of those funds that were previously in each individual organization's "Excess Funds Accounts."

(7) The certification is valid for a period of two years.

§3.9021. Addition of Geographic Territories or Jurisdictions to Certified Organizations.

(a) If a geographic territory or jurisdiction wants to join an existing certified crime stoppers organization, the organization must apply for continuing certification, and the following procedures must be followed:

(1) The geographic territory or jurisdiction seeking to join the organization must share contiguous borders with the certified crime stoppers organization;

(2) The certified crime stoppers organization and the geographical entity that is requesting to join the crime stoppers organization must choose a new name for the organization unless both parties agree to operate under the name of the existing organization;

(3) The certified crime stoppers organization must file the following documents with the director of the Council requesting certification under a new name (if applicable) and with an expanded geographic territory or jurisdiction:

(A) United States Internal Revenue Service (IRS) letter for a 501(c)(3) corporation authorizing the organization to operate under a new name, if applicable;

(B) Texas Secretary of State letter for a 501(c)(3) corporation authorizing the organization to operate under a new name (if applicable);

(C) Application for Continuing Certification under the new name (if applicable) and with an expanded geographic territory or jurisdiction;

(D) Copy of board of directors membership list for the organization, to include contact information for board members, the law enforcement coordinator, and executive director (if applicable);

(E) The dates and locations that at least one board member (if applicable), the law enforcement coordinator, and an executive director (if applicable) received training as authorized by the Council within the 24-month period preceding the new Application for Continuing Certification;

(F) Copy of the minutes of the board of directors meeting of the certified crime stoppers organization in which the board voted to add the new geographical entity to the territory or jurisdiction served by the crime stoppers organization;

(G) Written documentation from a law enforcement agency serving the geographic territory or jurisdiction showing an interest in joining an existing crime stoppers organization; and

(H) Additional information specified by a vote of the Council for inclusion in the application for continued certification that is necessary for the Council to make the determination for certification required by §414.011(a) of the Texas Government Code or to fulfill its duties under §414.005 of the Texas Government Code. The director of the Council may request further information needed to clarify a question raised in the examination of the materials submitted as part of the application.

(4) If the director of the Council determines that the newly expanded organization meets all requirements listed in paragraphs (1) - (3) of this subsection, the expanded organization will be presented to the Council for determination as to whether the expanded organization meets the requirements for certification at the Council's next regularly scheduled meeting.

(5) Once the Council grants certification, the organization will be eligible to apply to the CSCDs in the newly acquired geographic territory or jurisdiction to receive court fees under the provisions of Articles 37.073 and 42.152 and Chapter 42A, Texas Code of Criminal Procedure.

(6) The certification is valid for a period of two years.

(b) If a certified or non-certified organization serves the geographic area to which a certified organization is attempting to expand, the expanding organization must send written notice to the Council and to the organization serving the geographic area to which it intends to expand of its intent to serve that area.

§3.9025. Excess Funds.

(a) A certified crime stoppers organization may establish Excess Funds Accounts in accordance with §414.010(d) of the Texas Government Code. At the conclusion of each fiscal year, if the total amount of funds in the organization's rewards accounts exceeds three times the average annual amount of funds used by the organization to pay rewards during each of the three preceding fiscal years, the organization may deposit such excess amount into its Excess Funds Accounts.

(b) The Excess Funds Accounts may only be used for expenditures for law enforcement or public safety purposes directly related to crime stoppers or juvenile justice, which means:

(1) Costs incurred in providing training to crime stoppers volunteers, staff, or law enforcement coordinators and travel costs necessary to complete that training;

(2) Costs associated with supporting volunteers, staff, or law enforcement coordinators in performing crime stoppers operations;

(3) Juvenile delinquency prevention or intervention programs;

(4) Promotional or marketing costs encouraging utilization of crime stoppers tip lines or recruiting volunteers for crime stoppers organizations; and

(5) Transfers to the crime stoppers assistance account in the general revenue fund or to other certified crime stoppers organizations, provided that the transferring certified crime stoppers organization ensures the receiving certified crime stoppers organization uses such funds for law enforcement or public safety purposes as described in this subsection.

(c) Pursuant to §414.010(d) of the Texas Government Code, a certified crime stoppers organization that deposits funds in an Excess Funds Account may use any interest earned on the funds in such account to pay costs incurred in administering the organization.

(d) Among other uses, a certified crime stoppers organization is not considered to be using its excess funds for a law enforcement or public safety purpose related to crime stoppers or juvenile justice if:

(1) It uses such excess funds to pay the salary or compensation of any public employee;

(2) It uses such excess funds for law enforcement equipment not directly related to crime stoppers or juvenile delinquency prevention or intervention purposes;

(3) It pays or reimburses for travel or per diem costs that exceed those allowed for state officials or employees with its excess funds; or

(4) It uses such excess funds for a purpose or in a manner prohibited by federal or state law.

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 March 6, 2020.

TRD-202001015

Margie Fernandez-Prew
Director, Crime Stoppers Council
Office of the Governor
Effective date: March 26, 2020
Proposal publication date: January 3, 2020
For further information, please call: (512) 463-1919

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1 TAC §3.9010, §3.9013

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §414.006, which provides that the Council may adopt rules to carry out its functions under that chapter.

Cross Reference to Statute: Chapter 414, Texas Government Code, as amended by House Bill 3316, 86th Legislature, Regular Session.

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 March 6, 2020.

TRD-202001016
Margie Fernandez-Prew
Director, Crime Stoppers Council
Office of the Governor
Effective date: March 26, 2020
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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER A. BOARD OF TRUSTEES RELATIONSHIP

19 TAC §61.1, §61.2

The State Board of Education (SBOE) adopts amendments to §61.1 and §61.2, concerning school district boards of trustees. The amendment to §61.1 is adopted with changes to the proposed text as published in the December 20, 2019 issue of the *Texas Register* (44 TexReg 7799) and will be republished. The amendment to §61.2 is adopted without changes to the proposed text as published in the December 20, 2019 issue of the *Texas Register* (44 TexReg 7799) and will not be republished. The adopted amendment to §61.1 reflects changes made by House Bill (HB) 3 and HB 403, 86th Texas Legislature, 2019, to the SBOE's duty to provide training courses for independent school district trustees. The adopted amendment to §61.2 addresses the required number of nominees for trustee candidates for military reservation districts.

REASONED JUSTIFICATION: Texas Education Code (TEC), §11.159, Member Training and Orientation, requires the SBOE to provide a training course for school board trustees. Section 61.1, Continuing Education for School Board Members, addresses this statutory requirement. School board trustee training under current SBOE rule includes a local school district orientation session, a basic orientation to the TEC, an annual team-building session with the local school board and the superintendent, specified hours of continuing education based on identified needs, and training on evaluating student academic performance.

HB 403, 86th Texas Legislature, 2019, amended TEC, §11.159, to include a requirement for trustees to receive training regarding sexual abuse, human trafficking, and other maltreatment of children. The amendment to §61.1 implements this requirement in new subsection (b)(7).

HB 3, 86th Texas Legislature, 2019, added TEC, §11.185 and §11.186, to require each district board of trustees to adopt proficiency plans and annual goals for early childhood literacy, mathematics proficiency, and college, career, and military readiness. The annual goals should be for the subsequent five years to reach quantifiable goals. These plans are to be reviewed each year by the board of trustees and posted on the website of each district and campus. The amendment to §61.1 implements this requirement in new subsection (b)(6).

In addition, §61.1 was amended as follows.

The text of subsection (b)(1)-(6) was reformatted for clarity using language that currently exists in the rule and, in some instances, making non-substantive changes.

New subsection (b)(1)(E) specifies that the orientation for school board members must include information on the open meetings training required by Texas Government Code, §551.005; the public information training required by Texas Government Code, §552.012; and the cybersecurity training required by Texas Government Code, §2054.5191. This requirement ensures that school board members are aware of additional training required by statute.

At adoption, language was added to subsection (b)(2) to allow the basic orientation to the TEC and relevant legal obligations to be fulfilled through online instruction. The education service center (ESC) shall determine the clock hours of training credit to be awarded for successful completion of an online course, and the ESC must also provide verification of completion.

As proposed, the required provider for the team-building training specified in new subsection (b)(4) would have been changed from a registered provider to an authorized provider. However, in response to public comment, a change was made at adoption to maintain that the team-building session may be provided by an ESC or a registered provider.

Language was added in new subsections (c) and (d) to clarify the distinction between a registered and an authorized training provider.

Technical edits were made throughout §61.1 to conform with the reorganization of the rule.

Finally, new subsection (m) was added at adoption to specify a May 1, 2020 implementation date for the amendment to §61.1.

TEC, §11.352, grants the SBOE the authority to appoint a board of three or five trustees for each military reservation district. Enlisted personnel and officers may be appointed to the school board, but a majority of the trustees must be civilians. The trustees are selected from a list of people provided by the commanding officer of the military reservation. Section 61.2, Nomination of Trustees for Military Reservation School Districts and Boys Ranch Independent School District, addresses this statutory requirement.

The amendment to §61.2 changes the minimum number of military-district trustee nominations from three to one. This change allows for greater flexibility and local control by making an allowance for specific circumstances for each military reservation district and for the discretion of the commanding officer.

Other technical edits were also made to §61.2.

The SBOE approved the proposed amendments for first reading and filing authorization at its November 15, 2019 meeting and for second reading and final adoption at its January 31, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the amendments for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will allow school board trustees to take updated training before the beginning of the 2020-2021 school year. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 20, 2019, and ended January 24, 2020. The SBOE also provided an opportunity for registered oral and written comments at its January 2020 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment: Tenet Leadership, LLC commented in support of §61.1. However, the commenter stated that the rule, as proposed, restricts highly qualified Texas Education Agency (TEA)-certified coaches, authorized providers, and registered providers from providing school board orientation training. The commenter suggested that §61.1(b)(2)(E) be amended to read, "The orientation shall be provided by an ESC or other TEA registered or authorized provider."

Response: The SBOE disagrees. Given that one of the statutorily mandated powers and duties of TEA is to administer and monitor compliance with legally required education programs, and further given that ESCs are extensions of TEA, this change is inappropriate.

Comment: Texas Association of School Boards (TASB) commented that the proposed change to §61.1(b)(4) to require providers of the team-building training to be authorized instead of registered is not called for by legislation, would create an undue burden on the system, expand TEA's authority over local school boards, and reduce options for how local school boards meet their annual teambuilding requirement.

Response: The SBOE agrees that the team-building session may be provided by an ESC or a registered provider. At adoption, §61.1(b)(4)(F) was amended to read, "The team-building session shall be provided by an ESC or a registered provider as described in subsection (c) of this section."

Comment: TASB commented that removing the online training option for trustees' completion of training on evaluating student academic performance would be a mistake, as the proposed change would limit options and increase the time and cost to complete the requirement every two years.

Response: The SBOE disagrees. The content of the evaluating student academic performance training in §61.1(b)(6) includes the assessment and accountability systems, setting student outcome goals required by House Bill 3, 86th Texas Legislature, 2019, and monitoring progress toward these goals. School systems use different tools to monitor student outcomes and inform decision-making, and no two school systems have the same challenges. Effective training in these areas, therefore, requires a unique, customized approach. The complex nature of administering public education and the diversity of the more than 1,200 school systems in Texas makes a preset, homogenous, one-size-fits-all online training inappropriate. Virtual trainings that offer real-time interaction with an individual leading the training may be appropriate to eliminate the online challenges.

Comment: One individual commented in support of §61.1 as proposed, emphasizing the importance of face-to-face training.

Response: The SBOE agrees.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §11.159, as amended by House Bill (HB) 403, 86th Texas Legislature, 2019, which requires the State Board of Education (SBOE) to provide a training course for school board trustees, including one hour of training every two years, on identifying and reporting potential victims of sexual abuse, human trafficking, and other maltreatment of children; TEC, §11.185 and §11.186, as added by HB 3, 86th Texas Legislature, 2019, which requires each district board of trustees to adopt proficiency plans and annual goals for early childhood literacy, mathematics proficiency, and college, career, and military readiness; and TEC, §11.352, which grants the SBOE the authority to appoint a board of three or five trustees for each military reservation district.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§11.159, 11.185, 11.186, and 11.352.

§61.1. Continuing Education for School Board Members.

(a) Under the Texas Education Code (TEC), §11.159, the State Board of Education (SBOE) shall adopt a framework for governance leadership to be used in structuring continuing education for school board members. The framework shall be posted to the Texas Education Agency (TEA) website and shall be distributed annually by the president of each board of trustees to all current board members and the superintendent.

(b) The continuing education required under the TEC, §11.159, applies to each member of an independent school district board of trustees.

(1) Each school board member of an independent school district shall complete a local district orientation.

(A) The purpose of the local orientation is to familiarize new board members with local board policies and procedures and district goals and priorities.

(B) A candidate for school board may complete the training up to one year before he or she is elected or appointed. A newly elected or appointed school board member who did not complete this training in the year preceding his or her election or appointment must complete the training within 120 calendar days after election or appointment.

(C) The orientation shall be at least three hours in length.

(D) The orientation shall address local district practices in the following, in addition to topics chosen by the local district:

(i) curriculum and instruction;

(ii) business and finance operations;

(iii) district operations;

(iv) superintendent evaluation; and

(v) board member roles and responsibilities.

(E) Each board member should be made aware of the continuing education requirements of this section and those of the following:

(i) open meetings act in Texas Government Code, §551.005;

(ii) public information act in Texas Government Code, §552.012; and

(iii) cybersecurity in Texas Government Code, §2054.5191.

(F) The orientation shall be open to any board member who chooses to attend.

(2) Each school board member of an independent school district shall complete a basic orientation to the TEC and relevant legal obligations.

(A) The orientation shall have special, but not exclusive, emphasis on statutory provisions related to governing Texas school districts.

(B) A candidate for school board may complete the training up to one year before he or she is elected or appointed. A newly elected or appointed school board member who did not complete this training in the year preceding his or her election or appointment must complete the training within 120 calendar days after election or appointment.

(C) The orientation shall be at least three hours in length.

(D) Topics shall include, but not be limited to, the TEC, Chapter 26 (Parental Rights and Responsibilities), and the TEC, §28.004 (Local School Health Advisory Council and Health Education Instruction).

(E) The orientation shall be provided by a regional education service center (ESC).

(F) The orientation shall be open to any board member who chooses to attend.

(G) The continuing education may be fulfilled through online instruction, provided that the training incorporates interactive activities that assess learning and provide feedback to the learner and offers an opportunity for interaction with the instructor.

(H) The ESC shall determine the clock hours of training credit to be awarded for successful completion of an online course and shall provide verification of completion as required in subsection (h) of this section.

(3) After each session of the Texas Legislature, including each regular session and called session related to education, each school board member shall complete an update to the basic orientation to the TEC.

(A) The update session shall be of sufficient length to familiarize board members with major changes in statute and other relevant legal developments related to school governance.

(B) The update shall be provided by an ESC or a registered provider, as defined by subsection (c) of this section.

(C) A board member who has attended an ESC basic orientation session described in paragraph (2) of this subsection that incorporated the most recent legislative changes is not required to attend an update.

(D) The continuing education may be fulfilled through online instruction, provided that the training is designed and offered by a registered provider, incorporates interactive activities that assess learning and provide feedback to the learner, and offers an opportunity for interaction with the instructor.

(E) The ESC or registered provider shall determine the clock hours of training credit to be awarded for successful completion of an online course and shall provide verification of completion as required in subsection (h) of this section.

(4) The entire board shall participate with their superintendent in a team-building session.

(A) The purpose of the team-building session is to enhance the effectiveness of the board-superintendent team and to assess the continuing education needs of the board-superintendent team.

(B) The session shall be held annually.

(C) The session shall be at least three hours in length.

(D) The session shall include a review of the roles, rights, and responsibilities of a local board as outlined in the framework for governance leadership described in subsection (a) of this section.

(E) The assessment of needs shall be based on the framework for governance leadership described in subsection (a) of this section and shall be used to plan continuing education activities for the year for the governance leadership team.

(F) The team-building session shall be provided by an ESC or a registered provider as described in subsection (c) of this section.

(G) The superintendent's participation in team-building sessions as part of the continuing education for board members shall represent one component of the superintendent's ongoing professional development.

(5) In addition to the continuing education requirements in paragraphs (1) through (4) of this subsection, each board member shall complete additional continuing education based on the framework for governance leadership described in subsection (a) of this section.

(A) The purpose of continuing education is to address the continuing education needs referenced in paragraph (4) of this subsection.

(B) The continuing education shall be completed annually.

(C) In a board member's first year of service, he or she shall complete at least ten hours of continuing education in fulfillment of assessed needs.

(D) Following a board member's first year of service, he or she shall complete at least five hours of continuing education annually in fulfillment of assessed needs.

(E) A board president shall complete continuing education related to leadership duties of a board president as some portion of the annual requirement.

(F) At least 50% of the continuing education shall be designed and delivered by persons not employed or affiliated with the board member's local school district. No more than one hour of the

required continuing education that is delivered by the local district may utilize self-instructional materials.

(G) The continuing education shall be provided by an ESC or a registered provider, as defined by subsection (c) of this section.

(H) The continuing education may be fulfilled through online instruction, provided that the training is designed and offered by a registered provider, incorporates interactive activities that assess learning and provide feedback to the learner, and offers an opportunity for interaction with the instructor.

(I) The ESC or registered provider shall determine the clock hours of training credit to be awarded for successful completion of an online course and shall provide verification of completion as required in subsection (h) of this section.

(6) Each school board member shall complete continuing education on evaluating student academic performance and setting individual campus goals for early childhood literacy and mathematics and college, career, and military readiness.

(A) The purpose of the training on evaluating student academic performance is to provide research-based information to board members that is designed to support the oversight role of the board of trustees outlined in the TEC, §11.1515.

(B) The purpose of the continuing education on setting individual campus goals for early childhood literacy and mathematics and college, career, and military readiness is to facilitate boards meeting the requirements of TEC, §11.185 and §11.186.

(C) A candidate for school board may complete the training up to one year before he or she is elected or appointed. A newly elected or appointed school board member who did not complete this training in the year preceding his or her election or appointment must complete the training within 120 calendar days after election or appointment.

(D) The continuing education shall be completed every two years.

(E) The training shall be at least three hours in length.

(F) The continuing education required by this subsection shall include, at a minimum:

(i) instruction in school board behaviors correlated with improved student outcomes with emphasis on:

(I) setting specific, quantifiable student outcome goals; and

(II) adopting plans to improve early literacy and numeracy and college, career, and military readiness for applicable student groups evaluated in the Closing the Gaps domain of the state accountability system established under TEC, Chapter 39;

(ii) instruction in progress monitoring practices to improve student outcomes; and

(iii) instruction in state accountability with emphasis on the Texas Essential Knowledge and Skills, state assessment instruments administered under the TEC, Chapter 39, and the state accountability system established under the TEC, Chapter 39.

(G) The continuing education shall be provided by an authorized provider as defined by subsection (d) of this section.

(H) If the training is attended by an entire school board and its superintendent, includes a review of local school district data on student achievement, and otherwise meets the requirements of subsection (b)(4) of this section, the training may serve to meet a school board member's obligation to complete training under subsection (b)(4) and (6) of this section, as long as the training complies with the Texas Open Meetings Act.

(7) Each board member shall complete continuing education on identifying and reporting potential victims of sexual abuse, human trafficking, and other maltreatment of children in accordance with TEC, §11.159(c)(2).

(A) A candidate for school board may complete the training up to one year before he or she is elected or appointed. A newly elected or appointed school board member who did not complete this training in the year preceding his or her election or appointment must complete the training within 120 calendar days after election or appointment.

(B) The training shall be completed every two years.

(C) The training shall be at least one hour in length.

(D) The training must familiarize board members with the requirements of TEC, §38.004 and §38.0041, and §61.1051 of this title (relating to Reporting Child Abuse or Neglect, Including Trafficking of a Child).

(E) The training required by this subsection shall include, at a minimum:

(i) instruction in best practices of identifying potential victims of child abuse, human trafficking, and other maltreatment of children;

(ii) instruction in legal requirements to report potential victims of child abuse, human trafficking, and other maltreatment of children; and

(iii) instruction in resources and organizations that help support victims and prevent child abuse, human trafficking, and other maltreatment of children.

(F) The training sessions shall be provided by a registered provider as defined by subsection (c) of this section.

(G) This training may be completed online, provided that the training is designed and offered by a registered provider, incorporates interactive activities that assess learning and provide feedback to the learner, and offers an opportunity for interaction with the instructor.

(H) The registered provider shall determine the clock hours of training credit to be awarded for successful completion of an online course and shall provide verification of completion as required in subsection (h) of this section.

(c) For the purposes of this section, a registered provider has demonstrated proficiency in the content required for a specific training. A private or professional organization, school district, government agency, college/university, or private consultant shall register with the TEA to provide the board member continuing education required in subsection (b)(3), (5), and (7) of this section.

(1) The registration process shall include documentation of the provider's training and/or expertise in the activities and areas covered in the framework for governance leadership.

(2) An updated registration shall be required of a provider of continuing education every three years.

(3) A school district that provides continuing education exclusively for its own board members is not required to register.

(4) An ESC is not required to register under this subsection.

(d) An authorized provider meets all the requirements of a registered provider and has demonstrated proficiency in the content required in subsection (b)(4) and (6) of this section. Proficiency may be demonstrated by completing a TEA-approved train-the-trainer course that includes evaluation on the topics and following a review of the provider's qualifications and course design, or through other means as determined by the commissioner.

(1) A private or professional organization, school district, government agency, college/university, or private consultant may be authorized by TEA to provide the board member training required in subsection (b)(4) and (6) of this section.

(2) An ESC shall be authorized by TEA to provide the board member training required in subsection (b)(4) and (6) of this section.

(3) The authorization process shall include documentation of the provider's training and/or expertise in the activities and areas covered in the framework for governance leadership.

(4) An updated authorization shall be required of a provider of training every three years.

(e) No continuing education shall take place during a school board meeting unless that meeting is called expressly for the delivery of board member continuing education. However, continuing education may take place prior to or after a legally called board meeting in accordance with the provisions of the Texas Government Code, §551.001(4).

(f) An ESC board member continuing education program shall be open to any interested person, including a current or prospective board member. A district is not responsible for any costs associated with individuals who are not current board members.

(g) A registration fee shall be determined by ESCs to cover the costs of providing continuing education programs offered by ESCs.

(h) For each training described in this section, the provider of continuing education shall provide verification of completion of board member continuing education to the individual participant and to the participant's school district. The verification must include the provider's authorization or registration number.

(i) To the extent possible, the entire board shall participate in continuing education programs together.

(j) At the last regular meeting of the board of trustees before an election of trustees, the current president of each local board of trustees shall announce the name of each board member who has completed the required continuing education, who has exceeded the required hours of continuing education, and who is deficient in meeting the required continuing education as of the anniversary of the date of each board member's election or appointment to the board or two-year anniversary of his or her previous training, as applicable. The announcement shall state that completing the required continuing education is a basic obligation and expectation of any sitting board member under SBOE rule. The minutes of the last regular board meeting before an election of trustees must reflect whether each trustee has met or is deficient in meeting the training required for the trustee as of the first anniversary of the date of the trustee's election or appointment or two-year anniversary of his or her previous training, as applicable. The president shall cause the minutes of the local board to reflect the announcement and, if the minutes reflect that a trustee is deficient in training as of the anniversary of his or her joining the board, the district shall post the minutes on the district's Internet website within 10 business days of the meeting and maintain the posting until the trustee meets the requirements.

(k) Annually, the SBOE shall commend those local board-superintendent teams that complete at least eight hours of the continuing education specified in subsection (b)(4) and (5) of this section as an entire board-superintendent team.

(l) Annually, the SBOE shall commend local board-superintendent teams that effectively implement the commissioner's trustee improvement and evaluation tool developed under the TEC, §11.182, or any other tool approved by the commissioner.

(m) This section will be implemented May 1, 2020. This section as it read prior to adoption by the SBOE at its January 2020 meeting controls continuing education for school board members until May 1, 2020.

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

Filed with the Office of the Secretary of State on March 4, 2020.

TRD-202000993
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: March 24, 2020
Proposal publication date: December 20, 2019
For further information, please call: (512) 475-1497

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1034

The Texas Education Agency (TEA) adopts an amendment to §61.1034, concerning the new instructional facility allotment. The amendment is adopted without changes to the proposed text as published in the November 29, 2019 issue of the *Texas Register* (44 TexReg 7284) and will not be republished. The adopted amendment modifies the rule to reflect changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, to increase the allotment.

REASONED JUSTIFICATION: Texas Education Code (TEC), §42.158, enacted by Senate Bill 4, 76th Texas Legislature, 1999, created the New Instructional Facility Allotment (NIFA) for public school districts. The legislature did not provide funding under this allotment for the 2011-2012 through 2014-2015 school years. However, funding has been made available for the 2015-2016 through 2020-2021 school years. The NIFA is provided for operational expenses associated with the opening of a new instructional facility and is available to all public school districts and open-enrollment charter schools that meet the requirements of the statute and rule.

Former TEC, §42.158, was transferred to TEC, §48.152, by HB 3, 86th Texas Legislature, 2019. HB 3 increased funding for NIFA. The adopted amendment to 19 TAC §61.1034 is a conforming amendment that updates the rule to implement the increase in the maximum amount appropriated for allotments from $25 million to $100 million in a school year. The adopted amendment updates language related to NIFA distributions in subsection (e), including reference to excess local revenue provisions under TEC, §48.257. The adopted amendment also updates the authorizing statutory reference, changing TEC, §42.158, to §48.152.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began November 29, 2019, and ended December 30, 2019. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §48.004, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which authorizes the commissioner of education to adopt rules as necessary to implement and administer the Foundation School Program; TEC, §48.152, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which requires the commissioner to reduce each district's allotment under this section in the manner provided by TEC, §48.266(f), if the total amount of allotments to which districts are entitled under this section for a school year exceeds the amount appropriated under this subsection; and TEC, §48.266(f), as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which describes how the commissioner will reduce allotments if entitlements exceed the amounts appropriated.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§48.004, 48.152, and 48.266(f), as transferred, redesignated, and amended by HB 3, 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 March 3, 2020.

TRD-202000962
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: March 23, 2020
Proposal publication date: November 29, 2019
For further information, please call: (512) 475-1497

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CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

19 TAC §§66.27, 66.28, 66.30, 66.36, 66.39, 66.41 - 66.43, 66.63, 66.66, 66.67, 66.72, 66.75, 66.76, 66.81

The State Board of Education (SBOE) adopts amendments to §§66.27, 66.28, 66.30, 66.36, 66.39, 66.41-66.43, 66.63, 66.66, 66.67, 66.72, 66.75, and 66.81 and new §66.76, concerning the state adoption of instructional materials. The amendments to §§66.27, 66.28, 66.39, 66.66, 66.67, 66.75 and new §66.76 are adopted with changes to the proposed text as published in the October 4, 2019 issue of the *Texas Register* (44 TexReg 5699) and will be republished. The amendments to §§66.30, 66.36, 66.41-66.43, 66.63, 66.72, and 66.81 are adopted without changes to the proposed text as published in the October 4, 2019 issue of the *Texas Register* (44 TexReg 5699) and will not be republished. The adopted rule actions update rules related to state review and adoption of instructional materials.

REASONED JUSTIFICATION: Rules in 19 TAC Chapter 66, Subchapter B, address the adoption of instructional materials, covering topics such as proclamation, public notice, and schedule for adopting instructional materials; requirements for publisher participation; procedures for handling of samples and public access to samples; public comment on instructional materials; adding content during panel review and during the public comment period; and updates to adopted instructional materials.

The adopted revisions to the instructional materials rules update language to clarify the process for publisher participation in the review and adoption process, ensure that the adoption of prekindergarten materials and their alignment to the Texas Prekindergarten Guidelines (TPG) are appropriately included in the rules, and authorize a process for updating of Texas Essential Knowledge and Skills (TEKS) alignment for adopted materials. The adopted rule actions include amending existing rules and adding a new rule that addresses new editions of adopted instructional materials separate from the existing rule on updates to adopted instructional materials. The adopted rule actions also include technical edits throughout.

The following changes were made since approved for first reading.

Technical edits were made to §§66.28(d)(7), 66.39(a), 66.66(e), 66.67(f), and 66.76(c).

In response to public comment, reference to the TPG was added throughout the rules each time a reference was made to the TEKS.

In response to public comment, new §66.27(i) was added to change the requirements for meeting the TPG. The new subsection specifies that a proclamation for prekindergarten materials shall require the instructional materials to cover end-of-year outcomes at least twice in the teacher materials and as deemed developmentally appropriate in the student materials. The new subsection also requires the coverage to include both an opportunity for the teacher to teach and the student to practice or demonstrate the knowledge or skill.

In response to public comment, language was added to §66.39(g) to clarify the requirements regarding the final samples of prekindergarten materials that are required for education service centers.

During the second reading of the revisions in November 2019, the Committee of the Full Board discussed amending §66.28(d)(7) to prevent publishers of prekindergarten materials participating in *Proclamation 2021* from being burdened with the costs associated with the requirement to supply samples to any requesting school district in the same format of the products to be provided to schools upon ordering. The vote taken by the SBOE indicated that the change should be made to subsection (d)(2), but to comply with the expressed intent of the SBOE, the related amendment should have been made to subsection (d)(7). At its January 31, 2020 meeting, the SBOE took a one-time procedural action to correct the amendment to reinstate the sentence "Samples of submitted prekindergarten materials must match the format of the products to be provided to schools upon ordering" in subsection (d)(2) and remove the sentence "Samples of adopted prekindergarten materials must match the format of the products to be provided to schools upon ordering" from subsection (d)(7).

The SBOE approved the proposed revisions for first reading and filing authorization at its September 13, 2019 meeting and for second reading and final adoption at its November 15, 2019 meeting. In addition, a one-time procedural action was taken at the January 31, 2020 meeting to correct an error in §66.28.

In accordance with TEC, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date is necessary so that rule changes can be applied to *Proclamation 2020* products and the *Proclamation 2021* process and to ensure districts have the most current information regarding alignment of instructional materials to the TEKS. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began October 4, 2019, and ended November 8, 2019. The SBOE also provided an opportunity for registered oral and written comments at its November 2019 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and the corresponding responses.

Comment: An individual commented that it is cost-prohibitive to require full sets of prekindergarten systems to be sent to any district that requests them.

Response: The SBOE agrees and has modified the requirement in §66.28(d)(7) to include only an electronic sample of each product for school districts.

Comment: An individual commented that the TPG should be included in the rules each time the rules mention the TEKS.

Response: The SBOE agrees and has included a reference to the TPG throughout the rules each time the TEKS are referenced.

Comment: Three individuals commented that the rules should more clearly indicate that prekindergarten materials do not need to be submitted electronically.

Response: The SBOE agrees and has indicated in §66.28(d)(2) that prekindergarten materials are not to be submitted electronically.

Comment: Two individuals commented that the rules should more clearly define *student materials* as that term relates to prekindergarten products.

Response: The SBOE disagrees and has determined that definitions are better addressed in individual proclamations and related question and answer documents.

STATUTORY AUTHORITY. The amendments and new rule are adopted under Texas Education Code (TEC), §31.002, which defines open education resource instructional material; TEC, §31.003, which authorizes the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.023, which requires the SBOE to adopt a list of instructional materials that meet applicable physical specifications, contain material covering at least half of the applicable Texas Essential Knowledge and Skills (TEKS) in the student version and in the teacher version, are suitable for the subject and grade level for which the instructional material was submitted, and have been reviewed by academic experts in the subject and grade level for which the instructional material was submitted; TEC, §31.035, which allows the SBOE to adopt supplemental instructional materials that are not on the adopted list if the material covers one or more primary focal points or topics of a subject in the required curriculum, is not designed to serve as the only instructional material for the course, meets applicable physical specifications, is free from factual errors, is suitable for the subject and grade level for which the instructional material was submitted, and has been reviewed by academic experts in the subject and grade level for which the instructional material was submitted. The statute requires the SBOE to identify the TEKS that are covered by the supplemental instructional material and requires the material to comply with the review and adoption cycle provisions; and House Bill 3526, Section 5, 85th Texas Legislature, Regular Session, 2017, which changes the name of the instructional materials allotment to the technology and instructional materials allotment.

CROSS REFERENCE TO STATUTE. The amendments and new rule implement Texas Education Code, §§31.002, 31.003, 31.023, 31.035, and House Bill 3526, Section 5, 85th Texas Legislature, Regular Session, 2017.

§66.27. Proclamation, Public Notice, and Schedule for Adopting Instructional Materials.

(a) Texas Education Code (TEC), §31.002, defines instructional materials as content that conveys the essential knowledge and skills of a subject in the public-school curriculum through a medium or a combination of media for conveying information to a student. The term includes a book; supplementary materials; a combination of a book, workbook, and supplementary materials; computer software; magnetic media; DVD; CD-ROM; computer courseware; online services; or an electronic medium or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including open education resource instructional material.

(b) Upon the adoption of revised Texas essential knowledge and skills (TEKS) or Texas Prekindergarten Guidelines (TPG), the State Board of Education (SBOE) shall conduct an investigation to determine the extent of the revisions and whether revisions have created a need for new instructional materials.

(c) The SBOE shall issue a proclamation calling for instructional materials according to the review and adoption cycle adopted by the SBOE if the investigation required in subsection (b) of this section results in the determination that a proclamation is necessary. The proclamation shall serve as notice to all publishers and to the public that bids to furnish new materials to the state are being invited and shall call for:

(1) new instructional materials aligned to all of the TEKS for a specific subject and grade level or course(s) or to the TPG and to TEC, §28.002(h), as it relates to that specific subject in understanding the importance of patriotism and functioning productively in a free-enterprise society with appreciation for the basic democratic values of our state and national heritage;

(2) supplemental material aligned to new or expanded TEKS for a specific subject and grade level or course(s) or to new or expanded TPG and to TEC, §28.002(h), as it relates to that specific subject in understanding the importance of patriotism and functioning productively in a free-enterprise society with appreciation for the basic democratic values of our state and national heritage;

(3) new information demonstrating alignment of current instructional materials to the revised TEKS for a specific subject and grade level or course(s) or the revised TPG and to TEC, §28.002(h), as it relates to that specific subject in understanding the importance of patriotism and functioning productively in a free-enterprise society

with appreciation for the basic democratic values of our state and national heritage; or

(4) any combination of the calls described by paragraphs (1)-(3) of this subsection.

(d) The essential knowledge and skills adopted in this title effective in the year in which instructional materials are intended to be made available in classrooms are the SBOE's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under the corresponding proclamation.

(e) The essential knowledge and skills that will be used to evaluate instructional materials submitted for consideration under a proclamation and a copy of each proclamation issued by the SBOE may be accessed from the Texas Education Agency website and are 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.

(f) Proclamations calling for supplemental materials or new information only shall be issued at least 12 months before the scheduled adoption of instructional materials. Proclamations that include a call for complete new materials to cover all of the TEKS or TPG shall be issued at least 18 months before the scheduled adoption of the new instructional materials.

(g) Each proclamation shall contain the following:

(1) information about and reference to essential knowledge and skills in each subject for which bids are being invited;

(2) the requirement that a publisher of adopted instructional materials for a grade level other than prekindergarten must submit an electronic pre-adoption sample of the instructional materials as required by the TEC, §31.027(a) and (b), and may not submit a print sample copy;

(3) the requirement that electronic samples include a word search feature;

(4) the requirement that publishers file with the Texas Education Agency (TEA) print samples, electronic samples in an open file format or closed format, or galley proofs for use by state review panels;

(5) the student enrollment of the courses or grade levels called for, to the extent that it is available, for the school year prior to the year in which the proclamation is issued;

(6) specifications for providing computerized files to produce braille versions of adopted instructional materials;

(7) specifications for ensuring that electronic instructional materials are fully accessible to students with disabilities;

(8) a schedule of adoption procedures; and

(9) an option for the submission of open education resource instructional materials that are available for use by the state without charge on the same basis as instructional materials offered for sale.

(h) The proclamation shall require the instructional materials submissions to cover:

(1) content essential knowledge and skills for the subject area and grade level or course for which the materials are intended:

(A) at least once in the student text narrative; and

(B) once in an end-of-section review exercise, an end-of-chapter activity, or a unit test; and

(2) process essential knowledge and skills:

(A) at least once in the student text narrative and once in an end-of-section review exercise, an end-of-chapter activity, or a unit test; or

(B) twice in an end-of-section review exercise, an end-of-chapter activity, or a unit test.

(i) A proclamation for prekindergarten materials shall require the instructional materials submissions to cover the end-of-year outcomes at least twice in the teacher materials and as deemed developmentally appropriate in the student materials. The coverage must include both an opportunity for the teacher to teach and the student to practice or demonstrate the knowledge or skill.

(j) A draft copy of the proclamation shall be provided to each member of the SBOE and posted on the TEA website, and the TEA shall solicit input regarding the draft proclamation prior to its scheduled adoption by the SBOE. Any revisions recommended as a result of input from publishers shall be presented to the SBOE along with the subsequent draft of the proclamation.

(k) If the SBOE determines that good cause as defined by the SBOE exists, the SBOE may adopt an emergency, supplementary, or revised proclamation without complying with the timelines and other requirements of this section.

(l) The SBOE may issue a proclamation for instructional materials eligible for midcycle review. The midcycle adoption process shall follow the same procedures as the regular adoption except to the extent specified in this subsection.

(1) The midcycle proclamation shall include a fee not to exceed $10,000 for each program or system of instructional materials intended for a certain subject area and grade level or course submitted for midcycle review. Publishers participating in the midcycle review process are responsible for all expenses incurred by their participation.

(2) A publisher that intends to offer instructional materials for midcycle review shall commit to provide the instructional materials to school districts in the manner specified by the publisher. The manner in which instructional materials are provided may include:

(A) providing the instructional materials to any district in a regional education service center area identified by the publisher; or

(B) providing a certain maximum number of instructional materials specified by the publisher.

(3) The publisher of instructional materials submitted for midcycle review shall enter into a contract with the SBOE for a term that ends at the same time as any contract entered into by the SBOE for instructional materials for the same subject and grade level.

(4) The publisher of instructional materials submitted for midcycle review is not required to provide samples to education service centers or school districts as specified in the TEC, §31.027.

(5) The publisher of instructional materials submitted for midcycle review shall make available one electronic examination copy of each submitted instructional materials product, including materials intended for teacher use and ancillaries, to each SBOE member upon that member's request, beginning on the date in the adoption schedule when publishers file their samples at the TEA. The state does not guarantee return of these SBOE-requested materials.

§66.28. Requirements for Publisher Participation.

(a) A publisher with adopted materials shall comply with product standards and specifications.

(1) Hard copy instructional materials adopted by the State Board of Education (SBOE) shall comply with the standards in the latest edition of Manufacturing Standards and Specifications for Textbooks approved by the National Advisory Commission on Textbook Specifications, as applicable. A publisher shall file a statement certifying instructional materials submitted for consideration will meet applicable product standards and specifications if adopted. Each statement must be made in a format designated by the commissioner of education, signed by a company official, and filed on or before the deadline specified in the schedule of adoption procedures in each proclamation. If the commissioner determines that good cause exists, the commissioner may approve an exception for a specific portion or portions of this requirement.

(2) A publisher that offers electronic instructional materials must provide a report for each electronic component that verifies that the components follow the Web Content Accessibility Guidelines (WCAG) identified in the proclamation and technical standards required by the Federal Rehabilitation Act, Section 508. The report must be prepared by an independent third party and be based on an audit testing a random sampling of each different type of electronic component as outlined in each proclamation. If applicable, the number of pages to be audited to meet the requirements in the proclamation shall be determined by the publisher.

(3) A publisher that provides access to materials to students with disabilities through an alternate format shall include a link to that material on the entrance page of the main product.

(4) Materials delivered online shall meet minimum web-based standards.

(5) If, during the contract period, the commissioner determines that any adopted instructional materials have faulty manufacturing characteristics or are made of inferior materials, the materials shall be replaced by the publisher without cost to the state.

(6) If, during the contract period, the commissioner determines that any publisher's adopted instructional materials do not comply with the WCAG standards identified in the proclamation or the technical standards required by the Federal Rehabilitation Act, Section 508, the publisher's instructional materials contract may be presented to the SBOE for termination.

(7) A publisher of adopted instructional materials shall make available samples that meet the requirements of this subsection to an SBOE member upon that member's request, beginning on the date the publishers are required to submit their final samples to the Texas Education Agency (TEA).

(b) Publishers participating in the adoption process are responsible for all expenses incurred by their participation.

(c) A publisher that intends to offer instructional materials for adoption shall submit a statement of intent to bid on or before the date specified in the schedule of adoption procedures.

(1) The statement of intent to bid shall be submitted in a format designated by the commissioner.

(2) A publisher shall indicate in the statement of intent to bid the percentage of Texas essential knowledge and skills or Texas Prekindergarten Guidelines that the publisher believes are sufficiently covered in each instructional materials submission.

(3) A publisher shall specify hardware and system requirements needed to review any item included in an instructional materials submission.

(4) Additions to a publisher's statement of intent to bid shall not be accepted after the deadline for filing statements of intent to bid, except as allowed in the schedule of adoption procedures included in a proclamation.

(5) A publisher that intends to offer instructional materials for midcycle review shall submit a statement of intent to bid and price information on or before the date specified in the schedule of adoption procedures under midcycle review. The statement of intent to bid must:

(A) specify the manner in which instructional materials will be provided to school districts as specified in §66.27(k)(2) of this title (relating to Proclamation, Public Notice, and Schedule for Adopting Instructional Materials); and

(B) include payment of the fee for review of instructional materials submitted for midcycle review.

(d) A publisher that intends to offer instructional materials for review shall comply with the following requirements for providing pre-adoption samples.

(1) Complete electronic samples of student and teacher components of instructional materials shall be provided to the TEA and the 20 regional education service centers (ESCs) on or before the date specified in the schedule of adoption procedures in a proclamation. Samples submitted for review shall be complete versions of the final product and must include all content intended to be in the final product, not just the content identified in the correlations. Samples of electronic products must be fully functional for review purposes and meet any other specifications identified in the proclamation. The original sample submission must remain unchanged through the entire review and adoption process, though updated samples can be added to the publisher's submission. These samples are copyrighted by the publisher and are not to be downloaded for use in classrooms or for any purpose other than public review.

(2) A publisher of prekindergarten materials is not required to submit electronic samples of submitted prekindergarten instructional materials. Samples of submitted prekindergarten materials must match the format of the products to be provided to schools upon ordering.

(3) Electronic samples must be free of sales or marketing materials.

(4) These samples shall be made available electronically for public review. Publishers of instructional content accessed electronically shall provide all necessary information, such as locator and login information and passwords, required to ensure public access to their programs throughout the review period.

(5) If the commissioner determines that good cause exists, the commissioner may extend the deadline for filing samples with ESCs. At its discretion, the SBOE may remove from consideration any materials proposed for adoption that were not properly supplied to the ESCs, the TEA, or SBOE members.

(6) A publisher shall provide a complete description of all student and teacher components of an instructional materials submission.

(7) On request of a school district, a publisher shall provide an electronic sample of submitted instructional materials and may also provide print sample copies.

(8) One sample copy of each student and teacher component of an instructional materials submission shall be provided for each member of the appropriate state review panel in accordance with instructions provided by the TEA. Samples for review must be as free from factual and editorial error as possible and reflect the quality of the

final product intended to go into classrooms. Publishers have the option to provide reviewers with print samples, electronic samples in an open file format or closed format, or galley proofs. An electronic sample of print instructional materials must be offered in a format that simulates the print or "view only" version and that does not contain links to external sources. To ensure that the evaluations of state review panel members are limited to student and teacher components submitted for adoption, publishers shall not provide ancillary materials or descriptions of ancillary materials to state review panel members. The state does not guarantee return of sample instructional materials.

(9) The TEA, ESCs, and participating publishing companies shall work together to ensure that hardware or special equipment necessary for review of any item included in a student and/or teacher component of an instructional materials submission is available in each ESC. Participating publishers may be required to lend such hardware or special equipment to any member of a state review panel who does not have access to the necessary hardware or special equipment.

(10) Electronic samples must allow for multiple, simultaneous user access and be equipped with a word-search feature.

(e) The TEA may request additional samples if they are needed.

(f) A publisher that intends to offer instructional materials for adoption shall comply with the following bid requirements.

(1) Publishers shall file official bids with the commissioner according to the schedule of adoption procedures and in a manner designated by the commissioner.

(2) The official bid filed by a publisher shall include separate prices for each item included in an instructional materials submission. A publisher shall guarantee that individual items included in the student and/or teacher component are available for local purchase at the individual prices listed for the entire contract period.

(3) A publisher may submit supplemental bids with new package options or lower prices for existing packages or components according to the schedule of adoption procedures included in the proclamation if the publisher filed an initial bid for that course or grade level by the deadline in the schedule of adoption procedures. Supplemental bids may not be submitted for prices higher than were provided in the initial bids.

(g) Each instructional material or ancillary material that is offered as part of a bundle must also be available for purchase individually.

(h) A publisher that intends to offer instructional materials for adoption shall comply with the following additional requirements.

(1) A publisher shall submit to the TEA a signed affidavit including the following:

(A) certification that each individual whose name is listed as an author or contributor of the instructional materials contributed to the development of the instructional materials;

(B) a general description of each author's or contributor's involvement in the development of the instructional materials; and

(C) certification that all corrections required by the commissioner and SBOE have been made.

(2) Student materials offered for possible adoption may include consumable components in subjects and grade levels in which consumable materials are not specifically called for in the proclamation. In such cases, publishers must meet the following conditions.

(A) The per student price of the materials must include the cost of replacement copies of consumable student components for the full term of the adoption and contract, including any extensions of the contract terms, but for no more than 12 years. The offer must be set forth in the publisher's official bid.

(B) The publisher's official bid shall contain a clear explanation of the terms of the sale, including the publisher's agreement to supply consumable student materials for the duration of the contract and extensions as noted in subparagraph (A) of this paragraph.

(C) The publisher and the school district shall determine the manner in which consumable student materials are supplied beyond the initial order year.

(i) A publisher may not submit instructional materials for review that have been authored or contributed to by a current employee of the TEA.

(j) A publisher or author may not solicit input, directly or indirectly, on new or revised content from a member of the state review panel for a product the panelist reviewed while the product is being considered or even after the product has been adopted or rejected.

(k) On or before the deadline established in the schedule of adoption procedures, publishers shall submit correlations of instructional materials submitted for review with essential knowledge and skills required by the proclamation. Correlations shall be provided for materials designed for student use and materials designed for teacher use and must identify evidence of each student expectation addressed in the ways specified in §66.27(h) of this title. Correlations shall be submitted in a format designated by the commissioner.

(l) A publisher shall provide a list of all corrections required to be made to each student and teacher component of an instructional materials submission to bring them into compliance with applicable laws, rules, or the proclamation. The list must be in a format designated by the commissioner and filed on or before the deadline specified in the schedule of adoption procedures. If no corrections are necessary, the publisher shall file a statement to that effect in a format designated by the commissioner on or before the deadline in the schedule for submitting the list of corrections.

(m) On or before the deadline for submitting lists of corrections, publishers shall submit certification that all instructional materials have been edited for accuracy, content, and compliance with requirements of the proclamation.

(n) One complete electronic sample copy in an open file format or closed format of each student and teacher component of adopted instructional materials that incorporate all corrections required by the SBOE shall be filed with the commissioner on or before the date specified in the schedule of adoption procedures. The complete sample copies filed with the TEA must be representative of the final program.

(o) A publisher who intends to offer instructional materials for adoption shall comply with additional requirements included in a proclamation related to submission of instructional materials for adoption.

§66.39. Regional Education Service Centers: Procedures for Handling Samples; Public Access to Samples.

(a) Each regional education service center (ESC) executive director shall designate one person to supervise all access to samples of instructional materials.

(b) On or before the date specified in the schedule of adoption procedures, each ESC representative shall notify the commissioner of education of all irregularities in electronic samples in a manner desig-

nated by the commissioner. The appropriate publisher shall be notified of any sample irregularities reported by the ESCs.

(c) One electronic sample of all instructional materials under consideration for adoption shall be retained in each ESC for review by interested persons. The review sample must remain available until the ESC receives the electronic final adopted product sample on the date specified in the schedule of adoption procedures.

(d) Appropriate information, such as locator and login information and passwords, shall be made available by the ESCs to ensure public access to Internet-based instructional content throughout the review or contract period, as appropriate.

(e) Regional ESCs shall ensure reasonable public access to sample instructional materials, including access outside of normal working hours that shall be scheduled by appointment.

(f) On or before the date specified in the schedule of adoption procedures, each ESC shall publicize the date on which sample instructional materials will be available for review and shall notify all school districts in the region of the schedule.

(g) One electronic final sample of all instructional materials adopted by the State Board of Education shall be retained in each ESC for the entire adoption period for review by interested persons. Samples of adopted prekindergarten materials must match the format of the products to be provided to schools upon ordering.

§66.66. Consideration and Adoption of Instructional Materials by the State Board of Education.

(a) The State Board of Education (SBOE) shall either adopt or reject each submitted instructional material in accordance with the Texas Education Code (TEC), §31.024.

(b) The SBOE shall adopt instructional materials in accordance with the TEC, §31.023. Instructional materials may be adopted only if:

(1) they meet at least 50% of the Texas essential knowledge and skills (TEKS) or Texas Prekindergarten Guidelines (TPG) when the SBOE calls for materials as specified in §66.27(c)(1) of this title (relating to Proclamation, Public Notice, and Schedule for Adopting Instructional Materials) or meet requirements of the proclamation when the SBOE calls for materials as specified in §66.27(c)(2) or (3) of this title for the subject and grade level or course(s) in materials designed for student use and materials designed for teacher use. In determining the percentage of the TEKS or TPG covered by instructional materials, each student expectation shall count as an independent element of the TEKS or TPG;

(2) the publisher has agreed to ensure that they meet the established physical specifications adopted by the SBOE prior to making materials available for use in districts;

(3) the publisher has agreed to ensure that they follow the Web Content Accessibility Guidelines (WCAG) and technical specifications of the Federal Rehabilitation Act, Section 508, as specified in the proclamation;

(4) they are free from factual errors, including significant grammatical or punctuation errors that have been determined to impede student learning or that make the product of a quality not acceptable in Texas public schools, or the publisher has agreed to correct any identified factual errors or grammatical or punctuation errors that have been determined to impede student learning, prior to making them available for use in districts and charter schools;

(5) they are deemed to be suitable for the subject area and grade level;

(6) they have been reviewed by academic experts in the subject and grade level; and

(7) they receive approval by majority vote of the SBOE.

(c) No instructional material may be adopted that contains content that clearly conflicts with the stated purpose of the TEC, §28.002(h).

(d) Instructional materials submitted for review may be rejected by majority vote of the SBOE in accordance with the TEC, §31.024.

(e) Instructional materials the board determines that, based on the initial review, contain extensive errors and make a product of a quality not acceptable in Texas public schools are not determined to be free from factual errors.

(f) A publisher may withdraw from the adoption process at any time prior to execution of a contract with the SBOE for any reason by providing notification in writing to the commissioner of education. Notification of withdrawal is final and irrevocable.

(g) The commissioner may remove materials from the adopted list if the publisher fails to meet deadlines established in the schedule of adoption procedures.

§66.67. Adoption of Open Education Resource Instructional Materials.

(a) "Open education resource instructional material" means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that allows for free use, reuse, modification, and sharing with others, including full courses, course materials, modules, textbooks, streaming videos, tests, software, and any other tools, materials, or techniques used to support access to knowledge.

(b) The State Board of Education (SBOE) shall place open education resource instructional materials submitted for a secondary-level course on the adopted list if the instructional materials meet the criteria outlined in subsections (c) and (d) of this section.

(c) Open education resource instructional materials referenced in this section must be:

(1) submitted by an eligible institution, defined as a public institution of higher education that is designated as a research university or emerging research university under the Texas Higher Education Coordinating Board's accountability system, or a private university located in Texas that is a member of the Association of American Universities, or a public technical institute, as defined by the TEC, §61.003;

(2) intended for a secondary-level course; and

(3) written, compiled, or edited primarily by faculty of an eligible institution that specializes in the subject area of the instructional materials.

(d) To submit open education resource instructional materials, an eligible institution must:

(1) certify by the board of regents, or corresponding governing body, or president of the university, or by an individual authorized by one of these entities, that the instructional materials qualify for placement on the adopted list based on the extent to which the instructional materials cover the essential knowledge and skills identified under the TEC, §28.002;

(2) identify each contributing author;

(3) provide certification by the appropriate academic department of the submitting institution that the instructional materials are accurate; and

(4) certify that:

(A) for instructional materials for a senior-level course, a student who successfully completes a course based on the instructional materials will be prepared, without remediation, for entry into the eligible institution's freshman-level course in that subject; or

(B) for instructional materials for a junior-level and senior-level course, a student who successfully completes the junior-level course based on the instructional materials will be prepared for entry into the senior-level course.

(e) All information and certifications required by subsection (d) of this section shall be provided in a format designated by the commissioner of education.

(f) A publisher that offers open education resource instructional materials must provide a report for each electronic component that verifies that the component substantially follows Web Content Accessibility Guidelines (WCAG) and technical standards required by the Federal Rehabilitation Act, Section 508, as applicable. Specific standards that must be met will be specified in each proclamation.

(g) Before placing open education resource instructional materials submitted under subsection (b) of this section on the adopted list, the SBOE shall direct the Texas Education Agency (TEA) to post the materials on the TEA website for 60 days to allow for public comment and the SBOE shall hold a public hearing on the instructional materials. Public comment shall be provided to members of the SBOE and posted on the TEA website within five working days of its receipt.

(h) Not later than the 90th day after the date open education resource instructional materials are submitted as provided by the TEC, §31.0241, the SBOE may review the instructional materials. The SBOE:

(1) may request an independent review that follows the same process used in §66.36 of this title (relating to State Review Panels: Training, Duties, and Conduct) to confirm the content meets the criteria for placement on the adopted list based on the extent to which the instructional materials cover the essential knowledge and skills. The SBOE shall notify the submitting institution of any discrepancy in alignment with essential knowledge and skills;

(2) shall post with the list adopted under the TEC, §31.023, comments made by the SBOE regarding the open education resource instructional materials placed on the list; and

(3) shall distribute SBOE comments to school districts.

§66.75. Updates to Adopted Instructional Materials.

(a) A publisher may submit a request to the commissioner of education for approval to update content in state-adopted instructional materials. A publisher requesting approval of a content update shall provide a written request in a manner designated by the commissioner that includes an explanation of the reason for the update. This requirement includes electronic instructional materials and Internet products for which all users receive the same updates. The request must be accompanied by an electronic sample of the proposed updates. Proposed changes shall be posted on the Texas Education Agency (TEA) website for a minimum of seven calendar days prior to approval.

(b) A publisher that requests to update content in state-adopted instructional materials must comply with the following additional requirements:

(1) provide that there will be no additional cost to the state;

(2) certify in writing that the new material meets the applicable essential knowledge and skills and is free from factual errors; and

(3) certify that the updates do not affect the product's coverage of Texas Education Code (TEC), §28.002(h), as it relates to that specific subject and grade level or course(s), understanding the importance of patriotism and functioning productively in a free-enterprise society with appreciation for the basic democratic values of our state and national heritage.

(c) With prior commissioner approval, publishers may, at any time, make changes that do not affect the product's Texas essential knowledge and skills (TEKS) or Texas Prekindergarten Guidelines (TPG) coverage or its coverage of Texas Education Code, §28.002(h).

(1) Requests for approval of updates to content that was not used in determining the product's eligibility for adoption must be submitted to the commissioner prior to their introduction into state-adopted instructional materials to confirm that the changes do not affect TEKS or TPG coverage or coverage of TEC, §28.002(h).

(2) Responses from the commissioner to update requests shall be provided within 30 days after receipt of the request. If no action has been taken by the end of the 30 days, the request is deemed approved.

(d) All requests for updates involving content used in determining the product's eligibility for adoption must be approved by the State Board of Education (SBOE) prior to their introduction into state-adopted instructional materials. Requests must be submitted in a format designated by the commissioner and must include correlations to applicable student expectations. This requirement includes electronic instructional materials and Internet products for which all users receive the same updates. Proposed changes shall be posted on the TEA website for a minimum of seven calendar days prior to approval. The SBOE may assess penalties as allowed by law against publishers that fail to obtain approval for updates to such content in state-adopted instructional materials prior to delivery of the materials to school districts.

(e) Publishers must agree to supply the previous version of state-adopted instructional materials to school districts that choose to continue using the previous version during the duration of the original contract. This subsection does not apply to electronic instructional materials.

(f) A publisher of instructional materials may provide alternative formats for use by school districts if:

(1) the content is identical to SBOE-approved content;

(2) the alternative formats include the identical revisions and updates as the original product; and

(3) the cost to the state and school is equal to or less than the cost of the original product.

(g) Alternative formats may be developed and introduced at any time during the adoption cycle in conformance with the procedures for adoption of other state-adopted materials.

(h) Publishers must notify the commissioner in writing if they are providing SBOE-approved products in alternative formats.

(i) Publishers are responsible for informing districts of the availability of the alternative formats and for accurate fulfillment of orders for them.

(j) The commissioner may add alternative formats of SBOE-approved products to the list of adopted products available to school districts.

(k) Publishers of SBOE-adopted instructional materials may, at any time, without seeking approval from the SBOE or the commissioner, make technical enhancements or improvements that do not add or change content, provided the enhancements do not change the technical requirements for districts to continue to be able to access the materials in the same manner as originally submitted.

(l) The commissioner may provide an opportunity for publishers to submit updated content and new correlations to that content to update the product's official TEKS or TPG coverage percentage. The commissioner shall post an annual schedule of review procedures on the agency website to provide publishers with adequate notice of review timelines. The updated content shall be reviewed by state review panels during the next available state review panel meeting in accordance with the annual schedule of review procedures. Following the review, the commissioner shall provide a report to the SBOE that includes the following:

(1) the findings of the review panels regarding the TEKS or TPG coverage as provided in the updated content; and

(2) alleged factual errors in the updated content identified by state review panels.

(m) The SBOE shall either accept or reject each updated TEKS or TPG coverage percentage and errors report in accordance with §66.66 of this title (relating to Consideration and Adoption of Instructional Materials by the State Board of Education). An updated TEKS alignment determination is considered final, pursuant to TEC, §31.023(a-1).

§66.76. New Editions of Adopted Instructional Materials.

(a) A publisher may submit a request to the commissioner of education for approval to substitute a new edition of state-adopted instructional materials. A publisher requesting approval of a new edition shall provide a written request in a manner designated by the commissioner that includes an explanation of the reason for the substitution. The request must be accompanied by an electronic sample and a correlation document that meets all the requirements of the correlation document provided for the initial review. This requirement includes electronic instructional materials and Internet products for which all users receive the same updates. Proposed changes shall be made available for public review on the Texas Education Agency (TEA) website for a minimum of 60 calendar days prior to approval.

(b) A publisher that requests to substitute a new edition of state-adopted instructional materials must comply with the following additional requirements:

(1) provide that there will be no additional cost to the state;

(2) certify in writing that the new material meets the applicable Texas essential knowledge and skills (TEKS) or Texas Prekindergarten Guidelines (TPG) and is free from factual errors; and

(3) certify that the updates in the new edition do not affect the product's coverage of Texas Education Code (TEC), §28.002(h), as it relates to that specific subject and grade level or course(s), understanding the importance of patriotism and functioning productively in a free-enterprise society with appreciation for the basic democratic values of our state and national heritage.

(c) With prior commissioner approval, publishers may, at any time, substitute a new edition if the changes made to the new edition do not affect the product's TEKS coverage or its coverage of TEC, §28.002(h).

(1) Substitution requests to content that was not used in determining the product's eligibility for adoption must be submitted to the commissioner to confirm the changes do not affect TEKS coverage or coverage of TEC, §28.002(h).

(2) Responses from the commissioner to update requests shall be provided within 60 days after receipt of the request. If no action has been taken by the end of the 60 days, the request is deemed approved.

(3) Proposed changes shall be posted on the TEA website for a minimum of 60 days prior to approval.

(d) All requests for updates involving content used in determining the product's eligibility for adoption must be approved by the State Board of Education (SBOE) prior to their introduction into state-adopted instructional materials. Requests must be submitted in a format designated by the commissioner and must include correlations to applicable student expectations. The SBOE may assess penalties as allowed by law against publishers that fail to obtain approval for updates to such content in state-adopted instructional materials prior to delivery of the materials to school districts.

(e) Publishers must agree to supply the previous version of state-adopted instructional materials to school districts that choose to continue using the previous version during the duration of the original contract. This subsection does not apply to electronic instructional materials.

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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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 40. EPINEPHRINE AUTO-INJECTOR AND ANAPHYLAXIS POLICIES

SUBCHAPTER A. EPINEPHRINE AUTO-INJECTOR POLICIES IN INSTITUTIONS OF HIGHER EDUCATION

25 TAC §§40.1 - 40.8

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts new §§40.1 - 40.8, concerning Epinephrine Auto-Injector Policies in Institutions of Higher Education.

New §40.1 is adopted with changes to the proposed text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7313) and will be republished. New §§40.2 - 40.8 are adopted without changes and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The new sections are necessary to implement Senate Bill (S.B.) 1367, 85th Legislature, Regular Session, 2017, and House Bill (H.B.) 476 and H.B. 4260, 86th Legislature, Regular Session, 2019. S.B. 1367 added Texas Education Code, Chapter 51, Subchapter Y-1, which requires the adoption of rules for the maintenance, administration, and disposal of epinephrine auto-injectors in institutions of higher education that voluntarily adopt epinephrine auto-injector policies. H.B. 476 amended §51.882 of the Texas Education Code to require institutions of higher education that adopt a policy to submit the policy to DSHS. DSHS will maintain a record of the most recent policy and will make the information available upon request. H.B. 4260 added §773.0145 to the Texas Health and Safety Code, which authorizes private or independent institutions of higher education to adopt and implement epinephrine auto-injector policies. H.B. 4260 also allows a physician or person who has been delegated prescriptive authority under Chapter 157, Texas Occupations Code, to prescribe epinephrine auto-injectors in the name of an entity.

The new rules set the minimum standards for institutions of higher education to follow when adopting an epinephrine auto-injector policy, based on recommendations of the DSHS Stock Epinephrine Advisory Committee. An institution of higher education that voluntarily adopts an unassigned epinephrine auto-injector policy must stock at least one unassigned adult epinephrine auto-injector pack on each campus and conduct individual campus assessments to determine if additional epinephrine auto-injectors are needed. The new rules allow flexibility so that institutions of higher education may develop policies that address issues specific to each campus, including campus geography and student population size. Personnel and volunteers that are trained to administer unassigned epinephrine auto-injectors may administer an epinephrine auto-injector to a person suspected of experiencing anaphylaxis, including students, personnel, volunteers, and visitors. Public institutions of higher education that adopt epinephrine auto-injector policies are required to report the administration of an epinephrine auto-injector to DSHS within 10 business days.

COMMENTS

The 31-day comment period ended December 30, 2019.

During this period, DSHS received one comment from the Texas Medical Association regarding the proposed rules. A summary of the comment relating to the rules and DSHS's response follows.

Comment: One commenter stated that S.B. 1367 addressed prescriptions of epinephrine auto-injectors at public institutions of higher education and limited these prescriptions to only those issued by a physician. H.B. 4260 addressed private or independent institutions of higher education and allowed prescriptions issued by a "person who has been delegated prescriptive authority." The commenter suggested that the definition of "Authorized healthcare provider" as it appeared in §40.3(2) be revised to read "(a) for a public institution of higher education as defined in Texas Education Code §61.003(8), a physician, as defined in Texas Education Code, §51.881; (b) for a to [sic] private or independent institution of higher education as defined in Texas Education Code §61.003(15), a physician, as defined above, or person who has been delegated prescriptive authority by a physician under Texas Occupations Code, Chapter 157 as described in Texas Health and Safety Code, §773.0145."

Response: DSHS declines to make the suggested change. DSHS reviewed the statutes at issue and noted that Texas Occupations Code §157.001 allows physicians to delegate certain medical acts to non-physicians. Given that prescribing epinephrine auto-injectors is an act that may be delegated by a physician and that the language of Texas Education Code §51.885(c) makes room for such delegation or supervision by a physician, it is appropriate to read Texas Education Code, Chapter 51, Subchapter Y-1 as permitting the prescription of epinephrine auto-injectors by physicians as well as those who have been delegated prescriptive authority by a physician.

Due to a staff comment, §40.1 was revised to clarify the use of "that" in place of "who" when referring to the institutions of higher education.

STATUTORY AUTHORITY

The new sections are authorized by Texas Education Code, Chapter 51, Subchapter Y-1, which authorizes DSHS to adopt rules with advice from the DSHS Stock Epinephrine Advisory Committee regarding the maintenance, administration, and disposal of an epinephrine auto-injector on the campus of an institution of higher education subject to a local policy being adopted. The new sections are authorized by Texas Health and Safety Code, §773.0145, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules regarding the maintenance, administration, and disposal of an epinephrine auto-injector by a private or independent institution of higher education subject to a local policy being adopted. The new sections are authorized by Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

§40.1. Purpose.

The purpose of this subchapter is to establish minimum standards for administering, maintaining, and disposing of epinephrine auto-injectors for an institution of higher education that adopts unassigned epinephrine auto-injector policies. These standards are implemented under Texas Education Code, Chapter 51, Subchapter Y-1 and Texas Health and Safety Code, Chapter 773, Subchapter A.

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

Filed with the Office of the Secretary of State on March 5, 2020.

TRD-202001005
Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: March 25, 2020
Proposal publication date: November 29, 2019
For further information, please call: (512) 776-7279

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PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 601. INFORMED CONSENT

25 TAC §601.9

The Texas Medical Disclosure Panel (panel) adopts an amendment to §601.9 concerning informed consent of patients. The amendment to §601.9 is adopted with changes to the proposed text as published in the November 1, 2019, issue of the *Texas Register* (44 TexReg 6500). The rule will be republished.

BACKGROUND AND JUSTIFICATION

These amendments are in accordance with the Texas Civil Practice and Remedies Code, §74.102, which requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. Section 601.9 contains the Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia).

SECTION-BY-SECTION SUMMARY

Amendments to §601.9 replace references to the "Department of State Health Services" with references to the "Health and Human Services Commission."

Amendments to §601.9 also modify the disclosure and consent form in English and Spanish for anesthesia and/or perioperative pain management (analgesia) to ensure the physician delegating, supervising or performing the anesthetic will be privileged with the rebuttable presumption intended.

PUBLIC COMMENT

The 31-day comment period ended December 2, 2019.

During this period, the panel received comments regarding the proposed rules from three commenters: Texas Association of Nurse Anesthetists, Texas Hospital Association, and the Texas Society of Anesthesiologists.

Comment: One commenter requested the credentials of the physician be required to be included on the consent form, but was otherwise supportive of the changes.

Response: The panel disagreed with the request and no changes were made as a result of the comment.

Comments: Two commenters were concerned that the proposed changes to the form will interfere with the delegation and supervision authority by physicians.

Response: The panel disagreed with the commenters, but did revise language on the form to provide additional clarity.

STATUTORY AUTHORITY

The amendment is authorized under the Texas Civil Practice and Remedies Code, §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the form(s) for the treatments and procedures which do require disclosure.

§601.9. Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia).

The Texas Medical Disclosure Panel adopts the following form which shall be used to provide informed consent to a patient or person authorized to consent for the patient of the possible risks and hazards involved in anesthesia and/or perioperative pain management (analgesia). Providers shall have the form available in both English and Spanish language versions. Both versions are available from the Health and Human Services Commission.

(1) English form.

Figure: 25 TAC §601.9(1)

(2) Spanish form.

Figure: 25 TAC §601.9(2)

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 March 9, 2020.

TRD-202001037
Noah Appel, M.D.
Chairman
Texas Medical Disclosure Board
Effective date: June 1, 2020
Proposal publication date: November 1, 2019
For further information, please call: (512) 776-6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

The Commissioner of Insurance adopts new 28 TAC §5.4012 and amendments to §5.4011 and §§5.4601, 5.4603, 5.4621, 5.4622, and 5.4642, concerning windstorm building codes for structures insured by the Texas Windstorm Insurance Association (TWIA). The new and amended sections implement Insurance Code §2210.251(b) and §2210.252, which give the Commissioner authority to adopt windstorm building codes. The sections are also updated to reflect that the Texas Board of Professional Engineers is now the Texas Board of Professional Engineers and Land Surveyors.

The new section and amendments are adopted with changes to the proposed text published in the November 1, 2019, issue of the *Texas Register* (44 TexReg 6501). TDI adopts §§5.4621, 5.4622, and 5.4642 without changes to the proposed text. TDI revised §§5.4011, 5.4012, 5.4601, and 5.4603 from the proposed text in response to public comments. TDI revised §§5.4011, 5.4012, 5.4601, and 5.4603 to change the effective date of the new building codes from January 1, 2020, to April 1, 2020. TDI revised §5.4012 to require that structures in the catastrophe area be constructed in accordance with the wind provisions in the 2018 *International Building Code* (*IBC*) and *International Residential Code* (*IRC*).

Section 5.4011 and §5.4603 were also changed from the proposed text to conform to agency style and update addresses and to change a form's effective date, respectively.

REASONED JUSTIFICATION.

Section 5.4011. Amendments to §5.4011 are necessary to specify that the 2006 editions of the *IBC* and the *IRC* with Texas

Revisions will not apply to construction begun on or after April 1, 2020. The *IRC* specifies building code standards for residential structures and the *IBC* specifies building code standards for other structures, including commercial buildings and government buildings. The proposal would have applied the 2018 *IBC* and *IRC* beginning January 1, 2020; in response to comment, the 2018 codes will apply beginning April 1, 2020. The 2006 *IBC* and *IRC* with Texas Revisions will apply to construction begun on or after January 1, 2008, and before April 1, 2020. Section 5.4011 was also changed from the proposed text to conform to agency style and to update contact information.

Section 5.4012. New §5.4012 adopts the 2018 editions of the *IBC* and the *IRC.* Under the rule, the 2018 editions apply to structures constructed, repaired, or added to on or after April 1, 2020. For construction to be eligible for windstorm coverage through TWIA, the construction must comply with the windstorm building code adopted by the Commissioner for the year in which the construction began. The International Code Council (ICC) publishes revised building codes every three years. Adopting newer editions of the building codes is periodically necessary to ensure that new construction incorporates advances in technology and greater understanding of wind engineering.

Adopted subsection (b) of §5.4012 provides an exemption from §5.4012(a) for repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of a historic structure. Subsection (b)(1) - (3) defines the attributes that make a structure a historic structure. These subsections are consistent with previously adopted building code requirements.

Proposed §5.4012 contained specified wind speeds for each risk category in each of the three zones in the catastrophe area (Seaward, Inland I, and Inland II), which are delineated in §5.4008(a) - (c) of this title. In response to comment, adopted §5.4012 does not contain these specified wind speeds. Instead of determining wind speed based on which zone a structure is in, appointed qualified inspectors and engineers must determine wind speed by using the 2018 *IBC* or one of the five building code standards referenced in the 2018 *IRC.*

The proposal would have applied the 2018 *IBC* and *IRC* beginning January 1, 2020; in response to comment, the 2018 codes will apply beginning April 1, 2020.

Section 5.4601. The adopted amendment to §5.4601 will update the definition of "windstorm building code standards" to include the 2018 editions in new §5.4012. The proposed amendment to §5.4601 also reflects that the Texas Board of Professional Engineers is now the Texas Board of Professional Engineers and Land Surveyors.

In response to comment, TDI is changing the date for compliance with the new codes from January 1, 2020, to April 1, 2020 in the definition of "Windstorm building code standards."

Section 5.4603. The adopted amendment to §5.4603, which lists windstorm inspection forms, conforms that section to the new building codes. TDI also adopts nonsubstantive amendments to the names of some forms to improve consistency. In response to comment, TDI is changing the date for compliance with the new codes from January 1, 2020, to April 1, 2020.

Section 5.4603 was also changed from the proposed text to change the effective date of the Field Form, the WPI-7, used by TDI-employed inspectors. The form was changed to conform to the new building code adoption. The information captured in the WPI-7 is unchanged and is listed in §5.4608.

Sections 5.4621, 5.4622, and 5.4642. The adopted amendments to §§5.4621, 5.4622, and 5.4642 update references to windstorm inspection forms consistent with the amendments to §5.4603.

In addition, the adopted amendments update references to the Texas Board of Professional Engineers and Land Surveyors and make nonsubstantive capitalization and punctuation changes to conform the sections to the agency's current style.

TDI received comments on an informal draft of this rule, which was posted on TDI's website on January 18, 2019. TDI considered those comments when drafting the proposal.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received eight written comments. Commenters in support of the proposal were: two individuals, the ICC, and the South-Central Partnership for Energy Efficiency as a Resource. Commenters in support of the proposal with changes were: one individual, the Lone Star Chapter of the Sierra Club, Oldcastle BuildingEnvelope Inc., and the Texas Association of Builders.

Comments in support: Four commenters support adopting the 2018 editions of the *IBC* and the *IRC.*

Agency Response: TDI appreciates the support.

Comments on effective date: Two commenters questioned the proposed January 1, 2020 effective date.

Agency response: In response to comment, TDI is changing the date for compliance with the 2018 editions of the *IBC* and the *IRC* from January 1, 2020, to April 1, 2020.

Comment on product evaluations: One commenter asked about updating product evaluations on TDI's website regarding the products' compliance with the 2018 *IBC* and *IRC.*

Agency Response: TDI does not intend to reexamine existing product evaluations for compliance with the 2018 *IBC* and *IRC.* Product evaluations on TDI's website will remain there.

Building product manufacturers that have submitted product testing data and drawings to TDI for TDI to evaluate for compliance with the 2006 *IBC* and *IRC* may resubmit data and drawings for evaluation for compliance with the 2018 codes.

The product evaluations are not necessary for a structure to comply with the windstorm building code. An engineer certifying a structure may review a manufacturer's data and drawings to determine whether using the product is consistent with what the windstorm code requires for that structure.

Comment: One commenter supports adopting the 2018 *IBC* and *IRC* building codes, but requests that TDI specifically exclude the 2018 *International Existing Building Code* (*IEBC*) from the adoption. The commenter states that some engineering companies working for insurance companies and local governments have argued that the *IEBC* applies to the repair of existing buildings.

Agency Response: TDI declines to make the change. TDI adopts the 2018 editions of the *IBC* and *IRC,* both of which reference the *IEBC.*

Section 101.4.7 of the 2018 *IBC* states that "The provisions of the *International Existing Building Code* shall apply to matters governing the repair, alteration, change of occupancy, addition to and relocation of existing buildings."

Section R110.2 of the 2018 *IRC* requires applying the *IEBC* to construction that changes the character or use of an existing structure. In addition, the *IRC* requires wind design in certain areas, and Section R301.2.1.1 requires an engineer to choose from among five standards for wind design. One of those five standards, the *IBC,* requires applying the *IEBC.*

Carving the *IEBC* out from the adopted *IRC* would revise the *IRC* and limit engineers' options for complying with the wind design provisions in the *IRC.* TDI is adopting the 2018 *IBC* and *IRC* without revisions.

Comment: One commenter suggests TDI adopt the 2015 *IBC* and *IRC* because many jurisdictions have adopted these already. The commenter suggests that the rule allow for the 2015 *IBC* and *IRC* in addition to the 2018 *IBC* and *IRC.*

Agency Response: TDI declines to make the change. It is reasonable to adopt the most recent editions of the *IBC* and *IRC* and adopting a single year's editions will reduce confusion. Adopting the 2018 editions ensures that the codes adopted include the most recent advances in technology and greater understanding of wind engineering. However, TDI notes that in many instances the changes from the current 2006 editions of the *IBC* and *IRC* to either the 2015 or 2018 editions will be similar.

In addition, adopting the 2018 editions complies with federal recommendations and enables Texas to qualify for federal funds. The FEMA Harvey Mitigation report recommends that TDI adopt the 2018 *IBC* and *IRC* codes. The Federal Bipartisan Budget Act of 2018 included the Federal Cost Share Reform Incentive, which encourages states to adopt the latest building codes among other incentives. The Federal Cost Share Reform Incentive allows post-disaster federal cost-share with states to increase from 75 percent to 85 percent on a sliding scale based on several factors, including the adoption and enforcement of the latest building codes. By adopting the 2018 editions of the codes, Texas can qualify for more assistance from the federal government in post-disaster recovery funding. For these reasons, TDI adopts the 2018 *IBC* and *IRC* codes for the windstorm inspection program.

Comment: One commenter suggests that in §5.4012, the reference to "three-second gust wind speed" be changed to "ultimate design wind speed" as used by the 2018 *IBC* and *IRC* codes.

Agency Response: In response to another comment, TDI has removed the text in §5.4012 that refers to "three second-gust wind speed." However, the term will continue to appear on the forms TDI makes available to appointed qualified inspectors and engineers. The term is still appropriate because it is used in the 2016 edition of the *American Society of Civil Engineers Minimum Design Loads and Associated Criteria for Buildings and Other Structures,* which is referenced in the 2018 *IBC* and *IRC.*

Comment: One commenter requests that §5.4012, which applies to construction begun on or after April 1, 2020, be rewritten so that the Seaward, Inland I, and Inland II zones do not each require a single wind speed for each risk category in the zone. The commenter states that as proposed, §5.4012 revises the 2018 *IRC's* wind speed requirements. The commenter states that the wind speeds in proposed §5.4012 would trigger the requirement for windborne debris protection in areas where the 2018 *IRC* would not, and vice versa.

Agency Response: TDI has made the suggested change to §5.4012. Structures in the catastrophe area must be constructed in accordance with the wind provisions in the 2018 *IBC* and *IRC.* Appointed qualified inspectors and engineers must use the applicable wind speed according to the *IBC* or *IRC* at each site. Web resources and software applications are available to determine the applicable wind speed based on the longitude and latitude or address of a construction site.

DIVISION 1. PLAN OF OPERATION

28 TAC §5.4011, §5.4012

STATUTORY AUTHORITY. TDI adopts amended §5.4011 and new §5.4012 under Insurance Code §§2210.008, 2210.251, 2210.252, and 36.001.

Insurance Code §2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules to implement Insurance Code Chapter 2210.

Insurance Code §2210.251(b) states that for geographic areas specified by the Commissioner, the Commissioner must adopt by rule the 2003 *International Residential Code* and may adopt subsequent editions of that code and amendments to that code.

Insurance Code §2210.252 provides that the Commissioner by rule may adopt an edition of the *International Residential Code* and a supplement published by the International Code Council or an amendment to that code.

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.

§5.4011. Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008, and before April 1, 2020.

(a) To be eligible for catastrophe property insurance, structures located in the designated catastrophe areas specified in §5.4008 of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003) and which are constructed, repaired, or to which additions are made on and after January 1, 2008, and before April 1, 2020, must comply with the 2006 Editions of the International Residential Code and the International Building Code, as each is revised by the 2006 Texas Revisions, and all of which are adopted by reference to be effective January 1, 2008. The codes are published by and available from the International Code Council, Publications, 4051 West Flossmoor Road, Country Club Hills, Illinois, 60478-5795, (Telephone: 888-422-7233), and the 2006 Texas Revisions to the 2006 Edition of the International Residential Code and the 2006 Texas Revisions to the 2006 Edition of the International Building Code are available from the Windstorm Inspections Section of the Inspections Division, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, MC 104-INS, Austin, Texas, 78714-9104 and on the Texas Department of Insurance website at www.tdi.texas.gov. The following wind speed requirements must apply:

(1) Areas seaward of the intracoastal canal. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas which are seaward of the intracoastal canal and constructed, repaired, or to which additions are made on or after January 1, 2008, and before April 1, 2020, must be designed and constructed to resist a 3-second gust of 130 miles per hour.

(2) Areas inland of the intracoastal canal and within approximately 25 miles of the Texas coastline and east of the specified boundary line and certain areas in Harris County. To be eligible for catastrophe property insurance, structures located in designated catas-

trophe areas specified in §5.4008(b)(2)(A) and (B) of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003) and constructed, repaired, or to which additions are made on or after January 1, 2008, and before April 1, 2020, must be designed and constructed to resist a 3-second gust of 120 miles per hour.

(3) Areas inland and west of the specified boundary line. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in §5.4008(c) of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003) and constructed, repaired, or to which additions are made on or after January 1, 2008, and before April 1, 2020, must be designed and constructed to resist a 3-second gust of 110 miles per hour.

(b) Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a historic structure may be made without conformance to the requirements of subsection (a) of this section. In order for a historic structure to be exempted, at least one of the following conditions must be met:

(1) The structure is listed or is eligible for listing on the National Register of Historic places.

(2) The structure is a Recorded Texas Historic Landmark (RTHL).

(3) The structure has been specifically designated by official action of a legally constituted municipal or county authority as having special historical or architectural significance, is at least 50 years old and is subject to the municipal or county requirements relative to construction, alteration, or repair of the structure, in order to maintain its historical designation.

§5.4012. Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to Which Additions Are Made on or after April 1, 2020.

(a) To be eligible for catastrophe property insurance, structures located in the designated catastrophe areas specified in paragraphs (1), (2), and (3) of this subsection that are constructed, repaired, or to which additions are made on or after April 1, 2020, must comply with the 2018 editions of the *International Residential Code* and the *International Building Code,* which are adopted by reference and applicable beginning April 1, 2020. The codes are published by and available from the International Code Council at iccsafe.org or by calling toll-free 1-888-422-7233. The designated catastrophe areas are:

(1) Areas seaward of the intracoastal canal;

(2) Areas inland of the intracoastal canal and within approximately 25 miles of the Texas coastline and east of the specified boundary line and certain areas in Harris County as described in §5.4008(b)(2)(A) and (B) of this title; and

(3) Areas inland and west of the specified boundary line as described in §5.4008(c) of this title.

(b) Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of a historic structure may be made without conformance to the requirements of subsection (a) of this section. For a historic structure to be exempted, at least one of the following conditions must apply to the structure:

(1) The structure is listed or is eligible for listing on the National Register of Historic Places.

(2) The structure is a Recorded Texas Historic Landmark by the Texas Historical Commission.

(3) The structure has been designated by official action of a legally constituted municipal or county authority as having special historical or architectural significance, is at least 50 years old, and is subject to the municipal or county requirements relative to construction, alteration, or repair of the structure to maintain its historical designation.

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 March 9, 2020.

TRD-202001030
James Person
General Counsel
Texas Department of Insurance
Effective date: March 29, 2020
Proposal publication date: November 1, 2019
For further information, please call: (512) 676-6584

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DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

28 TAC §§5.4601, 5.4603, 5.4621, 5.4622, 5.4642

STATUTORY AUTHORITY. TDI adopts amended §§5.4601, 5.4603, 5.4621, 5.4622, and 5.4642 under Insurance Code §§2210.008, 2210.251, 2210.2515, 2210.252, and 36.001.

Insurance Code §2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules to implement Insurance Code Chapter 2210.

Insurance Code §2210.251(b) states that for geographic areas specified by the Commissioner, the Commissioner must adopt by rule the 2003 *International Residential Code* and may adopt subsequent editions of that code and amendments to that code.

Insurance Code §2210.2515 gives TDI the authority to prescribe forms on which a person may apply for a certificate of compliance.

Insurance Code §2210.252 provides that the Commissioner by rule may adopt an edition of the *International Residential Code* and a supplement published by the International Code Council or an amendment to that code.

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.

§5.4601. Definitions.

The following definitions apply to this subchapter:

(1) Applicant--A person who submits a new or renewal application for appointment as an appointed qualified inspector.

(2) Appointed qualified inspector--An engineer licensed by the Texas Board of Professional Engineers and appointed by TDI as a qualified inspector under Insurance Code §2210.254(a)(2).

(3) Appointed qualified inspector number--A number TDI assigns to each appointed qualified inspector.

(4) Constructed or construction--The act of building or erecting a structure or repairing (including reroofing), altering, remodeling, or enlarging an existing structure.

(5) Completed improvement--

(A) An improvement in which the original transfer of title from the builder to the initial owner of the improvement has occurred; or

(B) if a transfer under subparagraph (A) of this paragraph is not contemplated, an improvement that is substantially completed.

(6) Improvement--The construction of or repair (including reroofing), alteration, remodeling, or enlargement of a structure to which the plan of operation applies.

(7) Ongoing improvement--

(A) An improvement in which the original transfer of title from the builder to the initial owner of the improvement has not occurred; or

(B) if a transfer under subparagraph (A) of this paragraph is not contemplated, an improvement that is not substantially completed.

(8) Substantially completed--An improvement for which the final framing stage, including attachment of component and cladding items and installation of windborne debris protection, has been completed. If the improvement's windborne debris protection consists of wood structural panels, all the panels must be present at the improvement's location but need not be installed.

(9) TDI inspector--A qualified inspector authorized under Insurance Code §2210.254(a)(1) and employed by TDI.

(10) TDI--The Texas Department of Insurance.

(11) Texas Board of Professional Engineers and Land Surveyors, Texas Board of Professional Engineers, or TBPE--House Bill 1523, 86th Legislature, Regular Session, 2019, abolished the Texas Board of Professional Land Surveying and transferred its functions to the renamed Texas Board of Professional Engineers and Land Surveyors, effective September 1, 2019. All references to the Texas Board of Professional Engineers or the TBPE in this division are references to the Texas Board of Professional Engineers and Land Surveyors.

(12) Association--The Texas Windstorm Insurance Association.

(13) Windstorm building code standards--The requirements for building construction in §§5.4007 - 5.4012 of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made Prior to September 1, 1998; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After February 1, 2003 and before January 1, 2005; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2005, and before January 1, 2008; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008, and before April 1, 2020; and Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to Which Additions Are Made on or after April 1, 2020; respectively).

§5.4603. Windstorm Inspection Forms.

(a) Inspection Verification, Form WPI-2-BC-6. TDI adopts by reference the Inspection Verification, Form WPI-2-BC-6, effective January 1, 2017, for use in windstorm inspection, for structures constructed, repaired, or to which additions are made on and after January 1, 2008, and before April 1, 2020.

(b) Application, inspection, and renewal forms. TDI will make available the following forms on its website:

(1) Application for Appointment as a Qualified Inspector, Form AQI-1, effective January 1, 2017;

(2) Renewal Application for Appointment as a Qualified Inspector, Form AQI-R, effective January 1, 2017;

(3) Application for Certificate of Compliance for Ongoing Improvement, Form WPI-1, January 1, 2017;

(4) Application Form for Certificate of Compliance (WPI-8) for Completed Improvement, effective April 1, 2020; and

(5) Inspection Verification, Form WPI-2, effective April 1, 2020, for structures constructed, repaired, or to which additions are made on and after April 1, 2020.

(c) TDI inspection and certification forms. When appropriate, TDI will issue the following forms:

(1) Field Form, Form WPI-7, effective April 1, 2020; and

(2) Certificate of Compliance for Ongoing Improvement, Form WPI-8, effective January 1, 2017.

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
Effective date: March 29, 2020
Proposal publication date: November 1, 2019
For further information, please call: (512) 676-6584

CHAPTER 9. TITLE INSURANCE
SUBCHAPTER C. TEXAS TITLE INSURANCE STATISTICAL PLAN

28 TAC §9.401

The Commissioner of Insurance adopts an amendment to 28 TAC §9.401, relating to the Texas Title Insurance Statistical Plan (Statistical Plan). This rule adoption ensures that the Statistical Plan can record all the necessary business transactions in the title industry to set title insurance rates, as required by Insurance Code §2703.153. The amendment is adopted with changes to the proposed text as published in the December 6, 2019, issue of the *Texas Register* (44 TexReg 7486). The rule will be republished. TDI has changed the proposed effective date of January 1, 2020, to April 1, 2020.

REASONED JUSTIFICATION. TDI amends §9.401 to address changes made to title insurance rate rules on June 11, 2019, by Commissioner's Order No. 2019-5980. The Order adopted revisions proposed by the Texas Land Title Association (TLTA) to the rates and rate rules in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

TDI must amend the Statistical Plan to add codes that track the changes to the rate rules made by Commissioner's Order No. 2019-5980. These new codes will enable title insurance agents and companies to accurately report data as a result of the new rate rules. This data is used by the Commissioner to set future title insurance rates. Insurance Code §2703.153(h) requires that any change to the Statistical Plan be established in a rulemaking hearing under Government Code Chapter 2001, Subchapter B. TDI held a hearing in Docket No. 2828 on December 19, 2019, that was attended by representatives of the TLTA. There were no comments at the hearing.

Commissioner's Order No. 2019-5980 amended Rate Rule R-5, *Simultaneous Issuance of Owner's and Loan Policies;* and Rate Rule R-8, *Mortgagee Policy, on a Loan to Take Up, Renew, Extend or Satisfy an Existing Lien(s).* Because the Statistical Plan does not have the appropriate codes for these changes, this adoption is necessary to add them and ensure that the Statistical Plan meets the data collection standards required by Insurance Code §2703.153.

The change to Rate Rule R-5 allowed cash purchasers of property valued at $5 million or more to have up to 90 days to finance the property and not have to pay the full basic rate for the loan policy. Although a simultaneous rate credit existed before, the rule did not allow 90 days to obtain the credit. The Statistical Plan will now have code number 3211 for tracking this transaction. The change to Rate Rule R-8 extends the number of years a discount is available to a consumer who renews a loan policy from seven to eight years after the original policy was issued. The Statistical Plan will now have code number 4008 to account for these renewals.

As proposed, the revision to §9.401 included an effective date of January 1, 2020, for the adoption by reference of the rules in the Texas Title Insurance Statistical Plan. However, because the date included in the proposal has passed, TDI has revised the amendment to §9.401 to make the adoption by reference effective April 1, 2020.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed amendment.

STATUTORY AUTHORITY. TDI adopts the amendment to 28 TAC §9.401 under Insurance Code §2703.153 and §36.001.

Insurance Code §2703.153 requires title insurance companies and agents to submit data to TDI for use in fixing premium rates, and it provides that the Commissioner must regularly evaluate the collected information to determine whether additional or different information is needed. The contents of the statistical report used to collect data, including amendments to the report, must be established in a rulemaking hearing under Government Code, Chapter 2001, Subchapter B.

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.

§9.401. Texas Title Insurance Statistical Plan.

The Texas Department of Insurance adopts by reference the rules in the Texas Title Insurance Statistical Plan as amended effective April 1, 2020. This document is published by and is available from the Texas Department of Insurance, Mail Code 105-5D, P.O. Box 149014, Austin, Texas 78714-9104. This document is also available on the TDI website at www.tdi.texas.gov.

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 March 5, 2020.

TRD-202001001
James Person
General Counsel
Texas Department of Insurance
Effective date: April 1, 2020
Proposal publication date: December 6, 2019
For further information, please call: (512) 676-6584

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§115.10, 115.111, 115.112, 115.119, and 115.421.

Section 115.111 and §115.119 are adopted *with changes* to the proposed text as published in the September 27, 2019, issues of the *Texas Register* (44 TexReg 5564) and will be republished. Sections 115.10, 115.112, and 115.421 are adopted *without changes* to the proposed text and will not be republished.

The amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

The Federal Clean Air Act (FCAA) requires states to submit plans to demonstrate attainment of the National Ambient Air Quality Standards (NAAQS) for ozone nonattainment areas with a classification of moderate or higher. The Dallas-Fort Worth (DFW) 2008 eight-hour ozone nonattainment area, consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, was classified as a moderate nonattainment area for the 2008 eight-hour ozone NAAQS of 0.075 parts per million with a July 20, 2018 attainment date. Based on 2017 monitoring data, the DFW area did not attain the 2008 eight-hour ozone NAAQS and did not qualify for a one-year attainment date extension in accordance with the FCAA, §181(a)(5). On August 23, 2019, the EPA published final notice reclassifying the DFW and Houston-Galveston-Brazoria (HGB) nonattainment areas from moderate to serious for the 2008 eight-hour ozone NAAQS, effective September 23, 2019 (84 FR 44238, August 23, 2019).

With the final reclassification to serious nonattainment, the state is required to submit a SIP revision to fulfill the volatile organic compounds (VOC) reasonably available control technology (RACT) requirements mandated by FCAA, §172(c)(1) and §182(b)(2). Although the eight-county HGB area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) was also reclassified to serious nonattainment for the 2008 eight-hour ozone NAAQS, the commission determined that RACT is in place for all emission source categories in the HGB area; therefore, there are no changes in this adopted rulemaking that affect RACT in the HGB area.

The EPA's *Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements; Final Rule,* published in the *Federal Register* on March 6, 2015, (80 FR 12264), specifies an attainment date of July 20, 2021, for serious nonattainment areas. FCAA, §172(c)(1) requires the state to submit a SIP revision that incorporates all reasonably available control measures, including RACT, for sources of relevant pollutants. FCAA, §182(b)(2) requires the state to submit a SIP revision that implements RACT for all emission sources addressed in Control Techniques Guideline (CTG) and all non-CTG major sources of VOC, including emission sources covered in an Alternative Control Technology (ACT) document. The EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979).

Depending on the classification of an area designated nonattainment for a NAAQS, the major source threshold that determines what sources are subject to RACT requirements varies. Under the 1997 eight-hour ozone NAAQS, the DFW area consisted of nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) and was classified as a serious nonattainment area. The EPA's implementation rule for the 2008 eight-hour ozone NAAQS requires retaining the most stringent major source emission threshold for sources in an area to prevent backsliding (80 FR 12264). For this reason, the major source emission threshold for those nine counties remains at the level required for serious nonattainment areas, which is actual VOC emissions or the potential to emit (PTE) VOC emissions of 50 tons per year (tpy). Wise County was not part of the DFW 1997 eight-hour ozone NAAQS nonattainment area but was included as part of the DFW 2008 eight-hour ozone NAAQS nonattainment area; therefore, the major source threshold for Wise County was based on a classification of moderate nonattainment under the 2008 standard, which is actual VOC emissions or the PTE VOC emissions of 100 tpy. With the reclassification of the DFW area to serious nonattainment under the 2008 eight-hour ozone NAAQS, the major source emission threshold for all 10 counties, including Wise County, is actual VOC emissions or the PTE of 50 tpy of VOC emissions. The adopted rulemaking implements RACT in Wise County to reflect this change in the threshold for major sources in Wise County.

The adopted rulemaking revises Chapter 115, Subchapter B, Division 1, Storage of Volatile Organic Compounds, to implement VOC RACT for major source fixed roof oil and condensate storage tanks in Wise County. A previous DFW VOC RACT rulemaking (Rule Project Number 2013-048-115-AI, 40 TexReg 3907, June 19, 2015) addressed CTG RACT for this source category. The adopted revisions address major source storage tanks in Wise County by requiring fixed roof oil and condensate tanks with at least 50 tpy of uncontrolled actual VOC emissions from flashed gasses to operate a control device achieving at least 95% efficiency. In addition, these newly affected storage tanks are required to comply with associated inspection, repair, testing, and recordkeeping requirements. The commission anticipates most potentially affected tank batteries to have controls. Insignificant emissions reductions are anticipated from this rulemaking. RACT requirements must be complied with by no later than the attainment date for the DFW serious nonattainment area, July 20, 2021. The adopted amendments ensure that FCAA VOC RACT is in place for the DFW area. The commission invited comment on the technological and economic feasibility of the proposed RACT rule revisions in Chapter 115, Subchapter B, Division 1. One comment was received from EPA regarding RACT for VOC storage tanks in the HGB area. The comment is addressed in the Response to Comments section of this preamble.

The commission is not adopting amendments to implement RACT for other emission source categories based on a determination, after analyzing the point source emissions inventory, Title V permits, new source review permits, and central registry databases, that there would be no other affected sources that would meet the rule applicability or that would be affected by the rule requirements. As part of this rulemaking, the commission is adopting technical revisions intended to correct inadvertent errors in Chapter 115, Subchapter E, Division 2, Surface Coating Processes, made during a previous RACT rulemaking (Rule Project Number 2013-048-115-AI), to ensure consistency with the agency's intent. The adopted technical corrections to §115.421 clarify the language used in the emission specifications tables for surface coating processes. Non-substantive revisions are also adopted as part of this rulemaking that remove obsolete language within the sections of the chapter that are open for this rulemaking. The commission has determined that the adopted revisions do not negatively affect the status of the state's progress towards attainment with the ozone NAAQS, do not interfere with control measures, and do not prevent reasonable further progress toward attainment of the ozone NAAQS, as required in FCAA, §110(l).

Section by Section Discussion

Although the purpose of this rulemaking is to implement RACT for the DFW 2008 eight-hour ozone nonattainment area, the commission is also revising portions of the rules to make technical corrections to surface coating emission specifications. These technical corrections clarify the rules to be consistent with the agency's original intent. The specific changes are discussed in greater detail in this Section by Section Discussion in the corresponding portions related to the affected rule sections. The commission requested comment on any instance in which the technical corrections would not achieve the commission's intended original intent of the rule, but none were received pertaining to this matter

Subchapter A, Definitions

§115.10, Definitions

The adopted rulemaking amends §115.10(10) to remove obsolete language concerning Wise County's inclusion in the list of attainment counties. The language indicating that, beginning January 1, 2017, Wise County would no longer be considered a covered attainment county is no longer necessary since that date has passed and Wise County is included in the definition for the DFW area in §115.10(11). The commission also adopts removal from the §115.10(10) definition the language concerning Wise County's nonattainment designation for the

2008 eight-hour ozone NAAQS no longer being legally effective upon the commission publishing notice in the *Texas Register.* The litigation concerning Wise County's attainment status is complete, and Wise County remains designated nonattainment for the 2008 eight-hour ozone NAAQS. The removal of this language allows for greater clarity in the definitions and removes any doubt concerning the nonattainment status of Wise County.

The adopted rulemaking amends §115.10(11)(C) to remove obsolete language concerning the removal of Wise County from the definition of the DFW area. Wise County is a part of the DFW area and is included in the definition of the area along with Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties. The commission adopts the removal of the language in paragraph (11)(C) stating that Wise County is no longer included in the definition of the DFW area upon publication in the *Texas Register* by the commission that the nonattainment designation for the 2008 eight-hour ozone NAAQS for Wise County is no longer legally effective. As with the language in paragraph (10), the litigation concerning Wise County's attainment status is complete, and the commission adopts the removal of this language.

Subchapter B, General Volatile Organic Compound Sources

Division 1, Storage of Volatile Organic Compounds

The adopted rulemaking amends Chapter 115, Subchapter B, Division 1, to implement RACT requirements for the DFW area under the 2008 eight-hour ozone NAAQS. These adopted amendments lower the major source threshold for Wise County to 50 tpy of uncontrolled flash emissions for fixed roof oil and condensate storage tanks to be consistent with the major source threshold for a serious nonattainment area. The other counties in the DFW area are currently subject to a 50 tpy major source threshold due to a serious nonattainment classification under the 1997 eight-hour ozone NAAQS. The adopted rulemaking updates exemptions, control requirements, and compliance schedules in Subchapter B, Division 1 as well as makes any necessary edits and corrections to outdated or incorrect language. Although no changes are adopted for the inspection and repair requirements in §115.114, the requirements in §115.114(a)(5) reference the flash gas provisions in §115.112(e) and apply to the storage tanks newly affected by this adopted rulemaking.

§115.111, Exemptions

The commission adopts the amended exemptions under §115.111(a)(13) to change the condensate throughput limit required for an exemption for a storage tank or tank battery in Wise County storing condensate prior to custody transfer. If an owner or operator qualifies for this exemption, routing flashed gasses to a vapor control system for fixed roof tanks or aggregate of tanks in a tank battery is not required. The throughput limit required for an exemption is lowered from 6,000 barrels (252,000 gallons) to 3,000 barrels (126,000 gallons) of condensate throughput per year on a rolling 12-month basis beginning July 20, 2021, the date specified in §115.119(f) of the compliance schedule. The adopted amendment to this rule also states that, on or after July 20, 2021, the owner or operator of a storage tank or tank battery that exceeds the new 3,000-barrel throughput limit may be exempt from the requirements in §115.112(e)(4)(C)(ii). This exemption may be granted only if the owner or operator demonstrates, using the test methods found in §115.117, that the uncontrolled VOC emissions are less than 50 tpy on a rolling 12-month basis. The amendment to this exemption is needed to reflect the new major source threshold for sources required to implement RACT in Wise County. This new limit ensures that RACT is in place for storage tanks storing condensate in Wise County consistent with the RACT requirements for the other nine DFW area counties covered under the exemption in subsection (a)(10). The commission adopts changes to the proposal for this section by removing the proposed language within §115.111(a)(12) and including it in adopted §115.111(a)(13) for better clarity.

§115.112, Control Requirements

The commission adopts the amended control requirements under §115.112(e)(4)(C) and (5)(C). This amendment is needed to update the control requirements for VOC storage tanks to implement RACT in Wise County as part of the DFW serious ozone nonattainment area. The other nine counties in the DFW area are currently subject to major source RACT requirements due to a previous serious nonattainment classification under the 1997 eight-hour ozone NAAQS. This adopted amendment establishes a new, lower major source threshold for fixed roof oil and condensate VOC storage tanks in Wise County and ensures RACT is in place, as required under FCAA, §182(b).

The adopted amendment to §115.112(e)(4)(C) creates clauses (i) and (ii). The adopted clauses accommodate the transition from the current threshold of 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis to the new threshold of 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis on July 20, 2021. The addition of §115.112(e)(4)(C)(i) maintains the current standard for fixed roof tanks storing condensate and requires that flashed gases be routed to a vapor control system if the condensate throughput of an individual tank or the aggregate of tanks in a tank battery exceeds 6,000 barrels per year on a rolling 12-month basis. This clause applies only until the proposed July 20, 2021 compliance deadline, which is found under §115.119(f) in the compliance schedules and is the deadline for the RACT requirements adopted in this rulemaking. Accordingly, the addition of §115.112(e)(4)(C)(ii) sets the new standard for fixed roof tanks storing condensate and requires that flashed gases be routed to a vapor control system if the condensate throughput of an individual tank or the aggregate of tanks in a tank battery exceeds 3,000 barrels per year on a rolling 12-month basis. This clause applies beginning on the date specified in §115.119(f), or July 20, 2021, and ensures RACT is in place for major sources in Wise County. The commission is using 6,000 barrels and 3,000 barrels per year thresholds because this equates to 100 tons and 50 tons of VOC emissions per year, respectively, using the 33.3 pound per barrel emission factor.

The adopted amendment to §115.112(e)(5)(C) creates clauses (i) and (ii). The clauses accommodate the transition from the current threshold of 100 tpy condensate throughput per year on a rolling 12-month basis to the new threshold of 50 tpy condensate on a rolling 12-month basis on July 20, 2021. Specifically, §115.112(e)(5)(C)(i) indicates that, for a fixed roof storage tank storing oil or condensate, flashed gases must be routed to a vapor control system if the uncontrolled VOC emissions from an individual storage tank, from the aggregate of storage tanks in a tank battery, or from the aggregate of the storage tanks at a pipeline breakout station equal or exceed 100 tpy on a rolling 12-month basis. This clause applies only until the July 20, 2021 compliance deadline, which is found in the compliance schedules under adopted §115.119(f) and is the deadline for the RACT requirements adopted in this rulemaking. Section 115.112(e)(5)(C)(ii) indicates that, for a fixed roof storage tank

storing oil or condensate, flashed gases must be routed to a vapor control system if the uncontrolled VOC emissions from an individual storage tank, from the aggregate of storage tanks in a tank battery, or from the aggregate of the storage tanks at a pipeline breakout station equal or exceed 50 tpy. This adopted clause applies beginning on the date specified in adopted §115.119(f), or July 20, 2021, and ensures RACT is in place for major sources in Wise County.

§115.119, Compliance Schedules

The commission is amending compliance schedules found in existing §115.119(f) for Wise County. This adopted amendment specifies that in Wise County, the owner or operator of each VOC storage tank is required to be in compliance with the division by January 1, 2017, which was the compliance date associated with the previous RACT rulemaking (Rule Project Number 2013-048-115-AI). Adopted subsection (f) further specifies that owners or operators must comply with the updated exemption in §115.111(a)(13) and updated control requirements in §115.112(e)(4)(C)(ii) and (5)(C)(ii) no later than July 20, 2021, which is the attainment date for the DFW serious nonattainment area. The commission adopts changes to the proposed rule language for this section in order to comply with corrections made to §115.111. In addition, the proposed changes to subsection (f) included incorrect cross references to the two new provisions in §115.112. The commission adopts corrections to the proposed rule language to correctly reference §115.112(e)(4)(C)(ii) and (5)(C)(ii).

Subchapter E, Solvent-Using Processes

Division 2, Surface Coating Processes

§115.421, Emission Specifications

The commission adopts the amended table in §115.421(8)(A), to add the phrase "Minus Water and Exempt Solvent" to the "Coating Type" column heading, making this concept applicable to each of the surface coating types listed for regulation. The commission also adopts the amended table in §115.421(8)(A) to correct an inadvertent error made to the emission limits applicable to the surface coating of miscellaneous metal parts and products during a previous Chapter 115 VOC RACT rulemaking (Rule Project Number 2013-048-115-AI). As a result of that rulemaking, the contents of §115.421 were significantly reformatted to improve readability and enhance the clarity of that rule. Part of the reformat was transferring the four miscellaneous metal parts and products surface coating emission limits from a list to a table. The accompanying preamble discussion indicated that only changes to formatting were made and that no substantive changes to the requirements for this coating category were intended to be made. Prior to this adopted format change, determining compliance with the coating emission limits was on a pounds of VOC per gallon of coating, minus water and exempt solvent, basis. The adopted change adds the text "Minus Water and Exempt Solvent" to ensure the intent of this rule requirement is upheld. The existing miscellaneous metal parts and products emission specifications apply to affected surface coaters in the Beaumont-Port Arthur area, El Paso area, and Gregg, Nueces, and Victoria Counties, and in limited situations in the DFW and HGB areas. Most miscellaneous metal parts and products surface coaters in the DFW and HGB areas affected by the Chapter 115 rules are subject to the rules in Chapter 115, Subchapter E, Division 5. Because this change is to correct a previous error, no practical or RACT impact is expected to result from this rule clarification.

The commission adopts amendments to the table in §115.421(12), to remove the phrase "Minus Water and Exempt Solvent" from the heading of the "Coating Type" column and place it beside each of the coating types listed, except for the wipe-down solutions category. Similar to the miscellaneous metal parts and products surface coating requirements, the commission adopts the amended table in §115.421(12) to correct an inadvertent error made to the vehicle refinishing wipe-down solution emission specification made during a previous Chapter 115 VOC RACT rulemaking (Rule Project Number 2013-048-115-AI). Part of the reformat was transferring all the vehicle refinishing surface coating emission limits from a list to a table. The accompanying preamble discussion indicated that only changes to formatting would be made and that no substantive changes to the requirements for this coating category were intended to be made. Prior to this adopted format change, determining compliance with the wipe-down solution emission limit was on a pound of VOC per gallon of solution basis, evidenced by the omission of "excluding water and exempt solvent." While all the other surface coating types regulated under the vehicle refinishing category are calculated without the inclusion of water and exempt solvent, wipe-down solutions should be calculated with water and exempt solvent included. However, the table currently requires compliance on a pound of VOC per gallon of solution basis, excluding water and exempt solvent. The adopted change adds the text "minus water and exempt solvent" to all coating categories listed in the table except the wipe-down solution category to ensure the intent of this particular rule requirement is upheld. The existing vehicle refinishing emission specifications apply to affected surface coaters in the HGB and El Paso areas in addition to the DFW area. Because this change corrects a previous error, no practical or RACT impact is expected to result from this rule clarification.

Final Regulatory Impact Analysis Determination

The commission reviewed the amendments in light of the Regulatory Impact Analysis (RIA) requirements of Texas Government Code, §2001.0225, and determined that the amendments do not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if they did meet the definition, would not be subject to the requirement to prepare an RIA.

A "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the adopted rulemaking is to revise Chapter 115, Subchapter B, Division 1, to update the approved RACT requirements in the DFW 2008 eight-hour ozone nonattainment area. These adopted requirements lower the major source threshold for Wise County to 50 tpy of actual uncontrolled flash emissions for fixed roof oil and condensate storage tanks to be consistent with the major source threshold for a serious nonattainment area. Generally, the commission expects the requirements to place minimal burden on affected owners and operators and that the compliance date provides an adequate amount of time for these owners and operators to make all necessary installations and adjustments for compliance purposes.

The commission also adopts changes to two tables in Chapter 115, Subchapter E, Division 2, to correct inadvertent errors made to the emission limits applicable to the surface coating of mis-

cellaneous metal parts and products and to vehicle refinishing wipe-down solution emission specifications. These errors were made during a previous Chapter 115 VOC RACT rulemaking (Rule Project Number 2013-048-115-AI). During that rulemaking, the contents of these tables were significantly reformatted to improve readability and enhance the clarity of the rule. The accompanying preamble discussion indicated that only changes to formatting were being made and that no substantive changes to the requirements for these categories were intended to be made. The changes adopted with this rulemaking ensure the intent of the rule requirement is upheld. These emission specifications apply to affected surface coaters in the Beaumont-Port Arthur area, El Paso area, and Gregg, Nueces, and Victoria Counties and in limited situations in the DFW and HGB areas. Because this change is to correct a previous error, no practical or RACT impact is expected to result from this rule clarification.

As discussed in the Fiscal Note: Costs to State and Local Government section of the proposed preamble, the adopted rulemaking is not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with these federal standards on 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.

Additionally, this rulemaking does not meet any of the four applicability criteria for requiring an RIA for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking updates RACT requirements for crude oil and condensate storage tanks in the DFW area and corrects errors in two tables for requirements for specific surface coating types and wipe-down solution types listed for regulation in the tables.

The FCAA requires states to submit plans to demonstrate attainment of the NAAQS for nonattainment areas with a classification of moderate or higher. The DFW 2008 eight-hour ozone moderate nonattainment area failed to attain the 2008 standard by the July 20, 2018 attainment date for moderate areas and did not qualify for a one-year attainment date extension in accordance with the FCAA, §181(a)(5). On August 23, 2019, the EPA published final notice reclassifying the DFW and HGB nonattainment areas from moderate to serious for the 2008 eight-hour ozone NAAQS, effective September 23, 2019 (84 FR 44238, August 23, 2019). With the final reclassification to serious nonattainment, the state is required to submit a SIP revision to fulfill the VOC RACT requirements mandated by FCAA, §172(c)(1) and §182(b)(2). This includes a SIP revision that implements RACT for all emission sources addressed in a CTG and all non-CTG major sources of VOC, including emission sources covered in an ACT document.

Depending on the classification of an area designated nonattainment for an ozone NAAQS, the major source threshold that determines what sources are subject to RACT requirements varies. The EPA's implementation rule for the 2008 eight-hour ozone NAAQS requires retaining the most stringent major source emission threshold level for sources in an area to prevent backsliding (80 FR 12264). For these reasons, the nine DFW area counties that were designated nonattainment under the 1997 eight-hour ozone NAAQS and classified as serious (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) retain the major source emission threshold of a PTE of 50 tpy of VOC. Wise County, which was first designated nonattainment under the 2008 eight-hour ozone NAAQS, is currently subject to a major source threshold for moderate nonattainment areas, or actual VOC emissions or a PTE of 100 tpy of VOC. With the reclassification of the 10-county DFW 2008 eight-hour ozone NAAQS nonattainment area from moderate to serious, the major source emission threshold for Wise County lowered to the actual VOC emissions or the PTE of 50 tpy of VOC. This adopted rulemaking implements RACT in Wise County to reflect this change in the major source threshold for Wise County.

The adopted rulemaking revises Chapter 115, Subchapter B, Division 1, to implement VOC RACT for major source fixed roof oil and condensate storage tanks in Wise County. A previous DFW VOC RACT rulemaking (Rule Project Number 2013-048-115-AI) addressed CTG RACT for this source category. This adopted rulemaking addresses major source storage tanks in Wise County by requiring fixed roof oil and condensate tanks with at least 50 tpy of actual uncontrolled VOC emissions from flashed gasses to operate a control device achieving at least 95% efficiency. In addition, these newly affected storage tanks are required to comply with associated inspection, repair, testing, and recordkeeping requirements. Compliance with RACT requirements must be achieved by no later than July 20, 2021. The adopted rule amendments ensure that the FCAA mandates for VOC RACT are in place for all counties in the DFW eight-hour ozone nonattainment area for the 2008 eight-hour ozone NAAQS.

The adopted rulemaking implements the requirements of 42 United States Code (USC), §7410, that states adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410, generally does not require specific programs, methods, or reductions in order to meet the standards, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as, schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85, Air Pollution Prevention and Control). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule. The adopted rulemaking revises rules in Chapter 115, Subchapter B, Division 1, to update the approved RACT requirements for major source crude oil and condensate storage tanks in the DFW 2008 eight-hour ozone nonattainment area and correct previous errors in two tables for

requirements for specific surface coating types and wipe-down solution types listed for regulation in the tables.

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

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts rulemaking to revise the SIP. The legislature is presumed to understand this federal scheme. If each rule adopted for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every rulemaking to revise the SIP would require the full RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full RIA for rulemaking that is extraordinary in nature. While the rulemaking included in the SIP will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rulemakings adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

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

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

The specific intent of the adopted rulemaking is to update the approved RACT requirements for major source crude oil and condensate storage tanks in the DFW 2008 eight-hour ozone nonattainment area and correct previous errors in two tables for requirements for specific surface coating types and wipe-down solution types listed for regulation in the tables. The adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this adopted rulemaking. Therefore, this adopted rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because it does not meet the definition of a "Major environmental rule;" it also does not meet any of the four applicability criteria for a major environmental rule.

The commission invited public comment regarding the draft RIA determination during the public comment period. No oral or written comments were received regarding the RIA determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. For nonattainment areas classified as moderate and above, FCAA, §172(c)(1) and §182(b)(2), requires the state to submit a SIP revision that implements RACT for all major stationary sources of VOC. The specific purpose of the adopted rulemaking is to revise rules in Chapter 115, Subchapter B, Division 1, to update the approved RACT requirements for major source crude oil and condensate storage tanks in the DFW 2008 eight-hour ozone nonattainment area based on a serious classification. The adopted rulemaking also corrects errors made in a previous rulemaking to two tables in Chapter 115, Subchapter E, Division 2. This adopted rulemaking clarifies requirements for specific surface coating types and wipe-down solution types listed for regulation. Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007, does not apply to this adopted rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007, does not apply to this adopted rulemaking because this is an action that is taken in response to a real and substantial threat to public health and safety; is designed to significantly advance the health and safety purpose; and does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). The adopted rulemaking fulfills the FCAA requirement to implement RACT in nonattainment areas. These revisions will result in VOC emission reductions in ozone nonattainment areas that may contribute to the timely attainment of the ozone standard and reduced public exposure to VOC. Consequently, the adopted rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13).

For these reasons, Texas Government Code, Chapter 2007, does not apply to this adopted rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No oral or written comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 115 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 115 requirements.

Public Comment

The commission offered a public hearing in Houston on October 14, 2019, and in Arlington on October 17, 2019. The comment period closed on October 28, 2019. The commission received comments from EPA on this rulemaking. The commission also received comments pertaining to DFW and HGB RACT that were submitted only for the proposed DFW 2008 Ozone Serious AD SIP (2019-078-SIP-NR) and the proposed HGB 2008 Ozone Serious AD SIP (2019-078-SIP-NR). Those comments and the commission's responses can be found in the response to comment for those SIP Projects.

Response to Comments

Comment

The EPA supported removing the language that includes Wise County in the list of counties under the "Covered attainment counties" definition in §115.10(10) as well as the language that excludes Wise County from the "Dallas-Fort Worth area" definition in §115.10(11)(C).

Response

The commission appreciates the support for the proposed changes to Chapter 115. No changes were made in response to this comment.

Comment

The EPA recommended removing the phrase "except in Wise County" from §§115.122(a)(3)(B); 115.420(a)(9), (10) - (15); 115.427(9); and 115.440(b)(8)(A) and (C) to make those rules applicable to sources in Wise County or providing a justification for the exceptions in each instance. The EPA also commented that Wise County is not included in the listing of affected counties for the Industrial Wastewater rules in §115.149 and recommended providing an acceptable justification.

Response

The VOC RACT analysis conducted for Wise County did not result in identification of potentially affected sources covered by the rules the EPA specified. The commission has provided a negative declaration for these CTG emission source categories in Appendix F of the DFW Serious Classification Attainment Demonstration SIP revision, that was proposed concurrently with this rulemaking. The commission did not open the rules referenced in the EPA's comment as part of this rulemaking project and is, therefore, prohibited from making any changes to those sections at adoption. The TCEQ may conduct reviews, as appropriate, of VOC emissions sources in Wise County to determine if the rules in Chapter 115 need to be revised to implement RACT in the future. No changes were made in response to this comment.

Comment

The EPA recommended eliminating language that would remove Wise County from applicability to the rules in §§115.129(g), 115.219(g), 115.239(e), 115.359(e), 115.419(f), 115.429(f), 115.449(i), 115.459(d), 115.469(d), 115.479(d), and 115.519(e) upon notice in the *Texas Register* that the Wise County nonattainment designation under the 2008 eight-hour ozone NAAQS is no longer legally effective.

Response

The suggested changes are beyond the scope of this rulemaking. The commission did not propose any changes to the sections cited by the EPA and is prohibited from making changes to those sections at adoption. The referenced language was included due to litigation related to Wise County's attainment status under the 2008 eight-hour ozone NAAQS, which is now resolved. Similar language is removed in this adopted rulemaking from sections that were opened for this rule project, but the commission did not open sections solely to remove this obsolete language. The referenced language may be removed from affected sections of Chapter 115 when those sections are opened in a future rulemaking. No changes were made in response to this comment.

Comment

The EPA recommended removing language in §115.440(b)(8)(C) that identifies 100 tpy of VOC as the major source threshold. Similarly, the EPA recommended altering the minor printing source definition in §115.440(b)(9)(C) to include Wise County in the applicability of the rule.

Response

The commission did not open the rules referenced in the EPA's comment as part of this rulemaking project and is, therefore, prohibited from making any changes to those sections at adoption. The terms major printing source and minor printing source in §115.440(b) were incorporated in the rule during a previous rulemaking for purposes other than applicability for major source RACT. During the 2010 rulemaking (36 TexReg 8897) to implement 2006 Offset Lithographic and Letterpress Printing CTG RACT recommendations, the commission adopted RACT for this category for sources with at least three tpy of VOC emissions, as recommended in the 2006 CTG. Prior to the 2010 rulemaking, the offset lithographic printing rules in 30 TAC Chapter 115, Subchapter E, Division 4, were originally adopted in 1993 (18 TexReg 8538) to be consistent with the 1993 draft Offset Lithographic Printing CTG (EPA-453/D-95-001) and applied only to major sources. In the 2006 CTG, one of the VOC limits recommended was less stringent than the VOC limit for the same

solution recommendation in the 1993 draft CTG, and for that reason, adopted in the Chapter 115 rules. Therefore, the commission retained the more stringent limit in the existing rules at the time of rulemaking to incorporate the 2006 CTG recommendations to prevent backsliding for major printing sources that were already subject to the rules. Similarly, there were different exemptions recommended in the 2006 CTG and the commission used the major and minor printing sources in §115.441 to ensure that the newer exemptions were not applied to sources subject to the Chapter 115 offset lithographic printing rule prior to the 2010 rulemaking. Although formatted in a way that creates a separation in rule applicability, all offset lithographic printers subject to the rule, regardless of whether defined as a major or minor printing source, must comply with VOC emission limits that are at least as stringent as the 2006 CTG. Furthermore, the commission did not identify any offset lithographic printers at or above 50 tpy of VOC emissions, the major source threshold for the DFW area under the 2008 eight-hour ozone NAAQS, as part of the Wise County VOC RACT analysis. The commission contends that RACT is satisfied for the offset lithographic emission source category. The commission makes no changes in response to this comment.

SUBCHAPTER A. DEFINITIONS

30 TAC §115.10

Statutory Authority

The amended section is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended section is also adopted under the Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021 and FCAA, 42 USC, §§7401 *et seq.*

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 March 6, 2020.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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SUBCHAPTER B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES
DIVISION 1. STORAGE OF VOLATILE ORGANIC COMPOUNDS

30 TAC §§115.111, 115.112, 115.119

Statutory Authority

The amended sections are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended sections are also adopted under the Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021 and FCAA, 42 USC, §§7401 *et seq.*

§115.111. Exemptions.

(a) The following exemptions apply in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions),

except as noted in paragraphs (2), (4), (6), (7), and (9) - (11) of this subsection.

(1) Except as provided in §115.118 of this title (relating to Recordkeeping Requirements), a storage tank storing volatile organic compounds (VOC) with a true vapor pressure less than 1.5 pounds per square inch absolute (psia) is exempt from the requirements of this division.

(2) A storage tank with storage capacity less than 210,000 gallons storing crude oil or condensate prior to custody transfer in the Beaumont-Port Arthur or El Paso areas is exempt from the requirements of this division. This exemption no longer applies in the Dallas-Fort Worth area beginning March 1, 2013.

(3) A storage tank with a storage capacity less than 25,000 gallons located at a motor vehicle fuel dispensing facility is exempt from the requirements of this division.

(4) A welded storage tank in the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas with a mechanical shoe primary seal that has a secondary seal from the top of the shoe seal to the tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.

(5) An external floating roof storage tank storing waxy, high pour point crude oils is exempt from any secondary seal requirements of §115.112(a), (d), and (e) of this title (relating to Control Requirements).

(6) A welded storage tank in the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas storing VOC with a true vapor pressure less than 4.0 psia is exempt from any external floating roof secondary seal requirement if any of the following types of primary seals were installed before August 22, 1980:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(7) A welded storage tank in the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas storing crude oil with a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia is exempt from any external floating roof secondary seal requirement if any of the following types of primary seals were installed before December 10, 1982:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(8) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

(9) In the Houston-Galveston-Brazoria area, a storage tank or tank battery storing condensate, as defined in §101.1 of this title (relating to Definitions), prior to custody transfer with a condensate throughput exceeding 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(d)(4) or (e)(4)(A) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title (relating to Approved Test Methods), that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 25 tons per year on a rolling 12-month basis.

(10) In the Dallas-Fort Worth area, except Wise County, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(B)(i) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 50 tons per year on a rolling 12-month basis. This exemption no longer applies 15 months after the date the commission publishes notice in the *Texas Register* as specified in §115.119(b)(1)(C) of this title (relating to Compliance Schedules) that the Dallas-Fort Worth area has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard.

(11) In the Dallas-Fort Worth area, except in Wise County, on or after the date specified in §115.119(b)(1)(C) of this title, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(B)(ii) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 25 tons per year on a rolling 12-month basis.

(12) In Wise County, prior to July 20, 2021, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(C) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 100 tons per year on a rolling 12-month basis.

(13) In Wise County, on or after July 20, 2021, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(C) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 50 tons per year on a rolling 12-month basis.

(b) The following exemptions apply in Gregg, Nueces, and Victoria Counties.

(1) Except as provided in §115.118 of this title, a storage tank storing VOC with a true vapor pressure less than 1.5 psia is exempt from the requirements of this division.

(2) A storage tank with storage capacity less than 210,000 gallons storing crude oil or condensate prior to custody transfer is exempt from the requirements of this division.

(3) A storage tank with storage capacity less than 25,000 gallons located at a motor vehicle fuel dispensing facility is exempt from the requirements of this division.

(4) A welded storage tank with a mechanical shoe primary seal that has a secondary seal from the top of the shoe seal to the tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.

(5) An external floating roof storage tank storing waxy, high pour point crude oils is exempt from any secondary seal requirements of §115.112(b) of this title.

(6) A welded storage tank storing VOC with a true vapor pressure less than 4.0 psia is exempt from any external secondary seal requirement if any of the following types of primary seals were installed before August 22, 1980:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(7) A welded storage tank storing crude oil with a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia is exempt from any external secondary seal requirement if any of the following types of primary seals were installed before December 10, 1982:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(8) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

(c) The following exemptions apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties.

(1) A storage tank storing VOC with a true vapor pressure less than 1.5 psia is exempt from the requirements of this division.

(2) Slotted guidepoles installed in a floating roof storage tank are exempt from the provisions of §115.112(c) of this title.

(3) A storage tank with storage capacity between 1,000 gallons and 25,000 gallons is exempt from the requirements of §115.112(c)(1) of this title if construction began before May 12, 1973.

(4) A storage tank with storage capacity less than or equal to 420,000 gallons is exempt from the requirements of §115.112(c)(3) of this title.

(5) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

§115.119. Compliance Schedules.

(a) In Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, the compliance date has passed and the owner or operator of each storage tank in which any volatile organic compounds (VOC) are placed, stored, or held shall continue to comply with this division except as follows.

(1) The affected owner or operator shall comply with the requirements of §§115.112(d); 115.115(a)(1), (2), (3)(A), and (4); 115.117; and 115.118(a) of this title (relating to Control Requirements; Monitoring Requirements; Approved Test Methods; and Recordkeeping Requirements, respectively) no later than January 1, 2009. Section 115.112(d) of this title no longer applies in the Houston-Galveston-Brazoria area beginning March 1, 2013. Prior to March 1, 2013, the owner or operator of a storage tank subject to §115.112(d) of this title shall continue to comply with §115.112(d) of this title until compliance has been demonstrated with the requirements of §115.112(e)(1) - (6) of this title. Section 115.112(e)(3)(A)(i) of this title no longer applies beginning July 20, 2018.

(A) If compliance with these requirements would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied and degassed but no later than January 1, 2017.

(B) The owner or operator of each storage tank with a storage capacity less than 210,000 gallons storing crude oil and condensate prior to custody transfer shall comply with the requirements of this division no later than January 1, 2009, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(2) The affected owner or operator shall comply with §§115.112(e)(1) - (6), 115.115(a)(3)(B), (5), and (6), and 115.116 of this title (relating to Testing Requirements) as soon as practicable, but no later than March 1, 2013. Section 115.112(e)(3)(A)(i) of this title no longer applies beginning July 20, 2018. Prior to July 20, 2018, the owner or operator of a storage tank subject to §115.112(e)(3)(A)(i) of this title shall continue to comply with §115.112(e)(3)(A)(i) of this title until compliance has been demonstrated with the requirements of §115.112(e)(3)(A)(ii) of this title. After July 20, 2018, the owner or operator of a storage tank is subject to §115.112(e)(3)(A)(ii) of this title.

(A) If compliance with these requirements would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied and degassed but no later than January 1, 2017.

(B) The owner or operator of each storage tank with a storage capacity less than 210,000 gallons storing crude oil and condensate prior to custody transfer shall comply with these requirements no later than March 1, 2013, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(3) The affected owner or operator shall comply with §§115.112(e)(3)(A)(ii), 115.112(e)(7), 115.118(a)(6)(D) and (E), and 115.114(a)(5) of this title (relating to Inspection and Repair Requirements) as soon as practicable, but no later than July 20, 2018.

(b) In Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division on or before March 1, 2009, and shall continue to comply with this division, except as follows.

(1) The affected owner or operator shall comply with §§115.112(e), 115.115(a)(3)(B), (5), and (6), 115.116, and 115.118(a)(6) of this title as soon as practicable, but no later than March 1, 2013.

(A) If compliance with §115.112(e) of this title would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied and degassed but no later than December 1, 2021.

(B) The owner or operator of a storage tank with a storage capacity less than 210,000 gallons storing crude oil and condensate prior to custody transfer shall comply with these requirements no later than March 1, 2013, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(C) As soon as practicable but no later than 15 months after the commission publishes notice in the *Texas Register* that the Dallas-Fort Worth area, except Wise County, has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard the owner or operator of a storage tank storing crude oil or condensate prior to custody transfer or at a pipeline breakout station is required to be in compliance with the control requirements in §115.112(e)(4)(B)(ii) and (5)(B)(ii) of this title except as specified in §115.111(a)(11) of this title (relating to Exemptions).

(2) The owner or operator is no longer required to comply with §115.112(a) of this title beginning March 1, 2013.

(3) The affected owner or operator in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties shall comply with §§115.112(e)(7), 115.114(a)(5), and 115.118(a)(6)(D) and (E) of this title as soon as practicable, but no later than January 1, 2017.

(c) In Hardin, Jefferson, and Orange Counties, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by March 7, 1997, and shall continue to comply with this division, except that compliance with §115.115(a)(3)(B), (5), and (6), and §115.116 of this title is required as soon as practicable, but no later than March 1, 2013.

(d) In El Paso County, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by January 1, 1996, and shall continue to comply with this division, except that compliance with §115.115(a)(3)(B), (5), and (6), and §115.116 of this title is required as soon as practicable, but no later than March 1, 2013.

(e) In Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by July 31, 1993, and shall continue to comply with this division, except that compliance with §115.116(b) of this title is required as soon as practicable, but no later than March 1, 2013.

(f) In Wise County, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by January 1, 2017, and shall continue to comply with this division, except that compliance with §115.111(a)(13) and §115.112(e)(4)(C)(ii) and (5)(C)(ii) of this title is required as soon as practicable, but no later than July 20, 2021.

(g) The owner or operator of each storage tank in which any VOC is placed, stored, or held that becomes subject to this division on or after the date specified in subsections (a) - (f) of this section, shall comply with the requirements in this division no later than 60 days after becoming subject.

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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Robert Martinez
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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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SUBCHAPTER E. SOLVENT-USING PROCESSES

DIVISION 2. SURFACE COATING PROCESSES

30 TAC §115.421

Statutory Authority

The amended section is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended section is also adopted under the Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit SIP revisions that specify the manner in which the National Ambient Air Quality Standard will be achieved and maintained within each air quality control region of the state.

The amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021 and FCAA, 42 USC, §§7401 *et seq.*

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 117. CONTROL OF AIR POLLUTION FROM NITROGEN COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§117.10, 117.403, 117.8000, and 117.9030. The commission withdraws the amendment to §117.400.

The amendments to §117.403 and §117.9030 are adopted *with changes* to the proposed text as published in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5582) and, therefore, will be republished. The amendments to §117.10 and

§117.8000 are adopted *without changes* to the proposed text and, therefore, will not be republished.

The adopted amendments will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

The Federal Clean Air Act (FCAA) requires states to submit plans to demonstrate attainment of the National Ambient Air Quality Standards (NAAQS) for nonattainment areas designated with a classification of moderate or higher. The Dallas-Fort Worth (DFW) 2008 eight-hour ozone nonattainment area, consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, was classified as a moderate nonattainment area for the 2008 eight-hour ozone NAAQS of 0.075 parts per million (ppm) with a July 20, 2018 attainment deadline. Based on 2017 monitoring data, the DFW area did not attain the 2008 eight-hour ozone NAAQS and did not qualify for a one-year attainment date extension in accordance with FCAA, §181(a)(5). On August 23, 2019, the EPA published final notice reclassifying the DFW and Houston-Galveston-Brazoria (HGB) nonattainment areas from moderate to serious for the 2008 eight-hour ozone NAAQS, effective September 23, 2019 (84 FR 44238, August 23, 2019).

With the final reclassification to serious nonattainment, the state is required to submit a SIP revision to fulfill the nitrogen oxides (NO_x) reasonably available control technology (RACT) requirements mandated by FCAA, §172(c)(1) and §182(f). Although the eight-county HGB area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) was also reclassified to serious nonattainment for the 2008 eight-hour ozone NAAQS, the commission determined that RACT is in place for all emission source categories in the HGB area; therefore, there are no changes adopted in this rulemaking that affect the HGB area.

The EPA's *Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements;* Final Rule, published in the *Federal Register* on March 6, 2015 (80 FR 12264), specifies an attainment date of July 20, 2021 for serious nonattainment areas. FCAA, §172(c)(1) requires the state to submit a SIP revision that incorporates all reasonably available control measures, including RACT, for sources of relevant pollutants. FCAA, §182(f) requires the state to submit a SIP revision that implements RACT for all major sources of NO_x. The EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979).

Depending on the classification of an area designated nonattainment for a NAAQS, the major source threshold that determines what sources are subject to RACT requirements varies. Under the 1997 eight-hour ozone NAAQS, the DFW area consisted of nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) and was classified as a serious nonattainment area. The EPA's implementation rule for the 2008 eight-hour ozone NAAQS requires retaining the most stringent major source emission threshold for sources in an area to prevent backsliding (80 FR 12264). For this reason, the major source emission threshold for those nine counties remains at the level required for serious nonattainment areas, which is actual NO_x emissions or the potential to emit (PTE) of 50 tons per year (tpy) of NO_x. Wise County was not part of the DFW 1997 eight-hour ozone NAAQS nonattainment area but was included as part of the DFW 2008 eight-hour ozone NAAQS nonattainment area; therefore, the major source threshold for Wise County was based on a classification of moderate under the 2008 standard, which is actual NO_x emissions or the PTE of 100 tpy of NO_x. With reclassification of the DFW area to serious nonattainment under the 2008 eight-hour ozone NAAQS, the major source emission threshold for all 10 counties, including Wise County, is actual NO_x emissions or the PTE of 50 tpy of NO_x emissions. This adopted rulemaking implements RACT in Wise County to reflect this change in the major source threshold for Wise County. The emission reduction requirements from this adopted rulemaking will result in reductions in ozone precursors in Wise County. The compliance date for implementing control requirements and emission reductions for the DFW area is July 20, 2021, the attainment date for serious nonattainment areas under the 2008 eight-hour ozone NAAQS.

The adopted rulemaking revises Chapter 117 to implement RACT for all major sources of NO_x in the DFW area as required by FCAA, §172(c)(1) and §182(f). The commission previously adopted Chapter 117 RACT rules for sources in the DFW area as part of the SIP revision adopted May 23, 2007 (Rule Project Number 2006-034-117-EN) for the 1997 eight-hour ozone standard, and the EPA approved these rules on December 3, 2008 (73 FR 73562). The commission adopted Chapter 117 RACT rules for sources in the DFW area as part of a SIP revision adopted June 3, 2015 (Rule Project Number 2013-049-117-AI) for the 2008 eight-hour ozone standard for the moderate nonattainment area, and the EPA approved these rules on September 22, 2017 (82 FR 44320).

The commission adopts amendments to the following sections associated with the DFW 2008 eight-hour ozone RACT rulemaking: Subchapter A, Definitions, §117.10; Subchapter B, Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas, Division 4, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources, §117.403; Subchapter G, General Monitoring and Testing Requirements, Division 1, Compliance Stack Testing and Report Requirements, §117.8000; and Subchapter H, Administrative Provisions, Division 1, Compliance Schedules, §117.9030.

The commission adopts clarifications and minor revisions that will affect sources in other areas covered by Chapter 117, including adopted changes to stack testing provisions for compliance flexibility for stationary reciprocating internal combustion engines and clarifying the restriction on operating hours for exempt stationary diesel and dual-fuel engines located at major sources of NO_x in the nine-county DFW area, excluding Wise County. These adopted changes are discussed in detail in the Section by Section Discussion section of this preamble.

The commission adopts amendments to Chapter 117, Subchapter B, Division 4 to change the requirements for major industrial, commercial, or institutional (ICI) sources of NO_x in Wise County to address NO_x RACT requirements for serious nonattainment areas. Adopted revisions to Chapter 117, Subchapter B, Division 4 will require some owners or operators of major ICI sources of NO_x in Wise County to reduce NO_x emissions from certain stationary sources and source categories to satisfy RACT requirements. Identical to the definition of a major source in the other nine DFW-area counties, a major source of NO_x in Wise County

is any stationary source or group of sources located within a contiguous area and under common control that emits or has a PTE equal to or greater than 50 tpy of NO_x. As a result of this adopted rulemaking, newly identified process heaters and stationary internal combustion gas-fired engines will be subject to existing controls in Wise County. The proposed rulemaking would have extended rule applicability to incinerators in Wise County. The commission initially relied upon an existing exemption for incinerators, based on the maximum rated capacity of the unit, applicable to industrial units located at NO_x major sources in the other nine counties of the DFW area. Because all incinerators identified in the 2017 point source emissions inventory (EI) at major sources of NO_x in Wise County would otherwise qualify under this exemption, the commission determined including incinerators as applicable units at major sources of NO_x in Wise County to be unnecessary. In this adopted rulemaking, incinerators are removed from the list of applicable units under §117.400(b). The associated proposed exemption for incinerators based on maximum rated capacity is unnecessary and is also removed from the proposed language under §117.403(b). The change between rule proposal and adoption is also intended to eliminate any possible confusion since the commission did not propose any emission specifications for incinerators. Flares were also proposed as exempt units since this unit category was also identified in a similar manner to incinerators. However, with the removal of incinerators from the list of applicable units, the exemption for flares is no longer necessary and is also removed from the proposed language under §117.403(b).

Adopted revisions to Chapter 117, Subchapter B, Division 4 will also extend applicability of existing monitoring, testing, recordkeeping, and reporting requirements associated with Chapter 117, Subchapter B, Division 4 to the affected sources located in Wise County. These requirements are necessary to ensure compliance with existing emission specifications and to ensure that NO_x emission reductions are achieved from the units that become subject to the requirements of Chapter 117, Subchapter B, Division 4.

The commission revised the proposed rule language for compliance schedules to address the major source status change for Wise County, for units located at NO_x major sources in Wise County, and to address wood-fired boilers located at NO_x major sources in the 10-county DFW 2008 eight-hour ozone nonattainment area. The adopted changes to the proposed rule language are intended to more clearly indicate that the 2021 compliance schedule is only intended for sources that are made subject to the Chapter 117 rules as a result of the major source threshold in Wise County being reduced from 100 tpy to 50 tpy of NO_x. Specific discussion associated with the adopted emission specifications and other requirements in the adopted revisions to Chapter 117, Subchapter B, Division 4 are provided in the Section by Section Discussion section of this preamble.

The commission estimates that this adopted rulemaking will result in a 0.26 tons per day reduction of NO_x from major ICI sources in Wise County. In the RACT rules adopted for the May 23, 2007 DFW SIP revision, the state fulfilled NO_x RACT requirements for the nine-county DFW 1997 eight-hour ozone serious nonattainment area through adoption of emissions specifications in §117.410. In the RACT rules adopted for the June 3, 2015 DFW SIP revision, the state fulfilled NO_x RACT requirements for the 10-county DFW 2008 eight-hour ozone moderate nonattainment area through adoption of RACT emissions specifications for Wise County in §117.405. With this adopted rulemaking, the commission implements and fulfills NO_x RACT requirements for major sources of NO_x in Wise County with actual NO_x emissions or a PTE of 50 tpy of NO_x.

Section by Section Discussion

In addition to the adopted amendments associated with implementing RACT for the DFW area and specific minor clarifications and corrections discussed in greater detail in this section, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally are not specifically discussed in this preamble.

Subchapter A: Definitions

§117.10, Definitions

The commission amends the definition of "Major source" in §117.10(29). Adopted changes include revision to §117.10(29)(B) to remove all references to county names and insert a reference to the term "Dallas-Fort Worth eight-hour ozone nonattainment area" to reflect the change in classification status for Wise County and the deletion of existing §117.10(29)(C). The applicability threshold for Wise County is now the same as that for the other nine counties included in the DFW ozone nonattainment area, and separating Wise County from the other nine DFW area counties is no longer necessary. Adopted changes also include re-lettering existing §117.10(29)(D) and (E) to §117.10(29)(C) and (D) to accommodate the deletion of existing §117.10(29)(C). No substantive changes are intended to be made to existing subparagraphs (D) and (E).

Subchapter B: Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas

Division 4: Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources

To address RACT requirements for major sources of NO_x located in Wise County at the new 50 tpy major source threshold, the commission has determined that the existing rule provisions of Subchapter B, Division 4 satisfy RACT requirements for major sources of NO_x in Wise County at the new 50 tpy major source threshold. The commission had proposed changes to the existing rule provisions of Subchapter B, Division 4 that included amending rules applicable to any major stationary source of NO_x in Wise County that emits or has a PTE of 50 tpy of NO_x. Despite the proposed changes to rule language for incinerators as applicable units and associated proposed exemptions for incinerators and flares, the commission has since determined that no changes to the applicability rule language of Subchapter B, Division 4 are necessary. The commission also adopts technical corrections to exemption provisions for units located at major ICI stationary sources in the nine counties of the DFW 2008 eight-hour ozone nonattainment area, excluding Wise County, i.e. Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

§117.400, Applicability

The commission withdraws the proposed amendment to §117.400.

The amendment was initially proposed to clarify which units types located in specific counties in the DFW 2008 eight-hour ozone nonattainment area would be subject to the proposed revisions of Subchapter B, Division 4. The commission pro-

posed to add five incinerators that were identified in the 2017 point source EI as potentially affected sources. However, when compared to an existing exemption for incinerators at major sources of NO_x in the other nine counties of the DFW area, based on maximum rated capacity of the unit, these incinerators will qualify for this exemption. Furthermore, because the commission did not also propose any emission specifications for such incinerators, it is no longer necessary to list incinerators as applicable units in §117.400 for Wise County.

§117.403, Exemptions

The commission adopts revisions to §117.403 to clarify exemption criteria for units that are exempt from specified requirements of Subchapter B, Division 4. The commission is not changing the current list of exempt unit types, sizes, or uses in existing §117.403(a) for units located in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County. However, as part of this rulemaking, the commission adopts technical revisions intended to correct inadvertent errors in existing §117.403(a), made during a previous rulemaking adopted May 23, 2007 (Rule Project Number 2006-034-117-EN), to ensure consistency with the agency's intent. This rulemaking requires new and existing stationary diesel and dual-fuel engines claimed exempt under existing §117.403(a) to comply with the operating hours restriction requirements of existing §117.410(f) by adding a rule reference to §117.410(f) in §117.403(a). This clarification is adopted to be consistent with existing recordkeeping requirements in §117.445(f)(9) that are already referenced in §117.403(a) and that relate to the operating requirements in §117.410(f).

Existing §117.410(f) prohibits any person from starting or operating any stationary diesel or dual-fuel engine in any of the nine DFW area counties, which excludes Wise County, for testing or maintenance of the engine itself between the hours of 6:00 a.m. and noon, except for specific manufacturer's recommended testing requiring a run of over 18 consecutive hours; to verify reliability of emergency equipment (*e.g.,* emergency generators or pumps) immediately after unforeseen repairs; or firewater pumps for emergency response training conducted from April 1 through October 31. When this rule was adopted for the nine-county area as part of a May 23, 2007 rulemaking under the 1997 eight-hour ozone NAAQS, the provision was identical to a requirement implemented for the HGB ozone nonattainment area. The requirement delays starting or operation of these engines for testing or maintenance until after noon to help reduce NO_x emissions and limit ozone formation. Owners or operators of these engines are required under existing §117.445(f)(9) to maintain records of each time the engine is operated for testing and maintenance, including: dates of operation; start and end times of operation; identification of the engine; and total hours of operation for each month and for the most recent 12 consecutive months. Existing §117.403(a) already references the recordkeeping requirements of §117.445(f)(9) but does not currently reference the actual operating restrictions of §117.410(f). This adopted change is a technical correction to add the operating restrictions reference for engines located at major sources of NO_x in the nine DFW area counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties).

Based on 2017 point source EI data, the commission identified 40 stationary diesel and dual-fuel engines located in the nine counties for which the owner or operator may currently claim exemption under existing §117.403(a), specifically as backup, standby, firewater pump, or emergency engines and generators. The operating restrictions under §117.410(f) will apply to stationary diesel and dual-fuel engines located at NO_x major sources in the nine-county DFW area, excluding Wise County, that are claimed exempt and will prohibit their operation for testing or maintenance between 6:00 a.m. and noon, similar to the existing requirements for exempt units located at major and minor sources of NO_x in the HGB area and at minor sources of NO_x in the nine counties for the DFW area. For such units typically used in emergency situations or designated as low-use engines, the commission does not expect this adopted requirement to interfere with or restrict the normal operation of these engines. The commission has stated this in prior rulemaking actions concerning these provisions in Chapter 117 (26 TexReg 8110 and 32 TexReg 3206). The commission does not expect non-exempt units to be affected because these engines should already be complying with the operating restrictions and maintaining appropriate records.

The commission had proposed revisions to §117.403(b) for units located at NO_x major sources located in Wise County to include a new exemption for flares, as proposed §117.403(b)(6), and a new exemption for incinerators with a maximum rated capacity less than 40 million British thermal units per hour (MMBtu/hr), as proposed §117.403(b)(7), respectively. The commission identified five incinerators in the 2017 point source EI at major sources of NO_x in Wise County that will qualify for exemption based on heat input, when their heat input is compared to an existing exemption for incinerators applicable to units located at major ICI sources of NO_x in the other nine counties of the DFW area in Subchapter B, Division 4. The existing exemption for incinerators applicable in the other nine counties of the DFW area is based on a maximum rated capacity for incinerators less than 40 MMBtu/hr. Because the commission has determined it is no longer necessary to list incinerators as applicable units for major sources of NO_x in Wise County, the associated proposed exemption for incinerators based on maximum rated capacity is also unnecessary, and this proposed change is not adopted. With the removal of incinerators from the list of applicable units, the proposed exemption for flares is no longer necessary and is therefore also not adopted.

The commission identified 17 stationary diesel-fired engines in the 2017 point source EI located at major sources of NO_x in Wise County. All 17 units were reported to the commission by regulated entities as emergency backup diesel engines and generators. An existing exemption in §117.403(b)(3) exempts all stationary, diesel, reciprocating internal combustion engines located at NO_x major sources in Wise County. Because the commission did not identify a stationary diesel engine used for any other purpose other than for emergency backup situations, the commission is not currently adopting emission specifications for this category of equipment located in Wise County. These engines will continue to be exempt from the requirements in Subchapter B, Division 4.

Subchapter G: General Monitoring and Testing Requirements

Division 1: Compliance Stack Testing and Report Requirements

§117.8000, Stack Testing Requirements

The commission adopts §117.8000(f)(1) - (4) to specify the requirements of using an alternate test method when performing emissions testing on stationary internal combustion engines. Stack testing provisions for emissions testing of NO_x and carbon monoxide (CO) under Chapter 117 currently specify certain EPA-approved compliance reference test methods. Adopted

§117.8000(f) will allow owners or operators of stationary internal combustion engines that trigger the stack testing requirements of Subchapter G, Division 1 to use American Society for Testing and Materials (ASTM) Method D6348-03 to measure the emissions of NO_x and CO from stationary internal combustion engines in lieu of the EPA Reference Test Methods 7E or 20 for NO_x, and 10, 10A, or 10B for CO, as currently specified in existing §117.8000(c), when demonstrating compliance with an applicable emission standard under Chapter 117. All other applicable requirements for emissions testing in existing §117.8000(c) will continue to apply. For example, if the owner or operator is required to test for oxygen or ammonia emissions, the owner or operator will be required to continue to use the EPA reference test methods for oxygen or ammonia as specified in §117.8000(c). Adopted §117.8000(f)(1) specifies that the owner or operator electing to use ASTM Method D6348-03 shall notify the appropriate regional office and any local air pollution control agency having jurisdiction in writing at least 15 days prior to the date that the emissions performance test occurs. The commission also adopts in §117.8000(f)(2) that the analyte spiking procedure of Annex A5 to ASTM Method D6348-03 must be performed using NO_x calibration gas standards certified for total NO_x. The owner or operator electing to use ASTM Method D6348-03 to determine NO_x emissions from an engine may use any gas combination as long as it is a certified EPA protocol gas. The term "Nitrogen oxides (NO_x)" is defined in existing §117.10(34). This allows owners or operators to use nitric oxide, nitrogen dioxide, or any combination thereof so long as the components of the certified calibration gas do not interfere with the gas being detected.

To ensure strict adherence to all requirements of ASTM Method D6348-03 and associated Annexes A1 through A8 to ASTM Method D6348-03, the commission adopts §117.8000(f)(3) to require owners or operators electing to use the ASTM method to document in the compliance stack report required by existing §117.8010 that the owner or operator followed all such requirements, including all quality assurance and quality control procedures of all eight annexes. These adopted requirements are in addition to the existing requirements of §117.8010 that the test report must contain the information specified in existing §117.8010.

The commission adopts §117.8000(f)(4) to specify that minor modifications to ASTM Method D6348-03 are allowed for owners or operators electing to use the ASTM method as long as those minor modifications meet the conditions of existing §117.8000(d)(1) and (2).

The commission adopts these changes in an effort to afford compliance flexibility to owners or operators of stationary engines triggering emissions performance testing under Chapter 117. The EPA has already approved the use of ASTM Method D6348-03 for stationary compression-ignited and spark-ignited internal combustion engines under 40 Code of Federal Regulations Part 60, Subparts IIII and JJJJ, respectively. Because the commission is unaware of the EPA approving the use of ASTM Method D6348-03 for emission unit types other than for stationary internal combustion engines, the commission is not adopting use of ASTM Method D6348-03 for any other emission unit type covered by Chapter 117.

Subchapter H: Administrative Provisions

Division 1: Compliance Schedules

§117.9030, Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources

To more clearly indicate that the 2021 compliance schedule is only intended for sources that are made subject to the Chapter 117 rules as a result of the major source threshold being reduced from 100 tpy to 50 tpy of NO_x, the commission adopts changes to the proposed rule language for §117.9030(a)(1). The commission adopts changes to the compliance schedule for major sources of NO_x located in the 10-county DFW 2008 eight-hour ozone nonattainment area in existing §117.9030(a) for units subject to the emission specification of §117.405(a). The commission also adopts changes to the compliance schedule for major sources of NO_x located in Wise County in existing §117.9030(a) for units subject to the emission specifications of §117.405(b). Adopted §117.9030(a)(1)(A) preserves prior compliance deadlines for submittal of the initial control plan and all other requirements of Chapter 117, Subchapter B, Division 4 for units subject to the emission specification of §117.405(a), and located in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant Counties, or located at a source in Wise County that emits or has the PTE equal to or greater than 100 tpy of NO_x. For these units at these sources, the commission moves the requirements of existing §117.9030(a)(1)(A) to adopted §117.9030(a)(1)(A)(i). Additionally, the requirements of existing §117.9030(a)(1)(B) are moved to adopted §117.9030(a)(1)(A)(ii). For any unit that became subject to the emission specification of §117.405(a) after the compliance date of January 1, 2017, but was not the result of the major source threshold being reduced to 50 tpy in Wise County, the commission is making clear in adopted §117.9030(a)(1)(A)(iii) the owner or operator of these units shall demonstrate compliance with all the applicable requirements of Chapter 117, Subchapter B, Division 4 as soon as practicable, but no later than 60 days after the unit becomes subject. Adopted subparagraph (A)(iii) preserves existing rule requirements for units that become newly subject to the existing rules.

Adopted §117.9030(a)(1)(B) also preserves prior compliance deadlines for submittal of the initial and final control plan and all other requirements of Chapter 117, Subchapter B, Division 4 for units subject to the emission specifications of §117.405(b) and located at sources in Wise County that emit or have the PTE equal to or greater than 100 tpy of NO_x. For these units at these sources, the commission moves the requirements of existing §117.9030(a)(1)(A) to adopted §117.9030(a)(1)(B)(i). The requirements of existing §117.9030(a)(1)(B) are moved to adopted §117.9030(a)(1)(B)(ii). For any unit that became subject to the emission specifications of §117.405(b) after the compliance date of January 1, 2017, but was not the result of the major source threshold being reduced to 50 tpy in Wise County, the commission is making clear in adopted §117.9030(a)(1)(B)(iii) the owner or operator of these units shall demonstrate compliance with all the applicable requirements of Chapter 117, Subchapter B, Division 4 as soon as practicable, but no later than 60 days after the unit becomes subject. Adopted subparagraph (B)(iii) preserves existing rule requirements for units that become newly subject to the existing rules.

Finally, for those sources of NO_x in Wise County that are made subject to the Chapter 117 rules due to the change in the NO_x major source threshold for Wise County, the commission adopts §117.9030(a)(1)(C) as the compliance schedule for units subject to the emission specifications of §117.405 located at sources in Wise County that emit or have the PTE equal to or greater than 50 tpy of NO_x but less than 100 tpy

of NO_x. Adopted §117.9030(a)(1)(C)(i) specifies that owners or operators will be required to submit the initial control plan required by existing §117.450 no later than January 15, 2021. Adopted §117.9030(a)(1)(C)(ii) requires the owner or operator to demonstrate compliance with all other requirements of adopted Chapter 117, Subchapter B, Division 4 no later than July 20, 2021, which is also the deadline for submittal of the final control plan required by existing §117.452. For units that become subject to the emission specifications of §117.405 located at sources in Wise County that emit or have the PTE equal to or greater than 50 tpy but less than 100 tpy of NO_x after the compliance deadline of July 20, 2021, owners or operators of these units will be required to demonstrate compliance with all the applicable requirements of adopted Chapter 117, Subchapter B, Division 4 as soon as practicable, but no later than 60 days after becoming subject as specified in existing §117.9030(a)(2). For example, new units placed into service after July 20, 2021 will be required to comply within 60 days after startup of the unit. Existing units previously exempt from the rule but no longer qualifying for that exemption after July 20, 2021 will be required to comply with the adopted rule no later than 60 days after the unit no longer qualifies for the exemption. These adopted changes to the proposed rules are intended to provide greater clarity and address the major source status change for Wise County for units located at NO_x major source in Wise County and to address wood-fired boilers located at NO_x major sources in the 10-county DFW 2008 eight-hour ozone nonattainment area. They are not intended to change the existing requirements for those units that had a rule compliance deadline of January 1, 2017. Existing §117.9030(a)(1)(A) and (B) are removed.

The commission adopts removal of existing §117.9030(a)(3) since it is no longer necessary to include language concerning the removal of rule compliance requirements in Wise County upon *Texas Register* publication that Wise County's nonattainment designation for the 2008 eight-hour ozone NAAQS is no longer legally effective. The litigation concerning Wise County's attainment status is complete, and Wise County remains designated nonattainment for the 2008 eight-hour ozone NAAQS.

Final Regulatory Impact Analysis Determination

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

A "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the adopted amendments is to revise Chapter 117 to implement RACT for all major sources of NO_x in the DFW area as required by FCAA, §172(c)(1) and §182(f). The adopted rulemaking implements RACT in Wise County to reflect the change in the major source threshold for Wise County to serious for the 2008 eight-hour ozone NAAQS. The adopted rulemaking requires owners or operators of affected sources to comply with the emission standards, conduct initial emissions testing or continuous emissions monitoring to demonstrate compliance, install and operate a totalizing fuel flow meter, perform quarterly and periodic annual emissions compliance testing on stationary engines, submit compliance reports to the TCEQ, and maintain the appropriate records demonstrating compliance with the adopted rules, including but not limited to fuel usage, produced emissions, emissions-related control system maintenance, and emissions performance testing. The adopted rulemaking also updates allowed emission test methods for engines.

As discussed in the Fiscal Note: Costs to State and Local Government section of the proposed preamble, the adopted amendments are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with these federal standards on 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.

Additionally, these amendments do not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. These adopted amendments implement NO_x RACT in Wise County to reflect the change in the major source threshold for Wise County, as required by the EPA's change in designation of the DFW 2008 eight-hour ozone nonattainment area to serious nonattainment, and update allowed emission test methods for engines.

The FCAA requires states to submit plans to demonstrate attainment of the NAAQS for ozone nonattainment areas designated with a classification of moderate or higher. The DFW 2008 eight-hour ozone nonattainment area, consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, is currently classified as a serious nonattainment area for the 2008 eight-hour ozone NAAQS of 0.075 ppm with a July 20, 2021 attainment date. The EPA signed the final reclassification notice to reclassify the DFW area from moderate to serious on August 7, 2019. With the final reclassification to serious nonattainment, the state is required to submit a SIP revision to fulfill the NO_x RACT requirements mandated by FCAA, §172(c)(1) and §182(f).

Depending on the classification of an area designated nonattainment for the ozone standard, the major source threshold that determines what sources are subject to RACT requirements varies. Under the 1997 eight-hour ozone NAAQS, the DFW area consisted of nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) and was classified as a serious nonattainment area. The EPA's implementation rule for the 2008 eight-hour ozone NAAQS requires retaining the most stringent major source emission threshold for sources in an area to prevent backsliding (80 FR 12264). For this reason, the major source emission threshold remains at the serious classification level, which is actual NO_x emissions or the PTE of 50 tpy of NO_x. The major source threshold for Wise County, which was not part of the DFW 1997 eight-hour ozone NAAQS nonattainment area but was included as part of the DFW 2008 eight-hour ozone NAAQS nonattainment area, is based on a

classification of moderate under the 2008 standard, or actual NO_x emissions or the PTE of 100 tpy of NO_x. With the reclassification of DFW as a serious nonattainment area under the 2008 eight-hour ozone NAAQS, the major source emission threshold for Wise County is actual NO_x emissions or the PTE of 50 tpy of NO_x emissions. This adopted rulemaking implements RACT in Wise County to reflect this change in the major source threshold for Wise County.

The adopted rulemaking revises Chapter 117 to implement NO_x RACT in Wise County, lowering the major source threshold to actual NO_x emissions or the PTE of 50 tpy of NO_x and requiring owners or operators of affected sources to comply with the emission standards, conduct initial emissions testing or continuous emissions monitoring to demonstrate compliance, install and operate a totalizing fuel flow meter, perform quarterly and periodic annual emissions compliance testing on stationary engines, submit compliance reports to the TCEQ, and maintain the appropriate records demonstrating compliance with the adopted rules, including but not limited to fuel usage, produced emissions, emissions-related control system maintenance, and emissions performance testing. The adopted rulemaking also updates allowed emission test methods for engines.

The adopted rulemaking implements the requirements of 42 United State Code (USC), §7410 that states adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85, Air Pollution Prevention and Control). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule. The adopted rulemaking revises Chapter 117 to implement NO_x RACT in Wise County to reflect the change in the major source threshold for Wise County to actual NO_x emissions or the PTE of 50 tpy of NO_x and updates allowed emission test methods for engines.

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

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts rules into the SIP. The legislature is presumed to understand this federal scheme. If each rule adopted for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every rule adopted into the SIP would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the rules included in the SIP will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

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

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

The specific intent of the adopted rulemaking is to revise Chapter 117 to implement NO_x RACT in Wise County to reflect the change in the major source threshold to actual NO_x emissions or the PTE of 50 tpy of NO_x for Wise County and update allowed emission test methods for engines. The adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this adopted rulemaking. Therefore, this adopted rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because it does not meet the definition of a "Major environmental rule;" it also does not meet any of the four applicability criteria for a major environmental rule.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No oral or written comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific purpose of the adopted rulemaking is to implement RACT for all NO_x emission sources in the DFW 2008 eight-hour ozone NAAQS nonattainment area, as required by FCAA, §172(c)(1) and §182(f). The adopted rulemaking revises Chapter 117 to implement NO_x RACT in Wise County to reflect the change in the major source threshold to 50 tpy of NO_x for Wise County and updates allowed emission test methods for engines. Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these adopted rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). The adopted amendments fulfill the FCAA requirement to implement RACT in nonattainment areas. These revisions will result in NO_x emission reductions in ozone nonattainment areas that may contribute to the timely attainment of the 2008 eight-hour ozone NAAQS and reduce public exposure to NO_x. Consequently, the adopted rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No oral or written comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 117 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 117 requirements.

Public Comment

The commission offered a public hearing in Houston on October 14, 2019 and a public hearing in Arlington on October 17, 2019. The comment period closed on October 28, 2019. The commission did not receive any written or oral comments on this Chapter 117 NO_x RACT rulemaking. Any comments received on the DFW and HGB attainment demonstration SIP revisions (Non-Rule Project Nos. 2019-077-SIP-NR and 2019-078-SIP-NR) regarding NO_x RACT are addressed in the Response to Comments portions of the DFW and HGB attainment demonstration SIP revisions, respectively.

SUBCHAPTER A. DEFINITIONS

30 TAC §117.10

Statutory Authority

The amended section is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended section is also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC, §§7401, *et seq.*

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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Robert Martinez
Director, Environmental Law Division
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SUBCHAPTER B. COMBUSTION CONTROL AT MAJOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL SOURCES IN OZONE NONATTAINMENT AREAS
DIVISION 4. DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MAJOR SOURCES

30 TAC §117.403

Statutory Authority

The amended section is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended section is also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC, §§7401, *et seq.*

§117.403. Exemptions.

(a) Units located in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County exempted from the provisions of this division, except as specified in §§117.410(f), 117.440(i), 117.445(f)(4) and (9), 117.450, and 117.454 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration; Continuous Demonstration of Compliance; Notification, Recordkeeping, and Reporting Requirements; Initial Control Plan Procedures; and Final Control Plan Procedures for Attainment Demonstration Emission Specifications), include the following:

(1) industrial, commercial, or institutional boilers or process heaters with a maximum rated capacity equal to or less than:

(A) 2.0 million British thermal units per hour (MMBtu/hr) for boilers; and

(B) 5.0 MMBtu/hr for process heaters;

(2) heat treating furnaces and reheat furnaces with a maximum rated capacity less than 20 MMBtu/hr;

(3) flares, incinerators with a maximum rated capacity less than 40 MMBtu/hr, pulping liquor recovery furnaces, sulfur recovery units, sulfuric acid regeneration units, molten sulfur oxidation furnaces, and sulfur plant reaction boilers;

(4) dryers, heaters, or ovens with a maximum rated capacity of 5.0 MMBtu/hr or less;

(5) any dryers, heaters, or ovens fired on fuels other than natural gas. This exemption does not apply to gas-fired curing ovens used for the production of mineral wool-type or textile-type fiberglass;

(6) any glass, fiberglass, and mineral wool melting furnaces with a maximum rated capacity of 2.0 MMBtu/hr or less;

(7) stationary gas turbines and stationary internal combustion engines, that are used as follows:

(A) in research and testing of the unit;

(B) for purposes of performance verification and testing of the unit;

(C) solely to power other engines or gas turbines during startups;

(D) exclusively in emergency situations, except that operation for testing or maintenance purposes of the gas turbine or engine is allowed for up to 100 hours per year, based on a rolling 12-month basis. Any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after June 1, 2007, is ineligible for this exemption. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations (CFR) §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account;

(E) in response to and during the existence of any officially declared disaster or state of emergency;

(F) directly and exclusively by the owner or operator for agricultural operations necessary for the growing of crops or raising of fowl or animals; or

(G) as chemical processing gas turbines;

(8) any stationary diesel engine placed into service before June 1, 2007, that:

(A) operates less than 100 hours per year, based on a rolling 12-month basis; and

(B) has not been modified, reconstructed, or relocated on or after June 1, 2007. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account;

(9) any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after June 1, 2007, that:

(A) operates less than 100 hours per year, based on a rolling 12-month basis, in other than emergency situations; and

(B) meets the corresponding emission standard for nonroad engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998), and in effect at the time of installation, modification, reconstruction, or relocation. For the purposes of this paragraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account;

(10) boilers and industrial furnaces that were regulated as existing facilities by 40 CFR Part 266, Subpart H, as was in effect on June 9, 1993;

(11) brick or ceramic kilns with a maximum rated capacity less than 5.0 MMBtu/hr;

(12) low-temperature drying and curing ovens used in mineral wool-type fiberglass manufacturing and wet-laid, non-woven fiber mat manufacturing in which nitrogen-containing resins, or other additives are used;

(13) stationary, gas-fired, reciprocating internal combustion engines with a horsepower (hp) rating less than 50 hp;

(14) electric arc melting furnaces used in steel production;

(15) forming ovens and forming processes used in mineral wool-type fiberglass manufacturing; and

(16) natural gas-fired heaters used exclusively for providing comfort heat to areas designed for human occupancy.

(b) Units located in Wise County exempted from the provisions of this division, except as specified in §§117.440(i), 117.445(f)(4), 117.450, and 117.452 of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology), include the following:

(1) industrial, commercial, or institutional process heaters with a maximum rated capacity less than 40 MMBtu/hr;

(2) stationary gas turbines and stationary internal combustion engines that are used as follows:

(A) in research and testing of the unit;

(B) for purposes of performance verification and testing of the unit;

(C) solely to power other engines or gas turbines during startups;

(D) exclusively in emergency situations, except that operation for testing or maintenance purposes of the gas turbine or engine is allowed for up to 100 hours per year, based on a rolling 12-month basis; and

(E) in response to and during the existence of any officially declared disaster or state of emergency;

(3) stationary, diesel, reciprocating internal combustion engines;

(4) stationary, dual-fuel, reciprocating internal combustion engines; and

(5) stationary, gas-fired, reciprocating internal combustion engines with a hp rating less than 50 hp.

(c) The emission specifications in §117.410(a)(1) and (c) of this title do not apply to gas-fired boilers during periods that the owner or operator is required to fire fuel oil on an emergency basis due to natural gas curtailment or other emergency, provided:

(1) the fuel oil firing occurs during the months of November, December, January, or February; and

(2) the fuel oil firing does not exceed a total of 72 hours in any calendar month specified 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.

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Robert Martinez
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SUBCHAPTER G. GENERAL MONITORING AND TESTING REQUIREMENTS
DIVISION 1. COMPLIANCE STACK TESTING AND REPORT REQUIREMENTS

30 TAC §117.8000

Statutory Authority

The amended section is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose

to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended section is also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC, §§7401, *et seq.*

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

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SUBCHAPTER H. ADMINISTRATIVE PROVISIONS
DIVISION 1. COMPLIANCE SCHEDULES

30 TAC §117.9030

Statutory Authority

The amended section is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended section is also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC, §§7401, *et seq.*

§117.9030. Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources.

(a) Reasonably available control technology emission specifications.

(1) The owner or operator of any stationary source of nitrogen oxides (NO_x) in the Dallas-Fort Worth eight-hour ozone nonattainment area that is a major source of NO_x and is subject to §117.405(a) or (b) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) shall comply with the requirements of Subchapter B, Division 4 of this chapter (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources) as follows:

(A) for units subject to the emission specification of §117.405(a) of this title located in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant Counties, or located at a source in Wise County that emits or has the potential to emit equal to or greater than 100 tons per year (tpy) of NO_x:

(i) submission of the initial control plan required by §117.450 of this title (relating to Initial Control Plan Procedures) was required by June 1, 2016;

(ii) for units subject to the emission specification of §117.405(a) of this title as of January 1, 2017, compliance with all other requirements of Subchapter B, Division 4 of this chapter was required by January 1, 2017, and these units shall continue to comply with the requirements of Subchapter B, Division 4 of this chapter; and

(iii) for units that became subject to the emission specification of §117.405(a) of this title after January 1, 2017, compliance is required as specified in paragraph (2) of this subsection;

(B) for units subject to the emission specifications of §117.405(b) of this title located at sources in Wise County that emit or have the potential to emit equal to or greater than 100 tpy of NO_x:

(i) submission of the initial control plan required by §117.450 of this title was required by June 1, 2016;

(ii) for units subject to the emission specifications of §117.405(b) of this title as of January 1, 2017, compliance with all other requirements of Subchapter B, Division 4 of this chapter was required by January 1, 2017, and these units shall continue to comply with the requirements of Subchapter B, Division 4 of this chapter; and

(iii) for units that became subject to the emission specifications of §117.405(b) of this title after January 1, 2017, compliance is required as specified in paragraph (2) of this subsection; and

(C) for units subject to the emission specifications of §117.405 of this title located at sources in Wise County that emit or have the potential to emit equal to or greater than 50 tpy but less than 100 tpy of NO_x:

(i) submission of the initial control plan required by §117.450 of this title is required no later than January 15, 2021; and

(ii) for units subject to the emission specifications of §117.405 of this title, compliance with all other requirements of Subchapter B, Division 4 of this chapter is required as soon as practicable, but no later than July 20, 2021.

(2) The owner or operator of any stationary source of NO_x that becomes subject to the requirements of §117.405 of this title on or after the applicable compliance date specified in paragraph (1) of this subsection, shall comply with the requirements of Subchapter B, Division 4 of this chapter as soon as practicable, but no later than 60 days after becoming subject.

(b) Eight-hour ozone attainment demonstration emission specifications.

(1) The owner or operator of any stationary source of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area that is a major source of NO_x and is subject to §117.410(a) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall comply with the requirements of Subchapter B, Division 4 of this chapter as follows:

(A) submit the initial control plan required by §117.450 of this title no later than June 1, 2008; and

(B) for units subject to the emission specifications of §117.410(a) of this title, comply with all other requirements of Subchapter B, Division 4 of this chapter as soon as practicable, but no later than:

(i) March 1, 2009, for units subject to §117.410(a)(1), (2), (4), (5), (6), (7)(A), (8), (10), and (14) of this title;

(ii) March 1, 2010, for units subject to §117.410(a)(3), (7)(B), (9), (11), (12), and (13) of this title;

(C) for diesel and dual-fuel engines, comply with the restriction on hours of operation for maintenance or testing in §117.410(f) of this title, and associated recordkeeping in §117.445(f)(9) of this title (relating to Notification, Recordkeeping, and Reporting Requirements), as soon as practicable, but no later than March 1, 2009; and

(D) for any stationary gas turbine or stationary internal combustion engine claimed exempt using the exemption of §117.403(a)(7)(D), (8), or (9) of this title (relating to Exemptions), comply with the run time meter requirements of §117.440(i) of this title (relating to Continuous Demonstration of Compliance), and recordkeeping requirements of §117.445(f)(4) of this title, as soon as practicable, but no later than March 1, 2009.

(2) The owner or operator of any stationary source of NO_x that becomes subject to the requirements of Subchapter B, Division 4 of this chapter on or after the applicable compliance date specified in paragraph (1) of this subsection, shall comply with the requirements of Subchapter B, Division 4 of this chapter as soon as practicable, but no later than 60 days after becoming subject.

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 March 6, 2020.

TRD-202001013
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: March 26, 2020
Proposal publication date: September 27, 2019
For further information, please call: (512) 239-6812

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 161. COMMUNITY JUSTICE ASSISTANCE DIVISION ADMINISTRATION

37 TAC §161.21

The Texas Board of Criminal Justice adopts amendments to §161.21, concerning the Role of the Judicial Advisory Council, without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 115).

The adopted amendments specify that functions of the Judicial Advisory Council include reviewing proposed changes to Texas Department of Criminal Justice (TDCJ) Community Justice Assistance Division (CJAD) standards and making recommendations to the TDCJ CJAD director. The adopted amendments also make minor grammatical updates.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.006, 492.013, 493.003(b), 2110.005.

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on March 9, 2020.

TRD-202001019
Erik Brown
Director of Legal Affairs
Texas Department of Criminal Justice
Effective date: March 29, 2020
Proposal publication date: January 3, 2020
For further information, please call: (936) 437-6700

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CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.31

The Texas Board of Criminal Justice adopts amendments to §163.31, concerning Sanctions, Programs, and Services, without changes to the proposed text as published in the November 15, 2019, issue of the *Texas Register* (44 TexReg 7009).

The adopted amendments are necessary to add opportunities for CSCDs and judicial districts to make cost effective and efficient choices about providing service for adult probationers.

No comments were received regarding the amendments.

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

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on March 9, 2020.

TRD-202001020
Erik Brown
Director of Legal Affairs
Texas Department of Criminal Justice
Effective date: March 29, 2020
Proposal publication date: November 15, 2019
For further information, please call: (936) 437-6700

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37 TAC §163.41

The Texas Board of Criminal Justice adopts amendments to §163.41, concerning Medical and Psychological Information, without changes to the proposed text as published in the November 15, 2019, issue of the *Texas Register* (44 TexReg 7011). The rule will not be republished.

The adopted amendments make minor organizational changes, delete superfluous guidance, and otherwise make no substantive changes.

No comments were received regarding the amendments.

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

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on March 9, 2020.

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Erik Brown
Director of Legal Affairs
Texas Department of Criminal Justice
Effective date: March 29, 2020
Proposal publication date: November 15, 2019
For further information, please call: (936) 437-6700

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

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 its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC adopts amendments to §§19.1, 19.101, 19.401 - 19.411, 19.413, 19.414, 19.416, 19.417, 19.421, 19.501 - 19.504, 19.601, 19.602, 19.606, 19.702, 19.703, 19.706, 19.801 - 19.803, 19.901, 19.1001, 19.1010, 19.1101, 19.1104, 19.1107 - 19.1111, 19.1113, 19.1201 - 19.1203, 19.1205, 19.1401, 19.1501, 19.1601, 19.1901, 19.1902, 19.1908 - 19.1912, 19.1915, 19.1917, 19.1929, 19.2704 in Title 40, Part 1, Chapter 19, concerning Nursing Facility Requirements for Licensure and Medicaid Certification. The Executive Commissioner also adopts new §§19.701, 19.904, 19.1102, 19.1116, 19.1931 and adopts the repeal of §§19.418, 19.701, 19.705, 19.1102, 19.1103, 19.1903, and 19.1904 in Title 40, Part 1, Chapter 19, concerning Nursing Facility Requirements for Licensure and Medicaid Certification.

The amendments to §§19.101, 19.406, 19.421, 19.502, 19.602, 19.606, 19.702, 19.801, 19.802, 19.901, 19.1001, 19.1010, 19.1109, 19.1110, 19.1113, 19.1201, 19.1912, and new §19.904 are adopted with changes to the proposed text as published in the September 13, 2019, issue of the *Texas Register* (44 TexReg 4979). These sections will be republished.

The amendments to §§19.1, 19.401 - 19.405, 19.407 - 19.411, 19.413, 19.414, 19.416, 19.417, 19.501, 19.503, 19.504, 19.601, 19.703, 19.706, 19.803, 19.1101, 19.1104, 19.1107, 19.1108, 19.1111, 19.1202, 19.1203, 19.1205, 19.1401, 19.1501, 19.1601, 19.1901, 19.1902, 19.1908 - 19.1911, 19.1915, 19.1917, 19.1929, 19.2704; new §§19.701, 19.1102, 19.1116, 19.1931; and the repeal of §§19.418, 19.701, 19.705, 19.1102, 19.1103, 19.1903, and 19.1904 are adopted without changes to the proposed text as published in the September 13, 2019, issue of the *Texas Register* (44 TexReg 4979). These sections will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendments, new sections, and repeals in 40 Texas Administrative Code (TAC), Chapter 19, is to make HHSC rules consistent with federal regulations for nursing facilities participating in Medicare and Medicaid and to protect the health and safety of nursing facility residents.

The Code of Federal Regulations (CFR), Title 42, Subpart B, §§483.1, 483.5, 483.10, 483.12, 483.15, 483.20, 483.21, 483.24, 483.25, 483.30, 483.35, 483.40, 483.45, 483.50,

483.55, 483.60, 483.65, 483.70, 483.75, 483.80, 483.85, 483.90 and 483.95, was amended effective November 28, 2016, to revise the requirements that nursing facilities must meet to participate in the Medicare and Medicaid programs.

The adopted rules focus on person-centered care and culture change, quality of life improvement, care and services, health outcomes, individual choice, resident safety, professional standards, and quality assurance and performance improvement. The rule changes are necessary to enhance health and safety protections for nursing facility residents, streamline regulatory requirements for nursing facility providers, and improve consistency of regulatory survey activity.

HHSC also replaces references to both the "Texas Department of Human Services" or "DHS" and the "Department of Aging and Disability Services" or "DADS" with references to the "Texas Health and Human Services Commission" or "HHSC" throughout the proposal. The terms "responsible party," "legal representative," and other similar terms are replaced with the term "resident representative," throughout the proposal. The word "Texas" is added to the beginning of Texas codes. HHSC also makes editorial changes throughout the proposal to remove gender-specific language, adopt person-first respectful language, make plural nouns singular such as "resident" instead of "residents," and improve clarity and readability of the rules.

COMMENTS

The 31-day comment period ended October 14, 2019.

During this period, HHSC received comments regarding the proposed rules from ten commenters, including Disability Rights Texas, the Office of the State Long Term Care Ombudsman, and one individual. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Multiple commenters suggested expanding the definition of "comprehensive care plan" in §19.101(26) to add two additional requirements to the planning process. The additional requirements are documentation of the specialized services the nursing facility will provide as a result of preadmission screening and resident review (PASRR) recommendations and the resident's preferences for discharge.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The requirements related to PASRR recommendations are covered in §19.802(b)(3). The requirements related to a resident's preferences for discharge are covered in §19.802(b)(4)(B). The suggested changes to §19.101(26) involve substantive changes that are addressed in other sections of Chapter 19.

Comment: Multiple commenters stated that the definitions of "family representative" in §19.101(43) and "responsible party" in §19.101(123) are not in the federal regulations and are a historical approach to dealing with others designated by a resident who do not necessarily have legal status as a representative. The commenters suggested that these terms be replaced with "resident representative" as defined in §19.101(123) for the sections of the rule within the scope of this project and in other sections during future rule projects.

Response: HHSC declines to make the suggested changes at this time. "Responsible party" cannot be deleted in this chapter because the term is used in other sections of Chapter 19 that are not being amended in this project. Also, the term "family representative" as used in the discussion of family council in §19.403 is intended to mean representative of the family, not the individual resident.

Comment: Multiple commenters stated that the definition of "resident group" as used in §19.101(121) contains unnecessary language that could be interpreted to limit privacy and assembly protections of a resident group. The commenters recommend amending the definition to delete the requirements.

Response: HHSC agrees with the commenters and will change the definition as suggested.

Comment: A commenter suggested amending the definition of "resident representative" in §19.101(122) to clarify that an individual chosen by the resident to act on behalf of the resident to support the resident in decision-making requires the resident's permission.

Response: HHSC disagrees and declines to revise the rule in response to this comment. This request would change the definition of resident representative from what is set forth in 42 CFR §483.5. To ensure consistency in applying these requirements, HHSC will not deviate from the CFR language in its TAC rule.

Comment: Regarding §19.401, multiple commenters recommended creating a new subsection (b) with the language from 42 CFR §483.10(a)(1) related to treating resident with respect and dignity. The commenters also recommended moving language from subsection (a) to new subsection (c) to emphasize a facility's responsibility to protect and promote the rights of each individual.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The additional language requested from 42 CFR §483.10(a)(1) is included by reference in §19.401(b). By adopting the provisions in 42 CFR §483.10(a)(1) by reference, HHSC can enforce those requirements as state requirements without the need to repeat in state rules detailed federal language. The relevant citation is provided so that readers can easily find the federal language in the CFR, related to resident rights, and in the *Federal Register.*

Comment: Multiple commenters recommended that the statement of residents' rights from §19.401(c) be a required posting in §19.1921(e). The commenters also recommended comparing the statement of resident rights to the current "Residents' Rights" poster printed by HHSC to ensure consistency and updating the poster as needed.

Response: Section 19.1921(e) does require a facility to post the statement of residents' rights, and these amendments to Chapter 19 do not change that requirement. HHSC believes the current statement of resident rights is consistent with the requirements in the federal and state laws and rules. HHSC declines to revise the rule in response to this comment.

Comment: Regarding §19.406(a), multiple commenters recommended including language from 42 CFR §483.10(d) related to the resident's right to choose and retain a personal attending physician, subject to licensure and professional standards; access to all the physicians that provide care for a resident; and selection of another attending physician if the resident's first choice does not or is unwilling to meet the facility requirements to provide care.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The additional language requested from 42 CFR §483.10(d) is included by reference in §19.401(b). By adopting the provisions in 42 CFR §483.10(d) by reference,

HHSC can enforce those requirements as state requirements without the need to repeat in state rules detailed federal language. The relevant citation is provided so that readers can easily find the federal language in the CFR, related to resident rights, and in the *Federal Register.*

Comment: Regarding §19.406(a)(2), multiple commenters recommended including all language from 42 CFR §483.10(c)(4), §483.10(c)(5), and §483.10(b)(7)(iii) related to a resident's right to be informed of the type of caregiver who will provide care, the benefits and treatment options, treatment alternatives, and the resident's right to be provided opportunities to participate in his or her care planning.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The additional language requested from 42 CFR §483.10(c)(4), §483.10(c)(5), and §483.10(b)(7)(iii) is included by reference in §19.401(b). By adopting by reference the provisions in 42 CFR §483.10(c)(4), §483.10(c)(5) and §483.10(b)(7)(iii), HHSC can enforce those requirements as state requirements without the need to repeat in state rules detailed federal language. The relevant citation is provided so that readers can easily find the federal language in the CFR, related to resident rights, and in the *Federal Register.*

Comment: Regarding §19.406(a)(2), multiple commenters recommended including language related to a resident's right to reasonable accommodation and choice from §483.10(e)(3), §483.10(f)(1) and §483.10(f)(2). The commenter is concerned that this language is not included elsewhere in Chapter 19, making it vitally important for HHSC to include this language in the TAC to protect each resident's quality of life.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The additional language requested from §483.10(e)(3), §483.10(f)(1), and §483.10(f)(2) is included by reference in §19.401(b). By adopting the provisions in 42 CFR §483.10(e)(3), §483.10(f)(1) and §483.10(f)(2) by reference, HHSC can enforce those requirements as state requirements without the need to repeat in state rules detailed federal language. The relevant citation is provided so that readers can easily find the federal language in the CFR, related to resident rights, and in the *Federal Register.*

Comment: A commenter stated that §19.406(a)(3) says that "unless found to lack capacity" the individual has the right to participate in planning care and treatment or changes in care and treatment. The commenter stated that even if HHSC means the person is under guardianship, he or she should be supported to participate and express needs and preferences in care planning and changes and should be encouraged to participate alongside their legally authorized representative to the maximum extent possible consistent with Texas guardianship laws.

Response: HHSC agrees with the commenter and revises §19.406(a)(3) to provide that the resident has a right to participate in planning care and treatment or changes in care and treatment, to the extent practicable. This language is consistent with the language in 42 CFR §483.10(b)(7)(iii).

Comment: Regarding §19.407, multiple commenters recommended including language related to personal privacy from 42 CFR §483.10(g). The commenter is concerned that this language is not included elsewhere in Chapter 19, making it vitally important for HHSC to include this language in the TAC to protect each resident's quality of life.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The additional language requested from 42 CFR §483.10(g)(3) is included by reference in §19.401(b). By adopting the provisions in 42 CFR §483.10(g)(3) by reference, HHSC can enforce those requirements as state requirements without the need to repeat in state rules detailed federal language. The relevant citation is provided so that readers can easily find the federal language in the CFR, related to resident rights, and in the *Federal Register.*

Comment: Regarding §19.408, multiple commenters recommended including language from 42 CFR §483.10(j) related to the situations a resident has the right to voice grievances about. This language is not included elsewhere in Chapter 19, making it vitally important to include this language in the TAC to protect each resident's quality of life. Also, multiple commenters recommended adding language from 42 CFR §483.10(j) related to an individual's right to file a grievance and a nursing facility's responsibility related to responding to individual grievances. The commenters are concerned about protection to each resident's quality of life because Chapter 19 does not include language related to individual grievances.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The additional language requested from 42 CFR §483.10(j) is included by reference in §19.401(b). By adopting the provisions in 42 CFR §483.10(j) by reference, HHSC can enforce those requirements as state requirements without the need to repeat in state rules detailed federal language. The relevant citation is provided so that readers can easily find the federal language in the CFR, related to resident rights, and in the *Federal Register.*

Comment: Regarding §19.409, multiple commenters stated that the requirements related to the age of survey results a nursing facility must have available and the availability of any plans of correction as found in 42 CFR §483.10(g)(11)(ii) should be included in this rule.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The additional language requested from 42 CFR §483.10(g)(11)(ii) is included by reference in §19.401(b). By adopting the provisions in 42 CFR §483.10(g)(11)(ii) by reference, HHSC can enforce those requirements as state requirements without the need to repeat in state rules detailed federal language. The relevant citation is provided so that readers can easily find the federal language in the CFR, related to resident rights, and in the *Federal Register.*

Comment: Multiple commenters recommended that language from 42 CFR §483.10(f)(4) be added to §19.413(a). The federal requirements state a resident has the right to receive visitors of the resident's choosing at the time of the resident's choosing, subject to the right to deny visitation and in a manner that does not impose on the rights of another resident.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The additional language requested from 42 CFR §483.10(f)(4) is included by reference in §19.401(b). By adopting the provisions in 42 CFR §483.10(f)(4) by reference, HHSC can enforce those requirements as state requirements without the need to repeat in state rules detailed federal language. The relevant citation is provided so that readers can easily find the federal language in the CFR, related to resident rights, and in the *Federal Register.*

Comment: Multiple commenters recommended amending §19.413(a)(9) to add language from 42 CFR §483.10(f)(4)(iii)

related to restrictions that may be placed on the resident's right to visitors.

Responses: HHSC disagrees and declines to revise the rule in response to this comment. The additional language requested from 42 CFR §483.10(f)(4)(iii) is included by reference in §19.401(b). By adopting the provisions in 42 CFR §483.10(f)(4)(iii) by reference, HHSC can enforce those requirements as state requirements without the need to repeat in state rules detailed federal language. The relevant citation is provided so that readers can easily find the federal language in the CFR, related to resident rights, and in the *Federal Register.*

Comment: Multiple commenters suggested adding language from §483.10(f)(4)(G)(v) to §19.413 requiring a facility to have written policies and procedures regarding visitation rights of residents, including those setting forth any clinically necessary or reasonable restrictions or limitations, or safety restrictions or limitations.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The additional language requested from 42 CFR §483.10(f)(4)(G)(v) is included by reference in §19.401(b). By adopting the provisions in 42 CFR §483.10(f)(4)(G)(v) by reference, HHSC can enforce those requirements as state requirements without the need to repeat in state rules detailed federal language. The relevant citation is provided so that readers can easily find the federal language in the CFR, related to resident rights, and in the *Federal Register.*

Comment: Multiple commenters suggested adding language from 42 CFR §483.10(f)(4)(G)(vi)(A) to §19.413 regarding a facility's duty to inform each resident of the resident's visitation rights and related facility policy and procedures. The commenters argue the language in 42 CFR §483.10(f)(4)(G)(vi)(A) is more detailed and informative regarding the facility's responsibility to inform residents of their visitation rights.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The additional language requested from 42 CFR §483.10(f)(4)(G)(vi)(A) is included by reference in §19.401(b). By adopting the provisions in 42 CFR §483.10(f)(4)(G)(vi)(A) by reference, HHSC can enforce those requirements as state requirements without the need to repeat in state rules detailed federal language. The relevant citation is provided so that readers can easily find the federal language in the CFR, related to resident rights, and in the *Federal Register.*

Comment: Multiple commenters recommended amending §19.416 to add language from 42 CFR §483.10(i)(1)(ii) that states a nursing facility shall exercise reasonable care for the protection of the resident's property from loss or theft.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The additional language requested from 42 CFR §483.10(i)(1)(ii) is included by reference in §19.401(b). By adopting the provisions in 42 CFR §483.10(i)(1)(ii) by reference, HHSC can enforce those requirements as state requirements without the need to repeat in state rules detailed federal language. The relevant citation is provided so that readers can easily find the federal language in the CFR, related to resident rights, and in the *Federal Register.*

Comment: Regarding §19.417, multiple commenters recommended including in this rule language from 42 CFR §483.10(e)(5) related to roommate choice. The commenters think excluding this language may lead stakeholders to incorrectly believe that only married couples have the right to choose a roommate.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The additional language requested from 42 CFR §483.10(e)(5) is included by reference in §19.401(b). By adopting the provisions in 42 CFR §483.10(e)(5) by reference, HHSC can enforce those requirements as state requirements without the need to repeat in state rules detailed federal language. The relevant citation is provided so that readers can easily find the federal language in the CFR, related to resident rights, and in the *Federal Register.*

Comment: Multiple commenters objected to the repeal of §19.418, related to self-administration of medications. The commenters think the right to self-administer medications is important to resident autonomy and dignity and it should be described in Chapter 19.

Response: HHSC declines to rescind the repeal of §19.418. The requirements related to the self-administration of drugs are included in 42 CFR §481.10(c)(7) which is included by reference in §19.401(b). By adopting the provisions in 42 CFR §483.10(c)(7) by reference, HHSC can enforce those requirements as state requirements without the need to repeat in state rules detailed federal language. The relevant citation is provided so that readers can easily find the federal language in the CFR, related to resident rights, and in the *Federal Register.*

Comment: Regarding §19.421(a), multiple commenters recommended including in this rule language from 42 CFR §483.10(e)(7)(iii) related to a resident's right to refuse a room transfer if the transfer is solely for the convenience of staff.

Response: HHSC agrees with this comment and will make the requested change to the rule.

Comment: A commenter suggested amending §19.502(b)(5) to clarify how to prevent discharge of a resident with dementia or a physical disability who cannot obtain documents from a bank or other third party required to maintain Medicaid eligibility.

Response: HHSC declines to revise the rule in response to this comment. This rule governs the conduct of a nursing facility, and a nursing facility, by itself, is not able to resolve this problem. The law prohibits a nursing facility from requiring a resident to execute advance directives. Furthermore, a representative of a nursing facility would have a conflict of interest if he or she was also acting as a representative of a resident. Accordingly, HHSC cannot hold the nursing facility responsible ensuring that someone is able to obtain the financial documents to establish or maintain a resident's Medicaid eligibility. Furthermore, HHSC cannot prevent a nursing facility from discharging a resident who is not Medicaid eligible and is not paying the nursing facility for services.

Comment: One commenter suggested amending §19.503(d) to update a reference to Consumer Rights and Services.

Response: The correct citation is §19.502(e)(4)(A), and the commenter is requesting the reference be updated to reflect the correct Ombudsman unit at HHSC. HHSC agrees with the commenter and will make the necessary change to the rule.

Comment: Regarding §19.502(f)(4)(A), multiple commenters recommended amending the language instructing a resident how to request an appeal. The commenters recommended adding, to the discharge notice, the specific name, address (mailing and email) and telephone number of the entity that

receives appeal requests. Also, the commenters state residents and ombudsmen have been told not to contact a local Medicaid Eligibility worker to request an appeal, so this language should be deleted from §19.502(f)(4)(A).

Response: HHSC revised §19.502(f)(4)(A) by removing the requirement that the resident request a hearing through the Medicaid eligibility worker at the local HHSC office. Removing this requirement makes the language in the rule more consistent with the language in 1 TAC §357.11. HHSC declines to add to this section the specific name, address, and telephone number of the entity that receives appeal requests. This would make the rule inconsistent with 1 TAC §357.11.

Comment: One commenter suggested that §19.502(f)(4) should be changed to read "a statement of resident's appeal right, including alternative community placement."

Response: HHSC disagrees and declines to revise the rule in response to the comment. Alternative community placement is discussed during comprehensive care planning as required in §19.802(b)(4).

Comment: Regarding §19.503(c)(2), multiple commenters recommended adding language that will permit a resident to return and resume residence in a nursing facility if the resident receives a discharge notice while he or she is hospitalized and the resident chooses to appeal the discharge. This language is consistent with 42 CFR §483.15(e)(1)(ii) in accordance with the CMS State Operations Manual Appendix PP F-626 which states, "in situations where the facility intends to discharge the resident, the facility must comply with Transfer and Discharge Requirements at §483.15(c), and the resident must be permitted to return and resume residence in the facility while an appeal is pending."

Response: HHSC declines to revise the rule in response to this comment. Sections 19.502 and 19.503, read together, contain the same requirements as the federal regulations.

Comment: Regarding §19.602(a)(1)(B), §19.602(a)(4), §19.602(d), §19.606(b), §19.606(c), §19.606(d), and §19.1010(c)(3), multiple commenters recommended replacing "HHSC" with "HHSC Complaint and Incident Intake" so that a facility cannot bury an incident report by notifying a different part of HHSC or an HHSC contractor.

Response: HHSC partially agrees with the comment and will replace "HHSC" with "HHSC Complaint and Incident Intake" in §§19.602(a)(1)(B), 19.602(a)(4), 19.602(d), 19.606(b), and 19.1010(c)(3). HHSC will also replace "HHSC" with "HHSC Complaint and Incident Intake" in §§19.602(a)(1)(A) and 19.602(c) to make the references in §19.602 consistent. HHSC declines to replace "HHSC" with "HHSC Complaint and Incident Intake" in §§19.606(c) and 19.606(d). These subsections reference statistics provided by HHSC rather than to whom a facility must report an incident.

Comment: Multiple commenters requested that HHSC amend §19.602(d) to require a nursing facility to provide a copy of a written investigation report to a resident or resident representative as required in 42 CFR §483.70(i)(2)(i).

Response: HHSC declines to make this change. The federal regulations do not require a facility to proactively release written investigation reports. The regulations do allow the resident or resident representative to request a copy of a written investigation report.

Comment: Regarding §19.702(b)(1), one commenter recommended changing the requirement that an activities program be directed by a qualified professional who "is eligible for certification" as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body. The commenter recommended that an activities program be directed by a qualified professional who is certified as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body.

Response: HHSC declines to make this change. The federal rules use the "is eligible" language and the goal of HHSC in this rule project is to be as consistent as possible with the federal rules. Furthermore, HHSC does not want to make existing nursing facilities replace currently serving activities directors who are meeting residents' needs.

Comment: Regarding §19.702(b)(1), a commenter suggested keeping the reference to a therapeutic recreation assistant since this level of activities professional is certified by the Consortium for Therapeutic Recreation/Activities Certification, Inc.

Response: HHSC declines to make this change. The actual credential is called a therapeutic recreation associate, rather than an assistant. The website for the Consortium in Texas lists three levels of certification: Therapeutic Recreation Specialist, Therapeutic Recreation Associate, and Activity Director. The adopted rule language permits someone who is certified as an assistant or associate to be an Activities Director and encompasses anyone who is eligible to be certified as an activities professional by a recognized accrediting body. This includes a Therapeutic Recreation Associate.

Comment: Regarding §19.702(b)(1), a commenter requested that two accrediting bodies be added to this rule: the Consortium for Therapeutic Recreation/Activities Certification and the National Certification Council for Activity Professionals.

Response: HHSC agrees with the commenter and will make this change.

Comment: One commenter recommended the deletion of §19.702(b)(2). This subsection allows a person to serve as an Activities Director if the person has two years' experience in a social or recreational program within the last five years, one of which was full-time in a therapeutic activities program.

Response: HHSC declines to make this change. The language in §19.702(b)(2) is consistent with the federal rules in 42 CFR §483.24(c)(2)(ii)(B). To ensure consistency in applying these requirements, HHSC will not deviate from the CFR language in its TAC rule.

Comment: Multiple commenters objected to the repeal of §19.705, Environment. The commenters think the adoption by reference of §483.10(i) in §19.401(b) does not sufficiently protect residents and clarify requirements to providers and other stakeholders.

Response: HHSC declines to rescind the repeal of §19.705. The contents of this rule have been added to proposed §19.401(b) which incorporates by reference 42 CFR §483.10. The requirements related to a safe environment are found in §483.10(i). By adopting the provision in 42 CFR §483.10(i) by reference, HHSC can enforce those requirements as state requirements without the need to repeat in state rules detailed federal language. The relevant citation is provided so that readers can easily find the federal language in the CFR, related to resident rights, and in the *Federal Register.*

Comment: Regarding §19.802, multiple commenters recommended including language from 42 CFR §483.10(c) related to a resident's right to be informed of and provided opportunities to participate in his or her care. The commenters maintained that the additional detail related to a resident's right to participate in care planning is important to include in this section, in addition to mentioning it in §19.406.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The additional language requested from 42 CFR §483.10(c) is included by reference in §19.401(b). By adopting the provisions in 42 CFR §483.10(c) by reference, HHSC can enforce those requirements as state requirements without the need to repeat in state rules detailed federal language. The relevant citation is provided so that readers can easily find the federal language in the CFR, related to resident rights, and in the *Federal Register.*

Comment: A commenter recommended amending §19.803(a)(1)(D) to add "Discharge with supports and services or otherwise at the request of the individual does not require natural supports or unpaid caregiver supports."

Response: HHSC disagrees and declines to revise the rule in response to this comment. The CFR does not say natural supports or unpaid care supports are required. The request would expand the requirements beyond what is required by 42 CFR §483.21(c)(iv). To ensure consistency in applying these requirements, HHSC will not deviate from the CFR language in the adopted rule.

Comment: A commenter suggested adding additional language to §19.803(a)(1)(G)(iii) related to a resident's discharge summary to include the requirement for "an action plan to address barriers to discharge to the community."

Response: HHSC disagrees and declines to revise the rule in response to this comment. The request would expand the requirements beyond what is required by 42 CFR §483.21(c)(vii)(C). To ensure consistency in applying these requirements, HHSC will not deviate from the CFR language in the adopted rule.

Comment: A commenter suggested the rules in §19.904 should be expanded to address situations where a behavioral health provider might be contracted with to provide behavioral health services in the nursing home.

Response: HHSC disagrees and declines to revise the rule in response to this comment. The request would expand the requirements beyond what is required by 42 CFR §483.40. To ensure consistency in applying these requirements, HHSC will not deviate from the CFR language in the adopted rule.

HHSC also made additional edits in response to HHSC staff recommendations in multiple rules so that terminology in the adopted sections of Chapter 19 match the requirements in 42 CFR Chapter 483 to ensure consistency. The terms "care plan" and "comprehensive person-centered care plan" were replaced with the term "comprehensive care plan" in §§19.801(2)(c)(ii), 19.802(b), 19.802(h)(2), 19.901(4), 19.901(7), 19.901(8), 19.901(9), 19.901(10), 19.901(11), 19.904(1), 19.1001(a), 19.1001(a)(1)(C), 19.1001(a)(1)(D), 19.1001(a)(3), 19.1109(2), 19.1110(a), 19.1113(c)(2), 19.1201(3)(A), 19.1912(c), 19.1912(c)(1), 19.1912(d)(4). Clerical edits were made in §§19.101, 19.602(d), 19.901, and 19.904(2)(A). Also, the words *Federal Register* were italicized where appropriate.

SUBCHAPTER A. BASIS AND SCOPE

40 TAC §19.1

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

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 March 4, 2020.

TRD-202000973
Karen Ray
Chief Counsel
Department of Aging and Disability Services
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Proposal publication date: September 13, 2019
For further information, please call: (210) 619-8292

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SUBCHAPTER B. DEFINITIONS

40 TAC §19.101

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

§19.101. Definitions.

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

(1) Abuse--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (indecent exposure) or Texas Penal Code Chapter 22 (assaultive offenses), sexual harassment, sexual coercion, or sexual assault.

(2) Act--Chapter 242 of the Texas Health and Safety Code.

(3) Activities assessment--See Comprehensive Assessment and Comprehensive Care Plan.

(4) Activity director--The qualified individual appointed by the facility to direct the activities program as described in §19.702 of this chapter (relating to Activities).

(5) Addition--The addition of floor space to an institution.

(6) Administrator--A person currently licensed in accordance with 26 TAC Chapter 555 (relating to Nursing Facility Administrators).

(7) Admission MDS assessment--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.

(8) Advanced practice registered nurse--A person licensed as a registered nurse and approved to practice as an advanced practice registered nurse by the Texas Board of Nursing.

(9) Adverse event--An untoward, undesirable, and usually unanticipated event that causes death or serious injury, or the risk of death or serious injury.

(10) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(11) Applicant--A person or governmental unit, as those terms are defined in the Texas Health and Safety Code, Chapter 242, applying for a license under that chapter.

(12) Attending physician--A physician, currently licensed by the Texas Medical Board, who is designated by the resident or resident representative as having primary responsibility for the treatment and care of the resident.

(13) Authorized electronic monitoring--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(14) Barrier precautions--Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, face shields, and protective clothing for purposes of infection control.

(15) Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and reasonable safety, all consistent with the preferences of the resident.

(16) Certification--The determination by HHSC that a nursing facility meets all the requirements of the Medicaid or Medicare programs.

(17) Certified facility--A facility that meets the requirements of the Medicare program, the Medicaid program, or both.

(18) Certified Ombudsman--Has the meaning given in 26 TAC §88.2 (relating to Definitions).

(19) CFR--Code of Federal Regulations.

(20) Change of ownership-- An event that results in a change to the federal taxpayer identification number of the license holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(21) Chemical restraints--Any drug administered for the purpose of discipline or convenience, and not required to treat the resident's medical symptoms.

(22) CMS--Centers for Medicare & Medicaid Services.

(23) Complaint--Any allegation received by HHSC other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(24) Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(25) Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §19.801(2) of this chapter (relating to Resident Assessment).

(26) Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §19.802(c)(2) of this chapter (relating to Comprehensive Person-Centered Care Planning), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and

(D) assisting in the development of appropriate coping mechanisms.

(27) Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(28) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and HHSC have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(29) DADS--The term referred to the Department of Aging and Disability Services; it now refers to HHSC.

(30) Dentist--A practitioner licensed to practice dentistry by the Texas State Board of Dental Examiners.

(31) DHS-- This term referred to the Texas Department of Human Services; it now refers to HHSC.

(32) Dietitian--A qualified dietitian is one who is qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics; or

(B) licensure, or provisional licensure, as a dietitian under Texas Occupations Code, Chapter 701 and one year of supervisory experience in dietetic service of a health care facility.

(33) Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(34) Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(35) Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program or as a SNF in the Medicare program.

(36) Drug (also referred to as medication)--Any of the following:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

(C) any substance (other than food) intended to affect the structure or any function of the body of a human; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this paragraph. It does not include devices or their components, parts, or accessories.

(37) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(38) Emergency--A sudden change in a resident's condition requiring immediate medical intervention.

(39) Executive Commissioner--The executive commissioner of the Health and Human Services Commission.

(40) Exploitation--The illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with a resident using the resources of the resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(41) Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Texas Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a) - (d) of the Social Security Act. A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in 26 TAC Chapter 303 (relating to Preadmission Screening and Resident Review (PASRR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(42) Family council--A group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

(43) Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(44) Fiduciary agent--An individual who holds in trust another's monies.

(45) Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(46) Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(47) Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(48) Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act).

(49) HHSC--The Texas Health and Human Services Commission.

(50) HIV--Human Immunodeficiency Virus.

(51) Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to HHSC.

(52) Indirect ownership interest--Any ownership or membership interest in a person that has a direct ownership interest in an applicant or license holder.

(53) Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(54) Inspection--Any on-site visit to or survey of an institution by HHSC for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(55) Involuntary seclusion--Separation of a resident from others or from the resident's room or confinement to the resident's room, against the resident's will or the will of a person who is legally authorized to act on behalf of the resident. Monitored separation from other residents is not involuntary seclusion if the separation is a therapeutic intervention that uses the least restrictive approach for the minimum

amount of time, not exceed to 24 hours, until professional staff can develop a care plan to meet the resident's needs.

(56) IV--Intravenous.

(57) Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(58) License holder--A person that holds a license to operate a facility.

(59) Licensed health professional--A physician; physician assistant; advanced practice registered nurse; physical, speech, or occupational therapist; pharmacist; physical or occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; licensed social worker; or certified respiratory care practitioner.

(60) Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(61) Life Safety Code--NFPA 101.

(62) Life safety features--Fire safety components required by NFPA 101, including building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(63) Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §19.419 of this chapter (relating to Advance Directives)).

(64) Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(65) Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Texas Health and Safety Code, §121.021.

(66) Long-term care-regulatory--HHSC Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Medicaid participation.

(67) Major injury--An injury that qualifies as a major injury under NFPA 99.

(68) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

(69) Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(70) Managing local ombudsman--Has the meaning given in 26 TAC §88.2 (relating to Definitions).

(71) MDS--Minimum data set. See RAI.

(72) MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(73) Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid recipient.

(74) Medicaid nursing facility vendor payment system--Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(75) Medicaid recipient--A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(76) Medical director--A physician licensed by the Texas Medical Board, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(77) Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(78) Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 95 of this title (relating to Medication Aides--Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(79) Misappropriation--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(80) MN--Medical necessity. A determination, made by physicians and registered nurses who are employed by or contract with the state Medicaid claims administrator, that a recipient requires the services of a licensed nurse in an institutional setting to carry out a physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute medical necessity.

(81) Neglect--The failure to provide goods or services, including medical services that are necessary to avoid physical or emotional harm, pain, or mental illness.

(82) NFPA--National Fire Protection Association.

(83) NFPA 99--NFPA 99, Health Care Facilities Code, 2012 Edition.

(84) NFPA 101--NFPA 101, Life Safety Code, 2012 Edition.

(85) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This term may include an individual who provides these services through an agency or under a contract with the facility. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(86) Nurse practitioner--An advanced practice registered nurse licensed by the Texas Board of Nursing in the role of Nurse Practitioner.

(87) Nurses' station--A nurses' station is an area designated as the focal point on all shifts for the administration and supervision of resident-care activities for a designated number of resident bedrooms.

(88) Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(89) Nursing facility or nursing home--See definition of "facility."

(90) Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(91) Objectives--See definition of "goals."

(92) OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform.

(93) Ombudsman intern--Has the meaning given in 26 TAC §88.2 (relating to Definitions).

(94) Ombudsman Program--Has the meaning given in 26 TAC §88.2 (relating to Definitions).

(95) Paid feeding assistant--An individual who meets the requirements of §19.1113 of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(96) PASARR or PASRR--Preadmission Screening and Resident Review.

(97) Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(98) Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(99) Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(100) Person-centered care--To focus on the resident as the locus of control, and to support the resident in making choices and having control over the resident's daily life.

(101) Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a practitioner.

(102) Physical restraint--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(103) Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board to practice medicine.

(104) Physician assistant (PA)--An individual who is licensed as a physician assistant under Texas Occupations Code, Chapter 204.

(105) Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed to practice podiatry by the Texas State Board of Podiatric Medical Examiners.

(106) Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a practitioner, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(107) Practitioner--A physician, podiatrist, dentist, or an advanced practice registered nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(108) Private and unimpeded access--Access to enter a facility, or communicate with a resident outside of the hearing or view of others, without interference or obstruction from facility employees, volunteers, or contractors.

(109) PRN (pro re nata)--As needed.

(110) Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with HHSC.

(111) Qualified mental health professional - community services--Has the meaning given in 25 TAC §412.303 (relating to Definitions).

(112) Qualified surveyor--An employee of HHSC who has completed state and federal training on the survey process and passed a federal standardized exam.

(113) Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(114) Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by HHSC who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of HHSC Regulatory Services Division.

(115) Quality measure report--A report that provides information derived from an MDS that provides a numeric value to quality indicators. This data is available to the public as part of the Nursing Home Quality Initiative (NHQI), and is intended to provide objective measures for consumers to make informed decisions about the quality of care in a nursing facility.

(116) RAI--Resident Assessment Instrument. An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U. S. Department of Health and Human Services. At a minimum, this instrument must consist of the MDS core elements as specified by CMS; utilization guidelines; and Care Area Assessment process.

(117) Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(118) Rehabilitative services--Rehabilitative therapies and devices provided to help a person regain, maintain, or prevent deterioration of a skill or function that has been acquired but then lost or impaired due to illness, injury, or disabling condition. The term in-

cludes physical and occupational therapy, speech-language pathology, and psychiatric rehabilitation services.

(119) Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(120) Resident--Any individual residing in a nursing facility.

(121) Resident group--A group or council of residents who meet regularly.

(122) Resident representative--

(A) Any of the following:

(i) an individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications;

(ii) a person authorized by state or federal law (including agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications;

(iii) legal representative, as used in Section 712 of the Older Americans Act; or

(iv) the court-appointed guardian of a resident.

(B) This definition is not intended to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, state or federal law, or a court of competent jurisdiction.

(123) Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(124) Restraint--A chemical or physical restraint.

(125) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(126) RN--Registered nurse. An individual currently licensed by the Texas Board of Nursing as a registered nurse.

(127) RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by HHSC.

(128) RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate HHSC pays a nursing facility for services provided to the recipient.

(129) Secretary--Secretary of the U.S. Department of Health and Human Services.

(130) Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(131) SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(132) Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(133) Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by supervised employment providing social services in a health care setting.

(134) Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(135) State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(136) State Ombudsman--Has the meaning given in 26 TAC §88.2 (relating to Definitions).

(137) State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(138) Stay agreement--An agreement between a license holder and the executive commissioner that sets forth all requirements necessary to lift a stay and rescind a license revocation proposed under §19.2107 of this chapter (relating to Revocation of a License by the HHSC Executive Commissioner).

(139) Substandard quality of care violation--A violation of §19.401(a), §19.401(b), §19.402(b), (c), or (m); §19.406(d) - (h); §19.417(a), (b), or (d); §19.425(b)(1); §19.504(a); §19.601; §19.602; §19.701; §19.703; §19.706(a), (c), (d)(1) - (5), or (e)(7); §19.801; 19.901; §19.904(2) or (4); §19.1501(5), (6), or (7); or §19.1601(e)(2) of this chapter that constitutes:

(A) an immediate threat to resident health or safety;

(B) a pattern of or actual harm that is not an immediate threat; or

(C) a widespread potential for more than minimal harm, but less than an immediate threat, with no actual harm.

(140) Supervision--General supervision, unless otherwise identified.

(141) Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within the qualified person's sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(142) Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within the qualified person's sphere of competence. The person being supervised must have access to the qualified person providing the supervision.

(143) Survey agency--HHSC is the agency that, through contractual agreement with CMS, is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(144) *Texas Register*--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The Texas Register was established by the Administrative Procedure and Texas Register Act of 1975.

(145) Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(146) Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(147) Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act.

(148) Title XVI--Supplemental Security Income (SSI) of the Social Security Act.

(149) Title XVIII--Medicare provisions of the Social Security Act.

(150) Title XIX--Medicaid provisions of the Social Security Act.

(151) Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(152) Universal precautions--The use of barrier precautions and other precautions to prevent the spread of blood-borne diseases.

(153) Unreasonable confinement--Involuntary seclusion.

(154) Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(155) Vendor payment--Payment made by HHSC on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(156) Widespread--When the problem causing a violation is pervasive in a facility or represents systemic failure that affected or has the potential to affect a large portion or all of a facility's residents.

(157) Willfully interfere--To act or not act to intentionally prevent, interfere with, or impede or to attempt to intentionally prevent, interfere with, or impede.

(158) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

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

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SUBCHAPTER E. RESIDENT RIGHTS

40 TAC §§19.401 - 19.411, 19.413, 19.414, 19.416, 19.417, 19.421

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

§19.406. Free Choice.

(a) Resident rights. The resident has the right to:

(1) choose and retain a personal attending physician, subject to that physician's compliance with the facility's standard operating procedures for physician practices in the facility;

(2) be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(3) participate in planning care and treatment or changes in care and treatment, to the extent practicable. See §19.419 of this title (relating to Advance Directives).

(b) Licensed-only facilities. The resident must be allowed complete freedom of choice to obtain pharmacy services from any pharmacy that is qualified to perform the services. A facility must not require residents to purchase pharmaceutical supplies or services from the facility itself or from any particular vendor. The resident has the right to be informed of prices before purchasing any pharmaceutical item or service from the facility, except in an emergency.

(c) Additional requirements regarding freedom of choice for Medicaid recipients. The recipient must be allowed complete freedom of choice to obtain any Medicaid services from any institution, agency, pharmacy, person, or organization that is qualified to perform the ser-

vices, unless the provider causes the facility to be out of compliance with the requirements specified in this chapter.

(1) A facility must not require recipients to purchase supplies or services, including pharmaceutical supplies or services, from the facility itself or from any particular vendor. The recipient has the right to be informed of prices before purchasing any item or services from the facility, except in an emergency.

(2) The facility must furnish Medicaid recipients with complete information about available Medicaid services, how to obtain these services, their rights to freely choose service providers as specified in this subsection and the right to request a hearing before HHSC if the right to freely choose providers has been abridged without due process.

§19.421. Refusal of Certain Transfers in Medicaid-certified Facilities.

(a) A resident has the right to refuse a transfer to another room within the facility, if the purpose of the transfer is:

(1) to relocate a resident of a skilled nursing facility (SNF) from the distinct part of the facility that is an SNF to a part of the facility that is not an SNF;

(2) to relocate a resident of a nursing facility from the distinct part of the facility that is a nursing facility to a distinct part of the facility that is an SNF; or

(3) solely for the convenience of the staff.

(b) A resident's exercise of the right to refuse transfer under this section does not affect the resident's eligibility or entitlement to Medicaid benefits.

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40 TAC §19.418

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

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SUBCHAPTER F. ADMISSION, TRANSFER, AND DISCHARGE RIGHTS IN MEDICAID-CERTIFIED FACILITIES

40 TAC §§19.501 - 19.504

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

§19.502. Transfer and Discharge in Medicaid-certified Facilities.

(a) Examples. Transfer and discharge includes movement of a resident to a bed outside the certified facility, whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement within the same certified facility.

(b) Transfer and discharge requirements. The facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless:

(1) the transfer or discharge is necessary for the resident's welfare, and the resident's needs cannot be met in the facility;

(2) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(3) the safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;

(4) the health of other individuals in the facility would otherwise be endangered;

(5) the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Nonpayment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for the resident's stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid;

(6) the resident or resident representative requests a voluntary transfer or discharge; or

(7) the facility ceases to operate as a nursing facility and no longer provides resident care.

(c) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in subsection (b)(1) - (7) of this section, the facility must ensure that the transfer or discharge is documented in the resident's clinical record and appropriate information is communicated to the receiving health care institution or provider.

(1) Documentation must include:

(A) the basis for the transfer per subsection (b)(1) - (7) of this section; and

(B) in the case of subsection (b)(1) of this section, the specific resident's needs that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the needs.

(2) The documentation required by paragraph (1) of this subsection, must be made by:

(A) the resident's physician when transfer or discharge is necessary under subsection (b)(1) or (b)(2) of this section; or

(B) a physician when transfer or discharge is necessary under subsection (b)(3) or (b)(4) of this section.

(3) Information provided to the receiving health care institution or provider must include the following:

(A) contact information of the practitioner responsible for the care of the resident;

(B) resident representative information, including contact information;

(C) advance directive information;

(D) all special instructions or precautions for ongoing care, as appropriate;

(E) comprehensive care plan goals; and

(F) all other necessary information, including a copy of the resident's discharge summary, consistent with §19.803 of this chapter (relating to Discharge Summary (Discharge Plan of Care)), as applicable, to ensure a safe and effective transition of care.

(d) Notice before transfer or discharge. Before a facility transfers or discharges a resident, the facility must:

(1) notify the resident and the resident representative about the transfer or discharge and the reasons for the move in writing and in a language and manner the resident understands;

(2) if the discharge or transfer is initiated by the facility, send a copy of the notice to a representative of the Ombudsman Program at the time a discharge notice is presented to the resident and resident representative, in accordance with the timeframes described in subsection (e) of this section, except that the notice may be provided as soon as practicable, such as in a list of residents sent on a monthly basis, when a resident is temporarily transferred on an emergency basis to an acute care facility;

(3) record the reasons for the transfer or discharge in the resident's clinical record;

(4) include in the notice the items described in subsection (f) of this section; and

(5) comply with §19.2310 of this chapter (relating to Nursing Facility Ceases to Participate) when the facility voluntarily withdraws from Medicaid or Medicare or is terminated from Medicaid or Medicare participation by HHSC or the secretary.

(e) Timing of the notice.

(1) Except when specified in paragraph (3) of this subsection or in §19.2310 of this chapter, the notice of transfer or discharge required under subsection (d) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(2) The requirements described in paragraph (1) of this subsection and subsection (h) of this section do not have to be met if the resident or resident representative requests the transfer or discharge.

(3) Notice must be made as soon as practicable before transfer or discharge when:

(A) the safety of individuals in the facility would be endangered, as specified in subsection (b)(3) of this section;

(B) the health of individuals in the facility would be endangered, as specified in subsection (b)(4) of this section;

(C) the resident's health improves sufficiently to allow a more immediate transfer or discharge, as specified in subsection (b)(2) of this section;

(D) the transfer and discharge is necessary for the resident's welfare because the resident's needs cannot be met in the facility, as specified in subsection (b)(1) of this section, and the resident's urgent medical needs require an immediate transfer or discharge; or

(E) a resident has not resided in the facility for 30 days.

(4) When an immediate involuntary transfer or discharge as specified in subsection (b)(3) or (4) of this section, is contemplated, unless the discharge is to a hospital, the facility must:

(A) immediately call the staff of the Office of the State Long-term Care Ombudsman to report its intention to discharge; and

(B) submit to HHSC the required physician documentation regarding the discharge.

(f) Contents of the notice. For nursing facilities, the written notice specified in subsection (d) of this section must include the following:

(1) the reason for transfer or discharge;

(2) the effective date of transfer or discharge;

(3) the location to which the resident is transferred or discharged;

(4) a statement of the resident's appeal rights, including:

(A) the resident has the right to appeal the action as outlined in HHSC's Fair and Fraud Hearings Handbook by requesting a hearing within 90 days after the date of the notice;

(B) if the resident requests the hearing before the discharge date, the resident has the right to remain in the facility until the hearing officer makes a final determination unless failure to transfer or discharge would endanger the health or safety of the resident or individuals in the facility. The facility must document the danger failure to discharge would present; and

(C) information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;

(5) the name, address, email address, and telephone number of the managing local ombudsman and the toll-free number of the Ombudsman Program;

(6) in the case of a resident with mental illness, the address, email address, and phone number of the state mental health authority; and

(7) in the case of a resident with an intellectual or developmental disability, the authority for individuals with intellectual and developmental disabilities, and the phone number, address, and email

address of the agency responsible for the protection and advocacy of individuals with intellectual and developmental disabilities.

(g) Changes to the notice. If the information in the notice changes before effecting the transfer or discharge, the facility must update the recipients of the notice as soon as practicable once the updated information becomes available.

(h) Orientation for transfer or discharge. A facility must provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. This orientation must be provided in a form and manner that the resident can understand.

(i) Notice of relocation to another room. Except in an emergency, the facility must notify the resident and the resident representative at least five days before relocation of the resident to another room within the facility. The facility must prepare a written notice which contains:

(1) the reasons for the relocation;

(2) the effective date of the relocation; and

(3) the room to which the facility is relocating the resident.

(j) Fair hearings.

(1) Individuals who receive a discharge notice from a facility have 90 days to appeal. If the recipient appeals before the discharge date, the facility must allow the resident to remain in the facility, except in the circumstances described in subsections (b)(5) and (e)(3) of this section, until the hearing officer makes a final determination. Vendor payments and eligibility will continue until the hearing officer makes a final determination. If the recipient has left the facility, Medicaid eligibility will remain in effect until the hearing officer makes a final determination.

(2) When the hearing officer determines that the discharge was inappropriate, the facility, upon written notification by the hearing officer, must readmit the resident immediately, or to the next available bed. If the discharge has not yet taken place, and the hearing officer finds that the discharge will be inappropriate, the facility, upon written notification by the hearing officer, must allow the resident to remain in the facility. The hearing officer will also report the findings to HHSC Regulatory Services Division for investigation of possible noncompliance.

(3) When the hearing officer determines that the discharge is appropriate, the resident is notified in writing of this decision. Any payments made on behalf of the recipient past the date of discharge or decision, whichever is later, must be recouped.

(k) Discharge of married residents. If two residents in a facility are married and the facility proposes to discharge one spouse to another facility, the facility must give the other spouse notice of the spouse's right to be discharged to the same facility. If the spouse notifies a facility, in writing, that the spouse wishes to be discharged to another facility, the facility must discharge both spouses on the same day, pending availability of accommodations.

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

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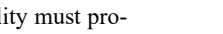

SUBCHAPTER G. FREEDOM FROM ABUSE, NEGLECT, AND EXPLOITATION

40 TAC §§19.601, 19.602, 19.606

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

§19.602. Incidents of Abuse, Neglect, and Exploitation Reportable to the Texas Health and Human Services Commission and Law Enforcement Agencies by Facilities.

(a) In response to allegations of abuse, neglect, exploitation, or mistreatment, the facility must:

(1) ensure that all alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property are reported:

(A) immediately to the administrator of the facility and to HHSC Complaint and Incident Intake, but no later than two hours after the allegation is made, if the events that cause the allegation involve abuse, or result in serious bodily injury; or

(B) no later than 24 hours after the allegation is made to the administrator of the facility and to HHSC Complaint and Incident Intake, if the events that cause the allegation do not involve abuse and do not result in serious bodily injury;

(2) conduct an investigation of the reported acts and have evidence that all alleged violations are thoroughly investigated;

(3) prevent further potential abuse, neglect, exploitation, or mistreatment while the investigation is in progress; and

(4) report the results of all investigations to the administrator or the administrator's designee and to HHSC Complaint and Incident Intake within five working days of the incident and, if the alleged violation is verified, take appropriate corrective action.

(b) A facility owner or employee who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse, neglect, or exploitation caused by another person must report the abuse, neglect, or exploitation.

(c) Reports described in subsections (a)(1) and (b) of this section must be made to HHSC Complaint and Incident Intake.

(d) Written investigation reports described in subsection (a)(4) of this section must be sent to HHSC Complaint and Incident Intake no later than the fifth working day after the initial.

(e) As a condition of employment, an employee of a facility must sign a statement that states:

(1) the employee may be criminally liable for failure to report abuses; and

(2) the employee has a cause of action against a facility, its owners or employees if the employee is suspended, terminated, disciplined, discriminated against, or retaliated against, under the Texas Health and Safety Code, Title 4, §260A.014, as a result of:

(A) reporting to the employee's supervisor, the administrator, HHSC, or a law enforcement agency a violation of law, including a violation of laws or regulations regarding nursing facilities; or

(B) initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the nursing facility.

(f) The statements described in subsection (e) of this section must be available for inspection by HHSC.

(g) A local or state law enforcement agency must be notified of reports described in subsection (b) of this section that allege that:

(1) a resident's health or safety is in imminent danger;

(2) a resident has recently died because of conduct alleged in the report of abuse or neglect or other complaint;

(3) a resident has been hospitalized or treated in an emergency room because of conduct alleged in the report of abuse or neglect or other complaint;

(4) a resident has been a victim of any act or attempted act described in the Texas Penal Code, §§21.02, 21.11, 22.011, or 22.021; or

(5) a resident has suffered bodily injury, as that term is defined in the Texas Penal Code, §1.07, because of conduct alleged in the report of abuse or neglect or other complaint.

§19.606. Reporting of Resident Death Information.

(a) All licensed facilities must report to HHSC the death of any resident in the facility and any resident who is transferred from the facility to a hospital and who dies within 24 hours after transfer.

(b) The facility must submit to HHSC Complaint and Incident Intake a standard HHSC form within ten working days after the last day of the month in which a resident death occurs. The form must include:

(1) name of deceased;

(2) social security number of the deceased;

(3) date of death; and

(4) name and address of the institution.

(c) These reports are confidential under the Texas Health and Safety Code, §260A.016; however, a licensed facility must make available historical statistics provided to the facility by HHSC and must provide the statistics, if requested, to an applicant for admission or the applicant's representative.

(d) HHSC produces statistical information of official causes of death to determine patterns and trends of incidents of death among the elderly and in specific facilities and makes this information available to the public upon request.

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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SUBCHAPTER H. QUALITY OF LIFE

40 TAC §19.701, §19.705

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

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40 TAC §§19.701 - 19.703, 19.706

STATUTORY AUTHORITY

The new section and amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

§19.702. Activities.

(a) The facility must provide, based on the comprehensive assessment and care plan and the preferences of each resident, an ongoing program to support a resident in the resident's choice of activities, both facility-sponsored group and individual activities and independent activities, designed to meet the interests of and support the physical, mental, and psychosocial well-being of each resident, encouraging both independence and interaction in the community.

(b) The activities program must be directed by a qualified professional who is a qualified therapeutic recreation specialist or an activities professional who:

(1) is eligible for certification as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body, such as the National Council for Therapeutic Recreation Certi-

fication, on or after October 1, 1990, the Consortium for Therapeutic Recreation/Activities Certification, or the National Certification Council for Activity Professionals;

(2) has two years of experience in a social or recreational program within the last five years, one of which was full-time in a therapeutic activities program;

(3) is a qualified occupational therapist or occupational therapy assistant; or

(4) has completed an activity director training course approved by a recognized credentialing body, such as the National Certification Council for Activity Professionals, National Council for Therapeutic Recreation Certification, or the Consortium for Therapeutic Recreation/Activities Certification, Inc.

(c) An activity director must complete eight hours of approved continuing education or equivalent continuing education units each year. Approval bodies include organizations or associations recognized as such by certified therapeutic recreation specialists or certified activity professionals or registered occupational therapists.

(d) The facility must ensure that activities assessment and care planning are completed and reviewed or updated as provided in §19.801 and §19.802 of this chapter (relating to Resident Assessment and Comprehensive Person-Centered Care Planning). If indicated by the RAI or the resident's need, an in-depth activities assessment is required.

(e) Toys and recreational equipment for a pediatric resident must be appropriate for the size, age, and developmental level of the resident.

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

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SUBCHAPTER I. RESIDENT ASSESSMENT

40 TAC §§19.801 - 19.803

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

§19.801. Resident Assessment.

A facility must conduct, initially and periodically, a comprehensive, accurate, standardized, reproducible assessment of a resident's functional capacity. The facility must electronically transmit to CMS resident-entry-and-death-in-facility tracking records required by the RAI; and OBRA assessments, including admission, annual, quarterly, significant change, significant correction, and discharge assessments.

(1) Admission orders. At the time a resident is admitted, the facility must have physician orders for the resident's immediate care.

(2) Comprehensive assessments.

(A) A facility must make a comprehensive assessment of a resident's needs, strengths, goals, life history, and preferences, using the current RAI process, including the MDS, Care Area Assessment process, and the Utilization Guidelines specified by HHSC and approved by CMS. The current RAI process is found in the MDS 3.0 manual posted by CMS on http://www.cms.gov.

(B) A facility must conduct an additional assessment and document the summary information if the MDS indicates an additional assessment on a care area is required.

(C) A facility must conduct a comprehensive assessment of a resident as follows:

(i) within 14 calendar days after admission, excluding readmissions in which there is no significant change in the resident's physical or mental condition. For purposes of this section, "readmission" means a return to the facility following a temporary absence for hospitalization or for therapeutic leave;

(ii) within 14 calendar days after the facility determines, or should have determined, that there has been a significant change in the resident's physical or mental condition. For purposes of this section, a "significant change" means a major decline or improvement in the resident's status that will not normally resolve itself without further intervention by staff or by implementing standard disease-related clinical interventions, that has an impact on more than one area of the resident's health status, and requires interdisciplinary review or revision of the comprehensive care plan, or both; and

(iii) not less often than once every 12 months.

(3) Quarterly review assessment. A facility must assess a resident using the quarterly review instrument specified by HHSC and approved by CMS not less frequently than once every three months.

(4) Use. A facility must maintain all resident assessments completed within the previous 15 months in the resident's active record and use the results of the assessments to develop, review, and revise the resident's comprehensive care plan as specified in §19.802 of this subchapter (relating to Comprehensive Person-Centered Care Planning).

(5) PASRR. A Medicaid-certified facility must:

(A) coordinate assessments with the PASRR process in 42 CFR, Part 483, Subpart C to the maximum extent practicable to avoid duplicative testing and effort, including:

(i) incorporating the recommendations from the PASRR level II determination and the PASRR evaluation report into a resident's assessment, care planning, and transitions of care; and

(ii) referring a level II resident and a resident suspected of having mental illness, an intellectual disability, or a developmental disability for level II resident review upon a significant change in status assessment; and

(B) promptly report a significant change in the mental or physical condition of a resident by submitting an MDS Significant Change in Status Assessment Form in the LTC Online Portal, in accordance with §19.2704(i)(12) of this chapter (Nursing Facility Responsibilities Related to PASRR).

(6) Automated data processing requirement.

(A) A facility must complete an MDS for a resident. The facility must enter MDS data into the facility's assessment software within 7 days after completing the MDS and electronically transmit the MDS data to CMS within 14 days after completing the MDS.

(B) A facility must complete the Long Term Care Medicaid Information form on an OBRA assessment that is submitted to the state Medicaid claims system for a Medicaid recipient or Medicaid applicant according to HHSC instructions located on the Texas Medicaid Healthcare Partnership Long Term Care Portal at http://www.tmhp.com.

(C) Data format. The facility must transmit MDS data to CMS in the format specified by CMS and HHSC.

(D) Information concerning a resident is confidential and a facility must not release information concerning a resident except as allowed by this chapter, including §19.407 of this chapter (relating to Privacy and Confidentiality) and §19.1910(d) of this chapter (relating to Clinical Records).

(7) Accuracy of assessments. The assessment must accurately reflect the resident's status.

(8) Coordination. A registered nurse must conduct or coordinate each assessment with the appropriate participation of health professionals.

(9) Certification.

(A) A registered nurse must sign and certify that the assessment is completed.

(B) Each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(10) Penalty for falsification under Medicare and Medicaid.

(A) An individual who willfully and knowingly:

(i) certifies a material and false statement in a resident assessment is subject to a civil money penalty of not more than $1,000 for each assessment; or

(ii) causes another individual to certify a material and false statement in a resident assessment is subject to a civil money penalty of not more than $5,000 for each assessment.

(B) Clinical disagreement does not constitute a material and false statement.

(11) Use of independent assessors in Medicaid-certified facilities and dually certified facilities. If HHSC determines, under a certification survey or otherwise, that there has been a knowing and willful certification of false statements under paragraph (10) of this section, HHSC may require (for a period specified by HHSC) individuals who are independent of the facility and who are approved by HHSC to conduct and certify the resident assessments under this section.

(12) Pediatric resident assessment.

(A) A facility must ensure that a pediatric assessment:

(i) is performed by a licensed health professional experienced in the care and assessment of children;

(ii) includes parents or guardians in the assessment process; and

(iii) includes a discussion with a parent or guardian about the potential for community transition.

(B) The clinical record of a child must include a record of immunizations, blood screening for lead, and developmental assessment. The local school district's developmental assessment may be used if available.

(C) A licensed health professional must assess a child's functional status in relation to pediatric developmental levels, rather than adult developmental levels.

(D) A facility must ensure pediatric residents receive services in accordance with the guidelines established by the Department of State Health Services' Texas Health Steps (THSteps). For Medicaid-eligible pediatric residents between the ages of six months and six years, blood screening for lead must be done in accordance with THSteps guidelines.

§19.802. Comprehensive Person-Centered Care Planning.

(a) Baseline care plans.

(1) The facility must develop and implement a baseline care plan for each resident that includes the instructions needed to provide effective and person-centered care of the resident that meet professional standards of quality care. The baseline care plan must:

(A) be developed within 48 hours of a resident's admission;

(B) include the minimum healthcare information necessary to properly care for a resident, including:

(i) initial goals based on admission orders;

(ii) physician orders;

(iii) dietary orders;

(iv) therapy services;

(v) social services; and

(vi) PASRR recommendation, if applicable.

(2) The facility may develop a comprehensive care plan in place of the baseline care plan if the comprehensive care plan:

(A) is developed within 48 hours of the resident's admission; and

(B) meets the requirements set forth in subsections (b) - (g) of this section, except subsection (c)(1) of this section.

(3) The facility must provide the resident and the resident representative a summary of the baseline care plan that includes:

(A) the initial goals of the resident;

(B) a summary of the resident's medications and dietary instructions;

(C) any services and treatments to be administered by the facility and personnel acting on behalf of the facility; and

(D) any updated information based on the details of the comprehensive care plan, as necessary.

(b) A facility must develop a comprehensive care plan for each resident, consistent with the resident's rights, that includes measurable short-term and long-term objectives and timeframes to meet a resident's medical, nursing, mental, and psychosocial needs that are identified in the comprehensive assessment. If a child is admitted to the facility, the comprehensive care plan must be based on the child's individual needs. The comprehensive care plan must describe the following:

(1) the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under §19.701 of this chapter (relating to Quality of Life) and §19.901 of this chapter (relating to Quality of Care);

(2) any services that would otherwise be required under §19.701 of this chapter and §19.901 of this chapter but are not provided due to the resident's exercise of rights, including the right to refuse treatment under §19.403(i) of this chapter (relating to Notice of Rights and Services);

(3) any nursing facility specialized services or nursing facility PASRR support activities the nursing facility will provide as a result of PASRR recommendations, in accordance with Subchapter BB of this chapter (relating to Nursing Facility Responsibilities Related To Preadmission Screening And Resident Review (PASRR)); and

(4) in consultation with the resident and resident representative:

(A) the resident's goals for admission and desired outcomes;

(B) the resident's preference and potential for future discharge, whether the resident's desire to return to the community was assessed, and any referrals to local contact agencies or other appropriate entities; and

(C) discharge plans in the comprehensive care plan as appropriate, in accordance with §19.803 of this subchapter (relating to Discharge Summary (Discharge Plan of Care)).

(c) The comprehensive care plan must be:

(1) developed within seven days after completion of the comprehensive assessment;

(2) prepared by an interdisciplinary team that includes:

(A) the attending physician;

(B) a registered nurse with responsibility for the resident;

(C) a nurse aide with responsibility for the resident;

(D) the qualified dietitian or director of food and nutrition services;

(E) other appropriate staff in disciplines as determined by the resident's needs or as requested by the resident; and

(F) to the extent practicable, the participation of the resident and the resident representative;

(3) periodically reviewed and revised by a team of qualified persons after each assessment, including both the comprehensive and quarterly review assessments; and

(4) for a resident under 22 years of age, annually reviewed at a comprehensive care plan meeting between the facility and the resident's LAR as defined in §19.805(a)(5) of this subchapter (relating to Permanency Planning for a Resident Under 22 Years of Age), which includes a review of:

(A) the LAR's contact information as required by §19.805(b)(4)(F) of this subchapter;

(B) the resident's comprehensive assessment;

(C) the resident's educational status; and

(D) the resident's permanency plan.

(d) Regarding subsection (c)(2)(F) of this section, an explanation must be included in a resident's clinical record if the participation of the resident and the resident representative is determined not practicable for the development of the resident's comprehensive care plan.

(e) A comprehensive care plan must include:

(1) for a resident under 18 years of age, the activities, supports, and services that, when provided or facilitated by the facility, will enable the resident to live with a family; or

(2) for a resident 18-22 years of age, the activities, supports, and services that, when provided or facilitated by the facility, will result in the resident having a consistent and nurturing environment in the least restrictive setting, as defined by the resident and LAR as defined in §19.805(a)(5) of this subchapter.

(f) A comprehensive care plan may include a palliative plan of care. This plan may be developed only at the request of the resident, surrogate decision maker or legal representative for residents with terminal conditions, end stage diseases or other conditions for which curative medical interventions are not appropriate. The plan of care must have goals that focus on maintaining a safe, comfortable and supportive environment in providing care to a resident at the end of life.

(g) For a resident under 22 years of age, the facility must provide written notice to the LAR, as defined in §19.805(a)(5) of this subchapter, of a meeting to conduct an annual review of the resident's comprehensive care plan no later than 21 days before the meeting date and request a response from the LAR.

(h) The services provided or arranged by the facility must:

(1) meet professional standards of quality;

(2) be provided by qualified persons in accordance with each resident's written comprehensive care plan; and

(3) effective November 28, 2019, be culturally-competent and trauma-informed.

(i) The comprehensive care plan must be made available to all direct care staff.

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

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Karen Ray
Chief Counsel
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SUBCHAPTER J. QUALITY OF CARE

40 TAC §19.901, §19.904

STATUTORY AUTHORITY

The new section and amendment are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code

§326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

§19.901. Quality of Care.

Based on the comprehensive assessment of a resident, the facility must ensure that a resident receives treatment and care in accordance with professional standards of practice, the comprehensive person-centered care plan, and the resident's choices, including the following:

(1) Vision and hearing. To ensure that a resident receives proper treatment and assistive devices to maintain vision and hearing abilities, the facility must, if necessary, assist the resident:

(A) in making appointments; and

(B) by arranging for transportation to and from the office of a practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(2) Skin Integrity.

(A) Pressure ulcers. Based on the comprehensive assessment of the resident, the facility must ensure that:

(i) a resident receives care, consistent with professional standards of practice, to prevent pressure ulcers and does not develop pressure ulcers unless the resident's clinical condition demonstrates that they are unavoidable; and

(ii) a resident with pressure ulcers receives necessary treatment and services, consistent with professional standards of practice, to promote healing, prevent infection, and prevent new ulcers from developing.

(B) Foot Care. To ensure that a resident receives proper treatment and care to maintain mobility and good foot health, the facility must:

(i) provide foot care and treatment, in accordance with professional standards of practice, including to prevent complications from the resident's medical condition; and

(ii) if necessary, assist the resident in making appointments with a qualified person, and arranging for transportation to and from such appointments.

(3) Incontinence.

(A) The facility must ensure that a resident who is continent of bladder and bowel on admission receives services and assistance to maintain continence unless the resident's clinical condition is or becomes such that continence is not possible to maintain.

(B) For a resident with urinary incontinence, based on the comprehensive assessment of the resident, the facility must ensure that:

(i) a resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization is necessary;

(ii) a resident who enters the facility with an indwelling catheter or subsequently receives one is assessed for removal of the catheter as soon as possible unless the resident's clinical condition demonstrates that catheterization is necessary; and

(iii) a resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections and to restore continence to the extent possible.

(C) For a resident with fecal incontinence, based on the resident's comprehensive assessment, the facility must ensure that a resident who is incontinent of bowel receives appropriate treatment and services to restore as much normal bowel function as possible.

(4) Colostomy, urostomy, or ileostomy care. The facility must ensure that a resident who requires colostomy, urostomy, or ileostomy services, receives such care consistent with professional standards of practice, the comprehensive care plan, and the resident's goals and preferences.

(5) Mobility. The facility must ensure that:

(A) a resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable;

(B) a resident with a limited range of motion receives appropriate treatment and services to increase range of motion and to prevent further decrease in range of motion; and

(C) a resident with limited mobility receives appropriate services, equipment, and assistance to maintain or improve mobility with the maximum practicable independence unless a reduction in mobility is unavoidable.

(6) Assisted nutrition and hydration. (Includes naso-gastric and gastrostomy tubes, both percutaneous endoscopic gastrostomy and percutaneous endoscopic jejunostomy, and enteral fluids). Based on a resident's comprehensive assessment, the facility must ensure that a resident:

(A) maintains acceptable parameters of nutritional status, such as usual body weight or desirable body weight range and electrolyte balance, unless the resident's clinical condition demonstrates that this is not possible or the resident preferences indicate otherwise;

(B) is offered sufficient fluid intake to maintain proper hydration and health;

(C) is offered a therapeutic diet when there is a nutritional problem and the health care provider orders a therapeutic diet;

(D) who has been able to eat enough alone or with assistance is not fed by enteral methods unless the resident's clinical condition demonstrates that enteral feeding was clinically indicated and consented to by the resident; and

(E) who is fed by enteral means receives the appropriate treatment and services to restore, if possible, oral eating skills and to prevent complications of enteral feeding including aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers.

(7) Parenteral fluids. Parenteral fluids must be administered consistent with professional standards of practice and in accordance with physician orders, the comprehensive care plan, and the resident's goals and preferences.

(8) Respiratory care, including tracheostomy care and tracheal suctioning. The facility must ensure that a resident who needs respiratory care, including tracheostomy care and tracheal suctioning, is provided such care, consistent with professional standards of practice, the comprehensive care plan, the resident's goals and preferences, and §19.802 of this chapter, (relating to Comprehensive Person-Centered Care Planning).

(9) Prostheses. The facility must ensure that a resident who has a prosthesis is provided care and assistance, consistent with professional standards of practice, the comprehensive care plan, and the resident's goals and preferences, to wear and be able to use the prosthetic device.

(10) Pain management. The facility must ensure that pain management is provided to a resident who requires such services, consistent with professional standards of practice, the comprehensive care plan, and the resident's goals and preferences.

(11) Dialysis. The facility must ensure that a resident who requires dialysis receives such services, consistent with professional standards of practice, the comprehensive care plan, and the resident's goals and preferences.

(12) Trauma-informed care. Effective November 28, 2019, the facility must ensure that a resident who is a trauma survivor receives culturally-competent, trauma-informed care in accordance with professional standards of practice and accounting for resident's experiences and preferences in order to eliminate or mitigate triggers that may cause re-traumatization of the resident.

(13) Bed rails. The facility must attempt to use appropriate alternatives before installing a side or bed rail. If a bed or side rail is used, the facility must ensure correct installation, use, and maintenance of bed rails, including the following elements:

(A) assess the resident for risk of entrapment from bed rails before installation;

(B) review the risks and benefits of bed rails with the resident or resident representative and obtain informed consent before installation;

(C) ensure the bed's dimensions are appropriate for the resident's size and weight; and

(D) follow the manufacturers' recommendations and specifications for installing and maintaining bed rails.

(14) Accidents. The facility must ensure that:

(A) the resident environment remains as free of accident hazards as possible; and

(B) each resident receives adequate supervision and assistive devices to prevent accidents.

(15) Pediatric care.

(A) Licensed nursing care of children. A facility caring for children must have 24 hour a day on-site licensed nursing staff in numbers sufficient to provide safe care. For any facility with five or more children under 26 pounds, at least one nurse must be assigned solely to the care of those children.

(B) Fewer than five pediatric residents. Facilities with fewer than five pediatric residents must assure that the children's rooms are in close proximity to the nurses' station.

(C) Respiratory care of children.

(i) To facilitate the care of ventilator-dependent children or children with tracheostomies, a facility must group those children in rooms contiguous or in close proximity to each other. An exception to this rule is children who are able to be schooled off-site.

(ii) Facilities must assure that alarms on ventilators, apnea monitors, and any other such equipment uniquely identify the child or the child's room.

(iii) A facility caring for children with tracheostomies requiring daily care (including ventilator-dependent children with tracheostomies) must have 24 hour a day on-site respiratory therapy staff in numbers sufficient to provide a safe ratio of respiratory therapist per these residents. For the purposes of this rule, respiratory therapy staff is defined as a registered respiratory therapist (RRT), a certified respiratory therapy technician (CRT), or a licensed nurse whose primary function is respiratory care.

(I) If the facility cares for nine or more children with tracheostomies requiring daily care (including ventilator-dependent children with tracheostomies), the facility must maintain a ratio of no less than one respiratory therapy staff per nine tracheostomy residents 24 hours a day.

(II) If the facility cares for six or more ventilator dependent children, the facility must:

(-a-) designate a respiratory therapy supervisor, either on staff or contracted who must be credentialed by the National Board for Respiratory Care (either CRT or RRT).

(-b-) provide and document that all respiratory therapy staff is trained in the care of children who are ventilator dependent. This training must be reviewed annually.

(-c-) assure that appropriate care, maintenance, and disinfection of all ventilator equipment and accessories occurs.

§19.904. Behavioral Health Services.

Each resident must receive and the facility must provide the necessary behavioral health care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and care plan.

(1) The facility must have sufficient staff who provide direct services to a resident with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. This is determined by resident assessments and individual comprehensive care plans and considering the number, acuity and diagnoses of the facility's resident population in accordance with §19.1931 of this chapter (relating to Facility Assessment). These competencies and skills sets include knowledge of and appropriate training and supervision for:

(A) caring for a resident with mental and psychosocial disorders, as well as a resident with a history of trauma or post-traumatic stress disorder, that have been identified in the facility assessment conducted pursuant to §19.1931 of this chapter; and

(B) implementing non-pharmacological interventions.

(2) Based on the comprehensive assessment of a resident, the facility must ensure that:

(A) a resident who displays or is diagnosed with mental disorder or psychosocial adjustment difficulty, or who has a history of trauma or post-traumatic stress disorder, receives appropriate treatment and services to correct the assessed problem or to attain the highest practicable mental and psychosocial well-being;

(B) a resident whose assessment did not reveal or who does not have a diagnosis of a mental or psychosocial adjustment difficulty or a documented history of trauma or post-traumatic stress disorder does not display a pattern of decreased social interaction or increased withdrawn, angry, or depressive behaviors, unless the resident's clinical condition demonstrates that development of such a pattern was unavoidable; and

(C) a resident who displays or is diagnosed with dementia, receives the appropriate treatment and services to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being.

(3) If rehabilitative services such as physical therapy, speech-language pathology, occupational therapy, and rehabilitative

services for mental disorders and intellectual disability, are required in the resident's comprehensive care plan, the facility must:

(A) provide the required services, including specialized rehabilitation services as required in §19.802 of this chapter (relating to Comprehensive Person-Centered Care Planning).

(B) obtain the required services from an outside resource in accordance with §19.1906 of this chapter (relating to Use of Outside Resources), from a Medicare or Medicaid provider of specialized rehabilitative services.

(4) The facility must provide medically-related social services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident.

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

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SUBCHAPTER K. NURSING SERVICES

40 TAC §19.1001, §19.1010

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

§19.1001. Nursing Services.

(a) The facility must have sufficient staff with the appropriate competencies and skill sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. This is determined by resident assessments and individual comprehensive care plans and considering the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment required at §19.1931 of this chapter (relating to Facility Assessment). Staff who have been instructed and who have demonstrated competence in the care of children must provide nursing services to children. Care and services are to be provided as specified in §19.901 of this chapter (relating to Quality of Care).

(1) Sufficient staff.

(A) The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:

(i) licensed nurses, except when waived under paragraph (5) of this subsection; and

(ii) other nursing personnel, including nurse aides.

(B) The facility must designate a licensed nurse to serve as a charge nurse on each shift, except when waived under paragraph (5) of this subsection.

(C) The facility must ensure that licensed nurses have the specific competencies and skill sets necessary to care for a resident's needs, as identified through resident assessments, and described in the comprehensive care plan.

(D) The facility must provide care that includes assessing, evaluating, planning, and implementing resident comprehensive care plans and responding to a resident's needs.

(2) Registered nurse.

(A) The facility must use the services of a registered nurse for at least eight consecutive hours a day, seven days a week, except when waived under paragraph (5) or (6) of this subsection.

(B) The facility must designate a registered nurse to serve as the director of nursing on a full-time basis, 40 hours per week, except when waived under paragraph (6) of this subsection.

(C) The director of nursing may serve as a charge nurse only when the facility has an average daily occupancy of 60 or fewer residents.

(3) Proficiency of nurse aides. The facility must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for a resident's needs, as identified through resident assessments, and described in the resident's comprehensive care plan.

(4) Requirements for facility hiring and use of nurse aides.

(A) General rule. A facility must not use any individual working in the facility as a nurse aide for more than four months, on a full-time basis, unless:

(i) the individual is competent to provide nursing and nursing related services; and

(ii) the individual:

(I) has completed a training and competency evaluation program, or a competency evaluation program approved by the state as meeting the requirements of 42 CFR §§483.151-483.154; or

(II) has been deemed or determined competent as provided in 42 CFR §483.150(a) and (b).

(B) Nonpermanent employees. A facility must not use on a temporary, per diem, leased, or any basis other than a permanent employee any individual who does not meet the requirements in subparagraphs (4)(A)(i) and (ii) of this paragraph.

(C) Competency. A facility must not use any individual who has worked less than four months as a nurse aide in that facility unless the individual:

(i) is a full-time employee in a state-approved training and competency evaluation program;

(ii) has demonstrated competence through satisfactory participation in a state-approved nurse aide training and competency evaluation program, or competency evaluation program; or

(iii) has been deemed or determined competent as provided in 42 CFR §483.150(a) and (b).

(D) Registry Verification. Before allowing an individual to serve as a nurse aide, a facility must receive registry verification

that the individual has met competency evaluation requirements and is not designated in the registry as having a finding concerning abuse, neglect or mistreatment of a resident, or misappropriation of a resident's property, unless:

(i) the individual is a full-time employee in a training and competency evaluation program approved by the state; or

(ii) the individual can prove that the individual has recently successfully completed a training and competency evaluation program, or competency evaluation program approved by the state and has not yet been included in the registry. A facility must follow up to ensure that such an individual actually becomes registered.

(E) Multi-state registry verification. Before allowing an individual to serve as a nurse aide, a facility must seek information from every state registry, established under §1819(e)(2)(A) or §1919(e)(2)(A) of the Social Security Act, that the facility believes will include information about the individual.

(F) Required retraining. If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

(G) Regular in-service education. The facility must complete a performance review of every nurse aide at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. The in-service training must:

(i) be sufficient to ensure the continuing competence of a nurse aide, but must be no less than 12 hours per year;

(ii) address areas of weakness as determined in nurse aides' performance reviews and facility assessment at §19.1931 of this chapter, and may address the special needs of a resident as determined by the facility staff;

(iii) for a nurse aide providing services to an individual with cognitive impairments, address the care of the cognitively impaired; and

(iv) include dementia management training and resident abuse prevention training.

(H) The facility must comply with the nurse aide training and registry rules found in Chapter 94 of this title (relating to Nurse Aides).

(5) Waiver of requirement to provide licensed nurses on a 24-hour basis.

(A) To the extent that a facility is unable to meet the requirements of paragraphs (1)(B) and (2)(A) of this subsection, the state may waive these requirements with respect to the facility, if:

(i) the facility demonstrates to the satisfaction of HHSC that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel;

(ii) HHSC determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility;

(iii) the state finds that, for any periods in which licensed nursing services are not available, a registered nurse or a physician is obligated to respond immediately to telephone calls from the facility; and

(iv) the waivered facility has a full-time registered or licensed vocational nurse on the day shift seven days a week. For purposes of this requirement, the starting time for the day shift must be between 6 a.m. and 9 a.m. The facility must specify in writing the schedule that it follows.

(B) A waiver granted under the conditions listed in this paragraph is subject to annual state review.

(C) In granting or renewing a waiver, a facility may be required by the state to use other qualified, licensed personnel.

(D) The state agency granting a waiver of these requirements provides notice of the waiver to the State Ombudsman and the protection and advocacy systems in the state for individuals with mental illness established under the Protection and Advocacy for Mentally Ill Individuals Act (42 USC Chapter 114, Subchapter I) and individuals with intellectual or developmental disabilities established under the Developmental Disabilities Assistance and Bill of Rights Act (42 USC Chapter 144, Subchapter I, Part C).

(E) The nursing facility that is granted a waiver by the state notifies residents of the facility and the resident representatives of the waiver.

(6) Waiver of the requirement to provide services of a registered nurse for more than 40 hours a week in a Medicare skilled nursing facility (SNF).

(A) The secretary of the U.S. Department of Health and Human Services (secretary) may waive the requirement that a Medicare SNF provide the services of a registered nurse for more than 40 hours a week, including a director of nursing specified in paragraph (2) of this subsection, if the secretary finds that:

(i) the facility is located in a rural area and the supply of Medicare SNF services in the area is not sufficient to meet the needs of individuals residing in the area;

(ii) the facility has one full-time registered nurse who is regularly on duty at the facility 40 hours a week; and

(iii) the facility either has:

(I) only residents whose physicians have indicated (through physician's orders or admission notes) that they do not require the services of a registered nurse or a physician for a 48-hour period; or

(II) made arrangements for a registered nurse or a physician to spend time at the facility, as determined necessary by the physician, to provide necessary skilled nursing services on days when the regular full-time registered nurse is not on duty.

(B) The secretary provides notice of the waiver to the State Ombudsman and the protection and advocacy systems in the state for individuals with mental illness established under the Protection and Advocacy for Mentally Ill Individuals Act (42 USC Chapter 114, Subchapter I) and individuals with intellectual or developmental disabilities established under the Developmental Disabilities Assistance and Bill of Rights Act (42 USC Chapter 144, Subchapter I, Part C).

(C) The SNF that is granted a waiver notifies residents of the facility and the resident representatives of the waiver.

(D) A waiver of the registered nurse requirement under subparagraph (A) of this paragraph is subject to annual renewal by the secretary.

(7) Request for waiver concerning staffing levels. The facility must request a waiver through the local HHSC Regulatory Services Division, in writing, at any time the administrator determines that

staffing will fall, or has fallen, below that required in paragraphs (1) and (2) of this subsection for a period of 30 days or more out of any 45 days.

(A) The following information must be included in the request:

(i) beginning date when facility was or is unable to meet staffing requirements;

(ii) type waiver requested (24-hour licensed nurse or seven-day-per-week R.N.);

(iii) projected number of hours per month staffing reduced for 24-hour licensed nurse waiver or seven-day-per-week R.N. waiver; and

(iv) staffing adjustments made due to inability to meet staffing requirements.

(B) Waivers for licensed-only or certified facilities will be granted by HHSC Regulatory Services Division staff. Waivers for a Medicare SNF receive final approval from the CMS.

(C) If a facility, after requesting a waiver, is later able to meet the staffing requirements of paragraphs (1) and (2) of this subsection, HHSC Regulatory Services Division staff must be notified, in writing, of the effective date that staffing meets requirements.

(D) Verification that the facility appropriately made a request and notification will be done at the time of survey.

(E) Amounts paid to Medicaid-certified facilities in the per diem payment to meet the staffing requirements of paragraphs (1) and (2) of this subsection may be adjusted if staffing requirements are not met.

(8) Duration of waiver. Approved waivers are valid throughout the facility licensure or certification period, unless approval is withdrawn. During the relicensure or recertification survey, the determination is made for approval or denial for the next facility licensure or certification period if a waiver continues to be necessary. The facility requests a redetermination for a waiver from HHSC Regulatory Services Division staff at the time the survey is scheduled. At other times if a request is made, HHSC staff may schedule a visit for waiver determination.

(9) Requirements for waiver approval. To be approved for a waiver, the nursing facility must meet all of the requirements stated in this subchapter and the requirements specified throughout this chapter. In some instances, the survey agency may require additional conditions or arrangements such as:

(A) an additional licensed vocational nurse on day-shift duty when the registered nurse is absent;

(B) modification of nursing services operations; and

(C) modification of the physical environment relating to nursing services.

(10) Denial or withdrawal of a waiver. Denial or withdrawal of a waiver may be made at any time if any of the following conditions exist:

(A) requirements for a waiver are not met on a continuing basis;

(B) the quality of resident care is not acceptable; or

(C) justified complaints are found in areas affecting resident care.

(11) Requirement that SNFs be in a rural area. A SNF (Medicare) must be in a rural area for waiver consideration, as specified in paragraph (6) of this subsection. A rural area is any area outside the boundaries of a standard metropolitan statistical area. Rural areas are defined and designated by the federal Office of Management and Budget; are determined by population, economic, and social requirements; and are subject to revisions.

(b) Nurse staffing information.

(1) Data requirements. The facility must post the following information:

(A) on a daily basis:

(i) the facility name;

(ii) the current date;

(iii) the resident census; and

(iv) the specific shifts for the day; and

(B) at the beginning of each shift, the total number of hours and actual time of day to be worked by the following licensed and unlicensed nursing staff, including relief personnel directly responsible for resident care:

(i) RNs;

(ii) LVNs; and

(iii) CNAs.

(2) Posting requirements. The nursing facility must post the data described in paragraph (1) of this subsection:

(A) in a clear and readable format; and

(B) in a prominent place readily accessible to residents and visitors.

(3) Public access to posted nurse staffing data. The facility must, upon oral or written request, make copies of nurse staffing data available to the public for review at a cost not to exceed the community standard rate.

(4) Facility data retention requirements. The facility must maintain the posted daily nurse staffing data for the period of time specified by written facility policy or for at least two years following the last day in the schedule, whichever is longer.

§19.1010. Nursing Practices.

(a) A licensed nurse must practice within the constraints of applicable state laws and regulations governing their practice, including the Nurse Practice Act, and must follow the guidelines contained in the facility's written policies and procedures.

(b) A nurse must enter, or approve and sign, nurses' notes in the following instances:

(1) at least monthly; and

(2) at the time of any physical complaints, accidents, incidents, and change in condition or diagnosis, and progress. All of these situations must be promptly recorded as exceptions and included in the clinical record.

(c) If permitted by written policies of the nursing facility, an RN or a physician's assistant may determine and pronounce a resident dead unless a resident is being supported by artificial means that preclude a determination that the resident's spontaneous respiratory and circulatory functions have ceased. The facility's nursing staff and the medical staff or consultant must have jointly developed and approved the policies. The policies must include the following requirements:

(1) The apparent death of a resident must be reported immediately to the attending physician, relatives, and any guardian or legal representatives.

(2) The body of a deceased resident must not be removed from the facility without a physician's or registered nurse's authorization. Telephone authorization is acceptable, if not in conflict with local regulations. Authorization by a justice of the peace, acting as a coroner, is sufficient when the attending or consulting physician or registered nurse is not available.

(3) A death that involves trauma, or unusual or suspicious circumstances, must be reported immediately, in accordance with local regulations, and to HHSC Complaint and Incident Intake, in accordance with §19.602(g)(2) of this chapter (relating to Incidents of Abuse, Neglect, and Exploitation Reportable to the Texas Health and Human Services Commission and Law Enforcement Agencies by Facilities). Deaths must also be reported to HHSC monthly, in accordance with §19.606 of this chapter (relating to Reporting of Resident Death Information).

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 March 4, 2020.

TRD-202000983
Karen Ray
Chief Counsel
Department of Aging and Disability Services
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Proposal publication date: September 13, 2019
For further information, please call: (210) 619-8292

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SUBCHAPTER L. FOOD AND NUTRITION SERVICES

40 TAC §§19.1101, 19.1102, 19.1104, 19.1107 - 19.1111, 19.1113, 19.1116

STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

§19.1109. Food Intake.

Food intake of a resident must be monitored and recorded as follows.

(1) Deviations from normal food and fluid intake must be recorded in the clinical records in accordance with §19.1911(b)(16)(E) of this chapter (relating to Contents of the Clinical Record).

(2) In-between meals and bedtime snacks, and supplementary feedings, either as a part of the overall comprehensive care plan or as ordered by a physician, including caloric-restricted diets, must be documented using the point, percentage, or other system consistently facility-wide.

§19.1110. Frequency of Meals.

(a) Each resident must receive and the facility must provide at least three meals daily, at regular times comparable to normal mealtimes in the community or in accordance with a resident's needs, preferences, requests, and comprehensive care plan.

(b) There must be not more than 14 hours between a substantial evening meal and breakfast the following day, except when a nourishing snack is served at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast the following day if a resident group agrees to this meal span.

(c) Suitable, nourishing alternative meals and snacks must be provided to a resident who wants to eat at non-traditional times or outside of scheduled meal service times, consistent with the resident's plans of care.

§19.1113. Paid Feeding Assistants.

(a) State-approved training course. The facility may use a paid feeding assistant, if the paid feeding assistant has successfully completed a state-approved training course that meets the requirements of §19.1115 of this subchapter (relating to Requirements for Training of Paid Feeding Assistants) before feeding a resident.

(b) Supervision. A paid feeding assistant must work under the supervision of an RN or an LVN. In an emergency, a paid feeding assistant must call a supervisory nurse for help. A paid feeding assistant can only feed a resident in the dining room.

(c) Resident selection criteria.

(1) The facility must ensure that a paid feeding assistant provides dining assistance only for a resident who has no complicated feeding problems, which include difficulty swallowing, recurrent lung aspirations, and tube or parenteral/IV feedings.

(2) The facility must base resident selection on the interdisciplinary team's assessment and the resident's latest assessment and comprehensive care plan. A resident's comprehensive care plan must reflect the resident's appropriateness for a paid feeding assistant.

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

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Karen Ray
Chief Counsel
Department of Aging and Disability Services
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For further information, please call: (210) 619-8292

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40 TAC §19.1102, §19.1103

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

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

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Karen Ray
Chief Counsel
Department of Aging and Disability Services
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SUBCHAPTER M. PHYSICIAN SERVICES

40 TAC §§19.1201 - 19.1203, 19.1205

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

§19.1201. Physician Services.

A physician must personally approve in writing a recommendation that an individual be admitted to a facility. Each resident must remain under the care of a physician. A physician, physician assistant, or advanced practice registered nurse must provide orders for the resident's immediate care and needs. The facility must ensure that:

(1) the medical care and other health care of each resident is supervised by an attending physician. Any consultations must be ordered by the attending physician;

(2) another physician supervises the medical care and other health care of a resident when the resident's attending physician is unavailable; and

(3) if a child is admitted to the facility:

(A) appropriate pediatric consultative services are utilized, in accordance with the comprehensive assessment and comprehensive care plan; and

(B) a pediatrician or other physician with training or expertise in the clinical care of children with complex medical needs participates in all aspects of the medical care.

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

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Karen Ray
Chief Counsel
Department of Aging and Disability Services
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For further information, please call: (210) 619-8292

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SUBCHAPTER O. DENTAL SERVICES

40 TAC §19.1401

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

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

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Karen Ray
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SUBCHAPTER P. PHARMACY SERVICES

40 TAC §19.1501

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

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

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Karen Ray
Chief Counsel
Department of Aging and Disability Services
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For further information, please call: (210) 619-8292

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SUBCHAPTER Q. INFECTION CONTROL

40 TAC §19.1601

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

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

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Karen Ray
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SUBCHAPTER T. ADMINISTRATION

40 TAC §§19.1901, 19.1902, 19.1908 - 19.1912, 19.1915, 19.1917, 19.1929, 19.1931

STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

§19.1912. Additional Clinical Record Service Requirements.

(a) Index of admissions and discharges. The facility must maintain a permanent, master index of all residents admitted to and discharged from the facility. This index must contain at least the following information concerning each resident:

(1) name of resident (first, middle, and last);

(2) date of birth;

(3) date of admission;

(4) date of discharge; and

(5) social security, Medicare, or Medicaid number.

(b) Facility closure. In the event of closure of a facility, change of ownership or change of administrative authority:

(1) the facility must have in place written policies and procedures to ensure that the administrator's duties and responsibilities involve providing the appropriate notices, as required by §19.2310 of this chapter (relating to Nursing Facility Ceases to Participate); and

(2) the new management must maintain documented proof of the medical information required for the continuity of care of all residents. This documentation may be in the form of copies of the resident's clinical record or the original clinical record. In a change of ownership, the two parties will agree and designate in writing who will be responsible for the retention and protection of the inactive and closed clinical records.

(c) Method of recording and correcting information. All resident care information must be recorded in ink or permanent print except for the medication, treatment, or diet section of the resident's comprehensive care plan. Correction of errors will be in accordance with accepted health information management standards.

(1) Erasures are not allowed on any part of the clinical record, with the exception of the medication, treatment, or diet section of the resident's comprehensive care plan.

(2) Correction of errors will be in accordance with accepted health information management standards.

(d) Required record retention. Periodic thinning of active clinical records is permitted; however, the following items must remain in the active clinical record:

(1) current history and physical;

(2) current physician's orders and progress notes;

(3) current RAI and subsequent quarterly reviews; in Medicaid-certified facilities, all RAIs and Quarterly Reviews for the prior 15-month period;

(4) current comprehensive care plan;

(5) most recent hospital discharge summary or transfer form;

(6) current nursing and therapy notes;

(7) current medication and treatment records;

(8) current lab and x-ray reports;

(9) the admission record; and

(10) the current permanency plan.

(e) Readmissions.

(1) If a resident is discharged for 30 days or less and readmitted to the same facility, upon readmission, to update the clinical record, staff must:

(A) obtain current, signed physician's orders;

(B) record a descriptive nurse note, giving a complete assessment of the resident's condition;

(C) include any changes in diagnoses;

(D) obtain signed copies of the hospital or transferring facility history and physical and discharge summary and a transfer summary containing this information is acceptable;

(E) complete a new RAI and update the comprehensive care plan if evaluation of the resident indicates a significant change, which appears to be permanent and if no such change has occurred, then update only the resident comprehensive care plan; and

(F) comply with §19.805 of this chapter (regarding Permanency Planning for a Resident Under 22 Years of Age).

(2) A new clinical record must be initiated if the resident is a new admission or has been discharged for over 30 days.

(f) Signatures.

(1) The use of faxing is acceptable for sending and receiving health care documents, including the transmission of physicians' orders. Long term care facilities may utilize electronic transmission if they adhere to the following requirements:

(A) The facility must implement safeguards to assure that faxed documents are directed to the correct location to protect confidential health information.

(B) All faxed documents must be signed by the author before transmission.

(2) Stamped signatures are acceptable for all health care documents requiring a physician's signature, if the person using the stamp sends a letter of intent which specifies that he will be the only one using the stamp, and then signs the letter with the same signature as the stamp.

(3) The facility must maintain all letters of intent on file and make them available to representatives of HHSC upon request.

(4) Use of a master signature legend in lieu of the legend on each form for nursing staff signatures of medication, treatment, or flow sheet entries is acceptable under the following circumstances.

(A) Each nursing employee documenting on medication, treatment, or flow sheets signs employee's full name, title, and initials on the legend.

(B) The original master legend is kept in the clinical records office or director of nurses' office.

(C) A current copy of the legend is filed at each nurses' station.

(D) When a nursing employee leaves employment with the facility, the employee's name is deleted from the list by lining through it and writing the current date by the name.

(E) The facility updates the master legend as needed for newly hired and terminated employees.

(F) The master signature legend must be retained permanently as a reference to entries made in clinical records.

(g) Destruction of Records. When resident records are destroyed after the retention period is complete, the facility must shred or incinerate the records in a manner which protects confidentiality. At the time of destruction, the facility must document the following for each record destroyed:

(1) resident name;

(2) clinical or medical record number, if used;

(3) social security number, Medicare number, Medicaid number or the date of birth; and

(4) date and signature of person carrying out disposal.

(h) Confidentiality. The facility must develop and implement written policies and procedures to safeguard the confidentiality of clinical record information from unauthorized access.

(1) Except as provided in paragraph (2) of this subsection, the facility must not allow access to a resident's clinical record unless a physician's order exists for supplies, equipment, or services provided by the entity seeking access to the record.

(2) The facility must allow access and release confidential medical information under court order or by written authorization of the resident or the resident representative, as in §19.407 of this chapter (relating to Privacy and Confidentiality).

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 March 4, 2020.

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Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: March 24, 2020
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For further information, please call: (210) 619-8292

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40 TAC §19.1903, §19.1904

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

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

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Karen Ray
Chief Counsel
Department of Aging and Disability Services
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For further information, please call: (210) 619-8292

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SUBCHAPTER BB. NURSING FACILITY RESPONSIBILITIES RELATED TO PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR)

DIVISION 2. NURSING FACILITY RESPONSIBILITIES

40 TAC §19.2704

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, §242.033, which authorizes licensing of nursing facilities; and Texas Health and Safety Code §326.004, which requires the HHSC executive commissioner to adopt rules to administer and implement the chapter.

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

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Karen Ray
Chief Counsel
Department of Aging and Disability Services
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For further information, please call: (210) 619-8292

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Texas

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

Executive Council of Physical Therapy and Occupational Therapy Examiners

Title 22, Part 28

The Executive Council of Physical Therapy and Occupational Therapy Examiners files this notice of its intent to review Title 22 Texas Administrative Code Chapter 651, Fees. The review is conducted in accordance with Texas Government Code §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During the review, the Executive Council of Physical Therapy and Occupational Therapy Examiners will assess whether the reasons for initially adopting the rules continue to exist.

Comments on the review may be submitted to Randall Glines, Staff Services Officer, Executive Council of Physical Therapy and Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to randall@ptot.texas.gov no later than 30 days after the date that this notice is published in the *Texas Register.*

Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption.

TRD-202001029
Ralph A. Harper
Executive Director
Executive Council of Physical Therapy and Occupational Therapy Examiners
Filed: March 9, 2020

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Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §163.33, concerning Community Supervision Staff. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes amendments to §163.33.

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

TRD-202001022
Erik Brown
Director of Legal Affairs
Texas Department of Criminal Justice
Filed: March 9, 2020

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The Texas Board of Criminal Justice files this notice of intent to review §163.35, concerning Supervision. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes amendments to §163.35.

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

TRD-202001024
Erik Brown
Director of Legal Affairs
Texas Department of Criminal Justice
Filed: March 9, 2020

♦ ♦ ♦

Texas Board of Occupational Therapy Examiners

Title 40, Part 12

The Texas Board of Occupational Therapy Examiners files this notice of its intent to review the following chapters of Title 40, Part 12 of the Texas Administrative Code: Chapter 361, Statutory Authority; Chapter 362, Definitions; Chapter 363, Consumer/Licensee Information; Chapter 364, Requirements for Licensure; Chapter 367, Continuing Education; Chapter 368, Open Records; Chapter 369, Display of Licenses; Chapter 370, License Renewal; Chapter 371, Inactive and Retired Status; Chapter 372, Provision of Services; Chapter 373, Supervision; Chapter 374, Disciplinary Actions/Detrimental Practice/Complaint Process/Code of Ethics/Licensure of Persons with Criminal Convictions; and Chapter 375, Fees. The review is conducted in accordance with Texas Government Code §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During the review, the Board will assess whether the reasons for initially adopting the rules continue to exist.

Comments on the review may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days after the date that this notice is published in the *Texas Register*.

Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption.

TRD-202001028
Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
Filed: March 9, 2020

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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: 25 TAC §601.9(1)

DISCLOSURE AND CONSENT - ANESTHESIA and/or PERIOPERATIVE PAIN MANAGEMENT (ANALGESIA)

TO THE PATIENT: *You have the right, as a patient, to be informed about your condition and the recommended anesthesia/analgesia to be used so that you may make the decision whether or not to receive the anesthesia/analgesia after knowing the risks and hazards involved. This disclosure is not meant to scare or alarm you; it is simply an effort to make you better informed so you may give or withhold your consent to the anesthesia/analgesia.*

I voluntarily request that anesthesia and/or perioperative pain management care (analgesia) as indicated below be administered to me (the patient). I understand it will be delegated or supervised or personally performed by Dr. _____ and/or physician associates and such other health care providers as necessary. Perioperative means the period shortly before, during and shortly after the procedure.

I understand that anesthesia/analgesia involves additional risks and hazards but I request the use of anesthetics/analgesia for the relief and protection from pain or anxiety during the planned and additional procedures. I realize the type of anesthesia/analgesia may have to be changed possibly without explanation to me.

I understand that serious, but rare, complications can occur with all anesthetic/analgesic methods. Some of these risks are breathing and heart problems, drug reactions, nerve damage, cardiac arrest, brain damage, paralysis, or death.

I also understand that other complications may occur. Those complications include but are not limited to:

Check planned anesthesia/analgesia method(s) and have the patient/other legally responsible person initial.

☐ _____GENERAL ANESTHESIA – injury to vocal cords, teeth, lips, eyes; awareness during the procedure; memory dysfunction/memory loss; permanent organ damage; brain damage.

☐ _____REGIONAL BLOCK ANESTHESIA/ANALGESIA - nerve damage; persistent pain; bleeding/hematoma; infection; medical necessity to convert to general anesthesia; brain damage.

☐ _____SPINAL ANESTHESIA/ANALGESIA - nerve damage; persistent back pain; headache; infection; bleeding/epidural hematoma; chronic pain; medical necessity to convert to general anesthesia; brain damage.

☐ _____EPIDURAL ANESTHESIA/ANALGESIA - nerve damage; persistent back pain; headache; infection; bleeding/epidural hematoma; chronic pain; medical necessity to convert to general anesthesia; brain damage.

☐ _____DEEP SEDATION – memory dysfunction/memory loss; medical necessity to convert to general anesthesia; permanent organ damage; brain damage.

☐ _____MODERATE SEDATION – memory dysfunction/memory loss; medical necessity to convert to general anesthesia; permanent organ damage; brain damage.

Additional comments/risks:

☐ _____PRENATAL/EARLY CHILDHOOD ANESTHESIA - potential long-term negative effects on memory, behavior, and learning with prolonged or repeated exposure to general anesthesia/moderate sedation/deep sedation during pregnancy and in early childhood.

_____

_____

_____

I understand that no promises have been made to me as to the result of anesthesia/analgesia methods.

I have been given an opportunity to ask questions about my anesthesia/analgesia methods, the procedures to be used, the risks and hazards involved, and alternative forms of anesthesia/analgesia. I believe that I have sufficient information to give this informed consent.

This form has been fully explained to me, I have read it or have had it read to me, the blank spaces have been filled in, and I understand its contents.

PATIENT/OTHER LEGALLY RESPONSIBLE PERSON (signature required)

_____

DATE: _____ TIME: _____ A.M. /P.M.

WITNESS:

_____

Signature

_____

Name (Print)

_____

Address (Street or P.O. Box)

_____

City, State, Zip

Figure: 25 TAC §601.9(2)

REVELACIÓN Y CONSENTIMIENTO -ANESTESIA y CONTROL DE DOLOR (ANALGESIA) PERIOPERATORIO

AL PACIENTE: *tiene derecho, como paciente, a ser informado sobre su enfermedad y la anestesia/analgesia recomendada que se usará, de modo que usted pueda tomar la decisión de si recibir la anestesia/analgesia o no después de conocer los riesgos y los peligros relacionados. Esta revelación no tiene como fin asustarlo o alarmarlo; es simplemente un esfuerzo por tenerlo mejor informado para que usted pueda dar o negar su consentimiento para la anestesia/analgesia.*

Solicito voluntariamente que me administren a mí (el paciente) la anestesia y la atención de control de dolor (analgesia) perioperatoria, según lo indicado a continuación. Entiendo que será delegado o supervisado o realizado personalmente por el Dr. _____ y / o los médicos asociados y otros proveedores de atención médica, según sea necesario. Perioperatorio significa el periodo poco antes de, durante y poco después del procedimiento.

Entiendo que la anestesia / analgesia implica riesgos y peligros adicionales, pero pido el uso de anestésicos / analgesia para el alivio y protección contra el dolor o la ansiedad durante los procedimientos planeados y adicionales. Me doy cuenta de que el tipo de anestesia / analgesia puede tener que ser cambiado posiblemente sin explicación para mí.

Entiendo que pueden ocurrir complicaciones graves, pero raras, con todos los métodos anestésicos/analgésicos. Algunos de estos riesgos son problemas de respiración y del corazón, reacciones a la medicina, daño nervioso, paro cardiaco, daño cerebral, parálisis o la muerte.

También entiendo que podrían ocurrir otras complicaciones. Entre esas complicaciones se incluyen:

Marque los métodos de anestesia/analgesia planeados y haga que el paciente/otra persona legalmente responsable ponga sus iniciales.

☐ _____ANESTESIA GENERAL –lesión a las cuerdas vocales, los dientes, los labios, los ojos; estar consciente durante el procedimiento; disfunción de la memoria/pérdida de la memoria; daño a órganos permanente; daño cerebral.

☐ _____ANESTESIA/ANALGESIA DE BLOQUEO REGIONAL -daño nervioso; dolor persistente; sangrado/hematoma; infección; necesidad médica de usar anestesia general en vez; daño cerebral.

☐ _____ANESTESIA/ANALGESIA ESPINAL -daño nervioso; dolor de espalda persistente; dolor de cabeza; infección; sangrado/hematoma epidural; dolor crónico; necesidad médica de usar anestesia general en vez; daño cerebral.

☐ _____ ANESTESIA/ANALGESIA EPIDURAL -daño nervioso; dolor de espalda persistente; dolor de cabeza; infección; sangrado/hematoma epidural; dolor crónico; necesidad médica de usar anestesia general en vez; daño cerebral.

☐ _____ SEDACIÓN PROFUNDA - disfunción de la memoria/pérdida de la memoria; necesidad médica de usar anestesia general en vez; daño a órganos permanente; daño cerebral.

☐ _____ MODERADA SEDACIÓN - disfunción de la memoria/pérdida de la memoria; necesidad médica de usar anestesia general en vez; daño a órganos permanente; daño cerebral.

Comentarios/riesgos adicionales:

☐ _____ ANESTESIA PRENATAL / INFANTIL TEMPRANA - posibles efectos negativos a largo plazo sobre la memoria, el comportamiento y el aprendizaje con exposición prolongada o repetida a anestesia general / sedación moderada / sedación profunda durante el embarazo y en la primera infancia.

_____

_____

Entiendo que no me han prometido nada con respecto al resultado de los métodos de anestesia/analgesia.

Me han dado la oportunidad de hacer preguntas sobre los métodos de anestesia/analgesia, los procedimientos que se usarán, los riesgos y los peligros relacionados, y las formas de anestesia/analgesia alternativas. Creo tener suficiente información para dar este consentimiento informado.

Me han explicado completamente este formulario, lo he leído o me lo han leído, se han rellenado los espacios en blanco, y entiendo el contenido de éste.

PACIENTE/OTRA PERSONA LEGALMENTE RESPONSABLE (se requiere una firma)

_____

FECHA: _____ HORA: _____ a.m. /p.m.

TESTIGO:

_____

Firma

_____

Nombre (en letra de molde)

_____

Domicilio (calle y número o apartado postal)

_____

Ciudad, estado y código postal

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.

Camino Real Regional Mobility Authority

Notice of Availability of Request for Proposals to Provide Financial Advisory Services

The Camino Real Regional Mobility Authority ("CRRMA"), a political subdivision, is soliciting statements of interest and qualifications from financial advisory firms interested in providing financial advisory services to the CRRMA. Firms responding must demonstrate a history of providing expert advice to governmental agencies, including but not limited to investment of available assets in legally permissible interest-yielding accounts and paper, issuance and servicing of tax-exempt debt, analysis of the financial feasibility of potential transportation projects (as defined in Texas Transportation Code, Chapter 370), and previous involvement in financing of transportation infrastructure.

The request for proposals will be available on or after March 20, 2020. Copies may be obtained electronically from the website of the CRRMA at www.crrma.org. Copies will also be available by contacting Robert Studer at studer@crrma.org or (915) 212-1579. Periodic updates, addenda, and clarifications may be posted on the CRRMA website, and interested parties are responsible for monitoring the website accordingly. Final responses must be received by the Camino Real Regional Mobility Authority, 801 Texas Avenue, El Paso, Texas 79901, Attn: Robert Studer, by 5:00 p.m., (El Paso time) April 10, 2020, to be eligible for consideration.

Each firm will be evaluated based on the criteria and process set forth in the request for proposals. The final selection of the financial advisory firm, if any, will be made by the CRRMA Board of Directors.

TRD-202001085
Robert Studer
Director of Finance
Camino Real Regional Mobility Authority
Filed: March 11, 2020

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/16/20 - 03/22/20 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/16/20 - 03/22/20 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-202001051
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 10, 2020

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Texas Education Agency

Request for Applications Concerning the 2020-2021 School Action Fund - Implementation Grant Program

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-20-121 is authorized by P.L. 114-95, Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001, Section 1003-School Improvement, and will be contingent on federal appropriations.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-20-121 from local educational agencies (LEAs) with schools designated by TEA as 2019-2020 Comprehensive Schools and D- and F-rated 2019-2020 Targeted Schools. A campus may not receive funding concurrently from Texas Title I Priority School (TTIPS) Cycle 4 or 5 grant funds, a School Redesign grant, a School Transformation Fund grant, a School Action Fund grant, or a Transformation Zone grant.

Description. The purpose of this grant program is to increase the number of students in great schools by providing customized implementation support to LEAs committed to bold and aggressive action to transform low-performing schools and create better options for students. Applicants choose to implement a school action model that might include the follow action models: create a new school and restart a struggling school. The grant includes support for LEAs to design schools, school models with greater autonomy and accountability, and matched technical assistance support from TEA.

Dates of Project. The 2020-2021 School Action Fund - Implementation grant program will be implemented primarily during the 2020-2021 and 2021-2022 school years. Applicants should plan for a starting date of no earlier than July 1, 2020, and an ending date of no later than July 31, 2022, contingent on the continued availability of federal funding.

Project Amount. Approximately $5 million is available for funding the 2020-2021 School Action Fund - Implementation grant program. The TEA anticipates awarding up to 5 grants. The maximum award amounts will be up to $1 million. Please see the Program Guidelines for additional information. This project is funded 100 percent with federal funds and is contingent on federal appropriations.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants' Conference. A webinar will be held on April 16, 2020. Applicants' conference/webinar details and a registration link are included in the Program Guidelines. Questions relevant to the RFA may be emailed to DSSI@tea.texas.gov on or before April 9, 2020. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and RFA.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the program guidelines of the RFA at DSSI@tea.texas.gov no later than April 9, 2020. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by April 21, 2020. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), May 5, 2020, to be eligible to be considered for funding. TEA will not accept applications by email. Applications may be delivered to the TEA visitors' reception area on the second floor of the William B. Travis Building, 1701 North Congress Avenue (at 17th Street and North Congress, two blocks north of the Capitol), Austin, Texas 78701 or mailed to Document Control Center, Grants Administration Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

TRD-202001078
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: March 11, 2020

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Request for Applications Concerning the 2020-2021 School Action Fund - Planning Grant Program

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-20-120 is authorized by P.L. 107-110, Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, Section 1003(g), and will be contingent on federal appropriations.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-20-120 from local educational agencies (LEAs) with schools designated by TEA as 2019-2020 Comprehensive Schools and D- and F-rated 2019-2020 Targeted Schools. A campus may not receive funding concurrently from Texas Title I Priority School (TTIPS) Cycle 4 or 5 grant funds, a School Redesign grant, a School Transformation Fund grant, a School Action Fund grant, or a Transformation Zone grant.

Description. The purpose of this grant program is to increase the number of students in great schools by providing customized planning support to LEAs committed to bold and aggressive action to transform low-performing schools and create better options for students. Applicants choose to implement a school action model that might include the follow action models: create a new school; restart a struggling school; redesign a school; and reassign students from a struggling school. The grant includes support for LEAs to design schools, school models with greater autonomy and accountability, and matched technical assistance support from TEA.

Dates of Project. The 2020-2021 School Action Fund - Planning grant program will be implemented primarily during the 2020-2021 school year. Applicants should plan for a starting date of no earlier than July 1, 2020, and an ending date of no later than July 31, 2021, contingent on the continued availability of federal funding.

Project Amount. Approximately $6 million is available for funding the 2020-2021 School Action Fund - Planning grant program. The TEA anticipates awarding up to 20 grants. The maximum award amounts will be up to $300,000. Please see the Program Guidelines for additional information. This project is funded 100 percent with federal funds and is contingent on federal appropriations.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants' Conference. A webinar will be held on April 16, 2020. Applicants' conference/webinar details and a registration link are included in the Program Guidelines. Questions relevant to the RFA may be emailed to DSSI@tea.texas.gov on or before April 9, 2020. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and RFA.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the program guidelines of the RFA at DSSI@tea.texas.gov no later than April 9, 2020. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Fre-

quently Asked Questions (FAQs) by April 21, 2020. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), May 5, 2020, to be eligible to be considered for funding. TEA will not accept applications by email. Applications may be delivered to the TEA visitors' reception area on the second floor of the William B. Travis Building, 1701 North Congress Avenue (at 17th Street and North Congress, two blocks north of the Capitol), Austin, Texas 78701 or mailed to Document Control Center, Grants Administration Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

TRD-202001077
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: March 11, 2020

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 20, 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 **April 20, 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: Center Point Independent School District; DOCKET NUMBER: 2019-1449-PWS-E; IDENTIFIER: RN105874648; LOCATION: Center Point, Kerr County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the construction of a new public water supply; PENALTY: $50; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2019-1240-AIR-E; IDENTIFIER: RN102018322; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: plastics manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), 117.310(c)(1)(B), and 122.143(4), New Source Review Permit Numbers 4437A, PSDTX808, and N014M2, Special Conditions Number 1, Federal Operating Permit (FOP) Number O1315, General Terms and Conditions (GTC) and Special Terms and Conditions Numbers 1.A and 18, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the concentration limit, and failing to comply with the maximum allowable emissions rates; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1315, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $30,844; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $12,338; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: CITGO Refining and Chemicals Company L.P.; DOCKET NUMBER: 2019-1571-AIR-E; IDENTIFIER: RN100238799; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 8778A and PSDTX408M3, Special Conditions Number 1, Federal Operating Permit (FOP) Number O1420, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 15, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O1420, GTC and STC Number 3.F, and 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; PENALTY: $10,695; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: City of Mason; DOCKET NUMBER: 2019-1349-MSW-E; IDENTIFIER: RN102002185; LOCATION: Mason, Mason County; TYPE OF FACILITY: municipal solid waste landfill; RULES VIOLATED: 30 TAC §330.171(b)(4) and §330.173(a), and Municipal Solid Waste (MSW) Permit Number 195, Part IV, Site Operating Plan for Arid Exempt, Type I MSW Landfills, by failing to prevent the disposal of Class 1 industrial solid waste; PENALTY: $1,890; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(5) COMPANY: City of Nacogdoches; DOCKET NUMBER: 2019-1439-MLM-E; IDENTIFIER: RN102217395; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: municipal solid waste landfill; RULES VIOLATED: 30 TAC §§116.110(a), 116.604(2), 122.143(4), 330.985(b), 330.987(c), and 330.989(a)(5), Federal Operating Permit (FOP) Number O2665/General Operating Permit (GOP) Number 517, Site-wide Requirements (b)(1), (b)(2), and (b)(8)(A), and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to renew the registration to use a standard permit by the date the registration expires; and 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O2665/GOP Number 517, Site-wide Requirements (b)(1) and (b)(2), and THSC, §382.085(b), by failing to submit a deviation report no later than 30

days after the end of each reporting period; PENALTY: $9,813; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $7,851; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: City of Reno; DOCKET NUMBER: 2019-1476-PWS-E; IDENTIFIER: RN102686581; LOCATION: Reno, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify and obtain approval from the executive director (ED) prior to making any significant change or addition to the systems production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.45(b)(1)(B)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.45(f)(4) and THSC, §341.0315(c), by failing to provide a purchase water contract that authorizes a maximum daily purchase rate, or uniform purchase rate in the absence of a specified daily purchase rate, plus the actual production capacity of the system of at least 0.6 gallons per minute per connection; 30 TAC §290.46(f)(2) and (3), (A)(i)(II), and (B)(v), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(j), by failing to complete a Customer Service Inspection certificate prior to providing continuous water service to new construction or any existing service when the water purveyor has reason to believe cross-connections or other potential contamination hazards exist; and 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; PENALTY: $850; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Rotan; DOCKET NUMBER: 2019-1567-PWS-E; IDENTIFIER: RN101440659; LOCATION: Rotan, Fisher 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 milligram per liter for total trihalomethanes based on the locational running annual average; and 30 TAC §290.272 and §290.274(a), by failing to meet the adequacy, availability, and/or content requirements for the Consumer Confidence Report for the calendar year 2018; PENALTY: $290; ENFORCEMENT COORDINATOR: Jée Willis, (512) 239-1115; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: City of Snook; DOCKET NUMBER: 2019-1333-PWS-E; IDENTIFIER: RN101195170; LOCATION: Snook, Burleson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: TCEQ Agreed Order Docket Number 2016-2026-PWS-E, Ordering Provision Number 2.a.ii, by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to collect lead and copper tap samples for the January 1, 2014 - December 31, 2014, and the January 1, 2015 - December 31, 2015, monitoring periods; PENALTY: $131; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: CWP ASSET CORP. dba Mister Carwash 11; DOCKET NUMBER: 2019-0700-PST-E; IDENTIFIER: RN102380680; LOCATION: Sugar Land, Fort Bend County; TYPE OF FACILITY: car wash with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every 30 days; and 30 TAC §334.606, by failing to maintain required operator training certification records and make them available for inspection upon request by agency personnel; PENALTY: $3,976; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: DCP Operating Company, LP; DOCKET NUMBER: 2019-1456-AIR-E; IDENTIFIER: RN100220052; LOCATION: Dumas, Moore County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 83193 and PSDTX1104, Special Conditions Number 4, Federal Operating Permit Number O2568, General Terms and Conditions and Special Terms and Conditions Number 8, and Texas Health and Safety Code, §382.085(b), by failing to maintain the minimum sulfur recovery efficiency for the Sulfur Recovery Unit at or above 98.5 % on a daily average when the sulfur production rate exceeds five long tons per day (LTPD) and at or above 96.0% on a daily average when the sulfur production rate is less than or equal to five LTPD; PENALTY: $20,850; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $10,425; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(11) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2019-0503-AIR-E; IDENTIFIER: RN100542711; LOCATION: Orange, Orange County; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O2055, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, 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 §122.143(4), New Source Review Permit Number 20204, Special Conditions Number 1, FOP Number O2055, GTC and STC Number 13, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $11,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $4,400; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: Gill Water Supply Corporation; DOCKET NUMBER: 2019-1659-PWS-E; IDENTIFIER: RN101208544; LOCATION: Marshall, Harrison 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 milligram per liter for total trihalomethanes based on the locational running annual average; PENALTY: $1,725; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: INVISTA S.a.r.l.; DOCKET NUMBER: 2019-0748-AIR-E; IDENTIFIER: RN104392626; LOCATION: Orange, Orange County; TYPE OF FACILITY: industrial organic chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O1898, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, 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; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review (NSR) Permit Number 1303, Special Conditions (SC) Number 1, FOP Number O1898, GTC and STC Number 20, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rate; and 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 1303, SC Number 1, NSR Permit Number 1387, SC Number 1, FOP Number O1898, GTC and STC Number 20, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $39,359; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $15,744; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: J & J Excavating & Materials Co.; DOCKET NUMBER: 2019-1328-MLM-E; IDENTIFIER: RN109620062; LOCATION: Uvalde, Uvalde County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; and 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities; PENALTY: $45,938; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: KAMORA, INCORPORATED dba Quik Save 1; DOCKET NUMBER: 2018-1000-PST-E; IDENTIFIER: RN102049798; LOCATION: Quinlan, Hunt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: KIM R. SMITH LOGGING, INCORPORATED; DOCKET NUMBER: 2019-0939-WQ-E; IDENTIFIER: RN110778396; LOCATION: Henderson, Rusk County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities; and TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of sediment into or adjacent to any water in the state; PENALTY: $62,500; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(17) COMPANY: Liberty Materials, Incorporated; DOCKET NUMBER: 2019-1584-WQ-E; IDENTIFIER: RN104527601; LOCATION: Woodloch, Montgomery County; TYPE OF FACILITY: sand and gravel operation; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System General Permit TXR05DK23, Section J, Number 5(b), by failing to prevent the unauthorized discharge of process water into or adjacent to any water in the state; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Paso Del Norte Materials, LLC; DOCKET NUMBER: 2019-1287-AIR-E; IDENTIFIER: RN110098357; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: asphalt and aggregate production plant; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code (THSC), §382.085(a) and (b), by failing to prevent nuisance odor conditions; and 30 TAC §§101.20(1), 116.115(c), and 116.615(2), 40 Code of Federal Regulations §60.8(f)(1), Standard Permit Registration Number 149990, Air Quality Standard Permit for Hot Mix Asphalt Plants, Special Conditions Number (1)(C)(i), and THSC, §382.085(b), by failing to conduct a performance test consisting of three separate runs using the applicable test method; PENALTY: $12,600; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,040; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(19) COMPANY: S K R BUSINESS LLC dba Burleson Food; DOCKET NUMBER: 2019-1367-PST-E; IDENTIFIER: RN102351251; LOCATION: Burleson, Johnson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to assure that all spill and overfill prevention devices are maintained in good operating condition; PENALTY: $4,188; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: SanBock, LLC dba Bristol General Store; DOCKET NUMBER: 2019-1627-PST-E; IDENTIFIER: RN109997379; LOCATION: Ennis, Ellis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the regulated USTs; 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; and 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to conduct reconciliation of detailed inventory control records at least once every 30 days in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the 30-day period plus 130 gallons; PENALTY: $10,563; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Texas Water Systems, Incorporated; DOCKET NUMBER: 2019-1719-PWS-E; IDENTIFIER: RN101210292; LOCATION: Gilmer, Upshur County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine (measured as total chlorine) throughout the distribution system at all times; and 30 TAC §290.46(q)(2), by failing to institute special precautions as described in the flowchart found in 30 TAC §290.47(e) in the event of low distribution pressure and water outages; PENALTY: $1,258; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(22) COMPANY: Trent Water Works, Incorporated; DOCKET NUMBER: 2019-1577-PWS-E; IDENTIFIER: RN102692670; LOCATION: Hempstead, Waller County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(a)(4), by failing to install water transmission and distribution lines below the frost line and in no case less than 24 inches below the ground surface; 30 TAC §290.44(c), by failing to ensure all waterlines within the distribution system meet the minimum waterline size, measured in inches in diameter, based on the number of connections; 30 TAC §290.44(d)(5), by failing to provide sufficient valves and blowoffs so that necessary repairs can be made without undue interruption of service over any considerable area and for flushing the system when required; 30 TAC §290.44(h)(1)(A), by failing to install backflow prevention assemblies or an air gap at all residences or establishments where an actual or potential contamination hazard exists, as identified in 30 TAC §290.47(f); 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the systems facilities and equipment; 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the public water system until the facility is decommissioned; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the facility's well remains in service; and 30 TAC §290.46(r), by failing to maintain a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and a minimum pressure of 20 psi during emergencies such as fire fighting; PENALTY: $1,456; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: TXI Operations, LP; DOCKET NUMBER: 2019-1431-AIR-E; IDENTIFIER: RN102171238; LOCATION: McKinney, Collin County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §§101.4, 101.5, and 106.6(b), Permit by Rule Registration Number 39376, and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent unauthorized emissions, failing to prevent a traffic hazard, and failing to prevent nuisance dust conditions; PENALTY: $7,875; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2019-1594-AIR-E; IDENTIFIER: RN100214386; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: oil and petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 38754 and PSDTX324M14, Special Conditions Number 1, Federal Operating Permit (FOP) Number O1458, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 22, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O1458, GTC and STC Number 2.F, and 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 §101.201(b)(1)(E) and (J) and §122.143(4), FOP Number O1458, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; PENALTY: $4,613; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-202001042

Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 10, 2020

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Enforcement Orders

An agreed order was adopted regarding UTILITIES INVESTMENT COMPANY, INC., Docket No. 2018-0965-PWS-E on March 10, 2020 assessing $200 in administrative penalties with $40 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 Mayo's Second Crossing RV Park LLC, Docket No. 2018-1157-PWS-E on March 10, 2020 assessing $832 in administrative penalties with $166 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 M&Z Wheelock, LLC, Docket No. 2018-1428-PWS-E on March 10, 2020 assessing $1,171 in administrative penalties with $234 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 Driscoll, Docket No. 2018-1478-PWS-E on March 10, 2020 assessing $50 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 Victoria's Platinum Properties, LLC, Docket No. 2018-1629-PWS-E on March 10, 2020 assessing $404 in administrative penalties with $242 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 QUIKTRIP CORPORATION, Docket No. 2019-0985-MLM-E on March 10, 2020 assessing $1,813 in administrative penalties with $362 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.

A field citation was adopted regarding ALLKIN CONSTRUCTION INC, Docket No. 2019-1495-WQ-E on March 10, 2020 assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Herbert Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding ROBERT DEAN MILLER, Docket No. 2019-1655-WR-E on March 10, 2020 assessing $350 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding RANDALL L PILKINGTON, Docket No. 2019-1691-OSI-E on March 10, 2020 assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Herbert Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding CALEB A ROSS, Docket No. 2019-1728-WOC-E on March 10, 2020 assessing $175 in administrative penalties. Information concerning any aspect of this citation 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.

A field citation was adopted regarding IEA CONSTRUCTORS LLC, Docket No. 2019-1732-WR-E on March 10, 2020 assessing $875 in administrative penalties. Information concerning any aspect of this citation 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.

TRD-202001074
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 11, 2020

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Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 160169

APPLICATION. D&K Stocker Investments, LLC, 5116 Sun Valley Drive, Fort Worth, Texas 76119-6410 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 160169 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 989 Kennedy Lane, Saginaw, Tarrant County, Texas 76131. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. *http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.856613&lng=-97.346649&zoom=13&type=r.* This application was submitted to the TCEQ on February 18, 2020. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on March 5, 2020.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at *www14.tceq.texas.gov/epic/eComment/.* Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Monday, April 13, 2020, at 6:00 p.m.

Courtyard by Marriott Fort Worth Fossil Creek

3751 Northeast Loop 820

Fort Worth, Texas 76137

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Drive, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from D&K Stocker Investments, LLC, 5116 Sun Valley Drive, Fort Worth, Texas 76119-6410, or by calling Ms. Monique Wells, Environmental Consultant, CIC Environmental LLC at (512) 292-4314.

Notice Issuance Date: March 5, 2020

TRD-202001075
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 11, 2020

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date

on which the public comment period closes, which in this case is **April 20, 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 April 20, 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: Alldoc's, Inc.; DOCKET NUMBER: 2019-0208-PST-E; TCEQ ID NUMBER: RN101750776; LOCATION: 5201 Victory Drive, Marshall, Harrison County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met. Specifically, spill and overfill control inspection records were not available for review; PENALTY: $4,800; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: BNSF Railway Company and Fort Worth & Western Railroad Company; DOCKET NUMBER: 2018-1589-AIR-E; TCEQ ID NUMBER: RN110494770; LOCATION: on a railway spur approximately 732 feet southeast of the intersection of Floyd Street and Powell Cemetery Road, Tolar, Hood County; TYPE OF FACILITY: railway diesel engines; RULES VIOLATED: Texas Health and Safety Code, §382.085(a) and (b) and 30 TAC §101.4, by failing to prevent nuisance odor conditions; PENALTY: $3,750; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: CHAHAL R&R, INC dba Alvin Express; DOCKET NUMBER: 2018-0970-PST-E; TCEQ ID NUMBER: RN104793054; LOCATION: 680 Highway 35 Bypass North, Alvin, Brazoria County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; 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.

(4) COMPANY: Michael Johnson; DOCKET NUMBER: 2018-0464-PST-E; TCEQ ID NUMBER: RN101443802; LOCATION: 101 South Smith Avenue, Hebbronville, Jim Hogg County; TYPE OF FACILITY: automobile service station with an inactive underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.7(d)(1)(B) and (3), by failing to provide an amended registration for any change or additional information regarding the UST system within 30 days from the date of the occurrence of the change or addition. Specifically, the registration had not been updated to reflect the current operational status of the UST system; 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. Specifically, the access points of the USTs were not locked during the investigation; TWC, §26.3475(d) and 30 TAC §334.49(c)(4)(C) and §334.54(b)(3), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; and TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C) and §334.54(b)(3), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure the rectifier and other components are operating properly; PENALTY: $13,180; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: PILOT POINT RURAL WATER SUPPLY, INC.; DOCKET NUMBER: 2019-0172-PWS-E; TCEQ ID NUMBER: RN102692837; LOCATION: 0.3 miles northeast of the intersection of North Willow Glade Circle and County Line Road near Pilot Point, Denton County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director by the tenth day of the month following the end of each quarter; 30 TAC §290.109(d)(4)(B) (formerly 30 TAC §290.109(c)(4)(B)) and §290.122(c)(2)(A) and (f), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive sample, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform-positive sample was collected, and failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to collect raw groundwater source samples; 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the executive director; and TWC, §5.702 and 30 TAC §291.76, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12097; PENALTY: $1,212; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: REWARI INVESTMENTS INC dba Haltom Corner; DOCKET NUMBER: 2018-1536-PST-E; TCEQ ID NUMBER: RN102346566; LOCATION: 4101 North East 28th Street, Haltom City, Tarrant 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. Specifically, the respondent did not conduct the annual line leak detector test; 30 TAC §334.48(a), by failing to ensure the UST system is operated, maintained, and managed in a manner that will prevent releases of regulated substances. Specifically, the filter on the piping of Dispenser Number Three was loose; and Texas Health and Safety Code, §382.085(b) and 30 TAC §115.225, by failing to comply with annual Stage I vapor recovery testing

requirements. Specifically, the annual testing of the Stage I equipment was not conducted; PENALTY: $4,855; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: S. J. LOUIS CONSTRUCTION OF TEXAS LTD.; DOCKET NUMBER: 2019-0454-WQ-E; TCEQ ID NUMBER: RN104794904; LOCATION: near Timberview Drive, Shelby Road, and Everman-Kennedale Road, Fort Worth, Tarrant County; TYPE OF FACILITY: construction project site; RULES VIOLATED: TWC, §26.121, 30 TAC §281.25(a)(4), and 40 Code of Federal Regulations, §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities. Specifically, respondent was performing construction activities prior to obtaining authorization under Texas Pollutant Discharge Elimination System General Permit Number TXR150000; PENALTY: $963; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: WEST PARK BUSINESS INC dba Gator Stop 4; DOCKET NUMBER: 2017-1151-PST-E; TCEQ ID NUMBER: RN101818201; LOCATION: 716 Magnolia Avenue, Port Neches, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of UST Numbers 1B and 2; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report a suspected release to the agency within 72 hours of discovery. Specifically, inconclusive Statistical Inventory Reconciliation (SIR) results for the super and diesel tanks for January 2017 to May 2017 indicated a suspected release that was not reported; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery. Specifically, inconclusive SIR results for the super and diesel tanks for January 2017 to May 2017 indicated a suspected release that was not investigated; PENALTY: $20,731; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202001046
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 10, 2020

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Notice of Public Meeting on Proposed Remedial Action

Notice of public meeting on April 23, 2020, in Corpus Christi, Nueces County, Texas concerning the Ballard Pits Proposed State Superfund Site (the site).

The purpose of the meeting is to obtain public input and information concerning the proposed remedy for the site.

The executive director of the Texas Commission on Environmental Quality (TCEQ or agency) issues this public notice of the selection of a proposed remedy for the site. In accordance with Texas Health and Safety Code, §361.187 and 30 Texas Administrative Code §335.349(a), a public meeting regarding the TCEQ's selection of a proposed remedy for the site shall be held. This notice was also published in the *Corpus Christi Caller Times* newspaper on March 20, 2020.

The public meeting will be held on April 23, 2020, at 7:00 p.m. at the Calallen Middle School Cafeteria, located at 4602 Cornett Drive in Corpus Christi, Texas 78410. The public meeting is not a contested case hearing under the Texas Government Code, Chapter 2001.

The site was proposed for listing on the state registry of Superfund sites in the January 13, 2006, issue of the *Texas Register* (31 TexReg 316). The site is approximately 296 acres in Section 6 of the Wade Riverside Subdivision, at the end of Ballard Lane, west of its intersection with County Road 73.

The TCEQ proposed remedy is a Plume Management Zone (PMZ) to manage on-site and off-site impacted groundwater and non-aqueous phase liquid (NAPL). NAPL will be monitored to ensure it remains within the PMZ. During post-closure care of the remedy, if performance monitoring measures indicate that the PMZ is not functioning properly, limited in-situ groundwater treatment will be implemented. The PMZ will be established with institutional controls filed in county real property records in accordance with the Texas Risk Reduction Program to restrict exposure to the NAPL and impacted groundwater. If institutional controls are not placed on the off-site properties, the off-site area impacted by NAPL may be excavated, a clay layer would be constructed at the bottom and around the excavation walls, and then the excavation would be backfilled with clean soil.

All persons desiring to comment may do so prior to or at the public meeting. All comments submitted *prior* to the public meeting **must be received by 5:00 p.m. on April 22, 2020, and should be sent in writing** to Scott Settemeyer, P.G., Project Manager, TCEQ, Remediation Division, MC-136, P.O. Box 13087, Austin, Texas 78711-3087, by email at *superfnd@tceq.texas.gov* or by facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting on April 23, 2020.

A portion of the record for this site, including documents pertinent to the proposed remedial action, are available for review during regular business hours at the Owen R. Hopkins Public Library, 3202 McKinzie Road, Corpus Christi, Texas 78410, (361) 826-7055. Complete copies of the TCEQ's public records regarding the site may be obtained during regular business hours at the TCEQ's Central File Room, located at 12100 Park 35 Circle, Building E, First Floor, in Austin, Texas, (512) 239-2900. Accessible parking is available on the east side of Building D, convenient to access ramps located between Buildings D and E. Additional files may be obtained by contacting the TCEQ project manager for the site, Scott Settemeyer, P.G., at (512) 239-3429. Photocopying of file information is subject to payment of a fee. Information regarding the site's history in the state Superfund program is also available on the TCEQ's website at *https://www.tceq.texas.gov/remediation/superfund/state/ballard.html.*

Persons who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-3844. Requests should be made as far in advance as possible.

For further information about the site or the public meeting, please call Crystal Taylor, TCEQ Community Relations Liaison, at (800) 633-9363.

TRD-202001049
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 10, 2020

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Notice of Water Rights Application

Notice issued March 10, 2020

CERTIFICATE OF ADJUDICATION No. 12-4031A; Palo Pinto County Municipal Water District No. 1, P.O. Box 387, Mineral Wells, Texas 76068-0387, Applicant, seeks authorization to extend the time to commence and complete construction related to the enlargement of Lake Palo Pinto and the construction of Turkey Peak Dam, located on Palo Pinto Creek, tributary of the Brazos River, Brazos River Basin. The application and fees were received on October 11, 2019, and additional information was received on December 19 and December 20, 2019. The application was declared administratively complete and filed with office of the Chief Clerk on January 7, 2020. The Executive Director has determined the applicant has shown due diligence and justification for delay. In the event a hearing is held on this application, the Commission shall also consider whether the appropriation shall be forfeited for failure to demonstrate sufficient due diligence and justification for delay. The Executive Director has completed the technical review of the application and prepared a draft Order. The draft Order, if granted, would authorize the extension of time to commence and complete construction of Turkey Peak Dam. The application, technical memorandum, and Executive Director's draft Order 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 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-202001076

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 11, 2020

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Quarterly Healthcare Common Procedure Coding System (HCPCS) Update for 2019 Novel Coronavirus Real Time RT-PCR Diagnostic Test Panels

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on March 23, 2020, beginning at 9:00 a.m. and ending at 10:00 a.m., to receive comment on proposed Medicaid payment rates for the Quarterly HCPCS Update for 2019 Novel Coronavirus Real Time RT-PCR Diagnostic Test Panels (COVID-19 test panels).

The public hearing will be held in conference room 2301 of HHSC's 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. 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.

Only testimony related to the Medicaid reimbursement rates for the COVID-19 test panels will be accepted during the public hearing.

Proposal. The payment rates for the COVID-19 test panels are proposed to be effective February 4, 2020.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

Section 355.8061, which addresses outpatient hospital reimbursement;

Section 355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

Section 355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps); and

Section 355.8610, which addresses the reimbursement for clinical laboratory services.

Briefing Packet. A briefing packet describing the proposed payments rates will be available at https://rad.hhs.texas.gov/rate-packets on March 13, 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-202001073
Karen Ray
Chief Counsel
Texas Health and Human Services
Filed: March 10, 2020

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Texas Department of Insurance

Company Licensing

Application for OHIC Insurance Company, a foreign fire and/or casualty company, to change its name to Obsidian Insurance Company. The home office is in Columbus, Ohio.

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-202001082
James Person
General Counsel
Texas Department of Insurance
Filed: March 11, 2020

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Texas Lottery Commission

Scratch Ticket Game Number 2214 "LUCHA LIBRE LOOT"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2214 is "LUCHA LIBRE LOOT". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2214 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2214.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, MASK/MÁSCARA SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2214 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
MASK/MÁSCARA SYMBOL	DBL
$2.00	TWO$
$4.00	FOR$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$1,000	ONTH
$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2214), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2214-0000001-001.

H. Pack - A Pack of the "LUCHA LIBRE LOOT" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "LUCHA LIBRE LOOT" Scratch Ticket Game No. 2214.

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 "LUCHA LIBRE LOOT" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-two (22) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "MASK" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. Si el jugador iguala cualquier Símbolo de Juego de TUS NÚMEROS con cualquier Símbolo de Juego de los NÚMEROS GANADORES, el jugador gana el PREMIO para ese símbolo. Si el jugador revela un Símbolo de Juego de "MÁSCARA", el jugador gana DOBLE el PREMIO para ese símbolo. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-two (22) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-two (22) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty-two (22) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-two (22) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to ten (10) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have two (2) different WINNING NUMBERS/NÚMEROS GANADORES Play Symbols.

E. Non-winning YOUR NUMBERS/TUS NÚMEROS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "MASK/MÁSCARA" (DBL) Play Symbol will never appear in the WINNING NUMBERS/NÚMEROS GANADORES Play Symbol spots.

H. The "MASK/MÁSCARA" (DBL) Play Symbol will only appear on winning Tickets as dictated by the prize structure.

I. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS/TUS NÚMEROS Play Symbol (i.e., 10 and $10).

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCHA LIBRE LOOT" Scratch Ticket Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCHA LIBRE LOOT" Scratch Ticket Game prize of $1,000 or $30,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCHA LIBRE LOOT" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "LUCHA LIBRE LOOT" 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 "LUCHA LIBRE LOOT" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the

Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,120,000 Scratch Tickets in Scratch Ticket Game No. 2214. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2214 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	948,480	9.62
$4.00	729,600	12.50
$5.00	145,920	62.50
$10.00	109,440	83.33
$20.00	72,960	125.00
$50.00	61,218	148.98
$100	4,028	2,264.15
$1,000	114	80,000.00
$30,000	6	1,520,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.40. 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. 2214 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. 2214, 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-202001062
Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 10, 2020

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Scratch Ticket Game Number 2221 "SPACE INVADERS™ $50,000 CASH INVASION"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2221 is "SPACE INVADERS™ $50,000 CASH INVASION". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2221 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2221.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, STAR SYMBOL, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $500, $5,000 and $50,000.

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. 2221 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET

39	TRNI
40	FRTY
STAR SYMBOL	DBL
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$25.00	TWFV$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$5,000	FVTH
$50,000	50TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2221), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2221-0000001-001.

H. Pack - A Pack of "SPACE INVADERS™ $50,000 CASH INVASION" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning 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 - A Texas Lottery "SPACE INVADERS™ $50,000 CASH INVASION" Scratch Ticket Game No. 2221.

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 "SPACE INVADERS™ $50,000 CASH INVASION" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "STAR" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the

front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize sturcture.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 05 and $5).

D. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

E. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to three (3) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "STAR" (DBL) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "SPACE INVADERS™ $50,000 CASH INVASION" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SPACE INVADERS™ $50,000 CASH INVASION" Scratch Ticket Game prize of $5,000 or $50,000, 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 "SPACE INVADERS™ $50,000 CASH INVASION" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "SPACE INVADERS™ $50,000 CASH INVASION" 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 "SPACE INVADERS™ $50,000 CASH INVASION" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "SPACE INVADERS™ $50,000 CASH INVASION" Scratch Ticket may be entered into one (1) of four (4) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,080,000 Scratch Tickets in the Scratch Ticket Game No. 2221. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2221 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	708,000	10.00
$10.00	377,600	18.75
$15.00	188,800	37.50
$20.00	188,800	37.50
$25.00	94,400	75.00
$50.00	70,800	100.00
$100	17,700	400.00
$500	1,652	4,285.71
$5,000	50	141,600.00
$50,000	7	1,011,428.57

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.30. 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. 2221 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 Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2221, 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-202001064
Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 10, 2020

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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 March 2, 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 Colorado Valley Telephone Cooperative, Inc. to Adjust High Cost Support under 16 Texas Administrative Code §26.407(h), Docket Number 50610.

Colorado Valley requests a high-cost support adjustment increase of $504,955. The requested adjustment complies with the cap of 140% of the annualized support the provider received in the 12 months ending March 1, 2020, 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 50610.

TRD-202001004
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: March 5, 2020

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Texas Real Estate Commission

Correction of Error

The Texas Real Estate Commission proposed an amendment to 22 TAC §535.92, concerning Continuing Education Requirements, in Chapter

535, General Provisions. The proposed rule notice appeared in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1299). The preamble associated with that proposal contained incorrect information. The corrected version appears below.

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.92, Continuing Education Requirements, in Chapter 535, General Provisions. The proposed amendments to §535.92 require three hours of continuing education (CE) to real estate sales agents or broker license renewals, the subject matter of which must be real estate contracts. The proposed amendments additionally clarify which license holders must take the broker responsibility course and updates the professional designations available through CE credit.

Chelsea Buchholtz, Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing this section as proposed will be greater protection of consumers by the increased knowledge and aptitude of license holders.

For each year of the first five years the proposed amendments are in effect the amendments will not:

--create or eliminate a government program;

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

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

--require an increase or decrease in fees paid to the agency;

--expand, limit or repeal an existing regulation;

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

--positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Chelsea Buchholtz, Executive Director, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapters 1101. No other statute, code or article is affected by the proposed amendments.

TRD-202000995
Chelsea Buchholtz
Executive Director
Texas Real Estate Commission
Filed: March 4, 2020

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Red River Authority of Texas

Request for Qualifications for Audit Services

The Red River Authority of Texas (Authority) is soliciting Request for Qualifications (RFQ) from interested persons and/or firms for the provision of Audit Services. The Authority is a governmental entity comprised of multiple departments and enterprise funds, and is subject to regulations governing the completion and filing of annual financial audits. In addition, the Authority provides wholesale and retail water and wastewater services.

The scope of the audit is to be performed under generally accepted auditing standards, as well as governmental auditing standards. The report is to be a Comprehensive Annual Financial Report (CAFR) that is graded annually and the auditor is requested to draft the main statements and combining schedules, as well as some or the other schedules within the CAFR. The Authority's staff will prepare schedules, reproduce documents, pull documents, and other such tasks as needed in order to expedite the audit.

The financial audit should be conducted as early as possible after fiscal year ending September 30 with the entire CAFR ready for discussion, recommendations and approval by the Authority's Board of Directors at the annual meeting in January of the subsequent year.

At a minimum, RFQ's should include:

1. Resumes with the names and relevant experience of the primary client representative and all support staff who are proposed to provide material input into the audit process as part of the proposed engagement.

2. The RFQ should also include the firm's overall experience to include references and contact information.

3. The primary client representative must be a licensed CPA and possess a thorough knowledge of state and federal regulations governing Texas governmental entities, to include federal Single Audit Act requirements.

4. Describe any current or potential conflict of interest that may result from the selection of your firm by the Authority. Specify the party with which the conflict exists or might arise, the nature of the conflict and whether the firm would step aside or resign from that engagement or representation creating the conflict.

5. Provide a copy of the audit services contract proposed by your firm without fee information.

The deadline for submission of RFQ's is **4:00 p.m.** on **Thursday, April 9, 2020.**

RFQ's may be submitted marked **CONFIDENTIAL RFQ** to Ms. Danna Bales, Executive Assistant by email to danna.bales@rra.texas.gov, by mail to P.O. Box 240, Wichita Falls, Texas 76307, or delivered to 3000 Hammon Road, Wichita Falls, Texas.

TRD-202001000
Randy Whiteman
General Manager
Red River Authority of Texas
Filed: March 5, 2020

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Region F Regional Water Planning Group

Public Hearing Notice - Region F

Notice is hereby given that the Region F Regional Water Planning Group (RFRWPG) is taking comment on the adopted Region F Initially Prepared Plan (IPP) Water Plan. The comments will be used in developing an approved regional water plan by RFRWPG. The RFRWPG area, also known as Region F, includes the following counties: Andrews, Borden, Brown, Coke, Coleman, Concho, Crane, Crockett, Ector, Glasscock, Howard, Irion, Kimble, Loving, Martin, Mason, McCulloch, Menard, Midland, Mitchell, Pecos, Reagan, Reeves, Runnels, Schleicher, Scurry, Sterling, Sutton, Tom Green, Upton, Ward and Winkler. The RFRWPG will accept written comments from the date of this notice through June 15, 2020, and will accept written and oral comments on the IPP at the public hearing.

Prior to taking action on the regional water plan based on the IPP, a public hearing will be held, and there will be a public comment period. The deadline for submission of public written comments is June 15, 2020.

The date, time, and location of the public hearing is as follows:

Notice is given that a public hearing on the IPP will be held on April 16, 2020, at 10:30 a.m. at the Administrative Offices of the Colorado River Municipal Water District in Howard County, located at 400 E. 24th Street, Big Spring, Texas.

A summary of the proposed action to be taken is as follows:

The proposed action is taking public comment on the adopted IPP and development of a regional water plan by the Region F Regional Water Planning Group (RFRWPG).

A copy of the IPP is available for viewing at the Region F Regional Water Planning Group (RFRWPG) Administrative Office, Colorado River Municipal Water District, 400 E. 24th Street, Big Spring, Texas. Beginning on March 16, 2020, a copy of the IPP will also be accessible at the website address of www.regionfwater.org.

A copy of the IPP will be available for viewing at the office of the County Clerk and Public Libraries (if one exists) for each county located within Region F by March 16, 2020.

The name, telephone number, and address of the person to whom questions or requests for additional information may be submitted as follows:

John W. Grant, telephone number (432) 267-6341, Colorado River Municipal Water District, P.O. Box 869, Big Spring, Texas 79721. The CRMWD is the Administrator for the RFRWPG.

How the public may submit comments is as follows:

The RFRWPG will accept written and oral comments at the public hearing. The RFRWPG will accept written comments after the posting of this notice until the deadline. Written comments may be sent directly to the RFRWPG by delivery to the CRMWD, P.O. Box 869, 400 E. 24th Street, Big Spring, Texas 79721. The deadline for submission of public written comments is June 15, 2020.

TRD-202001053
John Grant
Chair
Region F Regional Water Planning Group
Filed: March 10, 2020

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San Jacinto River Authority

Public Notice of the Initially Prepared Plan (IPP) of the Regional Water Plan of the Region H Water Planning Group

The Region H Water Planning Group area includes all or part of the following counties: Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Leon, Liberty, Madison, Montgomery, Polk, San Jacinto, Trinity, Walker, and Waller.

Notice is hereby given that the Region H Water Planning Group (RHWPG) is requesting public review and comment on an Initially Prepared 2021 Region H Water Plan (the IPP).

A summary of the content of the Draft Initially Prepared Plan: The *Initially Prepared Plan (IPP)* updates the 2016 Region H Water Plan that was included in the 2017 State Water Plan prepared by the Texas Water Development Board (TWDB). The 2021 IPP addresses the following topics:

--Projected population and water demands

--Existing water supply sources

--Analysis of needs

--Recommended water management strategies for meeting any identified water shortages

--Water conservation recommendations

--Impacts of the Regional Water Plan

--Drought response

--Regulatory, Administrative and Legislative Recommendations

--Comparison to previous regional planning

Public Comment: Public hearings to receive public comment on the IPP will be held at the following dates and locations:

April 16, 6:00 p.m.

City of Madisonville, Texas - Truman Kimbro Center

111 West Trinity Street

Madisonville, Texas 77864

April 21, 6:00 p.m.

Richmond, Texas

Fort Bend County Libraries - George Memorial Library

1001 Golfview Drive

Richmond, Texas 77469

April 23, 6:00 p.m.

Conroe, Texas

Montgomery County Memorial Library System - Central Library

104 I-45 North

Conroe, Texas 77304

The Agenda for each public hearing will consist of (1) brief introductions on behalf of the RHWPG, (2) a summary of the planning effort and the IPP given by the consulting team, and (3) individual comments of members of the public.

The RHWPG will accept written comments until 5:00 p.m. on June 28, 2020. Written comments should be provided to:

Hon. Mark Evans, Chair, RHWPG

c/o San Jacinto River Authority

P.O. Box 329

Conroe, Texas 77305-0329

Written comments without attachments also may be emailed to info@regionhwater.org.

Questions or requests for additional information may be submitted to: Jace Houston, General Manager, San Jacinto River Authority, P.O. Box 329, Conroe, TX 77305-0329, telephone (936) 588-3111. The San Jacinto River Authority is the Administrator for the RHWPG.

A copy of the Initially Prepared Plan for 2021 is available at the County Clerk's office and at a depository library in each county in Region H. A list of depositories and a copy of the IPP are available on the RHWPG website at www.regionhwater.org. A copy of the IPP also is at https://www.twdb.texas.gov/waterplanning/rwp/plans/2021/index.asp.

TRD-202001083
Mark Evans
Chair of the Region H Water Planning Group
San Jacinto River Authority
Filed: March 11, 2020

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Workforce Solutions Deep East Texas

Request for Proposals 20-396 Lease Space in Jasper, Texas

The Deep East Texas Local Workforce Development Board, Inc. dba Workforce Solutions Deep East Texas (Board) is requesting proposals to lease office space consisting of approximately 4,000 - 5,000 square feet. The space must be located within the city limits of Jasper, Texas, that are easily accessible to the public. All space offered must meet, be built to meet, or be renovated to meet the Board's specifications.

Anyone interested in offering space should obtain a copy of the Request for Proposals 20-396 (RFP) at www.detwork.org or you can request a copy of the RFP by contacting:

Kim Moulder, Staff Support Specialist

Workforce Solutions Deep East Texas

415 S First Street, Suite 110 B

Lufkin, Texas 75901

(936) 639-8898

Email: kmoulder@detwork.org

Web: www.detwork.org

RFP release date: March 6, 2020

End of Question Period: March 25, 2020, 4:00 p.m. (CST)

Proposal Due Date and Time: April 15, 2020, 4:00 p.m. (CST)

TRD-202001017
Mark Durand
Executive Director
Workforce Solutions Deep East Texas
Filed: March 6, 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
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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