
TEXAS REGISTER

Volume 45 Number 42

October 16, 2020

Pages 7341 - 7498



TEXAS REGISTER

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>
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Texas Register, (ISSN 0362-4781, USPS 12-0090), is published weekly (52 times per year) for \$340.00 (\$502.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P. O. Box 1710, Latham, NY 12110.

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The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Easton, MD and at additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register*, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

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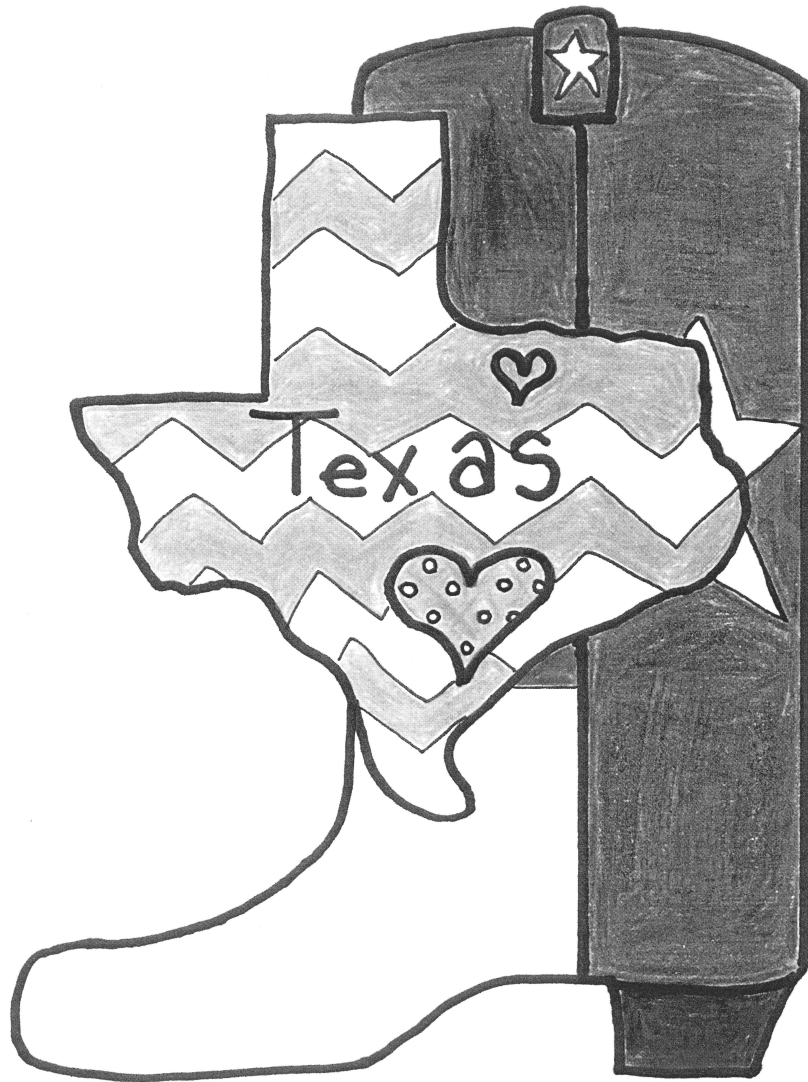
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THE GOVERNOR

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

Appointments

Appointments for September 30, 2020

Appointed as the Texas State Historian, for a term to expire September 30, 2022, Monte L. Monroe, Ph.D. of Lubbock, Texas (Dr. Monroe is being reappointed).

Appointed to the Statewide Health Coordinating Council, for a term to expire August 31, 2025, Kimberly N. Haynes, D.M.D. of Leander, Texas (replacing Ayeez A. Lalji, D.D.S. of Sugar Land, whose term expired).

Appointments for October 1, 2020

Appointed to the Council on Sex Offender Treatment, for a term to expire February 1, 2023, Elizabeth P. Aliseda of Beeville, Texas (replacing Charissa S. Dvorak of Heath, who resigned).

Appointed to the Council on Sex Offender Treatment, for a term to expire February 1, 2025, Velma "Jean" Stanley, Ph.D. of Lufkin, Texas (replacing Terri L. Bauer of Sachse, whose term expired).

Appointed to the Council on Sex Offender Treatment, for a term to expire February 1, 2025, Tiffany S. Strother of Godley, Texas (replacing Louis Gonzales, III of Round Rock, whose term expired).

Appointed to the Texas Appraiser Licensing and Certification Board, for a term to expire January 31, 2023, Rolando F. Castro of Cypress, Texas (replacing James J. "Jim" Jeffries of Georgetown, who resigned).

Appointments for October 5, 2020

Appointed to the Texas Crime Stoppers Council, for a term to expire September 1, 2024, Lauren H. Day of Austin, Texas (Ms. Day is being reappointed).

Appointed to the Texas Crime Stoppers Council, for a term to expire September 1, 2024, Gregory F. "Greg" New of Waxahachie, Texas (Mr. New is being reappointed).

Appointed to the Texas Crime Stoppers Council, for a term to expire September 1, 2024, Stephanie L. Vanskike of Sour Lake, Texas (replacing Steven W. "Steve" Squier of Cleveland, whose term expired).

Greg Abbott, Governor

TRD-202004168



Executive Order GA-32

Relating to the continued response to the COVID-19 disaster as Texas reopens.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, I issued Executive Order GA-08 on March 19, 2020, mandating certain social-distancing restrictions for Texans in accordance with guidelines promulgated by President Donald J. Trump and the Centers for Disease Control and Prevention (CDC); and

WHEREAS, I issued Executive Order GA-14 on March 31, 2020, expanding the social-distancing restrictions for Texans based on guidance from health experts and the President; and

WHEREAS, I subsequently issued Executive Orders GA-16, GA-18, GA-21, GA-23, and GA-26 from April through early June 2020, aiming to achieve the least restrictive means of combatting the threat to public health by continuing certain social-distancing restrictions, while implementing a safe, strategic plan to reopen Texas; and

WHEREAS, as Texas reopens in the midst of COVID-19, increased spread is to be expected, and the key to controlling the spread and keeping Texas residents safe is for all Texans to consistently follow good hygiene and social-distancing practices, especially those set forth in the minimum standard health protocols from the Texas Department of State Health Services (DSHS); and

WHEREAS, in June 2020, Texas experienced substantial increases in COVID-19 cases and hospitalizations, necessitating targeted and temporary adjustments to the reopening plan to achieve the least restrictive means for reducing the growing spread of COVID-19 and the resulting imminent threat to public health, and to avoid a need for more extreme measures; and

WHEREAS, I therefore issued Executive Orders GA-28 and GA-29 in late June and early July 2020, respectively, and amended Executive Order GA-28 by proclamation on July 2, 2020; and

WHEREAS, due to improved medical treatments for COVID-19 patients, substantial increases in testing, abundant supplies of personal protective equipment, and Texans' adherence to safe practices like social distancing, hand sanitizing, and use of face coverings, the spread of COVID-19 and the number of new COVID-19 cases and hospitalizations have steadily and significantly declined since late July; and

WHEREAS, I therefore issued Executive Orders GA-30 and GA-31 on September 17, 2020, allowing additional reopening and non-essential medical surgeries and procedures in Texas, except in some areas with high hospitalizations as defined in those orders; and

WHEREAS, as Texas continues to reopen, everyone must act safely, and to that end, this executive order and prior executive orders provide that all persons should follow the health protocols from DSHS, which whenever achieved will mean compliance with the minimum standards for safely reopening, but which should not be used to fault those who act in good faith but can only substantially comply with the standards

in light of scarce resources and other extenuating COVID-19 circumstances; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility "for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;" and

WHEREAS, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable under Section 418.173 by a fine not to exceed \$1,000, and may be subject to regulatory enforcement;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, and in accordance with guidance from the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, other medical advisors, the White House, and the CDC, do hereby order the following on a statewide basis effective at 12:01 a.m. on October 14, 2020:

Every business establishment in Texas shall operate at no more than 75 percent of the total listed occupancy of the establishment; provided, however, that:

1. There is no occupancy limit for the following:

a. any services listed by the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) in its Guidance on the Essential Critical Infrastructure Workforce, Version 4.0 or any subsequent version;

b. religious services, including those conducted in churches, congregations, and houses of worship;

c. local government operations, including county and municipal governmental operations relating to licensing (including marriage licenses), permitting, recordation, and document-filing services, as determined by the local government;

d. child-care services;

e. youth camps, including but not limited to those defined as such under Chapter 141 of the Texas Health and Safety Code, and including all summer camps and other daytime and overnight camps for youths;

f. recreational sports programs for youths and adults;

g. any public or private schools, and any public or private institutions of higher education, not already covered above;

h. drive-in concerts, movies, or similar events, under guidelines that facilitate appropriate social distancing, that generally require spectators to remain in their vehicles, and that minimize in-person contact between people who are not in the same household or vehicle; and

i. the following establishments that operate with at least six feet of social distancing between work stations: cosmetology salons, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade; massage establishments and other facilities where licensed massage therapists or other persons licensed or otherwise authorized to practice under Chapter 455 of the Texas Occupations Code practice their trade; and other personal-care and beauty services such as tanning salons, tattoo studios, piercing studios, hair removal services, and hair loss treatment and growth services.

2. In areas with high hospitalizations as defined below, any business establishment that otherwise would have a 75 percent occupancy or operating limit may operate at up to only 50 percent. This paragraph does not apply, however, to business establishments located in a county that has filed with DSHS, and is in compliance with, the requisite attestation form promulgated by DSHS regarding minimal cases of COVID-19.

"Areas with high hospitalizations" means any Trauma Service Area that has had seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of total hospital capacity exceeds 15 percent, until such time as the Trauma Service Area has seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of total hospital capacity is 15 percent or less. A current list of areas with high hospitalizations will be maintained at www.dshs.texas.gov/ga3031.

3. Except as provided below by paragraph No. 5, there is no occupancy limit for outdoor areas, events, and establishments, with the exception of the following outdoor areas, events, or establishments that may operate at no more than 75 or 50 percent, as applicable, of the normal operating limits as determined by the owner:

a. amusement parks;

b. water parks;

c. swimming pools;

d. museums and libraries; and

e. zoos, aquariums, natural caverns, and similar facilities.

4. All indoor and outdoor professional, collegiate, and similar sporting events, including rodeos and equestrian events, shall remain limited to 50 percent of the normal operating limits as determined by the owner.

5. For any outdoor gathering in excess of 10 people, including rafting, tubing, and related services, other than those set forth above in paragraph Nos. 1, 3, or 4, the gathering is prohibited unless the mayor of the city in which the gathering is held, or the county judge in the case of a gathering in an unincorporated area, approves of the gathering, and such approval can be made subject to certain conditions or restrictions not inconsistent with this executive order.

6. Restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages, and whose customers eat or drink only while seated, may offer dine-in services.

7. Bars or similar establishments that hold a permit from the Texas Alcoholic Beverage Commission (TABC), and are not restaurants as defined above in paragraph No. 6, may offer on-premises services only as described by this paragraph. A bar or similar establishment may offer on-premises services at up to 50 percent of the total listed occupancy of the establishment *if*:

a. the bar or similar establishment is not in an area with high hospitalizations as defined above, and the county judge of the county in which the bar or similar establishment is located files the requisite form with TABC; or

b. the bar or similar establishment is in an area with high hospitalizations as defined above, but is located in a county that has filed with DSHS, and is in compliance with, the requisite attestation form promulgated by DSHS regarding minimal cases of COVID-19, and the county judge of the county in which the bar or similar establishment is located also files the requisite form with TABC.

Patrons at bars or similar establishments operating under this paragraph may eat or drink only while seated, except that in an establishment that holds a permit from TABC as a brewer, distiller/rectifier, or winery, customers may sample beverages while standing so long as they are in

a group of six people or fewer and there is at least six feet of social distancing or engineering controls, such as partitions, between groups.

Where applicable, this 50 percent occupancy limit applies only indoors; the limit does not apply to outdoor areas, events, or establishments, although social distancing and other protocols must be followed.

People shall not visit bars or similar establishments that are located in counties not included in parts (a) or (b) above. A current list of all counties reopening under this paragraph will be maintained on TABC's website.

The use by bars or similar establishments of drive-thru, pickup, or delivery options for food and drinks remains allowed to the extent authorized by TABC.

8. For purposes of this executive order, facilities with retractable roofs are considered indoor facilities, whether the roof is opened or closed.

9. Staff members are not included in determining operating levels, except for manufacturing services and office workers.

10. Except as provided in this executive order or in the minimum standard health protocols recommended by DSHS, found at www.dshs.texas.gov/coronavirus, people shall not be in groups larger than 10 and shall maintain six feet of social distancing from those not in their group.

11. People over the age of 65 are strongly encouraged to stay at home as much as possible; to maintain appropriate distance from any member of the household who has been out of the residence in the previous 14 days; and, if leaving the home, to implement social distancing and to practice good hygiene, environmental cleanliness, and sanitation.

12. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) should use good-faith efforts and available resources to follow the minimum standard health protocols recommended by DSHS.

13. Nothing in this executive order or the DSHS minimum standards precludes requiring a customer to follow additional hygiene measures when obtaining services.

14. People may visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities as determined through guidance from the Texas Health and Human Services Commission (HHSC). Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible.

15. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency (TEA). Private schools and institutions of higher education are encouraged to establish similar standards.

Notwithstanding anything herein to the contrary, the governor may by proclamation add to the list of establishments or venues that people shall not visit.

This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order, allows gatherings prohibited by this executive order, or expands the list or scope of services as set forth in this executive order.

Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary

to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.

All existing state executive orders relating to COVID-19 are amended to eliminate confinement in jail as an available penalty for violating the executive orders. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes Executive Order GA-30, but does not supersede Executive Orders GA-10, GA-13, GA-17, GA-24, GA-25, GA-29, or GA-31. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.

Given under my hand this the 7th day of October, 2020.

Greg Abbott, Governor

TRD-202004177



Proclamation 41-3773

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that exceptional drought conditions pose a threat of imminent disaster in Andrews, Armstrong, Bailey, Brewster, Briscoe, Castro, Childress, Cochran, Collingsworth, Crane, Crosby, Culberson, Dawson, Dimmit, Deaf Smith, Ector, Floyd, Gaines, Glasscock, Gray, Hale, Hockley, Hudspeth, Jeff Davis, Lamb, Loving, Lubbock, Lynn, Martin, Midland, Motley, Parmer, Presidio, Randall, Reagan, Reeves, Sutton, Swisher, Terrell, Terry, Upton, Uvalde, Ward, Wheeler, Winkler, Yoakum, and Zavala counties.

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

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

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties based on the existence of such threat.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 5th day of October, 2020.

Greg Abbott, Governor
TRD-202004169



Proclamation 41-3774

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have issued proclamations renewing the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, a state of disaster continues to exist in all counties due to COVID-19;

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

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 7th day of October, 2020.

Greg Abbott, Governor
TRD-202004180



Proclamation 41-3775

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

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

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 7th day of October, 2020.

Greg Abbott, Governor
TRD-202004181



EMERGENCY RULES

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

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 187. PROCEDURAL RULES

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

22 TAC §187.2, §187.6

The Texas Medical Board is renewing the effectiveness of emergency amended §187.2 and §187.6 for a 60-day period. The text of the emergency rule was originally published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4430).

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004092

Scott Freshour

General Counsel

Texas Medical Board

Original effective date: June 24, 2020

Expiration date: December 20, 2020

For further information, please call: (512) 305-7016

SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

22 TAC §187.16

The Texas Medical Board is renewing the effectiveness of emergency amended §187.16 for a 60-day period. The text of the emergency rule was originally published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4432).

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004093

Scott Freshour

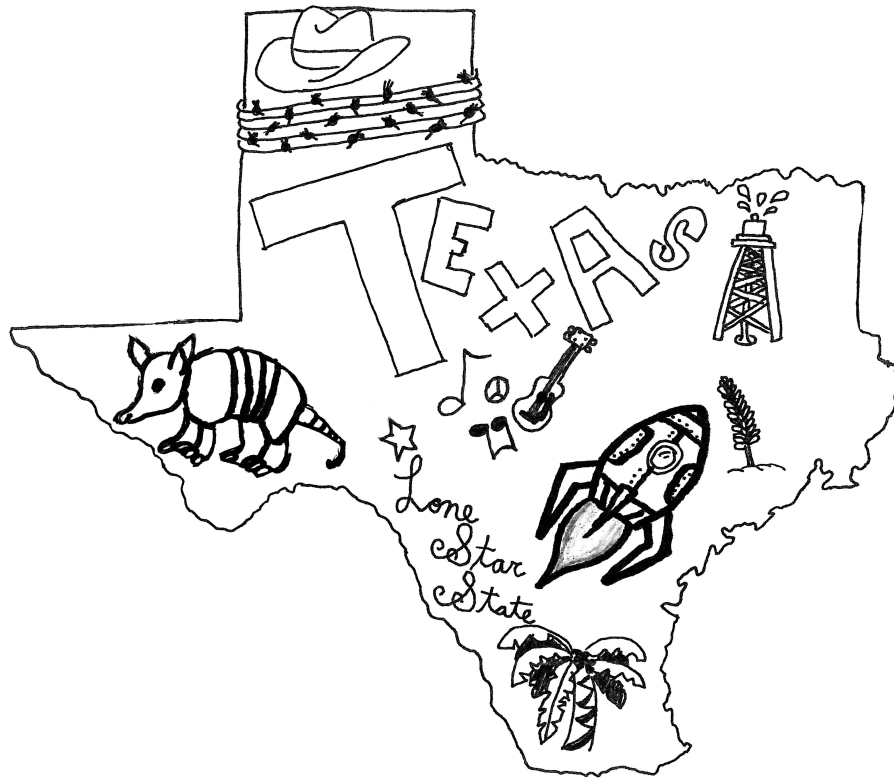
General Counsel

Texas Medical Board

Original effective date: June 24, 2020

Expiration date: December 20, 2020

For further information, please call: (512) 305-7016



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 1. MEDICAID PROCEDURES FOR PROVIDERS

1 TAC §354.1003

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §354.1003, concerning Time Limits for Submitted Claims.

BACKGROUND AND PURPOSE

Under §354.1003, most Medicaid providers must submit claims to the Medicaid claims administrator within 95 days from the date of service or the claims will be denied for late filing. Additionally, providers must adhere to claims filing and appeal deadlines, and all claims, including all appeals processes, must be finalized within 24 months of the date of service. On occasion, circumstances either partially or wholly beyond the providers' control result in claims being finalized outside of this 24-month timeliness requirement. The purpose of this amendment is to add an exception to the rule that allows HHSC to consider situations not already listed as exceptions to the provider 24-month time limit for filing claims, to the extent permitted by state and federal law, if the provider shows good cause. Exceptions for this reason are currently made on a case-by-case basis and adding this additional exception will bring the rule into alignment with current practice.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §354.1003(b) makes editorial changes in the reference to §354.2217 to clarify its location in the Texas Administrative Code, by replacing "of this title" with "of this chapter" and to add the title of §354.2217.

The proposed amendment to §354.1003(g) adds language clarifying that the forthcoming exceptions would only be considered to the extent they are allowed by federal law. The proposed amendment also adds new paragraph (4), which creates a new exception to the requirement that claims are processed within 24 months of the date of service. The new exception allows HHSC to consider situations not already listed in the rule as exceptions

to the provider 24-month time limit for filing claims if the provider shows good cause.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not impose any additional costs on small businesses, micro businesses, or rural communities that are required to comply with the rule.

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

does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rule is in effect, the public benefit of the rule will be to reduce administrative burden on providers and permit HHSC to pay claims when circum-

stances wholly beyond a provider's control result in claims being finalized outside of the 24-month timeliness requirement.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the proposed amendment does not require providers to alter their current business practices for filing claims.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R006" 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 directs the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The amendment affects Texas Government Code §354.1003 under Title 1, Part 15, Chapter 354, Subchapter A, Division 1, Time Limits for Submitted Claims.

§354.1003. Time Limits for Submitted Claims.

(a) Claims filing deadlines. Claims must be received by the Health and Human Services Commission (HHSC) or its designee in accordance with the following time limits to be considered for payment. Due to the volume of claims processed, claims that do not comply with the following deadlines will be denied payment.

(1) Inpatient hospital claims. Final inpatient hospital claims must be received by HHSC or its designee within 95 days from the date of discharge or 95 days from the date the Texas Provider Identifier (TPI) Number is issued, whichever occurs later. In the following situations, hospitals may, and in one instance, must file interim claims:

(A) Hospitals reimbursed according to prospective payment may submit an interim claim after the patient has been in the facility 30 consecutive days or longer.

(B) Children's hospitals reimbursed according to Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) methodology may submit interim claims prior to discharge and must submit an interim claim if the patient remains in the hospital past the hospital's fiscal year end.

(2) Outpatient hospital claims must be received by HHSC or its designee within 95 days from each date of service on the claim or 95 days from the date the Texas Provider Identifier (TPI) Number is issued, whichever occurs later.

(3) Claims from all other providers delivering services reimbursed by the Texas Medicaid acute care program must be received by HHSC or its designee within 95 days from each date of service on the claim or 95 days from the date the Texas Provider Identifier (TPI) Number is issued, whichever occurs later. This requirement does not apply to providers who deliver long-term care services and are subject to the billing requirements under Title 40 of the Texas Administrative Code.

(4) Providers must adhere to claims filing and appeal deadlines and all claims must be finalized within 24 months of the date of service. Submitted claims that exceed this time frame and do not qualify for one of the exceptions listed in subsection (g) of this section will not be considered for payment by the Texas Medicaid program.

(5) The following exceptions to the claims-filing deadlines listed in this subsection apply to all claims received by HHSC or its designee regardless of provider or service type.

(A) Claims on behalf of an individual who has applied for Medicaid coverage but has not been assigned a Medicaid recipient number on the date of service must be received by HHSC or its designee within 95 days from the date the Medicaid eligibility is added to HHSC's eligibility file. This date is referred to as the "add date."

(B) If a client loses Medicaid eligibility and is later determined to be eligible, or if the Medicaid eligibility is established retroactively, the claim must be received by HHSC or its designee within 95 days from the "add date" and within 365 days from the date of service.

(C) When a service is a benefit of Medicare and Medicaid, and the client is covered by both programs (dually eligible), the claim must first be filed with Medicare. Claims processed by Medicare must be received by HHSC or its designee within 95 days from the date of Medicare disposition or final determination of any Medicare appeal decision.

(D) When a client is eligible for Medicare Part B only, the inpatient hospital claim for services covered as Medicaid only should be submitted directly to Medicaid. The time limits in paragraph (1) of this subsection apply.

(E) When a service is billed to another insurance resource, the claim must be received by HHSC or its designee within 95 days from the date of disposition by the other insurance resource.

(F) When a service is billed to a third party resource that has not responded, the claim must be received by HHSC or its designee within 365 days from the date of service. However, 110 days must elapse after the third party billing before submitting the claim to HHSC or its designee.

(G) When a Title XIX family planning service is denied by Title XX prior to being submitted to Medicaid, the claim must be received by HHSC or its designee within 95 days of the date on the Title XX Denial Remittance Advice.

(H) Claims for services rendered by out-of-state providers must be received by HHSC or its designee within 365 days from the date of service.

(I) Claims for services rendered by the County Indigent Health Care Program, for which certification of the expenditures of local or state funds is required, are due to HHSC or its designee within the 365-day federal filing deadline.

(J) Claims for services rendered by school districts under the School Health and Related Services (SHARS) program, for which certification of the expenditures of local or state funds is required, are due to HHSC or its designee within the 365-day federal filing deadline or 95 days after the last day of the Federal Fiscal Year (FFY), whichever comes first.

(K) Claims for services rendered by enrolled Medicaid providers under the Department of Assistive and Rehabilitative Services' Blind Children's Vocational Discovery and Development Program (BCVDDP), for which certification of the expenditures of local or state funds is required, are due to HHSC or its designee within 365 days from the date of service.

(b) Appeals. All appeals of claims and requests for adjustments must be received by HHSC or its designee within 120 days from the date of the last denial of and/or adjustment to the original claim. Appeals must comply with §354.2217 of this chapter (relating to Provider Appeals and Reviews) [title].

(c) Incomplete Claims. Claims received by HHSC or its designee that are lacking the information necessary for processing will be denied as incomplete claims. The resubmission of the claim containing the necessary information must be received by HHSC or its designee within 120 days from the last denial date.

(d) Extension. If a filing deadline falls on a weekend or holiday, the filing deadline shall be extended to the next business day following the weekend or holiday.

(e) Additional Exceptions to the 95-day Claim Filing Deadline.

(1) HHSC shall consider the following additional exceptions when at least one of the situations included in this subsection exists. The final decision of whether a claim falls within one of the exceptions will be made by HHSC.

(A) Catastrophic event that substantially interferes with normal business operations of the provider, or damage or destruction of the provider's business office or records by a natural disaster, including but not limited to fire, flood, or earthquake; or damage or destruction of the provider's business office or records by circumstances that are clearly beyond the control of the provider, including but not limited to criminal activity. The damage or destruction of business records or criminal activity exception does not apply to any negligent or intentional act of an employee or agent of the provider because these persons are presumed to be within the control of the provider. The presumption can only be rebutted when the intentional acts of the employee or agent leads to termination of employment and filing of criminal charges against the employee or agent; or

(B) Delay or error in the eligibility determination of a recipient, or delay due to erroneous written information from HHSC or its designee, or another state agency; or

(C) Delay due to electronic claim or system implementation problems experienced by HHSC and its designee or providers; or

(D) Submission of claims occurred within the 365-day federal filing deadline, but the claim was not filed within 95-days from the date of service because the service was determined to be a benefit of the Medicaid program and an effective date for the new benefit was applied retroactively; or

(E) Recipient eligibility is determined retroactively and the provider is not notified of retroactive coverage.

(2) Under the conditions and circumstances included in paragraph (1) of this subsection, providers must submit the following documentation, if appropriate, and any additional requested information to substantiate approval of an exception. All claims that are to be considered for an exception must accompany the request. HHSC will consider only the claims that are attached to the request.

(A) All exception requests. The provider must submit an affidavit or statement from the provider stating the details of the cause for the delay, the exception being requested, and verification that the delay was not caused by neglect, indifference, or lack of diligence of the provider or the provider's employee or agent. This affidavit or statement must be made by the person with personal knowledge of the facts.

(B) Exception requests within paragraph (1)(A) of this subsection. The provider must submit independent evidence of insurable loss; medical, accident, or death records; or police or fire report substantiating the exception of damage, destruction, or criminal activity.

(C) Exception requests within paragraph (1)(B) of this subsection. The provider must submit the written document from HHSC, or its designee, that contains the erroneous information or explanation of the delayed information.

(D) Exception requests within paragraph (1)(C) of this subsection.

(i) The provider must submit the written repair statement, invoice, computer or modem generated error report (indicating attempts to transmit the data failed for reasons outside the control of the provider), or the explanation for the system implementation problems. The documentation must include a detailed explanation made by the person making the repairs or installing the system, specifically indicating the relationship and impact of the computer problem or system implementation to claims submission, and a detailed statement explaining why alternative billing procedures were not initiated after the delay in repairs or system implementation was known.

(ii) If the provider is requesting an exception based upon an electronic claim or system implementation problem experienced by HHSC or its designee, the provider must submit a written statement outlining the details of the electronic claim or system implementation problems experienced by HHSC or its designee that caused the delay in the submission of claims by the provider, any steps taken to notify the state or its designee of the problem, and a verification that the delay was not caused by the neglect, indifference, or lack of diligence on the part of the provider or its employees or agents.

(E) Exception requests within paragraph (1)(D) of this subsection. The provider must submit a written, detailed explanation of the facts and documentation to demonstrate the 365-day federal filing deadline for the benefit was met.

(F) Exception requests within paragraph (1)(E) of this subsection. The provider must submit a written, detailed explanation of the facts and activities illustrating the provider's efforts in requesting eligibility information for the recipient. The explanation must contain dates, contact information, and any responses from the recipient.

(f) Exceptions to the 120-day appeal deadline. HHSC shall consider exceptions to the 120-day appeal deadline if the criteria listed in this subsection is met and there is evidence to support paragraphs (1) or (2) of this subsection. The final decision about whether a claim falls within one of the exceptions will be made by HHSC. This is a one-time exception request; therefore, all claims that are to be considered within the request for an exception must accompany the request. Claims submitted after HHSC's determination has been made for the exception will be denied consideration because they were not included in the original request. An exception request must be received by HHSC within 18 months from the date of service in order to be considered. This requirement will be waived for the exceptions listed in paragraphs (2) and (3) of this subsection and subsection (g) of this section.

(1) Errors made by a third party payor that were outside the control of the provider. The provider must submit a statement outlining the details of the cause for the error, the exception being requested, and verification that the error was not caused by neglect, indifference, or lack of diligence on the part of the provider, the provider's employee, or agent. This affidavit or statement should be made by the person with personal knowledge of the facts. In lieu of the above affidavit or statement from the provider, the provider may obtain an affidavit or statement from the third party payor including the same information, and provide this to HHSC as part of the request for appeal.

(2) Errors made by the reimbursement entity that were outside the control of the provider. The provider must submit a statement from the original payor outlining the details of the cause of the error, the exception being requested, and verification that the error was not caused by neglect, indifference, or lack of diligence on the part of the provider, the provider's employee or agent. In lieu of the above reimbursement entity's statement, the provider may submit a statement including the same information, and provide this to HHSC as part of the request for appeal.

(3) Claims were adjudicated, but an error in the claim's processing was identified after the 120-day appeal deadline. The error is not the fault of the provider but an error occurred in the claims processing system that is identified after the 120-day appeal deadline has passed.

(g) Exceptions to the 24-month claim payment deadline. To the extent allowed by federal law, HHSC shall consider exceptions to the 24-month claim payment deadline for the situations listed in [paragraphs (1) - (3) of] this subsection. The final decision about whether a claim falls within one of the exceptions will be made by HHSC.

(1) Refugee Eligible Status: The payable period for all Refugee Medicaid eligible recipient claims is the federal fiscal year in which each date of service occurs plus one additional Federal Fiscal year. The date of service for inpatient claims is the discharge date.

(2) Medicare/Medicaid Eligible Status: The payable period for Medicaid/Medicare eligible recipient claims filed electronically is 24 months from the date the file is received from Medicare by the claims administrator for Medicaid. The payable period for Medicaid/Medicare eligible recipient claims filed on paper is 24 months from the date listed on the Medicare Remittance Advice.

(3) Retroactive Supplemental Security Income Eligible: The payable period for Supplemental Security Income (SSI) Medicaid eligible recipients when the Medicaid eligibility is determined retroactively is 24 months from the date the Medicaid eligibility is added to the eligibility file. This date is referred to as the "add date."

(4) Other HHSC approved situations: To the extent permitted by state and federal laws, rules, and regulations, HHSC may, at its

sole discretion, consider other situations as exceptions to the provider 24-month time limit if the provider shows good cause.

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004109

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 438-3360



CHAPTER 383. INTERSTATE COMPACT ON MENTAL HEALTH AND MENTAL RETARDATION

1 TAC §§383.101, 383.103, 383.105, 383.107, 383.109, 383.111, 383.113, 383.115, 383.117, 383.119, 383.121, 383.123

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §383.101, concerning Purpose; §383.103, concerning Application; §383.105, concerning Definitions; §383.107, concerning Prerequisite for Transfer; §383.109, concerning Legal Basis for Institutionalization; §383.111, concerning Coordinating Requests for Interstate Transfer; §383.113, concerning Requests for Persons with Mental Retardation To Be Transferred from Texas; §383.115, concerning Requests for Persons with Mental Illness To Be Transferred from Texas; §383.117, concerning Requests for Persons with Mental Retardation to Transfer to Texas; §383.119, concerning Requests for Persons with Mental Illness to Transfer to Texas; §383.121, concerning Exhibits; and §383.123, concerning References.

BACKGROUND AND PURPOSE

The purpose of this proposal is to repeal rules from Texas Administrative Code (TAC) Title 1, Part 15, Chapter 383, which have not been reviewed since 2001 and reference an agency that no longer exists - Texas Department of Mental Health and Mental Retardation. New rules are proposed elsewhere in this issue of the *Texas Register*, in 26 TAC Chapter 903, Interstate Compact on Mental Health and Intellectual and Developmental Disabilities. The new rules in Chapter 903 update and reorganize rules addressing the interstate compact on mental health and intellectual and developmental disabilities.

SECTION-BY-SECTION

The proposed repeals delete the rules in 1 TAC Chapter 383, to allow updated and reorganized rules to be proposed in 26 TAC Chapter 903.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules are repealed:

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rules do not apply to small or micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because the repeals do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Mike Maples, Deputy Executive Commissioner, Health and Specialty Care System, has determined that for each year of the first five years the repeals are in effect, the public benefit will be from elimination of rules that refer to an agency that no longer exists.

Trey Wood has also determined that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because there is no requirement to alter current business practices.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC, Mail Code 619E, P.O. Box 13247, Austin, Texas 78711-3247, or by email to healthandspecialtycare@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day

to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 19R065" in the subject line.

STATUTORY AUTHORITY

The repeals are 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, and Texas Health and Safety Code §§533.014, 533.0356, 533A.0355, 571.006 and 612.004 which authorize creation of rules related to this topic.

The repeals affect Texas Government Code §531.0055 and Texas Health and Safety Code §§533.014, 533.035, 533.0359, 533A.011, 533A.035, 533A.0355, 571.008, 571.0081, 572.0051, 574.0456, 593.041, 593.052 and Chapter 612.

§383.101. *Purpose.*

§383.103. *Application.*

§383.105. *Definitions.*

§383.107. *Prerequisite for Transfer.*

§383.109. *Legal Basis for Institutionalization.*

§383.111. *Coordinating Requests for Interstate Transfer.*

§383.113. *Requests for Persons with Mental Retardation To Be Transferred from Texas.*

§383.115. *Requests for Persons with Mental Illness To Be Transferred from Texas.*

§383.117. *Requests for Persons with Mental Retardation to Transfer to Texas.*

§383.119. *Requests for Persons with Mental Illness to Transfer to Texas.*

§383.121. *Exhibits.*

§383.123. *References.*

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 September 30, 2020.

TRD-202004067

Karen Ray
General Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 438-3049



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 91. DOG OR CAT BREEDERS PROGRAM

16 TAC §91.25, §91.92

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 91, §91.25 and §91.92,

regarding the Licensed Breeders program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 91, implement the Dog or Cat Breeders Act, Texas Occupations Code, Chapter 802.

The proposed rules are necessary to implement Senate Bill (SB) 1531, 86th Legislature, Regular Session (2019). SB 1531 made changes to the portion of the Dog or Cat Breeders Act, Occupations Code, Chapter 802, pertaining to criminal history of animal cruelty or neglect. In accordance with SB 1531, the proposed rules add a nolo contendere plea as a ground for denying or refusing to renew a breeder license. The proposed rules also incorporate the procedural changes provided for in SB 1531 by requiring the Department to deny, refuse to renew, suspend, or revoke a license in accordance with the Dog or Cat Breeders Act (Chapter 802) as well as Occupations Code Chapters 51 and 53, which also contain provisions related to criminal history. Finally, the proposed rules make two editorial changes: combining two subsections which are virtually identical, and correcting a reference to the Dog or Cat Breeders Act and the Licensed Breeder rules.

The proposed rules were presented to and discussed by the Licensed Breeder Advisory Committee at its meeting on September 23, 2020. The Advisory Committee did not make any changes to the proposed rules and voted that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §91.25(a) by adding a nolo contendere plea of animal cruelty or neglect to the list of reasons for which the Department must deny or refuse to renew a breeder license. The proposed rules also remove subsection (b), which lists reasons for which the Department may deny or refuse to renew a license.

The proposed rules amend §91.92(a) by requiring the Department to deny, refuse to renew, suspend, or revoke a dog or cat breeder license in accordance with Occupations Code, Chapters 51, 53, and 802. The proposed rules amend §91.92(b) by including language from current §91.25(b) stating that the Department may deny or refuse to renew a license in certain circumstances. The proposed rules also correct a reference in §91.92(b)(1) to the Dog or Cat Breeders Act and the Licensed Breeder rules.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. The proposed rules would not require the Department to obtain more personnel or resources, and conversely, any potential reductions in time or resources likely would not be large enough to affect the Department's costs. Local governments are not responsible for enforcing or administering the proposed rules.

Mr. Couvillon has also determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules. The proposed rules do not affect the fees paid to the Department, and local governments do not enforce or administer the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022. The Department estimates that there will be no effect on local employment because very few licensed breeders, controlling persons, or applicants to become licensed breeders will have the kind of criminal history that will cause a dog or cat breeder license to be revoked or denied under the proposed rules.

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be implementing the changes made by SB 1531. SB 1531 requires the Department to deny, refuse to renew, or revoke a dog or cat breeder license due to a plea of nolo contendere for animal cruelty or neglect. The bill also specifies that revocation due to animal cruelty or neglect occurs by operation of law, and that before the license is revoked, the Department must issue a notice of the revocation to the licensed breeder. This new procedure allows the Department to more quickly revoke the licenses of persons who have a history of animal cruelty or neglect, thereby protecting dogs and cats from potential harm, while still allowing the licensee to respond to the notice of revocation in accordance with SB 1531.

Additionally, the proposed rules remove duplicative language and correct a reference to the Dog or Cat Breeders Act and the Licensed Breeder rules. These proposed changes will make the rules more concise and easier to read.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. SB 1531 allows licensed breeders to provide to the Department proof that the breeder or the breeder's controlling person does not have criminal history that would cause the breeder's license to be revoked. While there could be a cost to obtain this type of documentation, that cost is unknown and cannot be estimated. Further, the licensed breeder would likely need to obtain this documentation under the previous statute in order to provide it to the Department prosecutor or the State Office of Administrative Hearings Administrative Law Judge to demonstrate why the license should not be revoked.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Although most, if not all, licensed dog and cat breeders are small or micro-businesses, for the reasons outlined above, no economic costs are anticipated to licensees as a result of the proposed rules. Additionally, although many breeders are located in rural communities, the Department anticipates that very few licensed breeders, controlling persons, or applicants to become licensed breeders will have the criminal history that will cause a breeder license to be revoked or denied under the proposed rules. Therefore, the proposed rules will not have an adverse economic effect on a rural community.

Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-

businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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 rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules expand §91.25 to add a plea of nolo contendere to the grounds for denying or refusing to renew a breeder license. The proposed rules combine subsections of §91.25 and §91.92 that list reasons for which the Department may deny, refuse to renew, revoke, or suspend a license. The proposed rules also expand §91.92 in that the proposed rules refer to Chapter 802, which includes the changes made by SB 1531, as well as Chapters 51 and 53 of the Occupations Code.
7. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 802, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 802. No other statutes, articles, or codes are affected by the proposed rules.

§91.25. License Approval and Issuance.

~~[(a)] The department shall deny issuance of a license to, or refuse to renew the license of, a person if the person or a controlling person of the dog or cat breeder has pled guilty or nolo contendere to, been convicted of, or received deferred adjudication for animal cruelty or neglect in this state or any other jurisdiction in the five years preceding the person's initial or renewal application for a license.~~

~~[(b) The department may deny issuance of a license to, refuse to renew the license held by a person who:]~~

~~[(1) fails to meet the requirements of this chapter and rules adopted under this chapter;]~~

~~[(2) has had a similar license issued by a federal, state, or local authority denied, revoked, or suspended;]~~

~~[(3) has falsified any material information requested by the department;]~~

~~[(4) has failed to meet a standard adopted by rule under this chapter; or]~~

~~[(5) has failed to comply with any corrective action required under an inspection report in the time provided by the report.]~~

§91.92. License Denial, Revocation, and Suspension.

(a) The department shall deny, refuse to renew, suspend, or revoke a license in accordance with Occupations Code, Chapters 51, 53, and 802 [if, after the license is issued, the person or a controlling person of the dog or cat breeder pleads guilty to, is convicted of, or receives deferred adjudication for animal cruelty or neglect in this state or any other jurisdiction].

(b) The department may deny, refuse to renew, revoke, or suspend a license held by a person who:

(1) fails to meet the requirements of Occupations Code, Chapter 802 and [this chapter and rules adopted under] this chapter;

(2) has had a similar license issued by a federal, state, or local authority denied, revoked, or suspended;

(3) has falsified any material information requested by the department;

(4) has failed to meet a standard adopted by rule under this chapter; or

(5) has failed to comply with any corrective action required under an inspection report in the time provided by the report.

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

Filed with the Office of the Secretary of State on October 5, 2020.

TRD-202004134

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 475-3032



PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS

SUBCHAPTER G. HORSE INDUSTRY

ESCROW ACCOUNT

DIVISION 3. BREED REGISTRIES

16 TAC §303.321, §303.323

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §303.321, Allocation to Breed Registries, and 16 TAC §303.323, Modifications to Approved Events. The proposed amendments to §303.321 would permit the executive director to act on behalf of the Commission to approve breed registry requests for funding from the Horse Industry Escrow Account ("the Account") that do not exceed \$50,000. The proposed amendments to §303.323 would update that section to allow the executive director to approve modifications to events when the proposal as modified would have qualified for initial approval by the executive director.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

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

ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amendments are in effect, the anticipated public benefit will be greater expeditiousness in the approval of many requests for funding from the Account. There is no probable economic cost to persons required to comply with the amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

For each year of the first five years that the proposed amendments are in effect, the government growth impact is as follows: the new sections do not create or eliminate a government program; the amendments do not create any new employee positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; the

amendments do not require an increase or decrease in fees paid to the agency; the amendments do not create new regulations; the amendments do not expand existing regulations; the amendments do not repeal existing regulations; the amendments do not increase or decrease the number of individuals subject to the rule's applicability; and the amendments are not expected to have an adverse effect on this state's economy.

EFFECT ON SMALL AND MICRO-BUSINESSES

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

IMPACT ON EMPLOYMENT CONDITIONS

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

ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

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

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

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

TAKINGS IMPACT STATEMENT

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

EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

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

PUBLIC COMMENTS

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* by mail to Robert Elrod, Public Information Officer for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, by e-mail to info@txrc.texas.gov, by telephone to (512) 833-6699, or by fax to (512) 833-6907.

STATUTORY AUTHORITY

The amendments are proposed under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

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

The agency certifies that legal counsel has reviewed the proposed amendments and found them to be within the agency's legal authority to adopt.

§303.321. Allocations to Breed Registries.

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

(g) For any request for allocation that does not exceed \$50,000, the executive director may act on behalf of the Commission to approve the request or may forward it to the Commission for consideration.

§303.323. Modifications to Approved Events.

(a) A breed registry seeking to make a modification to the date, description, or budget for an event for which funds have been allocated from the horse industry escrow account shall submit a request to:

(1) the executive director for [~~changes to one or more of the following~~]:

(A) a change to an event that, after the change, would qualify for approval by the executive director; or

(B) for an event that does not qualify for approval by the executive director, a change to one or more of the following:

(i) the date, if the proposed new date is within six months of the original date;

(ii) [~~(B)~~] the description, if the change does not materially change the nature or scope of the event; or

(iii) [~~(C)~~] the budget, if the proposed new budget is within ten percent of the original budget for the event; or

(2) the Commission, for all other changes.

(b) (No change.)

(c) The executive director may approve or deny a change requested under subsection (a)(1) of this section or may forward the request to the Commission for consideration. Upon request by the breed registry, a request for modification that was denied by the executive director shall be forwarded to the Commission for consideration.

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 September 30, 2020.

TRD-202004074

Chuck Trout

Executive Director

Texas Racing Commission

Earliest possible date of adoption: November 15, 2020

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



CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER A. RACETRACK LICENSES

DIVISION 1. GENERAL PROVISIONS

16 TAC §309.8

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §309.8, Racetrack License Fees. The

proposed amendments would modify racetrack license fees to account for the loss of one racetrack licensee in July 2020 and would also provide for automatic adjustments to fees in the event of additional losses or additions of racetrack licensees. The proposed amendments would further provide additional notice to the tracks of any fee increase and would require the Commission to initiate rulemaking in the event of future increases that exceed 15%.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

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

ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amendments are in effect, the anticipated public benefit will be ensuring that the agency has sufficient revenue to remain solvent and to continue regulating racing despite recent and potential future losses of licensed racetracks. Because the Commission's expenses remain roughly constant despite the loss of Gulf Greyhound Park, increases in the fees paid by the remaining license holders are necessary to maintain the Commission's revenue, with a probable economic cost to persons required to comply with the amendments of approximately 11.8% of their current annual racetrack license fees, which amounts to \$3,000 to \$23,500 per year depending on the class of license, with any future changes dependent on whether any current racetracks cease to be licensed or any new licenses are issued.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

EFFECT ON SMALL AND MICRO-BUSINESSES

The proposed amendments will have a modest adverse economic effect on approximately three small or micro-businesses. The economic impact on these businesses is estimated to be \$11,176 or \$16,471 per year, depending on the class of license held by the business. The agency considered alternative means of accomplishing the goal of raising sufficient revenue to properly regulate racing. However, it is not possible to reduce the adverse

effect on these businesses by establishing separate compliance requirements or standards or by exempting these businesses from the rule or any parts thereof. Because these amendments involve fees and a fixed amount of revenue necessary to ensure that the agency is able to continue regulating the racing industry, exempting these small businesses from the requirement would either result in disproportionately large increases to the other license holders or inadequate funding to the agency, which would in turn require the industry to cease operations and would have a negative impact on the economic health of the state. It should be noted that the small or micro-businesses in question have agreed to these increases.

IMPACT ON EMPLOYMENT CONDITIONS

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

ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

There will be no adverse effect on rural communities as a result of the proposed amendments.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

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

TAKINGS IMPACT STATEMENT

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

EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

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

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The amendments are proposed under Tex. Occ. Code § 2023.004, which authorizes the Commission to adopt rules to administer the Act, and § 2025.108, which authorizes the commission to prescribe reasonable annual fees to be paid by racetrack license holders.

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

§309.8 Racetrack License Fees

- (a) (No change.)
- (b) Annual License Fee. A licensed racing association shall pay an annual license fee by remitting to the Commission 1/12th of the

fee on the first business day of each month. The annual license fee for each license type is as follows:

- (1) for a Class 1 racetrack, \$223,530 [~~\$200,000~~];
 - (2) for a Class 2 racetrack, \$106,176 [~~\$95,000~~];
 - (3) for a Class 3 or 4 racetrack, \$27,941 [~~\$25,000~~]; and
 - (4) for a Greyhound racetrack, \$156,471 [~~\$140,000~~].
- (c) Adjustment of Fees.

(1) In the event that any racetrack license holder ceases to be licensed:

(A) the fees in subsection (b) of this section, as previously adjusted under paragraphs (1) and (2) of this section if applicable, shall be increased by the amount of the annual fee of the terminated license holder multiplied by the applicable fraction calculated as follows:

- (i) for a Class 1 license holder, the numerator is 100;
 - (ii) for a Class 2 license holder, the numerator is 47.5;
 - (iii) for a Class 3 or 4 license holder, the numerator is 12.5;
 - (iv) for a Greyhound racetrack, the numerator is 70;
- and

(v) the denominator is the sum of all the numerators assigned to each of the remaining license holders as specified in clauses (i) through (iv) of this subparagraph; and

(B) the fees in subsection (b) of this section as modified by subparagraph (A) of this paragraph shall be increased on a one-time, pro rata basis as necessary so that the Commission does not lose any racetrack license fee revenue due to the termination of the license.

(2) In the event that a new racetrack license is issued, the fees in subsection (b) of this section, as previously adjusted under this paragraph and paragraph (1) of this subsection if applicable, shall be decreased by the amount of the annual fee of the new license holder multiplied by the applicable fraction calculated in accordance with paragraph (1)(A)(i) through (v) of this subsection.

(3) If any of the adjustments imposed by this subsection cause the base annual license fee owed by any licensee to exceed the fee specified in subsection (b) of this section by more than 15%, the Commission shall undertake rulemaking to amend this section within 90 days after the Commission sends notice of the adjustment.

(4) ~~[(4)]~~ Annual fees are calculated using a projected base of 48 days of live horse racing per Class 1 racetrack, 8 days of live horse racing per Class 3 or 4 racetrack, and a total of 36 performances of live greyhound racing per fiscal year. If a Class 1 horse racetrack does not intend to use all of the race days allotted to it, it shall share the unused days with another Class 1 track, provided that the track receiving the unused days is not required to compensate the track sharing the days. To cover the additional regulatory cost in the event additional days or performances are requested by the associations, the executive secretary may:

(A) recalculate a horse racetrack's annual fee by adding an amount not to exceed \$5,345 for each live race day added beyond the base; and

(B) recalculate a greyhound racetrack's annual fee by adding \$750 for each live performance added beyond the base.

(5) ~~[(2)]~~ If the simulcast tax revenue collected in any quarter ending November 30, February 28 or 29, May 31, or August 31

is less than [96 percent of] the amount specified in subparagraphs (A) through (D) of this paragraph, [collected in the same period the year before,] the fees in subsection (b) of this section shall be increased[, for the second month of the following quarter,] on a one-time, pro rata basis in an amount sufficient to generate revenue in the amount of the difference between the amount of simulcast tax revenue collected in the quarter and the following amount: [that is 96 percent of the amount collected in the same quarter the year before.]

- (A) for a quarter ending November 30, \$599,620;
- (B) for a quarter ending February 28 or 29, \$630,955;
- (C) for a quarter ending May 31, \$750,560; and
- (D) for a quarter ending August 31, \$688,090.

(6) Any fee increase owed by a racetrack license holder under paragraph (5) of this subsection, as it existed on September 1, 2020, as paragraph (2) of this subsection, for the period from September 1, 2020, through November 30, 2020, shall be due February 1, 2021. Any fee increase owed by a racetrack license holder under paragraph (5) of this subsection for the period from December 1, 2020, through February 28, 2021, shall be calculated under paragraph (5) of this subsection as it exists on January 1, 2021.

(7) Any fee increase imposed by this subsection shall be effective upon 30 days notice to the racetracks.

(8) [(3)] If the executive secretary determines that the total revenue from the annual fees exceeds the amount needed to pay its costs, the executive secretary shall order a moratorium on all or part of the license fees remitted monthly by any or all of the associations. Before entering a moratorium order, the executive secretary shall develop a formula for imposing the moratorium in an equitable manner among the associations. In developing the formula, the executive secretary shall consider the amount of excess revenue received by the Commission, the source of the revenue, the Commission's costs associated with regulating each association, the Commission's projected receipts for the next fiscal year, and the Commission's projected expenses during the next fiscal year.

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

Filed with the Office of the Secretary of State on September 30, 2020.

TRD-202004072

Chuck Trout

Executive Director

Texas Racing Commission

Earliest possible date of adoption: November 15, 2020

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



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

The Texas Education Agency (TEA) proposes amendments to §§89.1001, 89.1011, 89.1035, 89.1040, 89.1047, 89.1050, 89.1055, 89.1070, 89.1075, 89.1094, 89.1165, 89.1193, 89.1195, and 89.1197 and new 89.1005 and 89.1092, concerning special education services. The proposed revisions would reflect changes resulting from state legislation and federal guidance; provide clarification related to the full individual and initial evaluation, contracting for services from non-public day schools, and placement of students with disabilities in off-campus programs; update references to statute and state agency names; and remove expired provisions.

BACKGROUND INFORMATION AND JUSTIFICATION: The rules in Chapter 89, Subchapter AA, address provisions for special education services, including general provisions, clarification of federal regulations and state law, and dispute resolution. Legislation from the 86th Texas Legislature, 2019, as well as federal guidance require that some of the rules in the subchapter be revised. Other rules require amendment to provide clarification, update cross references, and remove expired provisions. Specifically, the proposed revisions would update rules as follows.

Division 1, General Provisions

The proposed amendment to §89.1001, Scope and Applicability, would update a reference from the Texas Youth Commission to the Texas Juvenile Justice Department.

Proposed new §89.1005, Instructional Arrangements and Settings, would be added as a result of House Bill (HB) 3, 86th Texas Legislature, 2019. HB 3 renumbered Texas Education Code (TEC), §42.151, to §48.102 and amended it to transfer rulemaking authority related to instructional arrangements for students with disabilities from the State Board of Education (SBOE) to the commissioner of education. As a result, the language from 19 TAC §89.63 adopted under the SBOE's authority would be proposed as new §89.1005. The proposed new rule is substantially similar to §89.63 and identifies provisions for instructional arrangements and settings, including mainstream, homebound, hospital class, speech therapy, resource room/services, self-contained (mild, moderate, or severe) regular campus, off-home campus, nonpublic day school, vocational adjustment class/program, residential care and treatment facility (not school district resident), and state-supported living center.

Division 2, Clarification of Provisions in Federal Regulations and State Law

The proposed amendment to §89.1011, Full Individual and Initial Evaluation, would clarify when a referral for a special education evaluation may or must be made.

The proposed amendment to §89.1035, Age Ranges for Student Eligibility, would update cross references to 19 TAC §89.1070.

The proposed amendment to §89.1040, Eligibility Criteria, would implement changes to TEC, §30.002, by Senate Bill (SB) 522, 86th Texas Legislature, 2019, regarding evaluation of a student's visual impairment. Additionally, the amendment would align the rule with federal guidance. The current definition in §89.1040(c)(12) may have the effect of narrowing the Individuals with Disabilities Education Act (IDEA) definition in 34 Code of Federal Regulations, §300.8(c)(13), of "visual impairment

including blindness." As noted by the May 22, 2017 Letter to State Directors of Special Education, Preschool/619 State Coordinators from the U.S. Department of Education, Office of Special Education Programs, because the IDEA definition of "visual impairment including blindness" does not contain a modifier to allow states to define a precise level of impairment, "any impairment in vision, regardless of significance or severity, must be included in a State's definition, provided that such impairment, even with correction, adversely affects a child's educational performance." (emphasis in original)

The proposed amendment to §89.1047, Procedures for Special Education Decision-Making for Students in Foster Care, would implement changes to TEC, §29.0151, by HB 1709, 86th Texas Legislature, 2019, by clarifying that surrogate parents may not be employees of TEA.

The proposed amendment to §89.1050, The Admission, Review, and Dismissal Committee, would replace the reference to the Department of Assistive and Rehabilitative Services with the Texas Health and Human Services Commission. Additionally, the reference to TEC, §42.151, would be changed to TEC, §48.102, due to a renumbering of statute by HB 3, 86th Texas Legislature, 2019.

The proposed amendment to §89.1055, Content of the Individualized Education Program, would remove subsections (h) and (i), which expired at the beginning of the 2018-2019 school year. References to the 2018-2019 school year would also be removed from subsection (j), relettered as subsection (h), and subsection (k).

The proposed amendment to §89.1070, Graduation Requirements, would implement changes to TEC, §28.025, by HB 165, 86th Texas Legislature, 2019, which altered the means by which an endorsement may be earned. The proposed amendment would specify the modifications that may be made for a student eligible for special education services to earn an endorsement. References to statute and other administrative rule would also be updated.

The proposed amendment to §89.1075, General Program Requirements and Local District Procedures, would remove subsection (f), which references TEC, §29.007, since the statute was repealed by SB 1376, 86th Texas Legislature, 2019. In addition, language would be added in subsection (g), relettered as new subsection (f), to specify that school districts must comply with 19 TAC §89.1094 when contracting for services from non-public day schools.

Proposed new §89.1092, Contracting for Residential Educational Placements for Students with Disabilities, would be added as a result of HB 3, 86th Texas Legislature, 2019. HB 3 renumbered TEC, §42.151, to §48.102 and amended it to transfer rulemaking authority related to contracts for residential placements for students with disabilities from the SBOE to the commissioner. As a result, the language from 19 TAC §89.61 adopted under the SBOE's authority would be proposed as new 19 TAC §89.1092. In order to align with 19 TAC §89.1094, the new rule would differ from the current SBOE rule by increasing in subsection (a)(4)(E) the number of onsite visits a school district must make to a residential facility. Additionally, new subsection (b) would be added to specify the notification procedures a school district must follow if an admission, review, and dismissal (ARD) committee decides to place a student in a residential facility and address TEA's approval of the use of funds and/or the facility as applicable.

The proposed amendment to §89.1094, Students Receiving Special Education and Related Services in an Off-Campus Program, would include technical edits such as updated references to statute and other administrative rule and clarification regarding the placement of students with disabilities in off-campus programs.

Division 7, Dispute Resolution

The proposed amendments to §89.1165, Request for Special Education Due Process Hearing, §89.1193, Special Education Mediation, §89.1195, Special Education Complaint Resolution, and §89.1197, State Individualized Education Program Facilitation, would allow for the filing by electronic mail of special education due process hearing requests, special education mediation requests, special education complaints, requests for reconsideration of special education investigative reports, and requests for a state-provided facilitator for an ARD committee meeting.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation by adopting rules for instructional arrangements and settings and contracting for residential educational placements for students with disabilities under the commissioner's rulemaking authority. HB 3, 86th Texas Legislature, 2019, transferred rulemaking authority from the SBOE to the commissioner. In addition, the proposed rulemaking would expand and limit existing regulations as follows.

Proposed changes to 19 TAC §89.1011 would expand the rule by specifying that students are not required to receive response to intervention for any given length of time before a referral for a full individual and initial evaluation is made.

Proposed changes to 19 TAC §89.1040 would limit the rule by placing specific requirements on who must conduct an orientation and mobility evaluation and by setting out requirements for how that evaluation must be conducted. The rule is also limited by placing specific requirements on who must participate in reevaluations.

Proposed changes to 19 TAC §89.1047 would limit the rule by specifying that a TEA staff member may not serve as a surrogate parent.

Proposed changes to 19 TAC §89.1055 would limit the rule by removing outdated provisions.

Proposed changes to 19 TAC §89.1075 would limit the rule by removing an outdated reference to statute.

The proposed rulemaking would also increase the number of individuals subject to the rule's applicability by updating §89.1070 to permit students to earn an endorsement with modification of the curriculum if the modified curriculum is determined by the student's ARD committee to be sufficiently rigorous.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not repeal an existing regulation; would not 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. Montaña 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 and families with clarifications regarding special education requirements. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins October 16, 2020, and ends November 16, 2020. Public hearings on the proposal are scheduled for 8:30 a.m. on October 27 and 29, 2020. The public may participate in the October 27 hearing virtually by registering in advance for the meeting at <https://us02web.zoom.us/j/6792855729>. Dial in by phone at +1 346 248 7799. Supported devices can access the meeting at +13462487799,,6792855729#. The public may participate in the October 29 hearing virtually by registering in advance for the meeting at <https://us02web.zoom.us/j/87843168566>. Dial in by phone at +1 346 248 7799. Supported devices can access the meeting at +13462487799,,87843168566#.

Both hearings will be recorded and made available publicly. Parties interested in testifying must log in between 8:15 a.m. and 8:30 a.m. on the date of the applicable hearing and are encouraged to also send written testimony to spedrule@tea.texas.gov. The hearing(s) will conclude once all who have registered have been given the opportunity to comment. Questions about the hearings should be directed to SpecialEducation@tea.texas.gov. Additionally, persons requiring special accommodations, including the use of an interpreter, should notify the agency by emailing SpecialEducation@tea.texas.gov at least five working days before the respective hearing.

A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

DIVISION 1. GENERAL PROVISIONS

19 TAC §89.1001, §89.1005

STATUTORY AUTHORITY. The amendment and new section are proposed under Texas Education Code (TEC), §28.025, as amended by House Bill (HB) 165, 86th Texas Legislature, 2019, which establishes requirements, in part, for endorsements; TEC, §29.001, which establishes general statutory authority for the state to develop, implement, and monitor a statewide plan for special education; TEC, §29.003, which establishes state-specific criteria related to eligibility requirements for special education; TEC, §29.004, which establishes state-specific criteria related to full individual and initial evaluations for special education; TEC, §29.005, which establishes state-specific criteria related to students' individualized education programs (IEPs); TEC, §29.010, which establishes requirements related to monitoring activities for special education; TEC, §29.011 and §29.0111, which establish requirements related to transition programming for students eligible for special education; TEC, §29.0151, as amended by HB 1709, 86th Texas Legislature, 2019, which establishes requirements related to the appointment of surrogate parents to children in foster care who are eligible for special education services; TEC, §29.019, which establishes requirements related to the state's facilitated IEP project; TEC, §30.002, as amended by Senate Bill 522, 86th Texas Legislature, 2019, which establishes requirements related to the state's development and implementation of a plan for the education of children with visual impairments who are under 21 years of age; TEC, §48.102, as added by HB 3, 86th Texas Legislature, 2019, which establishes requirements related to funding for special education programs; 34 Code of Federal Regulations (CFR), §300.8, establishes definitions of eligibilities under special education; 34 CFR, §300.147, which establishes state monitoring requirements for facilities in which a student's admission, review, and dismissal committee have placed students who are eligible for special education; 34 CFR, §§300.151-300.153, which establish requirements related to the filing and resolution of special education complaints; 34 CFR, §300.320, which establishes requirements related to content of a student's IEP; 34 CFR, §300.506, which establishes requirements related to a state's mediation program; 34 CFR, §300.507, which establishes requirements related to a state's due process hearing program; and 34 CFR, §300.600, which establishes requirements related to the state's monitoring authority of special education programs.

CROSS REFERENCE TO STATUTE. The amendment and new section implement Texas Education Code, §§28.025, as amended by House Bill (HB) 165, 86th Texas Legislature, 2019; 29.001; 29.003; 29.004; 29.005; 29.010; 29.011; 29.0111; 29.0151, as amended by HB 1709, 86th Texas Legislature, 2019; 29.019; 30.002, as amended by Senate Bill 522, 86th Texas Legislature, 2019; and 48.102, as added by HB 3, 86th Texas Legislature, 2019; and 34 Code of Federal Regulations, §§300.8, 300.147, 300.151, 300.152, 300.153, 300.320, 300.506, 300.507, and 300.600.

§89.1001. Scope and Applicability.

(a) (No change.)

(b) Education programs [s] under the direction and control of the Texas Juvenile Justice Department [Texas Youth Commission], Texas School for the Blind and Visually Impaired, Texas School for the Deaf, and schools within the Texas Department of Criminal Justice shall comply with state and federal law and regulations concerning the delivery of special education and related services to eligible students

and shall be monitored by the Texas Education Agency in accordance with the requirements identified in subsection (a) of this section.

(c) (No change.)

§89.1005. Instructional Arrangements and Settings.

(a) Each local school district shall be able to provide services with special education personnel to students with disabilities in order to meet the special needs of those students in accordance with 34 Code of Federal Regulations, §§300.114-300.118.

(b) Subject to §89.1075(e) of this title (relating to General Program Requirements and Local District Procedures), for the purpose of determining the student's instructional arrangement/setting, the regular school day is defined as the period of time determined appropriate by the admission, review, and dismissal (ARD) committee.

(c) Instructional arrangements/settings shall be based on the individual needs and individualized education programs (IEPs) of eligible students receiving special education services and shall include the following.

(1) Mainstream. This instructional arrangement/setting is for providing special education and related services to a student in the regular classroom in accordance with the student's IEP. Qualified special education personnel must be involved in the implementation of the student's IEP through the provision of direct, indirect, and/or support services to the student and/or the student's regular classroom teacher(s) necessary to enrich the regular classroom and enable student success. The student's IEP must specify the services that will be provided by qualified special education personnel to enable the student to appropriately progress in the general education curriculum and/or appropriately advance in achieving the goals set out in the student's IEP. Examples of services provided in this instructional arrangement include, but are not limited to, direct instruction, helping teacher, team teaching, co-teaching, interpreter, educational aides, curricular or instructional modifications/accommodations, special materials/equipment, positive classroom behavioral interventions and supports, consultation with the student and his/her regular classroom teacher(s) regarding the student's progress in regular education classes, staff development, and reduction of ratio of students to instructional staff.

(2) Homebound. This instructional arrangement/setting is for providing special education and related services to students who are served at home or hospital bedside.

(A) Students served on a homebound or hospital bedside basis are expected to be confined for a minimum of four consecutive weeks as documented by a physician licensed to practice in the United States. Homebound or hospital bedside instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for any period of time totaling at least four weeks throughout the school year as documented by a physician licensed to practice in the United States. The student's ARD committee shall determine the amount of services to be provided to the student in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (b) of this section.

(B) Home instruction may also be used for services to infants and toddlers (birth through age 2) and young children (ages 3-5) when determined appropriate by the child's individualized family services plan (IFSP) committee or ARD committee. This arrangement/setting also applies to school districts described in Texas Education Code, §29.014.

(3) Hospital class. This instructional arrangement/setting is for providing special education instruction in a classroom, a hospital facility, or a residential care and treatment facility not operated by the

school district. If the students residing in the facility are provided special education services outside the facility, they are considered to be served in the instructional arrangement in which they are placed and are not to be considered as in a hospital class.

(4) Speech therapy. This instructional arrangement/setting is for providing speech therapy services whether in a regular education classroom or in a setting other than a regular education classroom. When the only special education or related service provided to a student is speech therapy, then this instructional arrangement may not be combined with any other instructional arrangement.

(5) Resource room/services. This instructional arrangement/setting is for providing special education and related services to a student in a setting other than regular education for less than 50% of the regular school day.

(6) Self-contained (mild, moderate, or severe) regular campus. This instructional arrangement/setting is for providing special education and related services to a student who is in a self-contained program for 50% or more of the regular school day on a regular school campus.

(7) Off-home campus. This instructional arrangement/setting is for providing special education and related services to the following, including, but not limited to, students at South Texas Independent School District and Windham School District:

(A) a student who is one of a group of students from more than one school district served in a single location when a free appropriate public education is not available in the respective sending district;

(B) a student in a community setting or environment (not operated by a school district) that prepares the student for postsecondary education/training, integrated employment, and/or independent living in coordination with the student's individual transition goals and objectives, including a student with regularly scheduled instruction or direct involvement provided by school district personnel or a student in a facility not operated by a school district (other than a nonpublic day school) with instruction provided by school district personnel; or

(C) a student in a self-contained program at a separate campus operated by the school district that provides only special education and related services.

(8) Nonpublic day school. This instructional arrangement/setting is for providing special education and related services to students through a contractual agreement with a nonpublic school for special education.

(9) Vocational adjustment class/program. This instructional arrangement/setting is for providing special education and related services to a student who is placed on a job (paid or unpaid unless otherwise prohibited by law) with regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP. This instructional arrangement/setting shall be used in conjunction with the student's individual transition goals and only after the school district's career and technical education classes have been considered and determined inappropriate for the student.

(10) Residential care and treatment facility (not school district resident). This instructional arrangement/setting is for providing special education instruction and related services to students who reside in care and treatment facilities and whose parents do not reside within the boundaries of the school district providing educational services to the students. In order to be considered in this arrangement, the services must be provided on a school district campus. If the instruction is provided at the facility, rather than on a school district campus,

the instructional arrangement is considered to be the hospital class arrangement/setting rather than this instructional arrangement. Students with disabilities who reside in these facilities may be included in the average daily attendance of the district in the same way as all other students receiving special education.

(11) State-supported living center. This instructional arrangement/setting is for providing special education and related services to a student who resides at a state-supported living center when the services are provided at the state-supported living center location. If services are provided on a local school district campus, the student is considered to be served in the residential care and treatment facility arrangement/setting.

(d) The appropriate instructional arrangement for students from birth through the age of two with visual and/or auditory impairments shall be determined in accordance with the IFSP, current attendance guidelines, and the agreement memorandum between the Texas Education Agency (TEA) and Texas Health and Human Services Commission Early Childhood Intervention Services.

(e) For nonpublic day school placements, the school district or shared service arrangement shall submit information to TEA indicating the students' identification numbers, initial dates of placement, and the names of the facilities with which the school district or shared service arrangement is contracting. The school district or shared service arrangement shall not count contract students' average daily attendance as eligible. TEA shall determine the number of contract students reported in full-time equivalents and pay state funds to the district according to the formula prescribed in law.

(f) Other program options that may be considered for the delivery of special education and related services to a student may include the following:

- (1) contracts with other school districts; and
- (2) other program options as approved by TEA.

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

Filed with the Office of the Secretary of State on October 5, 2020.

TRD-202004130

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 15, 2020

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



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

19 TAC §§89.1011, 89.1035, 89.1040, 89.1047, 89.1050, 89.1055, 89.1070, 89.1075, 89.1092, 89.1094

STATUTORY AUTHORITY. The amendments and new section are proposed under Texas Education Code (TEC), §28.025, as amended by House Bill (HB) 165, 86th Texas Legislature, 2019, which establishes requirements, in part, for endorsements; TEC, §29.001, which establishes general statutory authority for the state to develop, implement, and monitor a statewide plan for special education; TEC, §29.003, which establishes

state-specific criteria related to eligibility requirements for special education; TEC, §29.004, which establishes state-specific criteria related to full individual and initial evaluations for special education; TEC, §29.005, which establishes state-specific criteria related to students' individualized education programs (IEPs); TEC, §29.010, which establishes requirements related to monitoring activities for special education; TEC, §29.011 and §29.0111, which establish requirements related to transition programming for students eligible for special education; TEC, §29.0151, as amended by HB 1709, 86th Texas Legislature, 2019, which establishes requirements related to the appointment of surrogate parents to children in foster care who are eligible for special education services; TEC, §29.019, which establishes requirements related to the state's facilitated IEP project; TEC, §30.002, as amended by Senate Bill 522, 86th Texas Legislature, 2019, which establishes requirements related to the state's development and implementation of a plan for the education of children with visual impairments who are under 21 years of age; TEC, §48.102, as added by HB 3, 86th Texas Legislature, 2019, which establishes requirements related to funding for special education programs; 34 Code of Federal Regulations (CFR), §300.8, establishes definitions of eligibilities under special education; 34 CFR, §300.147, which establishes state monitoring requirements for facilities in which a student's admission, review, and dismissal committee have placed students who are eligible for special education; 34 CFR, §§300.151-300.153, which establish requirements related to the filing and resolution of special education complaints; 34 CFR, §300.320, which establishes requirements related to content of a student's IEP; 34 CFR, §300.506, which establishes requirements related to a state's mediation program; 34 CFR, §300.507, which establishes requirements related to a state's due process hearing program; and 34 CFR, §300.600, which establishes requirements related to the state's monitoring authority of special education programs.

CROSS REFERENCE TO STATUTE. The amendments and new section implement Texas Education Code, §§28.025, as amended by House Bill (HB) 165, 86th Texas Legislature, 2019; 29.001; 29.003; 29.004; 29.005; 29.010; 29.011; 29.0111; 29.0151, as amended by HB 1709, 86th Texas Legislature, 2019; 29.019; 30.002, as amended by Senate Bill 522, 86th Texas Legislature, 2019; and 48.102, as added by HB 3, 86th Texas Legislature, 2019; and 34 Code of Federal Regulations, §§300.8, 300.147, 300.151, 300.152, 300.153, 300.320, 300.506, 300.507, and 300.600.

§89.1011. Full Individual and Initial Evaluation.

(a) Referral of students for a full individual and initial evaluation for possible special education services must be a part of the district's overall, general education referral or screening system. Students [Prior to referral, students] experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial; remedial; compensatory; response to evidence-based intervention; and other academic or behavior support services. A student is not required to be provided with interventions for any specific length of time prior to a referral being made or a full individual and initial evaluation being conducted. If the student continues to experience difficulty in the general classroom with [after] the provision of interventions, district personnel must refer the student for a full individual and initial evaluation. A [This] referral for a full individual and initial evaluation may be initiated at any time by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.

(b) - (h) (No change.)

§89.1035. *Age Ranges for Student Eligibility.*

(a) Pursuant to state and federal law, services provided in accordance with this subchapter must be available to all eligible students ages 3-21. Services will be made available to eligible students on their third birthday. Graduation with a regular high school diploma pursuant to §89.1070(b)(1), (b)(3)(D) [(b)(2)(D)], (g)(1), (g)(2), (g)(3), or (g)(4)(D) of this title (relating to Graduation Requirements) terminates a student's eligibility to receive services in accordance with this subchapter. An eligible student receiving special education services who is 21 years of age on September 1 of a school year will be eligible for services through the end of that school year or until graduation with a regular high school diploma pursuant to §89.1070(b)(1), (b)(3)(D) [(b)(2)(D)], (g)(1), (g)(2), (g)(3), or (g)(4)(D) of this title, whichever comes first.

(b) (No change.)

§89.1040. *Eligibility Criteria.*

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

(c) Eligibility definitions.

(1) - (11) (No change.)

(12) Visual impairment.

(A) A student with a visual impairment is one who has been determined to meet the criteria for visual impairment as stated in 34 CFR, §300.8(c)(13). Information from a variety of sources must be considered by the multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on visual impairment in order to determine the need for specially designed instruction as stated in 34 CFR, §300.39(b)(3), and must include [The visual loss should be stated in exact measures of visual field and corrected visual acuity at a distance and at close range in each eye in a report by a licensed ophthalmologist or optometrist. The report should also include prognosis whenever possible. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. In meeting the criteria stated in 34 CFR, §300.8(c)(13), a student with a visual impairment is one who] :

(i) a medical report [has been determined] by a licensed ophthalmologist or optometrist that indicates the visual loss stated in exact measures of visual field and corrected visual acuity, at a distance and at near range, in each eye. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. The report should also include a diagnosis and prognosis whenever possible and whether the student has :

(I) [to have] no vision or [to have a serious] visual loss after correction; or

(II) [to have] a progressive medical condition that will result in no vision or a [serious] visual loss after correction; [and]

[(ii) has been determined by the following evaluations to have a need for special services:]

(ii) [(H)] a functional vision evaluation by a certified teacher of students with visual impairments or a certified orientation and mobility specialist. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation; [and]

(iii) [(H)] a learning media assessment by a certified teacher of students with visual impairments. The learning media assessment must include recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the stu-

dent and whether or not there is a need for ongoing evaluation in this area ; and [-]

(iv) as part of the full individual and initial evaluation, an orientation and mobility evaluation conducted by a person who is appropriately certified as an orientation and mobility specialist. The evaluation must be conducted in a variety of lighting conditions and in a variety of settings, including in the student's home, school, and community, and in settings unfamiliar to the student.

(B) A person who is appropriately certified as an orientation and mobility specialist must participate in any reevaluation as part of the multidisciplinary team, in accordance with 34 CFR, §§300.122 and 300.303-300.311, in evaluating data used to make the determination of the student's need for specially designed instruction.

[(B) A student with a visual impairment is functionally blind if, based on the preceding evaluations, the student will use tactual media (which includes braille) as a primary tool for learning to be able to communicate in both reading and writing at the same level of proficiency as other students of comparable ability.]

[(C) Beginning with the 2014-2015 school year, a full individual and initial evaluation of a student suspected of having a visual impairment must include an orientation and mobility evaluation conducted by a person who is appropriately certified as an orientation and mobility specialist and must be conducted in a variety of lighting conditions and in a variety of settings, including in the student's home, school, and community and in settings unfamiliar to the student.]

(C) [(D)] A [Beginning with the 2014-2015 school year, a] person who is appropriately certified as an orientation and mobility specialist must participate, as part of a multidisciplinary team, in accordance with 34 CFR, §§300.122 and 300.303-300.311, in evaluating data used in making the determination of the student's eligibility as a student with a visual impairment.

[(E) Beginning with the 2014-2015 school year, the scope of any reevaluation of a student who has been determined, after the full individual and initial evaluation, to be eligible for the district's special education program on the basis of a visual impairment must be determined, in accordance with 34 CFR, §§300.122 and 300.303-300.311, by a multidisciplinary team that includes an appropriately certified orientation and mobility specialist.]

(13) (No change.)

§89.1047. *Procedures for Special Education Decision-Making for Students in Foster Care.*

(a) - (c) (No change.)

(d) A surrogate parent appointed by a school district may not be an employee of the Texas Education Agency [state], the school district, or any other agency involved in the education or care of the child and may not have any interest that conflicts with the interests of the child. Each school district or shared services arrangement must develop and implement procedures for conducting an analysis of whether a potential surrogate parent has an interest that conflicts with the interests of his or her child. Issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to TDFPS.

(e) (No change.)

§89.1050. *The Admission, Review, and Dismissal Committee.*

(a) Each school district must establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full individual and initial evaluation is conducted pursuant to §89.1011 of this title (relating to Full

Individual and Initial Evaluation). The ARD committee is the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 Code of Federal Regulations (CFR), §300.321. The school district is responsible for all of the functions for which the IEP team is responsible under federal law and regulations and for which the ARD committee is responsible under state law, including the following:

(1) - (15) (No change.)

(16) TEC, §48.102 [§42.154] (Special Education).

(b) For a student from birth through two years of age with visual and/or auditory impairments, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the Texas Health and Human Services Commission [Department of Assistive and Rehabilitative Services]. For students three years of age and older, school districts must develop an IEP.

(c) - (k) (No change.)

§89.1055. *Content of the Individualized Education Program.*

(a) - (g) (No change.)

{(h) In accordance with TEC, §29.011 and §29.0111, not later than when a student reaches 14 years of age, the ARD committee must consider, and if appropriate, address the following issues in the IEP:}

{(1) appropriate student involvement in the student's transition to life outside the public school system;}

{(2) if the student is younger than 18 years of age, appropriate parental involvement in the student's transition;}

{(3) if the student is at least 18 years of age, appropriate parental involvement in the student's transition, if the parent is invited to participate by the student or the school district in which the student is enrolled;}

{(4) any postsecondary education options;}

{(5) a functional vocational evaluation;}

{(6) employment goals and objectives;}

{(7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments;}

{(8) independent living goals and objectives; and}

{(9) appropriate circumstances for referring a student or the student's parents to a governmental agency for services.}

{(i) Subsection (h) of this section expires with the beginning of the 2018-2019 school year.}

(h) [(j)] Not [Beginning with the 2018-2019 school year, not] later than when a student reaches 14 years of age, the ARD committee must consider and, if appropriate, address the following issues in the IEP:

(1) - (10) (No change.)

(i) [(k)] A [Beginning with the 2018-2019 school year, a] student's ARD committee shall annually review the issues described in subsection (h) [(j)] of this section and, if necessary, update the portions of the student's IEP that address those issues.

(j) [(h)] In accordance with 34 CFR, §300.320(b), beginning not later than the first IEP to be in effect when the student turns 16 years of age, or younger if determined appropriate by the ARD committee, and updated annually thereafter, the IEP must include the following:

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

(k) [(m)] The written statement of the IEP must document the decisions of the ARD committee with respect to issues discussed at each ARD committee meeting. The written statement must also include:

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

§89.1070. *Graduation Requirements.*

(a) Graduation with a regular high school diploma under subsections (b)(1), (b)(3)(D) [(b)(2)(D)], (g)(1), (g)(2), (g)(3), or (g)(4)(D) of this section terminates a student's eligibility for special education services under this subchapter and Part B of the Individuals with Disabilities Education Act and entitlement to the benefits of the Foundation School Program, as provided in Texas Education Code (TEC), §48.003(a) [§42.003(a)].

(b) A student entering Grade 9 in the 2014-2015 school year and thereafter who receives special education services may graduate and be awarded a regular high school diploma if the student meets one of the following conditions.

(1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117 [118], 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title (relating to Foundation High School Program) applicable to students in general education as well as satisfactory performance as established in the TEC, Chapter 39, on the required end-of-course assessment instruments [state assessments, unless the student's admission, review, and dismissal (ARD) committee has determined that satisfactory performance on the required state assessments is not necessary for graduation].

(2) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title applicable to students in general education but the student's ARD committee has determined that satisfactory performance on the required end-of-course assessment instruments is not necessary for graduation.

(3) [(2)] The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117 [118], 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title through courses, one or more of which contain modified curriculum that is aligned to the standards applicable to students in general education, as well as satisfactory performance as established in the TEC, Chapter 39, on the required state assessments, unless the student's ARD committee has determined that satisfactory performance on the required state assessments is not necessary for graduation. The student must also successfully complete the student's individualized education program (IEP) and meet one of the following conditions.

(A) - (D) (No change.)

(c) A student receiving special education services may earn an endorsement under §74.13 of this title (relating to Endorsements) if the student:

(1) (No change.)

(2) satisfactorily completes the courses required for the endorsement under §74.13(f) of this title without any modified curriculum or with modification of the curriculum, provided that the curriculum, as

modified, is sufficiently rigorous as determined by the student's ARD committee ; and

(3) performs satisfactorily as established in the TEC, Chapter 39, on the required end-of-course assessment instruments unless the student's ARD committee determines that satisfactory performance is not necessary [state assessments].

(d) (No change.)

~~[(e) In order for a student receiving special education services to use a course to satisfy both a requirement under the Foundation High School Program specified in §74.12 of this title and a requirement for an endorsement under §74.13 of this title, the student must satisfactorily complete the course without any modified curriculum.]~~

(e) ~~[(f)]~~ A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a high school diploma under the Foundation High School Program as provided in §74.1021 of this title (relating to Transition to the Foundation High School Program), if the student's ARD committee determines that the student should take courses under that program and the student satisfies the requirements of that program. Subsections (c) and (d) of this section apply to a student transitioning to the Foundation High School Program under this subsection. As the TEC, §28.0258 and §39.025(a-2), modify the state assessment requirements applicable to students in general education, a student receiving special education services who is classified in Grade 11 or 12 who has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments may graduate if the student has satisfied all other applicable graduation requirements.

(f) ~~[(g)]~~ A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a regular high school diploma if the student meets one of the following conditions.

(1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110- 117 [H8], 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation (under the recommended or distinguished achievement high school programs in Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008) or Chapter 74, Subchapter G, of this title (relating to Graduation Requirements, Beginning with School Year 2012-2013)), as applicable, including satisfactory performance as established in the TEC, Chapter 39, on the required state assessments.

(2) (No change.)

(3) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110- 117 [H8], 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation (under the minimum high school program in Chapter 74, Subchapter F or G, of this title), as applicable, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation.

(4) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110- 117 [H8], 126-128, and 130 of this title through courses, one or more of which contain modified content that is aligned to the standards required under the minimum high school program in Chapter 74, Subchapter

F or G, of this title, as applicable, as well as the satisfactorily completed credit requirements under the minimum high school program, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation. The student graduating under this subsection must also successfully complete the student's IEP and meet one of the following conditions.

(A) - (D) (No change.)

(g) ~~[(h)]~~ All students graduating under this section must be provided with a summary of academic achievement and functional performance as described in 34 Code of Federal Regulations (CFR), §300.305(e)(3). This summary must consider, as appropriate, the views of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals. An evaluation as required by 34 CFR, §300.305(e)(1), must be included as part of the summary for a student graduating under subsections (b)(2)(A), (B), or (C) or (g)(4)(A), (B), or (C) of this section.

(h) ~~[(i)]~~ Students who participate in graduation ceremonies but who are not graduating under subsections (b)(2)(A), (B), or (C) or (g)(4)(A), (B), or (C) of this section and who will remain in school to complete their education do not have to be evaluated in accordance with subsection (h) of this section.

(i) ~~[(j)]~~ Employability and self-help skills referenced under subsections (b)(2) and (g)(4) of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.

(j) ~~[(k)]~~ For students who receive a diploma according to subsections (b)(2) ; (b)(3) (A), (B), or (C) ; or (g)(4)(A), (B), or (C) of this section, the ARD committee must determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.

(k) ~~[(l)]~~ For purposes of this section, modified curriculum and modified content refer to any reduction of the amount or complexity of the required knowledge and skills in Chapters 110- 117 [H8], 126-128, and 130 of this title. Substitutions that are specifically authorized in statute or rule must not be considered modified curriculum or modified content.

§89.1075. *General Program Requirements and Local District Procedures.*

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

~~[(f) School districts that jointly operate their special education programs as a shared services arrangement, in accordance with TEC, §29.007, must do so in accordance with procedures developed by the Texas Education Agency (TEA).]~~

(f) ~~[(g)]~~ School districts that contract for services from non-public day schools must do so in accordance with 34 Code of Federal Regulations, §300.147, and §89.1094 of this title (relating to Students Receiving Special Education and Related Services in an Off-Campus Program) ~~[procedures developed by the TEA].~~

§89.1092. *Contracting for Residential Educational Placements for Students with Disabilities.*

(a) Residential placement. A school district may contract for residential placement of a student when the student's admission, review, and dismissal (ARD) committee determines that a residential placement is necessary in order for the student to receive a free appropriate public education (FAPE).

(1) A school district may contract for a residential placement of a student only with either public or private residential facilities that maintain current and valid licensure by the Texas Department of Aging and Disability Services, Texas Department of Family and Protective Services, or Department of State Health Services for the particular disabling condition and age of the student. A school district may contract for an out-of-state residential placement in accordance with the provisions of subsection (d)(3) of this section.

(2) Subject to subsections (c) and (d) of this section, the district may contract with a residential facility to provide some or all of the special education services listed in the contracted student's individualized education program (IEP). If the facility provides any educational services listed in the student's IEP, the facility's education program must be approved by the commissioner of education in accordance with subsection (d) of this section.

(3) A school district that intends to contract for residential placement of a student with a residential facility under this section shall notify the Texas Education Agency (TEA) of its intent to contract for the residential placement through the residential application process described in subsection (c) of this section.

(4) The school district has the following responsibilities when making a residential placement.

(A) Before the school district places a student with a disability in, or refers a student to, a residential facility, the district shall initiate and conduct a meeting of the student's ARD committee to develop an IEP for the student in accordance with 34 Code of Federal Regulations (CFR), §§300.320-300.325, state statutes, and commissioner rules.

(B) For each student, the services that the school district is unable to provide and that the facility will provide shall be listed in the student's IEP.

(C) For each student, the ARD committee shall establish, in writing, criteria and estimated timelines for the student's return to the school district.

(D) The appropriateness of the facility for each student residentially placed shall be documented in the IEP. General screening by a regional education service center is not sufficient to meet the requirements of this subsection.

(E) The school district shall make one announced initial visit and two subsequent onsite visits annually, one announced and one unannounced, to verify that the residential facility can and will provide the services listed in the student's IEP that the facility has agreed to provide to the student.

(F) For each student placed in a residential facility (both initial and continuing placements), the school district shall verify, during the initial residential placement ARD committee meeting and each subsequent annual ARD committee meeting, that:

(i) the facility meets minimum standards for health and safety;

(ii) residential placement is needed and is documented in the IEP; and

(iii) the educational program provided at the residential facility is appropriate and the placement is the least restrictive environment for the student.

(G) The placement of more than one student in the same residential facility may be considered in the same onsite visit to a facility; however, the IEP of each student must be individually reviewed

and a determination of appropriateness of placement and service must be made for each student.

(H) When a student who is residentially placed by a school district changes his or her residence to another Texas school district and the student continues in the contracted placement, the school district that negotiated the contract shall be responsible for the residential contract for the remainder of the school year.

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

(1) If the residential education program is on the commissioner's list of approved residential education programs, TEA will review the student's IEP and placement as required by 34 CFR, §300.120, and, in the case of a placement in or referral to a private school or facility, 34 CFR, §300.146. After review, TEA will notify the school district whether federal or state funds for the residential education program placement are approved. If TEA does not approve the use of funds, it will notify the school district of the basis for the non-approval.

(2) If the residential education program is not on the commissioner's list of approved residential education programs, TEA will begin the approval procedures described in subsection (d)(1) of this section. School districts must ensure there is no delay in implementing a child's IEP in accordance with 34 CFR, §300.103(c).

(3) If a residential education program placement is ordered by a special education hearing officer or court of competent jurisdiction, the school district must notify TEA of the order within 30 calendar days. The residential education program serving the student is not required to go through the approval procedures described in subsection (d)(1) of this section for the ordered placement. If, however, the school district or other school districts intend to place other students in the residential education program, the residential education program will be required to go through the approval procedures to be included on the commissioner's list of approved residential programs.

(c) Application approval process. Requests for approval of state and federal funding for residentially placed students shall be negotiated on an individual student basis through a residential application submitted by the school district to TEA.

(1) A residential application may be submitted for educational purposes only. The residential application shall not be approved if the application indicates that the:

(A) placement is due primarily to the student's medical problems;

(B) placement is due primarily to problems in the student's home;

(C) district does not have a plan, including timelines and criteria, for the student's return to the local school program;

(D) district did not attempt to implement lesser restrictive placements prior to residential placement (except in emergency situations as documented by the student's ARD committee);

(E) placement is not cost effective when compared with other alternative placements; or

(F) residential facility provides unfundable or unapprovable services.

(2) The residential placement, if approved by TEA, shall be funded as follows:

(A) the education cost of residential contracts shall be funded with state funds on the same basis as nonpublic day school contract costs according to Texas Education Code, §42.151;

(B) related services and residential costs for residential contract students shall be funded from a combination of fund sources. After expending any other available funds, the district must expend its local tax share per average daily attendance and 25% of its Individuals with Disabilities Education Act, Part B, (IDEA-B) formula tentative entitlement (or an equivalent amount of state and/or local funds) for related services and residential costs. If this is not sufficient to cover all costs of the residential placement, the district through the residential application process may receive additional IDEA-B discretionary funds to pay the balance of the residential contract placement(s) costs; and

(C) funds generated by the formula for residential costs described in subparagraph (B) of this paragraph shall not exceed the daily rate recommended by the Texas Department of Family and Protective Services for the specific level of care in which the student is placed.

(d) Approval of the education program for facilities that provide educational services. Residential facilities that provide educational services must have their educational programs approved for contracting purposes by the commissioner.

(1) If the education program of a residential facility that is not approved by the commissioner is being considered for a residential placement by a local school district, the school district should notify TEA in writing of its intent to place a student at the facility. TEA shall begin approval procedures and conduct an onsite visit to the facility within 30 calendar days after TEA has been notified by the local school district. Approval of the education program of a residential facility may be for one, two, or three years.

(2) The commissioner shall renew approvals and issue new approvals only for those facilities that have contract students already placed or that have a pending request for residential placement from a school district. This approval does not apply to residential facilities that only provide related services or residential facilities in which the local accredited school district where the facility is located provides the educational program.

(3) School districts that contract for out-of-state residential placement shall do so in accordance with the rules for in-state residential placement in this section, except that the facility must be approved by the appropriate agency in the state in which the facility is located rather than by TEA.

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

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

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

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

(A) - (C) (No change.)

(D) any other public or private entity with which a school district enters into a contract under TEC, §11.157(a) [~~§11.157~~], for the provision of special education services in a facility other than a school district campus operated by a school district.

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

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

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

(A) (No change.)

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

(C) (No change.)

(4) (No change.)

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

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

(d) (No change.)

(e) Funding procedures and other requirements. The cost of off-campus program placements will be funded according to TEC, §48.102 [~~§42.151~~] (Special Education), and §89.1005(e) [~~§89.63(e)~~] of this title (relating to Instructional Arrangements and Settings).

(1) - (3) (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 October 5, 2020.

TRD-202004131

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 15, 2020

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



DIVISION 7. DISPUTE RESOLUTION

19 TAC §§89.1165, 89.1193, 89.1195, 89.1197

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §28.025, as amended by House Bill (HB) 165, 86th Texas Legislature, 2019, which establishes requirements, in part, for endorsements; TEC, §29.001, which establishes general statutory authority for the state to develop, implement, and monitor a statewide plan for special education; TEC, §29.003, which establishes state-specific criteria related to eligibility requirements for special education; TEC, §29.004, which establishes state-specific criteria related to full individual and initial evaluations for special education;

TEC, §29.005, which establishes state-specific criteria related to students' individualized education programs (IEPs); TEC, §29.010, which establishes requirements related to monitoring activities for special education; TEC, §29.011 and §29.0111, which establish requirements related to transition programming for students eligible for special education; TEC, §29.0151, as amended by HB 1709, 86th Texas Legislature, 2019, which establishes requirements related to the appointment of surrogate parents to children in foster care who are eligible for special education services; TEC, §29.019, which establishes requirements related to the state's facilitated IEP project; TEC, §30.002, as amended by Senate Bill 522, 86th Texas Legislature, 2019, which establishes requirements related to the state's development and implementation of a plan for the education of children with visual impairments who are under 21 years of age; TEC, §48.102, as added by HB 3, 86th Texas Legislature, 2019, which establishes requirements related to funding for special education programs; 34 Code of Federal Regulations (CFR), §300.8, establishes definitions of eligibilities under special education; 34 CFR, §300.147, which establishes state monitoring requirements for facilities in which a student's admission, review, and dismissal committee have placed students who are eligible for special education; 34 CFR, §§300.151-300.153, which establish requirements related to the filing and resolution of special education complaints; 34 CFR, §300.320, which establishes requirements related to content of a student's IEP; 34 CFR, §300.506, which establishes requirements related to a state's mediation program; 34 CFR, §300.507, which establishes requirements related to a state's due process hearing program; and 34 CFR, §300.600, which establishes requirements related to the state's monitoring authority of special education programs.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§28.025, as amended by House Bill (HB) 165, 86th Texas Legislature, 2019; 29.001; 29.003; 29.004; 29.005; 29.010; 29.011; 29.0111; 29.0151, as amended by HB 1709, 86th Texas Legislature, 2019; 29.019; 30.002, as amended by Senate Bill 522, 86th Texas Legislature, 2019; and 48.102, as added by HB 3, 86th Texas Legislature, 2019; and 34 Code of Federal Regulations, §§300.8, 300.147, 300.151, 300.152, 300.153, 300.320, 300.506, 300.507, and 300.600.

§89.1165. Request for Special Education Due Process Hearing.

(a) A request for a due process hearing (due process complaint) must be in writing and must be filed with the Texas Education Agency (TEA) [-: The request may be filed] by electronic mail, mail, hand-delivery, or facsimile.

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

§89.1193. Special Education Mediation.

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

(c) A request for mediation must be in writing and must be filed with the TEA by electronic mail, mail, hand-delivery, or facsimile. The TEA has developed a form that may be used by parties requesting mediation. The form is available on request from the TEA and is also available on the TEA website.

(d) - (l) (No change.)

§89.1195. Special Education Complaint Resolution.

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

(c) A complaint must be filed with the TEA by electronic mail, mail, hand-delivery, or facsimile. The TEA has developed a form that

may be used by persons or organizations filing a complaint. The form is available on request from the TEA and is also available on the TEA website. The complaint timeline will commence the next business day after the day on which the TEA receives the complaint.

(d) - (e) (No change.)

(f) If a party to a complaint believes that the TEA's written report includes an error that is material to the determination in the report, the party may submit a signed, written request for reconsideration to the TEA by electronic mail, mail, hand-delivery, or facsimile within 15 calendar days of the date of the report. The party's reconsideration request must identify the asserted error and include any documentation to support the claim. The party filing a reconsideration request must forward a copy of the request to the other party at the same time that the request is filed with the TEA. The other party may respond to the reconsideration request within five calendar days of the date on which the TEA received the request. The TEA will consider the reconsideration request and provide a written response to the parties within 45 calendar days of receipt of the request. The filing of a reconsideration request must not delay a public education agency's implementation of any corrective actions required by the TEA.

(g) (No change.)

§89.1197. State Individualized Education Program Facilitation.

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

(c) A request for IEP facilitation under this section must be filed by completing a form developed by the TEA that is available upon request from the TEA and on the TEA website. The form must be filed with the TEA by one of the parties by electronic mail, mail, hand-delivery, or facsimile.

(d) - (o) (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 October 5, 2020.

TRD-202004132

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 15, 2020

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



CHAPTER 105. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SEVERANCE PAYMENTS

19 TAC §105.1021

The Texas Education Agency (TEA) proposes an amendment to §105.1021, concerning severance payment reporting and reductions in Foundation School Program (FSP) funding. The proposed amendment would remove obsolete language relating to recapture and update a reference to Texas Education Code (TEC), Chapter 42, which was recodified by House Bill (HB) 3, 86th Texas Legislature, 2019.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 105.1021 defines a severance payment and the requirements of

the board of trustees of an independent school district when an amount paid to a superintendent on early termination of the superintendent's contract exceeds the amount earned by the superintendent under the contract as of the date of termination. It also describes when and how the terms of the severance payment are to be reported to TEA and that the district's FSP funding will be reduced by the amount that the severance payment to the superintendent exceeds one year's salary and benefits under the superintendent's terminated contract.

The proposed amendment would implement HB 3, 86th Texas Legislature, 2019, by removing obsolete language in subsection (c)(2) that could potentially result in an incorrect recapture adjustment for some schools.

The proposed amendment would also update a cross reference to TEC, Chapter 42, in subsection (c)(3). HB 3 recodified TEC, Chapter 42, as Chapter 48.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lopez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be updating references to rules that were recodified as a result of HB 3, 86th Texas Legislature, 2019. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins October 16, 2020, and ends November 16, 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 October 16, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §11.201(c), which requires that the local school board of trustees that makes a severance payment to a superintendent to report the terms of the severance payment to the Texas Education Agency (TEA). It also requires TEA to reduce the district's Foundation School Program funding by the amount that the severance payment to the superintendent exceeds one year's salary and benefits under the superintendent's terminated contract.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §11.201(c).

§105.1021. Severance Payment Reporting and Reductions in Foundation School Program Funding.

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

(c) Reduction in FSP funding.

(1) (No change.)

{(2) For a school district subject to the provisions of the TEC, Chapter 41, any FSP funding reduction amount will be deducted from the FSP Tier I allotment for the district before computation of weighted average daily attendance for purposes of determining the district's equalized wealth level.}

(2) [(3)] A reduction in FSP funding under this section does not affect a school district's obligation to comply with all provisions of the TEC, Chapter 48 [42], including its obligation under that chapter to provide educational services to special populations.

(d) (No change.)

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

Filed with the Office of the Secretary of State on October 5, 2020.

TRD-202004133

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 15, 2020

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



TITLE 22. EXAMINING BOARDS

PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

The Texas Board of Professional Engineers and Land Surveyors (Board or TBPELS) proposes the repeal of 22 Texas Administrative Code, Chapter 661, regarding the general rules of procedures and practices for professional land surveying.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed repealed rules implement necessary changes as required by House Bill (HB) 1523, 86th Legislature, Regular Session (2019), related to the merger of operations of the Texas Board of Professional Engineers and the Texas Board of Professional Land Surveying into the TBPELS.

As required by HB 1523, the operations of the two agencies have been merged into one and the associated rules regarding operations of the agency have been revised and merged into 22 Texas Administrative Code, Chapters 131, 134, 136, 138, and 139 per the guidance of the Secretary of State. During the review of the rules for the merger, certain sections were determined to not be appropriate rules, redundant, or were consolidated with another rule.

Accordingly, the following rules are repealed:

Chapter 661 - General Rules of Procedures and Practice

Subchapter A: The Board

§661.1 Name

§661.2 Headquarters

§661.3 Chair

§661.4 Vice Chair

§661.5 Executive Director

§661.7 Executive Committee

§661.8 Standing Committees

§661.9 Special Committees

§661.10 Financial

§661.11 Vacancies

Subchapter B: Meetings

§661.23 Notice of Meetings

§661.24 Proceedings

Subchapter C: Definitions of Terms

§661.31 Definitions

§661.33 Easement Depiction

Subchapter D: Applications, Examinations, and Licensing

§661.41 Applications

§661.42 Fees

§661.43 References

§661.44 Rejections

§661.45 Examinations

§661.46 Seal and Oath

§661.47 Reciprocal Registration

§661.50 Surveyor In Training (SIT) Experience Requirements

§661.51 Surveyor-In-Training Education Requirement

§661.52 Inactive Status

§661.53 Active Duty Military

§661.55 Registration of Land Surveying Firms

§661.56 Land Surveying Firm Renewal and Expiration

§661.57 Land Surveying Firms Compliance

Subchapter E: Contested Cases

§661.60 Responsibility to the Board

§661.62 Complaint Process

§661.63 Frivolous Complaints

§661.64 Computation of Time

§661.65 Agreements To Be in Writing

§661.67 Conduct and Decorum

§661.68 Appearances Personally or by Representative

§661.86 Final Decisions and Orders

§661.87 Administrative Finality

§661.88 Motion for Rehearing

§661.97 Action in Another Jurisdiction

§661.99 Sanctions and Penalty Matrix

§661.100 Probation Guidelines

§661.102 Alternative Dispute Resolution for Personnel and Contracting Matters

§661.104 Negotiated Rulemaking

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed repeals are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed repeals.

Dr. Kinney has determined that for each year of the first five years the proposed repeals are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed repeals.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed repeals are in effect, the public benefit will be the clarification of agency rules regarding operations of the TBPELS.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

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

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed repeals do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed repeals. For each year of the first five years the proposed repeals are in effect, the agency has determined the following:

1. The proposed repeals do not create or eliminate a government program.
2. Implementation of the proposed repeals do not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed repeals do not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed repeals do not require an increase or decrease in fees paid to the agency.
5. The proposed repeals do not create a new regulation.
6. The proposed repeals do not expand, limit, or repeal a regulation as these provisions are covered elsewhere in policy or statute.
7. The proposed repeals do not increase the number of individuals subject to the rule's applicability.
8. The proposed repeals do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by the proposed repeals and the proposed repeals do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed repeals do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed repeals are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed repeals are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@engineers.texas.gov.

SUBCHAPTER A. THE BOARD

22 TAC §§661.1 - 661.5, 661.7 - 661.11

STATUTORY AUTHORITY

The rules are repealed pursuant to Texas Occupations Code §1001.201 and §1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. No other codes, articles, or statutes are affected by this proposal.

- §661.1. *Name.*
- §661.2. *Headquarters.*
- §661.3. *Chair.*
- §661.4. *Vice Chair.*
- §661.5. *Executive Director.*
- §661.7. *Executive Committee.*
- §661.8. *Standing Committees.*
- §661.9. *Special Committees.*
- §661.10. *Financial.*
- §661.11. *Vacancies.*

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004117

Lance Kinney

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 440-3080



SUBCHAPTER B. MEETINGS

22 TAC §§661.23, §661.24

STATUTORY AUTHORITY

The rules are repealed pursuant to Texas Occupations Code §1001.101 and §1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all

rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. No other codes, articles, or statutes are affected by this proposal.

§661.23. *Notice of Meetings.*

§661.24. *Proceedings.*

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004118

Lance Kinney

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 440-3080



SUBCHAPTER C. DEFINITIONS OF TERMS

22 TAC §661.31, §661.33

STATUTORY AUTHORITY

The rules are repealed pursuant to Texas Occupations Code §1001.101 and §1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. No other codes, articles, or statutes are affected by this proposal.

§661.31. *Definitions.*

§661.33. *Easement Depiction.*

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004119

Lance Kinney

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 440-3080



SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §§661.41 - 661.47, 661.50 - 661.53, 661.55 - 661.57

STATUTORY AUTHORITY

The rules are repealed pursuant to Texas Occupations Code §§ 1001.101 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and

land surveying in this state. No other codes, articles, or statutes are affected by this proposal.

§661.41. *Applications.*

§661.42. *Fees.*

§661.43. *References.*

§661.44. *Rejections.*

§661.45. *Examinations.*

§661.46. *Seal and Oath.*

§661.47. *Reciprocal Registration.*

§661.50. *Surveyor In Training (SIT) Experience Requirements.*

§661.51. *Surveyor-In-Training Education Requirement.*

§661.52. *Inactive Status.*

§661.53. *Active Duty Military.*

§661.55. *Registration of Land Surveying Firms.*

§661.56. *Land Surveying Firm Renewal and Expiration.*

§661.57. *Land Surveying Firms Compliance.*

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004120

Lance Kinney

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 440-3080



SUBCHAPTER E. CONTESTED CASES

22 TAC §§661.60, 661.62 - 661.65, 661.67, 661.68, 661.86 - 661.88, 661.97, 661.99, 661.100, 661.102, 661.104

STATUTORY AUTHORITY

The rules are repealed pursuant to Texas Occupations Code §§ 1001.101 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. No other codes, articles, or statutes are affected by this proposal.

§661.60. *Responsibility to the Board.*

§661.62. *Complaint Process.*

§661.63. *Frivolous Complaints.*

§661.64. *Computation of Time.*

§661.65. *Agreements To Be in Writing.*

§661.67. *Conduct and Decorum.*

§661.68. *Appearances Personally or by Representative.*

§661.86. *Final Decisions and Orders.*

§661.87. *Administrative Finality.*

§661.88. *Motion for Rehearing.*

§661.97. *Action in Another Jurisdiction.*

§661.99. *Sanctions and Penalty Matrix.*

§661.100. *Probation Guidelines.*

§661.102. *Alternative Dispute Resolution for Personnel and Contracting Matters.*

§661.104. *Negotiated Rulemaking.*

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004121

Lance Kinney

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 440-3080



CHAPTER 663. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND RULES OF CONDUCT

The Texas Board of Professional Engineers and Land Surveyors (Board or TBPELS) proposes the repeal of 22 Texas Administrative Code, Chapter 663, regarding the standards of professional responsibility and rules of conduct for professional land surveyors.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed repealed rules implement necessary changes as required by House Bill (HB) 1523, 86th Legislature, Regular Session (2019), related to the merger of operations of the Texas Board of Professional Engineers and the Texas Board of Professional Land Surveying into the TBPELS.

As required by HB 1523, the operations of the two agencies have been merged into one and the associated rules regarding operations of the agency have been revised and merged into 22 Texas Administrative Code, Chapters 131, 134, 136, 138, and 139 per the guidance of the Secretary of State. During the review of the rules for the merger, certain sections were determined to not be appropriate rules, redundant, or were consolidated with another rule.

Accordingly, the following rules are repealed:

Chapter 663: Standards of Professional Responsibility and Rules of Conduct

Subchapter A: General Practice Standards

§663.1 Ethical Standards

§663.3 Offer to Perform Services

§663.4 Conflicts of Interests

§663.5 Representations

§663.6 Unauthorized Practice

§663.8 Adherence to Statutes and Codes

§663.9 Professional Conduct

§663.10 Disciplinary Rules

§663.11 Criminal Convictions

Subchapter B: Professional and Technical Standards

§663.13 Introduction

§663.15 Precision and Accuracy

§663.16 Boundary Construction

§663.17 Monumentation

§663.18 Certification

§663.19 Survey Drawing/Written /Description/Report

§663.20 Subdivision Plat

§663.21 Descriptions Prepared for Political Subdivisions

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed repeals are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed repeals.

Dr. Kinney has determined that for each year of the first five years the proposed repeals are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed repeals.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed repeals are in effect, the public benefit will be the clarification of agency rules regarding operations of the TBPELS.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

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

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed repeals do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed repeals. For each year of the first five years the proposed repeals are in effect, the agency has determined the following:

1. The proposed repeals do not create or eliminate a government program.
2. Implementation of the proposed repeals do not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed repeals do not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed repeals do not require an increase or decrease in fees paid to the agency.
5. The proposed repeals do not create a new regulation.
6. The proposed repeals do not expand, limit, or repeal a regulation as these provisions are covered elsewhere in policy or statute.
7. The proposed repeals do not increase the number of individuals subject to the rule's applicability.
8. The proposed repeals do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by the proposed repeals and the proposed repeals do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed repeals do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed repeals are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed repeals are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@engineers.texas.gov.

SUBCHAPTER A. GENERAL PRACTICE STANDARDS

22 TAC §§663.1, 663.3 - 663.6, 663.8 - 663.11

STATUTORY AUTHORITY

The rules are repealed pursuant to Texas Occupations Code §1001.201 and §1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. No other codes, articles, or statutes are affected by this proposal.

- §663.1. *Ethical Standards.*
- §663.3. *Offer to Perform Services.*

- §663.4. *Conflicts of Interests.*
- §663.5. *Representations.*
- §663.6. *Unauthorized Practice.*
- §663.8. *Adherence to Statutes and Codes.*
- §663.9. *Professional Conduct.*
- §663.10. *Disciplinary Rules.*
- §663.11. *Criminal Convictions.*

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004123

Lance Kinney

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 440-3080



SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

22 TAC §§663.13, 663.15 - 663.21

STATUTORY AUTHORITY

The rules are repealed pursuant to Texas Occupations Code §1001.101 and §1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. No other codes, articles, or statutes are affected by this proposal.

- §663.13. *Introduction.*
- §663.15. *Precision and Accuracy.*
- §663.16. *Boundary Construction.*
- §663.17. *Monumentation.*
- §663.18. *Certification.*
- §663.19. *Survey Drawing/Written /Description/Report.*
- §663.20. *Subdivision Plat.*
- §663.21. *Descriptions Prepared for Political Subdivisions.*

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004124

Lance Kinney

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 440-3080



CHAPTER 664. CONTINUING EDUCATION

22 TAC §§664.1 - 664.10

The Texas Board of Professional Engineers and Land Surveyors (Board or TBPELS) proposes the repeal of 22 Texas Administrative Code, Chapter 664, regarding continuing education for professional land surveyors.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed repealed rules implement necessary changes as required by House Bill (HB) 1523, 86th Legislature, Regular Session (2019), related to the merger of operations of the Texas Board of Professional Engineers and the Texas Board of Professional Land Surveying into the TBPELS.

As required by HB 1523, the operations of the two agencies have been merged into one and the associated rules regarding operations of the agency have been revised and merged into 22 Texas Administrative Code, Chapter 138, per the guidance of the Secretary of State. During the review of the rules for the merger, certain sections were determined to not be appropriate rules, redundant, or were consolidated with another rule.

Accordingly, the following rules are repealed:

Chapter 664: Continuing Education

§664.1 Purpose

§664.2 Deadlines

§664.3 Numerical Requirements for Continuing Education

§664.4 Types of Acceptable Continuing Education

§664.5 Procedure for Course Approval

§664.6 Reporting and Record Keeping

§664.7 Review and Audit Process

§664.8 Failure to Complete Required Continuing Education

§664.9 Acceptable Carry-over Continuing Education Units/Hours

§664.10 Exemptions

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed repeals are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed repeals.

Dr. Kinney has determined that for each year of the first five years the proposed repeals are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed repeals.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed repeals are in effect, the public benefit will be the clarification of agency rules regarding operations of TBPELS.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

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

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed repeals do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed repeals. For each year of the first five years the proposed repeals are in effect, the agency has determined the following:

1. The proposed repeals do not create or eliminate a government program.
2. Implementation of the proposed repeals do not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed repeals do not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed repeals do not require an increase or decrease in fees paid to the agency.
5. The proposed repeals do not create a new regulation.
6. The proposed repeals do not expand, limit, or repeal a regulation as these provisions are covered elsewhere in policy or statute.
7. The proposed repeals do not increase the number of individuals subject to the rule's applicability.
8. The proposed repeals do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by the proposed repeals and the proposed repeals do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed repeals do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed repeals are not brought with the specific intent to protect the environment or re-

duce risks to human health from environmental exposure; thus, the Board asserts the proposed repeals are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@engineers.texas.gov.

STATUTORY AUTHORITY

The rules are repealed pursuant to Texas Occupations Code §§ 1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. No other codes, articles, or statutes are affected by this proposal.

- §664.1. *Purpose.*
- §664.2. *Deadlines.*
- §664.3. *Numerical Requirements for Continuing Education.*
- §664.4. *Types of Acceptable Continuing Education.*
- §664.5. *Procedure for Course Approval.*
- §664.6. *Reporting and Record Keeping.*
- §664.7. *Review and Audit Process.*
- §664.8. *Failure to Complete Required Continuing Education.*
- §664.9. *Acceptable Carry-over Continuing Education Units/Hours*
- §664.10. *Exemptions.*

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004125

Lance Kinney

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 440-3080



CHAPTER 665. EXAMINATION ADVISORY COMMITTEE

22 TAC §§665.1 - 665.10

The Texas Board of Professional Engineers and Land Surveyors (Board or TBPELS) proposes the repeal of 22 Texas Administrative Code, Chapter 665, regarding the examination advisory committee for professional land surveyors.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed repealed rules implement necessary changes as required by House Bill (HB) 1523, 86th Legislature, Regular Session (2019), related to the merger of operations of the Texas Board of Professional Engineers and the Texas Board of Professional Land Surveying into the TBPELS.

As required by HB 1523, the operations of the two agencies have been merged into one and the associated rules regarding operations of the agency have been revised and merged into 22 Texas Administrative Code, Chapters 131 and 134, per the guidance of the Secretary of State. During the review of the rules for the merger, certain sections were determined to not be appropriate rules, redundant, or consolidated with another rule.

Accordingly, the following rules are repealed:

Chapter 665: Examination Advisory Committee

§665.1 Introduction

§665.2 Size, Quorum and Qualifications

§665.3 Process of Appointment

§665.4 Terms of Office

§665.5 Non-binding Statements

§665.6 Reimbursement for Expenses

§665.7 Training

§665.8 Examination Process and Board's Interaction

§665.9 Continuing Education Credit

§665.10 Texas Guaranteed Student Loan Corporation Defaulters

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed repeals are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed repeals.

Dr. Kinney has determined that for each year of the first five years the proposed repeals are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed repeals.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed repeals are in effect, the public benefit will be the clarification of agency rules regarding operations of the TBPELS.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed repeals. Since the agency has determined that the proposed repeals will have no adverse economic effect on small businesses,

micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed repeals do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed repeals. For each year of the first five years the proposed repeals are in effect, the agency has determined the following:

1. The proposed repeals do not create or eliminate a government program.
2. Implementation of the proposed repeals do not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed repeals do not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed repeals do not require an increase or decrease in fees paid to the agency.
5. The proposed repeals do not create a new regulation.
6. The proposed repeals do not expand, limit, or repeal a regulation as these provisions are covered elsewhere in policy or statute.
7. The proposed repeals do not increase the number of individuals subject to the rule's applicability.
8. The proposed repeals do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by the proposed repeals and the proposed repeals do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed repeals do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed repeals are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed repeals are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas

78741, faxed to his attention at (512) 440-0417 or sent by email to rules@engineers.texas.gov.

STATUTORY AUTHORITY

The rules are repealed pursuant to Texas Occupations Code §1001.201 and §1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. No other codes, articles, or statutes are affected by this proposal.

§665.1. *Introduction.*

§665.2. *Size, Quorum and Qualifications.*

§665.3. *Process of Appointment.*

§665.4. *Terms of Office.*

§665.5. *Non-binding Statements.*

§665.6. *Reimbursement for Expenses.*

§665.7. *Training.*

§665.8. *Examination Process and Board's Interaction.*

§665.9. *Continuing Education Credit.*

§665.10. *Texas Guaranteed Student Loan Corporation Defaulters.*

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004126

Lance Kinney

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 440-3080



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 40. EPINEPHRINE AUTO-INJECTOR AND ANAPHYLAXIS POLICIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes new §§40.11 - 40.18, concerning Epinephrine Auto-Injector Policies in Certain Entities, and new §§40.21 - 40.28, concerning Epinephrine Auto-Injector Policies in Youth Facilities.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (H.B.) 1849 and H.B. 4260, 86th Legislature, Regular Session, 2019, which amended Texas Human Resources Code, Chapter 42, Subchapter C, and Texas Health and Safety Code, Chapter 773, Subchapter A. The bills require the adoption of rules for the

stocking and administering of unassigned epinephrine auto-injectors in amusement parks, restaurants, sports venues, child-care facilities, day camps or youth camps, youth centers, small employer-based day-care facilities, temporary shelter day-care facilities, and listed family homes that voluntarily adopt unassigned epinephrine auto-injector policies. If a venue or youth facility voluntarily adopts a policy, trained personnel or volunteers may administer an epinephrine auto-injector to a person reasonably believed to be experiencing anaphylaxis.

DSHS convened the Stock Epinephrine Advisory Committee (SEAC) to request recommendations on how to integrate evidence-based practices in the rules while allowing flexibility for the entities and youth facilities. The SEAC recommended stocking at least one adult epinephrine auto-injector pack, the required training to implement the rules, and the requirement to report the administration of an epinephrine auto-injector to DSHS within 10 business days after the administration of an epinephrine auto-injector. The proposed new rules allow flexibility so that venues and youth facilities may develop policies specific to each location, including geography and venue population size.

SECTION-BY-SECTION SUMMARY

Proposed new §40.11 describes the purpose of the subchapter, which is to establish minimum standards for administering, maintaining, and disposing of epinephrine auto-injectors in entities that voluntarily adopt epinephrine auto-injector policies.

Proposed new §40.12 states that specified entities may adopt and implement a written policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors at each venue's property. If a written policy is voluntarily adopted under this subchapter, the policy must comply with Texas Health and Safety Code, §773.0145, and this subchapter.

Proposed new §40.13 defines terms used in the rules relating to the maintenance, administration, and disposal of epinephrine auto-injectors in certain entities.

Proposed new §40.14 states that the rules apply to any venue that chooses to voluntarily adopt and implement a written policy regarding the maintenance, administration, and disposal of epinephrine auto-injectors at each venue.

Proposed new §40.15 addresses unassigned epinephrine auto-injector policy requirements in venues.

Proposed new §40.16 addresses training requirements for venue personnel and venue volunteers in the administration of epinephrine auto-injectors and recognition of anaphylaxis.

Proposed new §40.17 addresses the required reporting of administering an epinephrine auto-injector.

Proposed new §40.18 addresses the immunity from liability as outlined in this subchapter and Texas Health and Safety Code, §773.0145.

Proposed new §40.21 addresses the purpose of the subchapter, which is to establish minimum standards for administering, maintaining, and disposing of epinephrine auto-injectors in youth facilities that voluntarily adopt epinephrine auto-injector policies.

Proposed new §40.22 states that a youth facility may voluntarily adopt and implement a written policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors at each youth facility.

Proposed new §40.23 defines terms used in the rules relating to the maintenance, administration, and disposal of epinephrine auto-injectors in youth facilities.

Proposed new §40.24 states that the rules apply to any youth facility that voluntarily chooses to adopt and implement a written policy regarding the maintenance, administration, and disposal of epinephrine auto-injectors.

Proposed new §40.25 addresses unassigned epinephrine auto-injector policy requirements in youth facilities.

Proposed new §40.26 addresses training of facility personnel in the administration of epinephrine auto-injectors and the recognition of anaphylaxis.

Proposed new §40.27 addresses the required reporting of administering an epinephrine auto-injector.

Proposed new §40.28 addresses immunity from liability as outlined in this subchapter and Texas Health and Safety Code, §773.0145.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Donna Sheppard, Chief Financial Officer, has also determined that there will be an adverse economic effect on small businesses, micro-businesses, or rural communities.

There are approximately 18,635 youth camps, child-care facilities, small employer-based day-care facilities, temporary shelter day-care facilities, and listed family homes that may be classified as small businesses or micro-businesses. DSHS is unable to determine the number of small businesses or micro-businesses for youth centers, amusement parks, restaurants, and sports venues. The only cost is the cost to voluntarily comply with the proposed 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 and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Dr. Manda Hall, Associate Commissioner, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The public will benefit because amusement parks, restaurants, sports venues, child-care facilities, day camps or youth camps, youth centers, small employer-based day-care facilities, temporary shelter day-care facilities, and listed family homes that voluntarily adopt unassigned epinephrine auto-injector policies will be able to administer epinephrine auto-injectors to individuals suspected of experiencing anaphylaxis. By administering epinephrine auto-injectors to people suspected of anaphylaxis, many lives may be saved.

Donna Sheppard, Chief Financial Officer, has also determined that for the first five years the rules are in effect, persons who voluntarily comply with the proposed rules may incur economic costs. It is estimated that 1 pack of epinephrine auto-injectors will cost between \$300 and \$600. There are approximately 360 youth camps, 15,192 child-care facilities, 10 small employer-based day-care facilities, 12 temporary shelter day-care facilities, and 3,061 listed family homes. DSHS is unable to determine the number of youth centers, amusement parks, restaurants, and sports venues in Texas. Based on the available data, the cost will be between \$5,590,500 and \$11,181,000. This will depend on how many of the entities choose to voluntarily adopt a policy.

DSHS is assuming that the cost for the hands-on training with an epinephrine auto-injector trainer will cost \$20 per person. Assuming youth camps, child-care facilities, small employer-based day-care facilities, temporary shelter day-care facilities, and listed family homes trains at least 1 person to administer the epinephrine auto-injector, the total cost to train 1 person per venue or youth facility will be \$372,700 each year. Therefore, depending on the cost of the epinephrine auto-injector pack, the minimum total cost of compliance is between \$5,963,200 and \$11,553,700 per year (\$320-\$620 per venue or youth facility per year). Because participation is voluntary, the overall cost could be less. This estimate does not include the cost to replace an epinephrine auto-injector that is used, nor does it include the costs if a venue or youth facility chooses to purchase more than one pack.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Anita Wheeler at (512) 776-2909 in DSHS, Community Health Improvement Division, School Health Program.

Written comments on the proposal may be submitted to Anita Wheeler, School Nurse Consultant, School Health Program, P.O.

Box 149347, Austin, Texas 78714-9347, via fax at (512) 776-7555, or by email to SchoolHealth@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 emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 20R018" in the subject line.

SUBCHAPTER B. EPINEPHRINE AUTO-INJECTOR POLICIES IN CERTAIN ENTITIES

25 TAC §§40.11 - 40.18

STATUTORY AUTHORITY

The new sections are authorized by Texas Health and Safety Code, §773.0145, which authorizes the Executive Commissioner of HHSC to adopt rules regarding the stocking and administering of unassigned epinephrine auto-injectors in amusement parks, restaurants, sports venues, child-care facilities, day camps or youth camps, youth centers, small employer-based day-care facilities, temporary shelter day-care facilities, and listed family homes that voluntarily adopt unassigned epinephrine auto-injector policies. The new sections are also authorized by Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules and policies necessary for the operation and provision of services by DSHS, and for the administration of Texas Health and Safety Code, Chapter 1001.

The new sections implement Texas Health and Safety Code, Chapter 773 and Chapter 1001 and Texas Government Code, §531.0055.

§40.11. Purpose.

The purpose of this subchapter is to establish minimum standards for administering, maintaining, and disposing of epinephrine auto-injectors for a specified entity that adopts an unassigned epinephrine auto-injector policy. These standards are implemented under Texas Health and Safety Code, Chapter 773, Subchapter A.

§40.12. Voluntary Unassigned Epinephrine Auto-injector Policies for Certain Entities.

Specified entities may adopt and implement a written policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors at each venue's property. The adopted policy must comply with the standards outlined in Texas Health and Safety Code §773.0145 and this subchapter.

§40.13. Definitions.

The following terms and phrases, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Anaphylaxis--As defined in Texas Education Code §51.881.

(2) Authorized healthcare provider--A physician 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.

(3) Personnel--Employees and volunteers of a venue.

(4) Unassigned epinephrine auto-injector--An epinephrine auto-injector prescribed by an authorized healthcare provider in the name of the venue issued with a non-patient-specific standing order for the administration of an epinephrine auto-injector.

(5) Venue--An entity offering a place of public gathering including:

(A) an amusement park, as defined by Texas Penal Code §46.035;

(B) a restaurant, as defined by Texas Business and Commerce Code §17.821; or

(C) a sports venue, as defined by Texas Local Government Code §504.151.

(6) Volunteer--A person who:

(A) is providing services for or on behalf of a venue on the premises of the venue, or providing services for or on behalf of a venue at an offsite sponsored event or related activity; and

(B) does not receive compensation in excess of reimbursement for expenses.

§40.14. Applicability.

This subchapter applies to any venue that voluntarily adopts and implements a written policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors at each venue.

§40.15. Maintenance, Administration, and Disposal of Unassigned Epinephrine Auto-Injectors.

(a) A venue shall obtain a prescription and standing order from an authorized healthcare provider each year to stock, possess, and maintain at least one unassigned adult epinephrine auto-injector pack (two doses) on each venue's property, as described in Texas Health and Safety Code §773.0145. The number of additional adult packs may be determined by an individual venue assessment led by an authorized health-care provider, based on available resources.

(b) A venue performing such an assessment may consider:

(1) consultation with office of risk management, office of food services, or any department involved with public well-being;

(2) venue geography, including high risk areas; and

(3) venue occupancy limit.

(c) In developing an epinephrine auto-injector policy, a venue shall designate:

(1) a department to coordinate and manage policy implementation, which shall include:

(A) conducting an assessment;

(B) training venue personnel;

(C) purchasing (or otherwise acquiring), storing, and using unassigned epinephrine auto-injectors; and

(D) disposing of used or expired unassigned epinephrine auto-injectors;

(2) personnel who can be trained to administer unassigned epinephrine auto-injectors;

(3) locations for unassigned epinephrine auto-injectors;

(4) procedures for notifying local emergency medical services when a member of the venue or volunteer suspects a person is experiencing anaphylaxis and when an epinephrine auto-injector is administered; and

(5) a plan to replace, as soon as reasonably possible, any unassigned epinephrine auto-injector that is used, and to replace any unused unassigned epinephrine auto-injector upon or prior to its expiration.

(d) The policy and the locations of the unassigned epinephrine auto-injector must be publicly available, and the unassigned epinephrine auto-injector must be stored in accordance with the manufacturer's guidelines.

§40.16. Training.

(a) Each venue that adopts an unassigned epinephrine auto-injector written policy under this subchapter is responsible for training venue personnel and venue volunteers in the recognizing of anaphylaxis signs and symptoms and hands-on administration of an unassigned epinephrine auto-injector.

(b) Training shall be consistent with the most recent Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs published by the federal Centers for Disease Control and Prevention.

(c) Each venue shall maintain training records and each venue shall make available upon request a list of those venue personnel or venue volunteers trained and authorized to administer the unassigned epinephrine auto-injector on the venue's property.

§40.17. Report on Administering Unassigned Epinephrine Auto-Injectors.

(a) The venue that adopts a policy for administering unassigned epinephrine auto-injectors shall submit a report no later than the 10th business day after the date an epinephrine auto-injection is administered, in accordance with the unassigned epinephrine auto-injector policy adopted under this subchapter. The report shall be submitted to the prescribing physician and the Department of State Health Services (DSHS).

(b) Notifications to the commissioner of DSHS shall be submitted on the designated electronic form available on the DSHS School Health Program website, available at dshs.texas.gov.

§40.18. Immunity from Liability.

A person who in good faith takes, or fails to take, any action under this subchapter or Texas Health and Safety Code, Chapter 773, Subchapter A, is immune from civil or criminal liability or disciplinary action resulting from that action or failure to act in accordance with the Texas Health and Safety Code §773.0145.

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004115

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 776-7279



SUBCHAPTER C. EPINEPHRINE
AUTO-INJECTOR POLICIES IN YOUTH
FACILITIES

25 TAC §§40.21 - 40.28

STATUTORY AUTHORITY

The new sections are authorized by Texas Health and Safety Code, §773.0145, which authorizes the Executive Commissioner of HHSC to adopt rules regarding the stocking and administering of unassigned epinephrine auto-injectors in amusement parks, restaurants, sports venues, child-care facilities, day camps or youth camps, youth centers, small employer-based day-care facilities, temporary shelter day-care facilities, and listed family homes that voluntarily adopt unassigned epinephrine auto-injector policies. The new sections are also authorized by Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules and policies necessary for the operation and provision of services by DSHS, and for the administration of Texas Health and Safety Code, Chapter 1001.

The new sections implement Texas Health and Safety Code, Chapter 773 and Chapter 1001 and Texas Government Code, §531.0055.

§40.21. Purpose.

The purpose of this subchapter is to establish minimum standards for administering, maintaining, and disposing of epinephrine auto-injectors for a youth facility that adopts unassigned epinephrine auto-injector policies. These standards are implemented under Texas Health and Safety Code, Chapter 773, Subchapter A.

§40.22. Voluntary Unassigned Epinephrine Auto-injector Policies for Youth Facilities.

A youth facility may voluntarily adopt and implement a written policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors at each youth facility. If a written policy is adopted under this subchapter, the policy must comply with Texas Health and Safety Code, §773.0145, and this subchapter.

§40.23. Definitions.

The following terms and phrases, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Anaphylaxis--As defined in Texas Human Resources Code, §42.067.

(2) Authorized healthcare provider--A physician, 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.

(3) Personnel--Employees or volunteers of a youth facility.

(4) Unassigned epinephrine auto-injector--An epinephrine auto-injector prescribed by an authorized healthcare provider in the name of the youth facility, issued with a non-patient-specific standing order for the administration of an epinephrine auto-injector.

(5) Youth facility is:

(A) a child-care facility, as defined by Texas Human Resources Code, §42.002;

(B) a day camp or youth camp, as defined by Texas Health and Safety Code, §141.002;

(C) a youth center, as defined by Texas Health and Safety Code, §481.134;

(D) a small employer-based day-care facility, as defined by Texas Human Resources Code, §42.151;

(E) a temporary shelter day-care facility, as defined by Texas Human Resources Code, §42.201;

(F) a listed family home, as defined by Texas Human Resources Code, §42.052(c); or

(G) any other private or public entity that would benefit from the possession and administration of epinephrine auto-injectors, that provide services for youth under the age of eighteen.

§40.24. Applicability.

This subchapter applies to any youth facility that voluntarily chooses to adopt and implement a written policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors.

§40.25. Maintenance, Administration, and Disposal of Unassigned Epinephrine Auto-Injectors.

(a) A youth facility (facility) shall stock at least one unassigned pediatric epinephrine auto-injector pack (two doses) and one adult epinephrine auto-injector pack (two doses). The number of additional pediatric and adult packs may be determined by a facility assessment led by an authorized health-care provider, based on available resources, in accordance with this subchapter.

(b) A facility with greater than 100 youth and staff that voluntarily adopts an unassigned epinephrine auto-injector policy shall conduct an assessment to determine the minimum number of additional unassigned epinephrine auto-injectors and may consider as a part of an assessment:

(1) consultation with administrators, office of risk management, food services management, or any department involved with public well-being;

(2) facility geography, including high risk areas where food exposure or environmental trigger exposure may occur;

(3) enrollment limit and number of personnel; and

(4) the number of youth with an identified allergy.

(c) An unassigned epinephrine auto-injector policy shall include:

(1) a designated administrator to coordinate and manage policy implementation;

(2) an assessment, if greater than 100 youth and staff;

(3) a training policy for personnel that is consistent with §40.22 of this subchapter (relating to Training);

(4) a requirement to obtain a prescription from an authorized healthcare provider each year to stock, possess, and maintain the minimum number of unassigned epinephrine auto-injectors, described in §40.20 of this subchapter (relating to Applicability), to be dispensed by an authorized pharmacy, as defined by Texas Occupations Code, Chapter 560, §560.001;

(5) a requirement to obtain a standing order designating how and when to administer an unassigned epinephrine auto-injector;

(6) the number of unassigned epinephrine auto-injectors at the facility;

(7) a process to verify the inventory of unassigned epinephrine auto-injectors at regular intervals for expiration and replacement;

(8) a plan to replace, as soon as reasonably possible, any unassigned epinephrine auto-injector when used or close to expiration;

(9) a requirement that the unassigned epinephrine auto-injectors be stored according to manufacturer's instructions;

(10) designation of one or more secure and easily-accessible locations to store unassigned epinephrine auto-injectors; and

(11) procedures for notifying local emergency medical services when a person is suspected of experiencing anaphylaxis and when an epinephrine auto-injector is administered.

(d) If a facility implements an unassigned epinephrine auto-injector policy under this subchapter, the facility must provide written or electronic notice to a parent or guardian of each youth enrolled within 15 calendar days.

(e) If a facility changes or discontinues the policy adopted under this subchapter, the facility must provide a written or electronic notice detailing the change or discontinuation to a parent or guardian of each youth within 15 calendar days of the change or discontinuation.

§40.26. Training.

(a) Each youth facility (facility) that adopts an unassigned epinephrine auto-injector written policy under this subchapter is responsible for annually training personnel to recognize the signs and symptoms of anaphylaxis and to perform hands-on administration of an unassigned epinephrine auto-injector.

(b) Training shall be consistent with the most recent Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs published by the federal Centers for Disease Control and Prevention.

(c) Each facility shall maintain and make available upon request:

(1) a list of personnel trained and authorized to administer the unassigned epinephrine auto-injector; and

(2) annual training records for such personnel.

§40.27. Report on Administering Unassigned Epinephrine Auto-Injectors.

(a) The youth facility (facility) shall submit a report no later than the 10th business day after the date facility personnel administer an unassigned epinephrine auto-injector. The report shall be submitted to the owner of the facility, the prescribing physician, and the Department of State Health Services (DSHS).

(b) Notifications to DSHS shall be submitted on the designated electronic form available on DSHS's School Health Program website found at dshs.texas.gov. DSHS will submit a copy of the report to the Child Care Regulation Department of the Texas Health and Human Services Commission.

§40.28. Immunity from Liability.

A person who in good faith takes, or fails to take, any action under this subchapter or Texas Health and Safety Code, Chapter 773, Subchapter A, is immune from civil or criminal liability or disciplinary action resulting from that action or failure to act in accordance with the Texas Health and Safety Code, §773.0145.

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004116

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 776-7279



SUBCHAPTER D. MAINTENANCE AND ADMINISTRATION OF ASTHMA MEDICATION

25 TAC §§40.41 - 40.49

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes new §§40.41 - 40.49, concerning Maintenance and Administration of Asthma Medication.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (H.B.) 2243, 86th Legislature, Regular Session, 2019, which amended Texas Education Code, Chapter 38 Subchapter E. H.B. 2243 allows school districts, open-enrollment charter schools, and private schools to develop a policy to stock and administer asthma medication to a student if the student is reasonably believed to be experiencing a symptom of asthma; the school nurse has written authorization from a parent or guardian of the student stating that the school nurse may administer prescription asthma medication to the student; and the student has been diagnosed as having asthma.

DSHS convened the Stock Epinephrine Advisory Committee (SEAC) to request recommendations on how to integrate evidence-based practices in the rules while allowing flexibility for the school districts and schools. The SEAC recommended to stock at least two doses of medication, the type of medication, the inclusion of the equipment to have on hand to administer the medication, and to report the administration of asthma medication to the DSHS Commissioner within 10 business days after administration of the medicine. The proposed new rules allow flexibility so that schools may develop policies specific to each campus, including campus geography and student population size.

SECTION-BY-SECTION SUMMARY

Proposed new §40.41 states the purpose of the subchapter, which is to establish minimum standards for administering, maintaining, and disposing of unassigned asthma medication in school districts, open-enrollment charter schools, and private schools that voluntarily adopt unassigned asthma medication policies.

Proposed new §40.42 defines terms used in the subchapter.

Proposed new §40.43 states that the rules apply to any school district, open enrollment charter school, or private school that voluntarily chooses to adopt and implement a written unassigned asthma medication policy.

Proposed new §40.44 addresses unassigned asthma medication policy requirements in school districts, open-enrollment charter schools, and private schools.

Proposed new §40.45 addresses the prescription, administration, and disposal of unassigned asthma medication.

Proposed new §40.46(a) states that a school district, open enrollment charter school, or private school that chooses to adopt a written unassigned asthma medication policy, or a campus that is subject to this subchapter is responsible for training school nurses. Subsection (b) states that a list of trained nurses be available upon request.

Proposed new §40.47 addresses retaining records related to implementing and administering the unassigned asthma medication policy and reporting incidences of medication administration to DSHS with 10 days after the date a school nurse administers asthma medication via the DSHS's website.

Proposed new §40.48 addresses the requirements for notifying parents or guardians of the unassigned asthma medication policy.

Proposed new §40.49 addresses the immunity of liability as outlined in Texas Education Code, §38.215(a).

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Donna Sheppard has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as participation in providing the new service described in the proposed rules is voluntary.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Manda Hall, MD, Associate Commissioner, Community Health Improvement Division, has determined that for each year of the first five years that the rules will be in effect, the public benefit will be that the safety of students with asthma on school campuses will be improved for schools that voluntarily adopt unassigned asthma medication policies.

Donna Sheppard has also determined that for the first five years the rules are in effect, schools that voluntarily comply with the proposed rules may incur economic costs because the cost of the asthma medication and supplies is between \$150 and \$400 per campus. Based on data from the Texas Education Agency for school year 2017-2018, there are approximately 8,766 public and charter school campuses in Texas. According to the Texas Private School Commission, there are approximately 1,326 accredited private schools in Texas. If the price of the medication is \$150, then the total cost for all public, private, and open-enrollment charter schools per fiscal year is \$1,513,800. If the price is \$400, then the total cost to schools per fiscal year is \$4,036,800. Because participation is voluntary, the overall cost could be less. This estimate does not include the cost to replace the asthma medication or the equipment to administer the medication nor does it include the costs if a school chooses to purchase additional doses of medication or more equipment. Schools may utilize free asthma medication programs, if available.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Anita Wheeler at (512) 776-7279 in DSHS, Community Health Improvement Division, School Health Program.

Written comments on the proposal may be submitted to School Health Program, P.O. Box 149347, Austin, Texas 78714-9347, or 1100 West 49th Street, Austin, Texas 78756, faxed to (512) 776-7555, or emailed to Schoolhealth@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 emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 20R019" in the subject line.

STATUTORY AUTHORITY

The new sections are required to comply with Texas Education Code, Chapter 38, Subchapter E. The new sections are also authorized 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 new sections implement Texas Education Code, Chapter 38, Texas Government Code, §531.0055, and Texas Health and Safety Code, Chapter 1001.

§40.41. Purpose.

The purpose of this subchapter is to establish minimum standards for administering, maintaining, and disposing of unassigned asthma medication for school districts, open-enrollment charter schools, and private schools that voluntarily adopt unassigned asthma medication policies. These standards are implemented under Texas Education Code Chapter 38 Subchapter E.

§40.42. Definitions.

The following terms and phrases, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Authorized healthcare provider--A physician, as defined in Texas Education Code, §38.201, or person who has been delegated prescriptive authority by a physician under Texas Occupations Code Chapter 157.

(2) Campus--A geographic unit of a school district, open-enrollment charter school, or private school that:

(A) has an assigned administrator;

(B) has enrolled students who are counted for average daily attendance;

(C) has assigned instructional staff;

(D) provides instructional services to students;

(E) has one or more grades in the range from early childhood education through grade 12 or is ungraded; and

(F) is subject to Texas laws.

(3) School nurse--Registered nurse, as defined in 19 TAC §153.1022 (relating to Minimum Salary Schedule for Certain Professional Staff), authorized to administer asthma medication, or licensed vocational nurse working under supervision as described in Texas Occupations Code §301.353.

(4) Unassigned asthma medication--A fast acting bronchodilator delivered by metered dose inhaler with single use spacer or by nebulizer as a rescue medication, prescribed by an authorized healthcare provider in the name of the school district, open-enrollment charter school, or private school, issued with a non-patient-specific standing delegation order for the administration of an asthma medication, and issued by an authorized healthcare provider.

§40.43. Applicability.

This subchapter applies to any school district, open-enrollment charter school, or private school that voluntarily adopts and implements a written policy regarding the maintenance, administration, and disposal of unassigned asthma medication on each campus.

§40.44. Voluntary Unassigned Asthma Medication Policies.

(a) A school district, open-enrollment charter school, or private school may voluntarily adopt and implement a written policy regarding the maintenance, administration, and disposal of asthma medication at each campus.

(1) If a written policy is adopted under this subchapter, the unassigned asthma medication policy must comply with Texas Education Code §38.208.

(2) Subject to the availability of funding, a school district, open-enrollment charter school, private school, or campus that adopts such a policy must purchase or obtain the suggested minimum dosage of unassigned asthma medication.

(b) In development of an unassigned asthma medication policy, a campus may consider performing an assessment to include:

(1) consultation with school nurses, the local school health advisory committee, local healthcare providers, or any department or organization involved with student well-being;

(2) campus geography; and

(3) student population size.

(c) If a school district, open-enrollment charter school, or private school voluntarily adopts an unassigned asthma medication policy, the policy must include:

(1) a process to obtain written authorization from a parent or guardian of the student that the student has been diagnosed as having asthma and stating that the school nurse may administer unassigned asthma medication to the student;

(2) a designated campus department to coordinate and manage policy implementation that includes:

(A) conducting an assessment;

(B) training of school nurses;

(C) acquiring or purchasing, maintaining, storing, and using unassigned asthma medication, subject to available campus funding; and

(D) disposing of expired unassigned asthma medication;

(3) a list of school nurses who will be assigned to administer unassigned asthma medication;

(4) locations of unassigned asthma medication;

(5) procedures for notifying a parent, prescribing physician, and the student's primary healthcare provider when unassigned asthma medication is administered; and

(6) a plan to replace, as soon as reasonably possible, any unassigned asthma medication that is used or close to expiration.

(d) An adopted unassigned asthma medication policy must be publicly available.

§40.45. Prescription, Administration, and Disposal of Unassigned Asthma Medications.

(a) A campus that adopts an unassigned asthma medication policy must stock unassigned asthma medication, subject to available funding, as defined by §40.44 of this subchapter (relating to Voluntary Unassigned Asthma Medication Policies).

(b) A campus must obtain a prescription from an authorized healthcare provider each year to stock, possess, and maintain at least two doses of unassigned asthma medication on each campus as described in Texas Education Code §38.208 and any equipment necessary to administer the medication.

(1) The campus must renew this prescription or obtain a new prescription annually.

(2) The number of additional doses may be determined by an individual campus assessment led by an authorized healthcare provider, based on available funding.

(c) An authorized healthcare provider who prescribes unassigned asthma medication under subsection (b) of this section must provide the campus with a standing order for the administration of unassigned asthma medication to a person who:

(1) is reasonably believed to be experiencing a symptom of asthma; and

(2) has provided written notification and permission as required by the unassigned asthma medication policy.

(d) The unassigned asthma medication must be stored in accordance with the manufacturer's guidelines and local district policy.

(e) Expired unassigned asthma medication and other used or expired supplies must be disposed of in accordance with the manufacturer's guidelines and local district policy.

§40.46. Training.

(a) A school district, open-enrollment charter school, or private school that chooses to adopt a written unassigned asthma medication policy, or a campus that is subject to this subchapter, is responsible for training school nurses about:

(1) the adopted unassigned asthma medication policy;

(2) the authorized or prescribing healthcare provider's standing order;

(3) follow-up with the prescribing healthcare provider and the student's primary care physician; and

(4) the report required after administering an unassigned asthma medication under §40.47 of this subchapter (relating to Report on Administering Unassigned Asthma Medication).

(b) Each campus must maintain training records and must make available upon request a list of school nurses trained and authorized to administer the unassigned asthma medication on the campus.

§40.47. Report on Administering Unassigned Asthma Medication.

(a) Records relating to implementing and administering the school district, open-enrollment charter school, or private school's unassigned asthma medication policy must be retained per the campus record retention schedule.

(b) The campus must submit a report no later than the 10th business day after the date a school nurse administers asthma medication in accordance with the unassigned asthma medication policy adopted under this subchapter. The report must be included in the student's permanent record and submitted to the school administrator, prescribing healthcare provider, the student's primary healthcare provider, and to the Department of State Health Services (DSHS) Commissioner.

(c) Notifications to the DSHS Commissioner must be submitted on the designated electronic form available on DSHS's School Health Program website found at dshs.texas.gov.

§40.48. Notice to Parents Regarding Unassigned Asthma Medication Policies in Schools.

(a) If a school district, open-enrollment charter school, or private school implements an unassigned asthma medication policy under this subchapter, the campus shall provide written or electronic notice to a parent or guardian of each student in accordance with Texas Education Code §38.212.

(b) If a school district, open-enrollment charter school, or private school changes or discontinues the unassigned asthma medication policy under this subchapter, written or electronic notice detailing the change or discontinuation must be provided to a parent or guardian of each student within 15 calendar days after the change or discontinuation.

§40.49. Immunity from Liability.

A person who in good faith takes or fails to take any action under this subchapter, or Texas Education Code Chapter 38 Subchapter E, is immune from civil or criminal liability or disciplinary action resulting

from that action or failure to act in accordance with Texas Education Code §38.215(a).

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004110

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 776-7279



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 903. INTERSTATE COMPACT ON MENTAL HEALTH AND INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

26 TAC §§903.1 - 903.8

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §903.1, concerning Purpose; §903.2, concerning Application; §903.3, concerning Definitions; §903.4, concerning Prerequisite for Transfer; §903.5, concerning Legal Basis for Institutionalization; §903.6, concerning Coordinating Requests for Interstate Transfer; §903.7, concerning Requests for a Person with Mental Illness or Intellectual and Developmental Disabilities to Transfer from Texas; and §903.8, concerning Requests for a Person with Mental Illness or Intellectual and Developmental Disabilities to Transfer to Texas.

BACKGROUND AND PURPOSE

The purpose of this proposal is to introduce new updated and reorganized rules related to the transfer of a person with intellectual and developmental disabilities and mental or behavioral health disorders in Texas Administrative Code (TAC) Title 26, Part 1, Chapter 903 to replace the current rules in 1 TAC Chapter 383. The rules in Chapter 383 have not been reviewed since 2001 and reference an agency that no longer exists - the Texas Department of Mental Health and Mental Retardation.

SECTION-BY-SECTION

Proposed new §903.1 establishes the purpose of the chapter.

Proposed new §903.2 establishes to whom the chapter applies.

Proposed new §903.3 provides terminology used in the chapter.

Proposed new §903.4 establishes the prerequisites for transferring a person interstate.

Proposed new §903.5 establishes when a person may be detained by the state.

Proposed new §903.6 describes the coordination of requests for an interstate transfer.

Proposed new §903.7 describes the process to request the transfer of a person with mental illness or intellectual and developmental disabilities from Texas.

Proposed new §903.8 describes the process to request the transfer of a person with mental illness or intellectual and developmental disabilities to Texas.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules in 26 TAC, which will replace rules being repealed contemporaneously in 1 TAC;
- (6) the proposed rules will not expand, limit, or repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rules do not apply to small or micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Mike Maples, Deputy Executive Commissioner, Health and Specialty Care System, has determined that for each year of the first five years the rules are in effect, the public benefit will be locating the rules in 26 TAC with other HHSC rules, and accessing rules with the current agency name and terminology.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because they will not be required to alter their business practices.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC, Mail Code 619E, P.O. Box 13247, Austin, Texas 78711-3247, or by email to healthandspecialtycare@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 19R065" in the subject line.

STATUTORY AUTHORITY

The new sections are 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, and Texas Health and Safety Code §§533.014, 533.0356, 533A.0355, 571.006 and 612.004 which authorize creation of rules related to this topic.

The new sections affect Texas Government Code §531.0055 and Texas Health and Safety Code §§533.014, 533.035, 533A.011, 533A.035, 533A.0355, 571.008, 571.0081, 572.0051, 574.0456, 593.041, 593.052 and Chapter 612.

§903.1. Purpose.

This chapter implements Texas laws authorizing the transfer of a person with intellectual and developmental disabilities and mental or behavioral health disorders and co-diagnoses receiving services at a state operated facility between Texas and other states.

§903.2. Application.

This chapter applies to the Texas Health and Human Services Commission (HHSC) state hospitals and state supported living centers (SSLCs), and local authorities.

§903.3. Definitions.

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

(1) Family member--The person's spouse, parent, sibling, adult child, or any individual the person identifies as playing a significant role in their life.

(2) HHSC--Texas Health and Human Services Commission.

(3) ICC--Interstate compact coordinator. The individual who facilitates the transfer of a person served in Texas state hospitals and SSLCs out-of-state to another state's facility or the transfer of a person from out-of-state psychiatric hospitals and intermediate care facilities for individuals with intellectual disabilities into Texas state hospitals and SSLCs.

(4) Informed consent--The knowing agreement of the person or the person's legally authorized representative (LAR) to a pro-

posed transfer. This consent must be given under the person's or LAR's ability to exercise free power of choice without undue pressure or any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(5) LAR--Legally authorized representative. An individual authorized by law to make decisions for a person about the matters described in this chapter. The LAR may include a parent, guardian, or managing conservator of a child or adolescent, or a guardian of an adult.

(6) Local authority--An entity designated by HHSC in accordance with the Texas Health and Safety Code §533.035(a).

(7) Person--An individual who is eligible for care, treatment, or supervision at an SSLC or state hospital, as determined by the laws of the sending state, and for whom interstate transfer is requested.

(8) SSLC--State supported living center. An intermediate care facility for individuals with an intellectual disability or related condition that HHSC operates.

(9) State hospital--A psychiatric hospital with an inpatient component that HHSC operates.

(10) Transfer--Moving a person from a facility in one state to a facility in a different state under Texas Health and Safety Code §571.008; Texas Health and Safety Code §533A.011 and §533.014(a)(3); or the Interstate Compact on Mental Health, Texas Health and Safety Code Chapter 612.

§903.4. Prerequisite for Transfer.

(a) To transfer a person to a state operated facility in another state from a Texas state hospital or SSLC:

(1) the person must be a resident or former resident of the receiving state;

(2) the person's LAR must live in the receiving state; or

(3) the person must have a family member living in the receiving state who will play a significant role in the person's life.

(b) To transfer a person from a state operated facility in another state to a Texas state hospital or SSLC:

(1) the person must be a resident of Texas;

(2) the person's LAR must live in Texas; or

(3) the person must have a family member living in Texas who will play a significant role in the person's life.

§903.5. Legal Basis for Institutionalization.

(a) A person with a mental illness or an intellectual or developmental disability who is involuntarily committed by another state and who transfers to Texas may be detained for up to 96 hours. To detain a person for more than 96 hours, one of the following must apply:

(1) a voluntary admission to a Texas state hospital or SSLC;

(2) an order of protective custody; or

(3) a commitment order of a Texas court.

(b) An appropriate court in the county of a state hospital or local authority's service area may conduct commitment proceedings of a person transferred to the state hospital or local authority from another state.

(c) Court commitment of a person with intellectual and developmental disabilities to an SSLC is governed by Texas Health and Safety Code §593.041 and §593.052.

(d) Voluntary admission of a person with an intellectual and developmental disability to an SSLC is governed by Texas Health and Safety Code Chapter 593, Subchapters A and B and 40 TAC Chapter 2, subchapter F (relating to Continuity of Services--State Facilities).

(e) Voluntary admission of a person with mental illness to a state hospital is governed by Chapter 306, subchapter D of this title (relating to Mental Health Services--Admission, Continuity, and Discharge) and Texas Health and Safety Code Chapter 572.

§903.6. Coordinating Requests for Interstate Transfer.

The Texas ICC coordinates requests for interstate transfer to or from Texas. Anyone interested in an interstate transfer may contact the Texas ICC by email at Interstate_Compact_Coordination@hhsc.state.tx.us or by mail at HHSC, Texas ICC, P.O. Box 12668, Austin, Texas 78711-2668. The Texas ICC must not discriminate on the grounds of race, color, national origin, religion, sex, age, disability, or political affiliation.

§903.7. Requests for a person with Mental Illness or Intellectual and Developmental Disabilities to Transfer from Texas.

(a) A letter of request for interstate transfer of a person with mental illness or intellectual and developmental disabilities from a state hospital or SSLC must be sent to the Texas ICC by email (preferred) or mail.

(b) State hospital or SSLC staff must discuss the proposed transfer and the person's preference with the person, the person's LAR, and the person's family, or, if appropriate, other available sources to ascertain whether the transfer is in the person's best interest.

(c) If the transfer will not occur, the Texas ICC must provide written notification to the person who requested the transfer of the reason for not proceeding with the transfer.

(d) The Texas ICC must contact the receiving state's ICC and make a reasonable effort to obtain authorization for the transfer if HHSC determines the transfer of a person is in the person's best interest.

(e) If the person is proposed to be transferred from a state hospital or SSLC to a facility in another state that is a party to the interstate compact, HHSC must not take final action without the approval of the committing Texas court.

(f) If the receiving state decides to accept the person for immediate transfer, then the state hospital or SSLC must:

(1) make all travel arrangements, including coordinating with the facility in the receiving state to assist with travel inside the receiving state;

(2) be responsible for all transfer expenses;

(3) ensure arrangements are made for an escort or escorts to accompany and assist the person to reach their destination;

(4) ensure the following items accompany the person upon transfer to the receiving state:

(A) all appropriate legal documents;

(B) the person's Medicaid, Medicare, or third-party insurance card or cards, if available;

(C) copies of all the person's laboratory reports and physical exams conducted within the past 30 days and any additional significant reports made within the past year;

(D) all the person's personal belongings at the state hospital or SSLC; and

(E) the supply of all prescribed medication as agreed upon by the sending and receiving facilities.

(g) The Texas ICC must ensure all authorized parties are informed of the progress made on the transfer request.

§903.8. Requests for a Person with Mental Illness or Intellectual and Developmental Disabilities to Transfer to Texas.

(a) A written request for interstate transfer of a person with a mental illness or an intellectual and developmental disability to a Texas state hospital or SSLC must be sent by the requesting state's ICC, or its designee, to the Texas ICC by email to Interstate Compact Coordination@hhsc.state.tx.us.

(b) The written request must be accompanied by the following information:

(1) documentation that the prerequisites for transfer to Texas are met, in accordance with §903.4(b) of this chapter (relating to Prerequisite for Transfer);

(2) a consent to the interstate transfer and release of records to the Texas ICC, signed by the person or the person's LAR;

(3) the completed "Request for Interstate Transfer" form;

(4) a copy of the person's immunization record;

(5) a copy of the person's social security card;

(6) a copy of the person's birth certificate or appropriate substitute;

(7) a copy of the person's diagnosis of mental illness or intellectual and developmental disabilities;

(8) a copy of the person's comprehensive medical history, including any medical evaluations, current physician's orders, and list of current medications;

(9) a summary of the person's social history and history of mental illness or intellectual and developmental disabilities, including a copy of any psychiatric or psychological evaluations;

(10) a copy of the person's current individual habilitation plan and annual planning conference documents for a person with intellectual and developmental disabilities;

(11) a copy of the original order of commitment and any renewals and, if required, documentation of approval to transfer from the committing court;

(12) a copy of guardianship or other legal documentation pertaining to the person requesting transfer, if applicable; and

(13) a brief cover letter signed by the institution's chief executive officer, or designee, stating the circumstances or reasons for requesting the transfer.

(c) Upon receipt, the Texas ICC must review the request packet.

(1) If the request packet is complete, the Texas ICC must forward it to the appropriate local authority, which may request additional information to determine whether the person is eligible for admission to:

(A) a state hospital in accordance with Texas Health and Safety Code Chapter 574 and 575; and Chapter 306, subchapter D of this title (relating to Mental Health Services--Admission, Continuity, and Discharge); or

(B) an SSLC in accordance with Texas Health and Safety Code Chapter 591, and 40 TAC Chapter 2, subchapter F (relating to Continuity of Services--State Facilities).

(2) If the request packet is incomplete, the Texas ICC contacts the requesting state's ICC and identifies the specific information or documentation that must be received for the transfer to proceed.

(d) If the local authority determines the person is eligible for admission, the local authority authorizes admission. The local authority provides written notification to the Texas ICC and the appropriate state hospital or SSLC of the admission authorization. The Texas ICC provides written notification to the requesting state's ICC of the person's eligibility and authorization for admission and includes the name and phone number of the state hospital or SSLC contact.

(e) If the local authority determines that the person is not eligible for admission, the local authority provides written notification to the Texas ICC of the person's ineligibility for admission. The Texas ICC provides written notification to the requesting state's ICC of:

(1) the person's ineligibility for admission;

(2) the person's or LAR's right to provide additional information for consideration in re-determining eligibility, if the person believes incomplete information was used to determine ineligibility; and

(3) the person's or LAR's right to contact the Texas Health and Human Services Office of the Ombudsman by mailing Mail Code H-700, P.O. Box 13247, Austin, Texas 78711-3247, or by calling 1-800-252-8154.

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 September 30, 2020.

TRD-202004068

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 438-3049

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 35. EMERGENCY AND TEMPORARY ORDERS AND PERMITS; TEMPORARY SUSPENSION OR AMENDMENT OF PERMIT CONDITIONS

SUBCHAPTER E. EMERGENCY ORDERS FOR UTILITIES

30 TAC §35.202

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §35.202.

Background and Summary of the Factual Basis for the Proposed Rule

The proposed rulemaking is intended to implement statutory changes made by House Bill (HB) 3542 and Senate Bill (SB) 700 of the 86th Texas Legislature, 2019.

SB 700 amends Texas Water Code (TWC), Chapters 5 and 13 to authorize the TCEQ to issue emergency orders with or without a hearing to compel a retail public utility to provide water and/or sewer service to ensure safe drinking water or environmental protection. Additionally, TCEQ can issue an emergency order to compel a retail public utility to provide an emergency interconnection for not more than 90 days if necessary to ensure safe drinking water or environmental protection. The legislation also amends TWC, Chapter 5 to allow the commission by order or rule to delegate to the executive director of the TCEQ the authority to receive applications, issue emergency orders under TWC, §13.041(h), and authorize in writing a representative or representatives to act on the executive director's behalf. SB 700 took effect on September 1, 2019.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapter 291, Utility Regulations.

Section Discussion

In addition to the proposed revisions associated with this rulemaking, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where the proposal of additional subsections, paragraphs, subparagraphs, etc. are proposed, subsequent re-lettering or renumbering are modified accordingly. These changes are non-substantive and are not specifically discussed in this preamble.

§35.202, *Emergency Order to Compel Utility to Provide Service or Interconnection*

The commission proposes new §35.202 to allow the commission or executive director to issue emergency orders to compel a retail public utility to provide water and/or sewer service to ensure safe drinking water or environmental protection, or provide an emergency interconnection for not more than 90 days.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency.

The agency estimates that 329 retail public utilities are operated by units of local government and have a certificate of convenience and necessity and would be affected by this proposed rulemaking. Assuming these units of local government comply with safe drinking water laws and regulations, no fiscal implications are anticipated for units of local government as a result of administration or enforcement of the proposed rule. If a unit of local government is out of compliance, then the agency may order it to provide an emergency interconnection with a neighboring retail public utility. If this were to occur, there would likely be a one-time cost to the unit of local government.

This rulemaking addresses necessary changes in order to implement SB 700 and HB 3542. The proposed rulemaking includes additional authority that would allow the agency to issue emergency orders to ensure safe drinking water or environmental protection

or provide a limited emergency interconnection. The rulemaking also makes non-substantive or stylistic changes.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule would be in effect, the public benefit anticipated would be improved readability and compliance with state law.

The proposed rulemaking is not anticipated to impact the estimated 605 investor-owned water and sewer utilities in Texas. Because this fiscal analysis assumes that entities are in compliance with state rules and regulations regarding safe drinking water, no fiscal implications are anticipated for businesses or individuals.

Local Employment Impact Statement

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

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking would not adversely affect rural communities in a material way for the first five years that the proposed rule would be in effect. The proposed rule would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule would be in effect.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking would not require the creation of new employee positions, eliminate current employee positions, or require an increase or decrease in fees paid to the agency. The proposed rulemaking would expand an existing regulation to comply with the state law that authorizes the agency to issue emergency orders to ensure safe drinking water or environmental protection or provide a limited emergency interconnection. The proposed rulemaking would not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The proposed rulemaking is intended to implement statutory changes made by HB 3542 and SB 700 of the 86th Texas Legislature, 2019, to add a new section to reflect changes to

Texas Water Code, Chapters 5 and 13. New §35.202 adds authority to allow the executive director to issue emergency orders to compel a retail public utility to provide water and/or sewer service to ensure safe drinking water or environmental protection, or provide an emergency interconnection for not more than 90 days.

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule." The specific intent is to protect the environment or reduce risks to human health from environmental exposure. However, the proposed rule would not 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. It is not anticipated that the cost of complying with the proposed rule would be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rule would not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Second, the proposed rulemaking does not meet any of the four applicability requirements for a major environmental rule listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies 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. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law; 2) does not exceed any express requirement of TWC, Chapter 5 or 13, which relates to orders issued by the commission, orders issued by the executive director, and emergency orders; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a Major environmental rule, this rulemaking is not subject to Texas Government Code §2001.0225.

Takings Impact Assessment

The commission prepared a takings impact assessment for the proposed rules pursuant to Texas Government Code, §2007.043. The specific purpose of the proposed rule is to ensure consistency between the rules and their applicable statutes

as amended by recent legislation and grant the commission and executive director authority to compel a retail public utility with a certificate of public convenience and necessity to provide water and/or sewer service that complies with statutory and regulatory requirements of the commission and to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water and/or sewer service for up to 90 days.

The proposed regulations would not affect a landowner's rights in private real property because this proposed rulemaking would not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The proposed rule does not constitute a taking because it would not burden private real property.

Consistency with the Coastal Management Program

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

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

Announcement of Virtual Hearing

The commission will hold a *virtual* public hearing on this proposal on November 10, 2020, at 10:00 a.m. Central Standard Time. The virtual hearing is structured for the receipt of oral comments by interested persons. Individuals who register may present oral statements when called upon in order of registration. Open discussion will not be permitted during the virtual hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to and after the virtual hearing via the Team Live Event Q&A chat function.

Persons who do not have internet access or who have special communication or other accommodation needs who plan to attend the hearing should contact Sandy Wong, General Law Division at (512) 239-1802 or 1-800-RELAY-TX (TDD) to register. Accommodation requests should be made as far in advance as possible.

Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments or want their attendance on record must register by November 6, 2020. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on November 9, 2020, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_NW-Y0ZjlyM2YtNjc1OC00YWNmLWE1NjAtNDJiYWVhMTc2ZWU5%40thread.v2/0?context=%7b%22id%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22oid%22%3a%220

Submittal of Comments

Written comments may be submitted to Ms. Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2020-011-291-OW. **The comment period closes on November 17, 2020.** Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Brian Dickey, Water Supply Division, (512) 239-0963.

Statutory Authority

The new rule is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state; and TWC, §13.041(b), concerning General Powers of Utility Commission and Commission; Rules; Hearings, which provides the commission with the authority to adopt any rules reasonably required in the exercise of its powers and jurisdiction.

The proposed new rule implements Senate Bill 700 passed by the 86th Texas Legislature, 2019.

§35.202. Emergency Order to Compel Utility to Provide Service or Interconnection.

(a) The commission or executive director may compel a retail public utility that has obtained a certificate of public convenience and necessity to provide water or sewer service, or both, that complies with all statutory and regulatory requirements of the commission if necessary to ensure safe drinking water or environmental protection.

(b) The commission or executive director may compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if necessary to ensure safe drinking water or environmental protection.

(c) Notice of an action under this section is adequate if the notice is mailed or hand-delivered to the last known address of the retail public utility's headquarters.

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004112

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 239-2678



CHAPTER 291. UTILITY REGULATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §291.14 and §291.142.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking is intended to implement statutory changes made by House Bill (HB) 3542 and Senate Bill (SB) 700 of the 86th Texas Legislature, 2019.

HB 3542 amends Texas Water Code (TWC), Chapter 13 and adds additional criteria that allow the TCEQ to appoint a person to temporarily manage a utility. Specifically, TWC, §13.4132(a)(3) authorizes the appointment of a temporary manager if a utility provides retail water or sewer utility service through fewer than 10,000 taps or connections and violates a final order of the commission by failing to provide system capacity that is greater than the required raw water or groundwater production rate or the anticipated daily demand of the system; provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions; or maintain accurate or properly calibrated testing equipment or other means of monitoring the effectiveness of a chemical treatment or pathogen inactivation or removal process. HB 3542 took effect on September 1, 2019.

SB 700 amended TWC, Chapters 5 and 13 to authorize the TCEQ to issue emergency orders with or without a hearing to compel a retail public utility to provide water and/or sewer service to ensure safe drinking water or environmental protection. Additionally, TCEQ can issue an emergency order to compel a retail public utility to provide an emergency interconnection for not more than 90 days if necessary to ensure safe drinking water or environmental protection. The legislation also amends TWC, Chapter 5 to allow the commission by order or rule to delegate to the executive director of the TCEQ the authority to receive applications, issue emergency orders under TWC, §13.041(h), and authorize in writing a representative or representatives to act on the executive director's behalf. SB 700 took effect on September 1, 2019.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions.

Section by Section Discussion

In addition to the proposed revisions associated with this rulemaking, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where the proposal of additional subsections, paragraphs, subparagraphs, etc. are proposed, subsequent re-lettering or renumbering are modified accordingly. These changes are non-substantive and are not specifically discussed in this preamble.

§291.14, *Emergency Orders*

The commission proposes to amend §291.14(a) by moving portions of the existing criteria into proposed subsection (a)(1) and to include two additional criteria as proposed subsection (a)(2) and (3) that would allow the commission or the executive director to issue emergency orders.

§291.142, Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver

The commission proposes to add §291.142(a)(3) to include additional criteria that would allow the commission or the executive director to appoint a person to temporarily manage a utility.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency.

The agency estimates that 329 retail public utilities are operated by units of local government and have a certificate of convenience and necessity and would be affected by this proposed rulemaking. Assuming these units of local government comply with safe drinking water laws and regulations, no fiscal implications are anticipated for units of local government as a result of administration or enforcement of the proposed rule. If a unit of local government is out of compliance, then the agency may order it to provide an emergency interconnection with a neighboring retail public utility. If this were to occur, there would likely be a one-time cost to the unit of local government.

This rulemaking addresses necessary changes in order to implement SB 700 and HB 3542. The proposed rulemaking includes additional criteria that would allow the agency to issue emergency orders to ensure safe drinking water or environmental protection or provide a limited emergency interconnection. The proposed rulemaking authorizes the agency to appoint a temporary manager under TWC, §5.507 and §13.4132.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules would be in effect, the public benefit anticipated would be compliance with state law.

The proposed rulemaking is not anticipated to impact the estimated 605 investor-owned water and sewer utilities in Texas. Because this fiscal analysis assumes that entities are in compliance with state rules and regulations regarding safe drinking water, no fiscal implications are anticipated for businesses or individuals.

Local Employment Impact Statement

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

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking would not adversely affect rural communities in a material way for the first five years that the proposed rules would be in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rules would be in effect.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking would not require the creation of new employee positions, eliminate current employee positions, or require an increase or decrease in fees paid to the agency. The proposed rulemaking would expand an existing regulation to comply with the state law that authorizes the agency to issue emergency orders to ensure safe drinking water or environmental protection or provide a limited emergency interconnection. The agency may appoint a temporary manager under TWC, §5.507 and §13.4132. The proposed rulemaking would not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The proposed rulemaking is intended to implement statutory changes made by HB 3542 and SB 700 to amend sections to reflect changes to TWC, Chapters 5 and 13. The intent of the changes to §291.14 is to add criteria to allow the executive director to issue emergency orders to compel a retail public utility to provide water and/or sewer service to ensure safe drinking water or environmental protection, or provide an emergency interconnection for not more than 90 days. The intent on the changes to §291.142 is to add additional criteria that would allow the commission or executive director to appoint a person to temporarily manage a utility.

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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."

First, the proposed rulemaking does not meet the statutory definition of a major environmental rule. The specific intent is to protect the environment or reduce risks to human health from environmental exposure. However, the proposed rules would not 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. It is not anticipated that the cost of complying with the proposed rules would be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Second, the proposed rulemaking does not meet any of the four applicability requirements for a major environmental rule listed in Texas Government Code, §2001.0225(a). Texas Government

Code, §2001.0225 only applies 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. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law; 2) does not exceed any express requirements of TWC, Chapter 5 or 13, which relate to orders issued by the commission, orders issued by the executive director, and emergency orders; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a major environmental rule nor does it meet any of the four applicability requirements for a major environmental rule this rulemaking is not subject to Texas Government Code, §2001.0225.

Takings Impact Assessment

The commission prepared a takings impact assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The specific purpose of these proposed rules is to ensure consistency between the rules and their applicable statutes as amended by recent legislation; to grant the commission and executive director authority, with or without a hearing; to compel a retail public utility with a certificate of public convenience and necessity to provide water and/or sewer service that complies with statutory and regulatory requirements of the commission; to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water and/or sewer service for up to 90 days; to establish what qualifies as adequate notice to a retail public utility if an emergency order is issued without a hearing; and to add criteria which would allow the commission or the executive director to appoint a person to temporarily manage a utility.

The proposed regulations would not affect a landowner's rights in private real property because this proposed rulemaking would not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The proposed rules do not constitute a taking because they would not burden private real property.

Consistency with the Coastal Management Program

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

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

Announcement of Virtual Hearing

The commission will hold a *virtual* public hearing on this proposal on November 10, 2020, at 10:00 a.m. Central Standard Time. The virtual hearing is structured for the receipt of oral comments by interested persons. Individuals who register may present oral statements when called upon in order of registration. Open discussion will not be permitted during the virtual hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to and after the virtual hearing via the Teams Live Event Q&A chat function.

Persons who do not have internet access or who have special communication or other accommodation needs who plan to attend the hearing should contact Sandy Wong, General Law Division at (512) 239-1802 or 1-800-RELAY-TX (TDD) to register. Accommodation requests should be made as far in advance as possible.

Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments or want their attendance on record must register by November 6, 2020. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on November 9, 2020 to those who registered for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/join/19%3ameeting_NW-YOZjlyM2YtNjc1OC00YWNmLWE1NjAtNDJlYWFhMTc2ZWE5%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%220ab3b264-6a49-48c6-afc8-8225e4a7b0ac%22%2c%22IsBroadcastMeeting%22%3atrue%22%7d

Submittal of Comments

Written comments may be submitted to Ms. Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2020-011-291-OW. **The comment period closes on November 17, 2020.** Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/proposal_adapt.html. For further information, please contact Brian Dickey, Water Supply Division, (512) 239-0963.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §291.14

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to

carry out its powers and duties under the provisions of the TWC and other laws of this state; and TWC §13.041(b), concerning General Powers of Utility Commission and Commission; Rules; Hearings, which provides the commission with the authority to adopt any rules reasonably required in the exercise of its powers and jurisdiction.

The proposed amendment implements House Bill 3542 passed by the 86th Texas Legislature, 2019.

§291.14. Emergency Orders.

(a) The commission or executive director may [also] issue orders under Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) to:

(1) appoint a temporary manager under Texas Water Code, §5.507 and §13.4132;

(2) compel a retail public utility that has obtained a certificate of public convenience and necessity to provide water or sewer service, or both, that complies with all statutory and regulatory requirements of the commission if necessary to ensure safe drinking water or environmental protection; and

(3) compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if necessary to ensure safe drinking water or environmental protection.

(b) If an order is issued under this section without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the commission.

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004113

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 239-2678



SUBCHAPTER J. ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

30 TAC §291.142

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state; and TWC §13.041(b), concerning General Powers of Utility Commission and Commission; Rules; Hearings, which provides the commission with the authority to adopt any rules reasonably required in the exercise of its powers and jurisdiction. The proposed amendment implements House Bill 3542 passed by the 86th Texas Legislature, 2019.

§291.142. Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver.

(a) The commission or the executive director, after providing to the utility notice and an opportunity for a hearing, may authorize a willing person to temporarily manage and operate a utility that:

(1) has discontinued or abandoned operations or the provision of services; [or]

(2) is being referred to the attorney general for the appointment of a receiver under Texas Water Code (TWC), §13.412 for:

(A) having expressed an intent to abandon or abandoned operation of its facilities;

(B) having violated a final order of the commission;

(C) having allowed any property owned or controlled by it to be used in violation of a final order of the commission; or

(D) violates a final judgment issued by a district court in a suit brought by the attorney general under:

(i) TWC, Chapter 7;

(ii) TWC, Chapter 13; or

(iii) Texas Health and Safety Code, Chapter 341; or

(3) provides retail water or sewer utility service through fewer than 10,000 taps or connections and violates a final order of the commission by failing to:

(A) provide system capacity that is greater than the required raw water or groundwater production rate or the anticipated daily demand of the system;

(B) provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions; or

(C) maintain accurate or properly calibrated testing equipment or other means of monitoring the effectiveness of a chemical treatment or pathogen inactivation or removal process.

(b) The commission or the executive director may appoint a person under this section by emergency order under Chapter 35 of this title (relating to Emergency and Temporary Order and Permits; Temporary Suspension or Amendment of Permit Conditions). A corporation may be appointed a temporary manager.

(c) Abandonment includes, but is not limited to:

(1) failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services;

(2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;

(3) failure to adequately maintain facilities or to provide sufficient facilities resulting in potential health hazards, extended outages, or repeated service interruptions;

(4) failure to provide customers adequate notice of a health hazard or potential health hazard;

(5) failure to secure an alternative available water supply during an outage;

(6) displaying a pattern of hostility toward or repeatedly failing to respond to the commission or the utility's customers; and

(7) failure to provide the commission or its customers with adequate information on how to contact the utility for normal business and emergency purposes.

(d) This section does not affect the authority of the commission to pursue an enforcement claim against a utility or an affiliated interest.

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004114

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 239-2678



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER P. SERVICES AND BENEFITS FOR TRANSITION PLANNING TO A SUCCESSFUL ADULTHOOD

DIVISION 2. EDUCATION AND TRAINING VOUCHER PROGRAM

The Department of Family and Protective Services (DFPS) proposes amendments to §§700.1613, 700.1615, 700.1617; repeals of §§700.1619, 700.1621, 700.1623; and new §700.1619 and §700.1621 in Subchapter P Services and Benefits for Transition Planning to a Successful Adulthood in Title 40, Texas Administrative Code (TAC), Chapter 700, relating to Child Protective Services.

BACKGROUND AND PURPOSE

The Education and Training Voucher (ETV) is a federally funded program administered by DFPS. It provides up to \$5,000.00 for certain higher education or vocational training costs for eligible foster care youth and former foster care youth.

Under the Family First Services and Prevention Act, (FFSPA), federal language was eliminated that required a student to be participating in the ETV program by age 21 to continue to remain eligible. In addition, FFSPA mandates students cannot receive ETV funds for more than 5 years, regardless of whether those years are consecutive or not. These rule changes will update the Texas Administrative Code to reflect the federal changes made to 42 U.S.C. §677, John H. Chafee Foster Care Program for Successful Transition to Adulthood. In addition, the rules are being amended to clarify populations eligible for ETV, make general updates, simplify rules concerning what higher education institutions the student must attend and the category of ETV expenses.

Lastly, specific provisions have been added to assist in preventing theft, fraud, and forgery of ETV funds.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §700.1613: (1) delete the requirement that a student has to be participating in the ETV program at age 21 to continue to remain eligible for ETV; (2) clarify that students who are in Extended Foster Care or leave care after age 18, and those who are emancipated by a court while in DFPS foster care can be eligible to receive ETV funds. The amendment also includes a provision that if the federal government legally requires a population group to be covered by the ETV program that those members would also be covered. This provision is to eliminate the need to modify the rule if the federal government mandates certain populations to receive ETV in the future; and (3) limit ETV to five years, regardless of if those years are consecutive.

The proposed amendments to §700.1615: (1) ensure students that take college credit courses can receive ETV; (2) simplify the rule concerning what institution the student must attend to receive ETV. The type of institution the student must attend is determined by the U.S. Education Code. Currently, the agency rule is a restatement of the U.S. Education Code. Amending the rule eliminates the need for future rule changes if the U.S. Education Code or federal guidance is modified; (3) add a provision to ensure ETV funds are disbursed via direct deposit, which assists in preventing theft, fraud, or forgery of ETV; and (4) update the rule regarding who the student must submit their ETV application and documentation to.

The proposed amendments to §700.1617: (1) clarify and update legal cites; and (2) incorporate the cost of attendance expenses in section (b).

Section 700.1619 is being repealed. The types of costs included in the cost of attendance is determined by the U.S. Education Code. Currently, the agency rule is a restatement of the federal law. By repealing this rule and incorporating the U.S. Education Code citation in the previous rule, it eliminates the need for future agency rule changes if the U.S. Education Code or federal guidance is modified.

Section 700.1621 is being repealed. The content has been incorporated in new §700.1619.

Section 700.1623 is being repealed. The content has been incorporated in new §700.1621.

New §700.1619 incorporates the content from former §700.1621 concerning what other requirements are needed after a student is initially determined eligible for the ETV Program.

New §700.1621 incorporates the content from former §700.1623 concerning when a student loses the right to continue receiving benefits under the ETV Program. It also now adds the act of theft, fraud, or forgery involving ETV funds as a ground for termination from the ETV program.

FISCAL NOTE

David Kinsey, Chief Financial Officer of DFPS, has determined that for each year of the first five years that the sections will be in effect there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the section(s) 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 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 the agency;
- (5) the proposed rules will create a new regulation, as it creates a new subchapter;
- (6) the proposed action repeals §700.1619 but incorporates the content into existing §700.1617; all other repeal of rules is only to the extent needed to sequentially renumber existing and proposed rules;
- (7) the proposed rules will not increase 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

Mr. Kinsey has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Pursuant to subsection (c)(7) of Texas Government Code §2001.0045, the statute does not apply to a rule that is adopted by the Department of Family and Protective Services.

PUBLIC BENEFIT

Deneen Dryden, Associate Commissioner for Child Protective Services has determined that for each year of the first five years the sections are in effect the anticipated public benefit is a reduction in barriers for students to receive ETV and preventing misappropriation of ETV funds.

REGULATORY ANALYSIS

The department has determined that this proposal is not a major environmental rule as defined by Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

DFPS 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 Government Code, §2007.043.

PUBLIC COMMENT

Electronic comments and questions may be submitted to the Director of Youth Transitional Living Services, Debra.Emerson@dfps.state.tx.us. Written comments on the proposal may be submitted to the Texas Register Liaison, Legal Services 20R13, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication of this proposal in the *Texas Register*.

40 TAC §§700.1613, 700.1615, 700.1617

STATUTORY AUTHORITY

The amendments are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the Department.

No other statutes, articles, or codes are affected by the proposed rules as ETV is a federal benefit.

§700.1613. *Who can be eligible for the ETV Program?*

(a) Students [Youth] in one of the following categories can be eligible to participate in the ETV Program, as long as they are under the age of 23:

(1) at least 16 years of age and in DFPS's conservatorship [likely to remain in DFPS foster care until age 18];

(2) in DFPS Extended Foster Care [not yet age 21 but aged out of DFPS foster care]; [or]

(3) left DFPS foster care at age 18 or older, or were legally emancipated by a court while in DFPS foster care; [not yet age 21 and was adopted or exited to the Permanency Care Assistance Program from DFPS foster care after turning age 16.]

(4) adopted from DFPS foster care after turning age 16;

(5) exited to the Permanency Care Assistance Program from DFPS foster care after turning age 16; or

(6) any other population group legally required under federal law.

(b) A student may remain eligible up to age 23, as long as the student is making satisfactory progress toward completion of postsecondary education or vocational training. In no event may a student receive ETV funds for more than 5 years, regardless of if the years are consecutive. [If a student is already participating in the ETV Program when turning age 21, the student may remain eligible for assistance until age 23, as long as the student is making satisfactory progress toward completion of postsecondary education or vocational training, as defined by the institution the student is attending.]

§700.1615. *What must an eligible student [youth] do to qualify for participation in the ETV Program?*

(a) To qualify for financial assistance under the ETV Program, an eligible student [youth] must:

(1) meet one of the requirements in §700.1613(a) of this title (relating to Who can be eligible for the ETV Program?);

(2) be taking a course which the student will receive college academic credit while in high-school or a program leading to a high-school diploma or equivalent, have a high school diploma or equivalent, or be exempt from compulsory school attendance pursuant to Texas Education Code, §25.086(a)(6)(A);

(3) be enrolled in an applicable institution of higher education as defined by 20 U.S.C. §1002; [that falls within one of the following categories:]

[(A) an accredited or pre-accredited, public or nonprofit institution that provides a bachelor's degree or not less than a two-year program that provides credit towards a degree or certification;]

[(B) an accredited or pre-accredited, public or nonprofit institution that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation; or]

~~[(C) an accredited or pre-accredited, public or nonprofit institution, or a private institution, that has been in existence for at least two years and that provides a program of training to prepare students for gainful employment in a recognized occupation; and]~~

~~(4) for students 18 and older, have a financial account that accepts direct deposits. For students under age 18, exceptions to this requirement may be made by DFPS on a case-by-case basis; and~~

~~(5) complete and file an application and required documentation with the DFPS ETV contractor [eordinator].~~

~~(b) If denied eligibility, DFPS notifies the applicant in writing of the reason(s) for the denial, and of the right to appeal the denial, as defined in §700.1625 of this title (relating to Can a student appeal a denial of eligibility, or a suspension, or termination of benefits?).~~

~~§700.1617. How much financial assistance may an eligible student [youth] receive under the ETV Program and what types of expenses are included in the cost of attendance for which ETV funds can be used?~~

~~(a) The total annual amount of financial assistance that an eligible student [youth] may receive from the ETV Program is determined by the following criteria:~~

~~(1) The amount of financial assistance is limited to the lesser of \$5,000 or the total cost of attendance, as allowable under [defined in] §472 of the federal Higher Education Act of 1965 (20 U.S.C. §1087I)(20 USCS 1087H).~~

~~(2) The amount of educational assistance to a student under the ETV Program and any other federal or federally supported program must not exceed the total cost of attendance, as defined in §472 of the federal Higher Education Act of 1965 (20 U.S.C. §1087I).~~

~~(3) Financial assistance provided under the ETV Program cannot duplicate benefits provided under any other federal or federally supported program.~~

~~(4) If a student is eligible for the state exemption from payment of tuition and fees, under Texas Education Code §54.366, §54.367, or any other tuition waiver exemption[§54.211 or §54.2111,] and is attending an institution where that exemption applies, the student may not receive financial assistance under the ETV Program for the cost of tuition and fees.~~

~~(b) ETV funds can only be used to pay for the category of expenses as allowable under §472 of the federal Higher Education Act of 1965 (20 U.S.C. §1087I) and applicable federal guidance, if the student will incur such costs.~~

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004098

Tiffany Roper

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 438-3397



40 TAC §§700.1619, 700.1621, 700.1623

STATUTORY AUTHORITY

The repeals are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the Department.

No other statutes, articles, or codes are affected by the proposed repeals as ETV is a federal benefit.

§700.1619. What types of expenses are included in the cost of attendance for which ETV funds can be used?

§700.1621. After a student is initially determined eligible for the ETV Program, are there other requirements the student must meet?

§700.1623. When does a student lose the right to continue receiving benefits under the ETV 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 October 2, 2020.

TRD-202004099

Tiffany Roper

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 438-3397



40 TAC §700.1619, §700.1621

STATUTORY AUTHORITY

The new sections are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the Department.

No other statutes, articles, or codes are affected by the proposed rules as ETV is a federal benefit.

§700.1619. After a student is initially determined eligible for the ETV Program, are there other requirements the student must meet?

(a) Yes; to remain eligible for the ETV Program, the student must:

(1) maintain satisfactory progress toward completion of postsecondary education or vocational training, as defined by the institution the student is attending; and

(2) submit documentation to establish that minimum enrollment requirements are met and that satisfactory progress, referred to in paragraph (1) of this subsection, is being made.

(b) A student's failure to meet the requirements of subsection (a) of this section may result in suspension of continued benefits under the ETV Program. DFPS sends the student written notice of the reason(s) for suspension of ETV benefits, and the student's right to appeal, as defined in §700.1625 of this title (relating to Can a student appeal a denial of eligibility, or a suspension, or termination of benefits?).

§700.1621. When does a student lose the right to continue receiving benefits under the ETV Program?

A student's benefits under the ETV Program may be terminated when DFPS discovers that any of the following events has occurred:

(1) the student falsified information in the application for benefits, or in providing required documentation to maintain eligibility for the ETV Program;

(2) the student has used ETV funds for expenses that are not included in §472 of the federal Higher Education Act of 1965 (20 U.S.C. §1087II), or falsified documentation in accounting for expenditures;

(3) the student is no longer attending the program for which financial assistance has been provided;

(4) the student commits an act of theft, fraud, or forgery involving ETV funds; or

(5) the student reaches the age of ineligibility, as defined in §700.1613 of this title (relating to Who can be eligible for the ETV 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 October 2, 2020.

TRD-202004100

Tiffany Roper

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Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 438-3397



CHAPTER 702. GENERAL ADMINISTRATION

SUBCHAPTER H. TRAUMA AND TRAUMA-INFORMED CARE

40 TAC §702.701

The Department of Family and Protective Services (DFPS) proposes §702.701 in new Subchapter H Trauma and Trauma-Informed Care in Title 40, Texas Administrative Code (TAC), Chapter 702, relating to General Administration.

BACKGROUND AND PURPOSE

Currently, the Texas Family Code, Government Code, and Human Resources Codes (in addition to other Texas Codes) include requirements that refer to a child in the state's child welfare system experiencing "trauma," and to certain training, programs, or services being "trauma-informed," but provide no definition or description of the terms. See for example: Texas Family Code Sec. 264.015 regarding Training and Sec. 266.012 Comprehensive Assessments; Texas Government Code Sec. 533.0052 Star Health Program: Trauma-Informed Care Training; Texas Human Resources Code Sec. 40.043 Child Safety and Runaway Prevention Procedures, Sec. 40.079 Strategic State Plan to Implement Community-Based Care and Foster Care Prevention Services, Sec. 42.0531 Secure Agency Foster Homes, and Sec. 42.252. Proposed Operational Plan; Licensing Procedures.

In 2017, the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families ("Children's Commission") formed the Statewide Collaborative on Trauma-Informed Care (SCTIC) comprised of child welfare professionals and stakeholders, including DFPS. In February 2019, the Children's Commission published a document containing the recommendations of the SCTIC entitled "Building a Trauma-Informed Child Welfare System: A Blueprint." The stated purpose of the Trauma Blueprint is to provide a roadmap for the Texas

child welfare system to become more trauma-informed and trauma-responsive.

In July 2019, the Children's Commission formed the SCTIC Implementation Task Force to implement the strategies set forth in the Trauma Blueprint. Strategy 1.1 calls for definitions of "trauma" and "trauma-informed care" to be adopted through a formal process to create a common understanding of the terminology used to create and ensure Texas has a trauma-informed and trauma-responsive child welfare system. To achieve Strategy 1.1, the SCTIC Implementation Task Force charged its Policy and Practice Workgroup with drafting and providing recommended definitions to be voted on by the SCTIC Implementation Task Force and submitted to DFPS to initiate its formal rulemaking process. The definitions were approved by a majority vote during the SCTIC Implementation Task Force meeting held on Friday, February 28, 2020, and were submitted to DFPS.

The Department of Family and Protective Services (DFPS) proposes to adopt into rule the definitions of "trauma" and "trauma-informed" recommended by the SCTIC. DFPS intends for these definitions to apply to the Prevention and Early Intervention (PEI), Child Protective Investigations (CPI), and Child Protective Services (CPS) divisions of DFPS.

SECTION-BY-SECTION SUMMARY

The proposed SUBCHAPTER H would establish §702.701 which would define trauma and trauma-informed care using the language recommended by the SCTIC, as follows:

(a) Trauma results from an event, series of events, or set of circumstances experienced by an individual as physically or emotionally harmful or life-threatening with lasting adverse effects on the individual's functioning or the individual's mental, physical, social, emotional, or spiritual well-being.

(b) An individual, program, organization, or system that is trauma-informed fully integrates knowledge about trauma into policies, procedures, and practices by: (1) Realizing the widespread impact of trauma, understanding potential paths for recovery, and acknowledging the compounding impact of structural inequities related to culture, history, race, gender, identity, locale, and language; (2) Recognizing the signs and symptoms of trauma in clients, families, staff, and others involved with the system; (3) Maximizing physical and psychological safety and responding to the impact of structural inequities on individuals and communities; (4) Building healthy, trusting relationships that create mutuality among children, families, caregivers, and professionals at an individual and organizational level; and (5) Striving to avoid re-traumatization.

FISCAL NOTE

David Kinsey, Chief Financial Officer of DFPS, has determined that for each year of the first five years that the sections will be in effect there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the section(s) 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 employee positions;

- (3) implementation of the proposed rule will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to the agency;
- (5) the proposed rule will create a new regulation, as it creates a new Subchapter;
- (6) the proposed rule will not limit, expand, or repeal an existing regulation;
- (7) the proposed rule will not increase 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

Mr. Kinsey has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Pursuant to subsection (c)(7) of Texas Government Code §2001.0045, the statute does not apply to a rule that is adopted by the Department of Family and Protective Services.

PUBLIC BENEFIT

Deneen Dryden, Associate Commissioner for Child Protective Services, Jim Sylvester, Associate Commissioner for Child Protective Investigations, and Sasha Rasco, Associate Commissioner for Prevention and Early Intervention, have determined that for each year of the first five years the sections are in effect the public will benefit from a uniform definition of trauma and trauma informed care. Establishing uniform and inclusive definitions agreed upon by key child welfare stakeholders will help ensure a consistent approach to providing services in a trauma-informed manner and will strengthen the responsiveness of the child welfare system to better meet the needs of children and families who have experienced trauma.

REGULATORY ANALYSIS

The department has determined that this proposal is not a major environmental rule as defined by Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

DFPS 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 Government Code, §2007.043.

PUBLIC COMMENT

Electronic comments and questions may be submitted to RULES@dfps.state.tx.us. Written comments on the proposal may be submitted to the Texas Register Liaison, Legal Services 19R16, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication of this proposal in the *Texas Register*.

STATUTORY AUTHORITY

The new rule is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Pro-

ective Services commissioner shall adopt rules for the operation and provision of services by the Department.

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

§702.701. What is Trauma and Trauma-Informed Care?

(a) Trauma results from an event, series of events, or set of circumstances experienced by an individual as physically or emotionally harmful or life-threatening with lasting adverse effects on the individual's functioning or the individual's mental, physical, social, emotional, or spiritual well-being.

(b) An individual, program, organization, or system that is trauma-informed fully integrates knowledge about trauma into policies, procedures, and practices by:

(1) Realizing the widespread impact of trauma, understanding potential paths for recovery, and acknowledging the compounding impact of structural inequities related to culture, history, race, gender, identity, locale, and language;

(2) Recognizing the signs and symptoms of trauma in clients, families, staff, and others involved with the system;

(3) Maximizing physical and psychological safety and responding to the impact of structural inequities on individuals and communities;

(4) Building healthy, trusting relationships that create mutuality among children, families, caregivers, and professionals at an individual and organizational level; and

(5) Striving to avoid re-traumatization.

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004101

Tiffany Roper

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 438-3397



CHAPTER 707. CHILD PROTECTIVE INVESTIGATIONS

SUBCHAPTER C. CHILD CARE INVESTIGATIONS

The Department of Family and Protective Services (DFPS) proposes amendments to §§707.745, 707.765, 707.825; and 707.857 in Chapter 707, concerning Child Protective Investigations.

BACKGROUND AND PURPOSE

The purpose of the rule changes is to reflect notification requirements of investigation findings to a residential child care operation after the completion of a child abuse, neglect, or exploitation investigation involving the operation's staff.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §707.745 consist of clarifying the notification process to child care operations after the DFPS investigation is complete. Specifically, if DFPS conducts an investigation at: (1) a residential child care operation, DFPS will notify the person in charge of the operation of the investigation findings and name of the alleged or designated perpetrator within five calendar days after the investigation is closed. If the person in charge, administrator, or the director is the perpetrator, DFPS will notify the permit holder or other appropriate person; (2) a child day care operation, the Health and Human Services Child Care Licensing inspector assigned to monitor the operation will notify the operation of the results of the DFPS investigation after the inspector makes determinations about any minimum standard violations.

The proposed amendments to §707.765 include: (1) adding residential child care operations to the list of entities permitted to obtain confidential abuse, neglect, and exploitation information; and (2) clarifying that a child day care operation cited for a deficiency by Health and Human Services Child Care Licensing as a result of the DFPS investigation is permitted to obtain confidential abuse, neglect, and exploitation information.

The proposed amendments to §707.825 specify that if an operation was previously notified of investigation findings when DFPS completed its investigation and the abuse, neglect, or exploitation finding is reversed or altered pursuant to an administrative review of investigation findings, DFPS will notify the child care operation of the change within five calendar days.

The proposed amendments to §707.857 specifies that if an operation was previously notified of investigation findings when DFPS completed its investigation and an administrative law judge: (1) reverses or alters the abuse, neglect, or exploitation finding, DFPS will notify the child care operation of the change within five calendar days; and (2) upholds the finding, DFPS will notify the child care operation that the finding was sustained after an appeal has occurred or the timeframe for filing an appeal has expired. In addition, DFPS is updating the current rule language to change "must" to "will" so that the language is consistent with the language used in the other rules in division 3 of subchapter C. This change is non-substantive as the agency construes "will" and "must" as substantively identical, and therefore, despite the language change, DFPS' existing notification requirements are not changing.

FISCAL NOTE

David Kinsey, Chief Financial Officer of DFPS, has determined that for each year of the first five years that the rules will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the rules as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation will not affect the number of employee positions;
- (3) implementation will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rules will not affect fees paid to the agency;

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

(6) the proposed rules will not expand, limit, or repeal an existing regulation;

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

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

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

Mr. Kinsey has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not apply to small or micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Pursuant to subsection (c)(7) of Texas Government Code, §2001.0045, the statute does not apply to a rule that is adopted by DFPS.

PUBLIC BENEFIT

Jim Sylvester, Associate Commissioner for Child Protective Investigations, has determined that for each year of the first five years the rules are in effect, the updates will further efforts to ensure child safety and well-being of children in child care operations.

REGULATORY ANALYSIS

DFPS has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

DFPS 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 Government Code §2007.043.

PUBLIC COMMENT

Comments and questions on this proposal must be submitted within 30 days of publication of the proposal in the *Texas Register*. Electronic comments and questions may be submitted to RULES@dfps.state.tx.us. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services 20R16, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

DIVISION 3. NOTIFICATION

40 TAC §707.745

STATUTORY AUTHORITY

The proposed amended sections implement the Child Abuse Prevention and Treatment Act and Texas Human Resources Code §40.006.

The amended sections are proposed under Human Resources Code (HRC) §40.027, which provides that the DFPS commissioner shall adopt rules for the operation and provision of services by the department.

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

§707.745. *Whom will we inform of the abuse, neglect, or exploitation investigation results?*

(a) Once the abuse, neglect, or exploitation investigation is complete, we will provide the following written notifications:

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

(3) Notification of the investigation findings to the parent of the alleged victim. If the alleged victim is a child in the conservatorship of the Texas Department of Family and Protective Services, we will notify the alleged victim's Child Protective Services' caseworker; ~~and~~

(4) If the investigation occurred at a residential child care operation, notification of the investigation findings and the name of the person alleged or designated as a perpetrator of abuse, neglect, or exploitation to the person in charge of the operation within five calendar days after the investigation is closed. If the person in charge, the administrator, or the director of the operation is the perpetrator, we will notify the permit holder or other appropriate person; and

(5) [(4)] Notification to the reporter of the completion of the investigation within five calendar days after the investigation is closed.

(b) If the investigation occurred at a child day care operation, the [The] Child Care Licensing inspector assigned to monitor the [child care] operation will notify the operation of the results of our investigation after the inspector makes determinations about any minimum standard violations.

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004094

Tiffany Roper

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 438-3397



DIVISION 4. CONFIDENTIALITY

40 TAC §707.765

STATUTORY AUTHORITY

The proposed amended sections implement the Child Abuse Prevention and Treatment Act and Texas Human Resources Code §40.006.

The amended sections are proposed under Human Resources Code (HRC) §40.027, which provides that the DFPS commissioner shall adopt rules for the operation and provision of services by the department.

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

§707.765. *Who may obtain confidential abuse, neglect, and exploitation investigation information from the Child Care Investigation's file made confidential under the federal Child Abuse Prevention and*

Treatment Act and Texas Human Resources Code (HRC) §§40.005 and 42.004?

(a) The following may obtain confidential abuse, neglect, and exploitation investigation information from us subject to the limitations described in §707.767 (relating to Are there any portions of the abuse, neglect, or exploitation investigation records that may not be released to anyone?) and §707.769 (relating to Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in the abuse, neglect, or exploitation investigation records maintained by us?) in this division:

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

(8) A residential child care operation;

(9) [(8)] A child day care operation cited for a deficiency by CCL as a result of the investigation;

(10) [(9)] A single-source continuum contractor (SSCC) for community-based care when:

(A) The SSCC subcontracts with the child care operation where the investigation occurred;

(B) The operation has signed a release of information; and

(C) CCL cited the operation for a deficiency as a result of the investigation;

(11) [(10)] An administrative law judge who conducts a due process hearing related to a finding of abuse, neglect, or exploitation or related to an enforcement action taken by CCL or another state agency as a result of the finding. See division 7 of this subchapter (relating to Due Process Hearings);

(12) [(11)] A judge of a court of competent jurisdiction in a criminal or civil case arising out of an investigation of child abuse, neglect, or exploitation, if the judge:

(A) provides notice to DFPS and any other interested parties;

(B) after reviewing the information, including audio and/or videotapes, determines that the disclosure is essential to the administration of justice and will not endanger the life or safety of any individual; and

(C) includes in the disclosure order any safeguards that the court finds appropriate to protect the interest of the child involved in the investigation;

(13) [(12)] According to Texas Family Code (TFC) §162.0062, a prospective adoptive parent of a child who is the subject of the investigation or who is the alleged or designated perpetrator in the investigation;

(14) [(13)] A child care licensing agency or child welfare agency from another state that requests information on the alleged perpetrator as part of a background check or to assist in its own child abuse, neglect, or exploitation investigation; and

(15) [(14)] Any other person authorized by state or federal law to have a copy.

(b) - (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.

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004095
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: November 15, 2020
For further information, please call: (512) 438-3397



DIVISION 6. ADMINISTRATIVE REVIEWS

40 TAC §707.825

STATUTORY AUTHORITY

The proposed amended sections implement the Child Abuse Prevention and Treatment Act and Texas Human Resources Code §40.006.

The amended sections are proposed under Human Resources Code (HRC) §40.027, which provides that the DFPS commissioner shall adopt rules for the operation and provision of services by the department.

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

§707.825. What actions regarding an abuse, neglect, or exploitation finding may we take at the conclusion of the administrative review?

- (a) (No change.)
- (b) If the finding is reversed or altered, we will:
 - (1) update our records to reflect the change; and [-]
 - (2) inform any operation previously notified of the investigation findings under §707.745(a)(4) of division 2 (relating to Whom will we inform of the abuse, neglect, or exploitation investigation results?) of the reversal or change within five calendar days.

(c) If the finding is reversed, we will also remove your name from the Texas Department of Family and Protective Services Central Registry.

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004096
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: November 15, 2020
For further information, please call: (512) 438-3397



DIVISION 7. DUE PROCESS HEARINGS

40 TAC §707.857

STATUTORY AUTHORITY

The proposed amended sections implement the Child Abuse Prevention and Treatment Act and Texas Human Resources Code §40.006.

The amended sections are proposed under Human Resources Code (HRC) §40.027, which provides that the DFPS commis-

sioner shall adopt rules for the operation and provision of services by the department.

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

§707.857. What actions must we take in response to an administrative law judge's action regarding an abuse, neglect, or exploitation finding?

(a) If the administrative law judge (ALJ) alters or reverses the finding, [~~then~~] we will [must]:

(1) update our records to reflect the change; and [-]

(2) inform any operation previously notified of investigation findings under §707.745(a)(4) of division 2 (relating to Whom will we inform of the abuse, neglect, or exploitation investigation results?) of the reversal or change within five calendar days.

(b) If the ALJ reverses the finding, we will [must] also remove your name from the Texas Department of Family and Protective Services (DFPS) Central Registry.

(c) [~~th~~] If the ALJ upholds the finding, [~~then~~] we will [must]:

(1) change your designation from a "designated perpetrator" to a "sustained perpetrator" in the DFPS Central Registry; and :

(2) inform any operation previously notified of investigation findings under §707.745(a)(4) of division 2 (relating to Whom will we inform of the abuse, neglect, or exploitation investigation results?) of the sustained finding after an appeal has occurred or the timeframe for filing an appeal has expired.

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

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004097
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: November 15, 2020
For further information, please call: (512) 438-3397



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER A. MOTOR VEHICLE TITLES

42 TAC §217.3

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to amend Title 43 of the Texas Administrative Code §217.3 relating to motor vehicle titles. The changes remove references to the list of certified mopeds published by the Texas Department of Public Safety (DPS) because that list will no longer be maintained. DPS is no longer maintaining the list in response to House Bill (HB) 3171, 86th Legislature, Regular Session (2019), which repealed Transportation Code §521.225, which required DPS to maintain the list.

EXPLANATION. The proposed amendments to §217.3(1)(B) eliminate references to the list of certified mopeds published by DPS and clarify that determinations on whether a motor vehicle may be titled as a moped will be based on the definition of moped in Transportation Code §541.201. Previously, DPS provided a list of certified mopeds that was referenced when county tax assessor-collector offices processed title applications. Transportation Code §521.225, which required that the list be maintained, was repealed by HB 3171. Because that list is no longer maintained, determinations will be based on the statutory definition of moped. Transportation Code §541.201(8) defines moped as, "a motor vehicle that is equipped with a rider's saddle and designed to have when propelled not more than three wheels on the ground, that cannot attain a speed in one mile of more than 30 miles per hour, and the engine of which cannot produce more than five-brake horsepower; and if an internal combustion engine, has a piston displacement of 50 cubic centimeters or less and connects to a power drive system that does not require the operator to shift gears." If the vehicle meets the definition, it will be titled as a moped. The amendments are not changing or adding requirements for the definition of moped, but are removing the requirement that a motor vehicle be listed on the certified moped list before titling as a moped.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the proposed new section will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Jeremiah Kuntz, Director of the Vehicle Title and Registration Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Kuntz has also determined that, for each year of the first five years the proposed new section is in effect, the public benefits include removing outdated procedures from department rules, removing the requirement that mopeds must be on a list of certified mopeds to be titled, and clarifying the existing criteria for titling a motor vehicle as a moped.

Mr. Kuntz anticipates that there will be no additional costs on regulated persons to comply with these rules, because the rules do not establish any additional requirements or costs for the regulated person.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the amendment will not have an adverse economic effect on small businesses, micro-businesses, or rural communities because the proposal imposes no additional requirements, and has no additional financial effect, on any small businesses, micro-businesses, or rural communities. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

TAKINGS IMPACT ASSESSMENT. The department 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 Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that during the first five years the proposed amendments are in effect, no government program would be created or eliminated. Implementation of the proposed amendments would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendments do not create a new regulation, or expand, or limit, an existing regulation. The proposed amendments remove an existing regulation. Lastly, the proposed amendments do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy. The proposed amendments do not change the definition of moped; instead the proposed amendments remove the requirement that mopeds must be on a list of certified mopeds to be titled.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on November 16, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes amendments to §217.3 under Transportation Code §501.0041 and §1002.001.

Transportation Code §501.0041 authorizes the department to adopt rules to administer Chapter 501.

Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §501.021 and §501.022.

§217.3. Motor Vehicle Titles.

Unless otherwise exempted by law or this chapter, the owner of any motor vehicle that is required to be titled, including any motor vehicle required to be registered in accordance with Transportation Code Chapter 502, shall apply for a Texas title in accordance with Transportation Code Chapter 501 or 731.

(1) Motorcycles, autcycles, and mopeds.

(A) The title requirements for a motorcycle, autcycle, and moped are the same requirements prescribed for any motor vehicle.

(B) A vehicle that meets the criteria for a moped under Transportation Code §541.201(8) [and has been certified as a moped by the Department of Public Safety] will be registered and titled as a moped. [If the vehicle does not appear on the list of certified mopeds published by that agency, the vehicle will be treated as a motorcycle for title and registration purposes.]

(2) Farm vehicles.

(A) The term "motor vehicle" does not apply to implementations of husbandry, which may not be titled.

(B) Farm tractors owned by agencies exempt from registration fees in accordance with Transportation Code §502.453, are required to be titled and registered with "Exempt" license plates issued in accordance with Transportation Code §502.451.

(C) Farm tractors used as road tractors to mow rights of way or used to move commodities over the highway for hire are required to be registered and titled.

(D) Owners of farm trailers and farm semitrailers with a gross weight of 34,000 pounds or less may apply for a Texas title. Owners of farm trailers and farm semitrailers with a gross weight in excess of 34,000 pounds shall apply for a Texas title. If a farm trailer or farm semitrailer with a gross weight of 34,000 pounds or less has been titled previously, any subsequent owner shall apply for a Texas title for the farm trailer or farm semitrailer.

(3) Neighborhood electric vehicles. The title requirements of a neighborhood electric vehicle (NEV) are the same requirements prescribed for any motor vehicle.

(4) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers shall apply for a Texas title for any trailer or semitrailer with a gross weight in excess of 4,000 pounds. Owners of trailers and semitrailers with a gross weight of 4,000 pounds or less may apply for a Texas title. If a trailer or semitrailer with a gross weight of 4,000 pounds or less has been titled previously, any subsequent owner shall apply for a Texas title for the trailer or semitrailer. House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph to be titled:

(A) The rated carrying capacity will not be less than one-third of its empty weight.

(B) Mobile office trailers, mobile oil field laboratories, and mobile oil field bunkhouses are not designed as dwellings, but are classified as commercial semitrailers and must be registered and titled as commercial semitrailers if operated on the public streets and highways.

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle that is less than eight feet six inches in width or less than 45 feet in length is classified as a travel trailer and shall be registered and titled.

(ii) A camper trailer shall be titled as a house trailer and shall be registered with travel trailer license plates.

(iii) A recreational park model type trailer that is primarily designed as temporary living quarters for recreational, camping or seasonal use, is built on a single chassis, and is 400 square feet or less when measured at the largest horizontal projection when in the set

up mode shall be titled as a house trailer and may be issued travel trailer license plates.

(5) Assembled vehicles. The title requirements for assembled vehicles are prescribed in Subchapter L of this title (relating to Assembled Vehicles).

(6) Not Eligible for Title. The following are not eligible for a Texas title regardless of the vehicle's previous title or registration in this or any other jurisdiction:

(A) vehicles that are missing or are stripped of their motor, frame, or body, to the extent that the vehicle loses its original identity or makes the vehicle unsafe for on-road operation as determined by the department;

(B) vehicles designed by the manufacturer for on-track racing only;

(C) vehicles designed or determined by the department to be for off-highway use only, unless specifically defined as a "motor vehicle" in Transportation Code Chapter 501; or

(D) vehicles assembled, built, constructed, rebuilt, or reconstructed in any manner with:

(i) a body or frame from a vehicle which is a "nonreparable motor vehicle" as that term is defined in Transportation Code §501.091(9); or

(ii) a motor or engine from a vehicle which is flood damaged, water damaged, or any other term which may reasonably establish the vehicle from which the motor or engine was obtained is a loss due to a water related event.

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

Filed with the Office of the Secretary of State on October 1, 2020.

TRD-202004091

Tracey Beaver

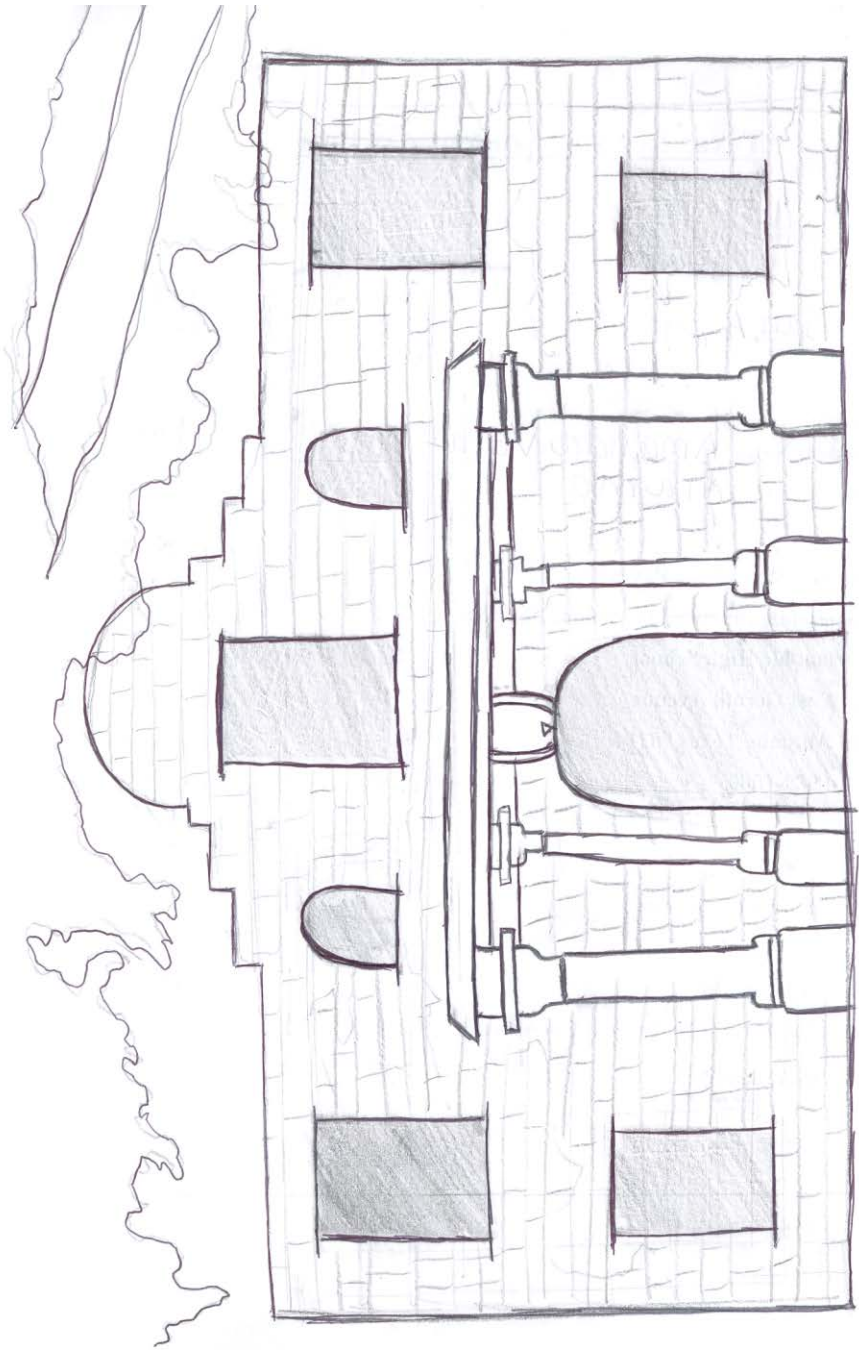
General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: November 15, 2020

For further information, please call: (512) 465-5665





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 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 83. COSMETOLOGISTS

16 TAC §83.72

The Texas Department of Licensing and Regulation withdraws the emergency adoption of the amendment to §83.72, which appeared in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4595).

Filed with the Office of the Secretary of State on September 30, 2020.

TRD-202004076

Brad Bowman

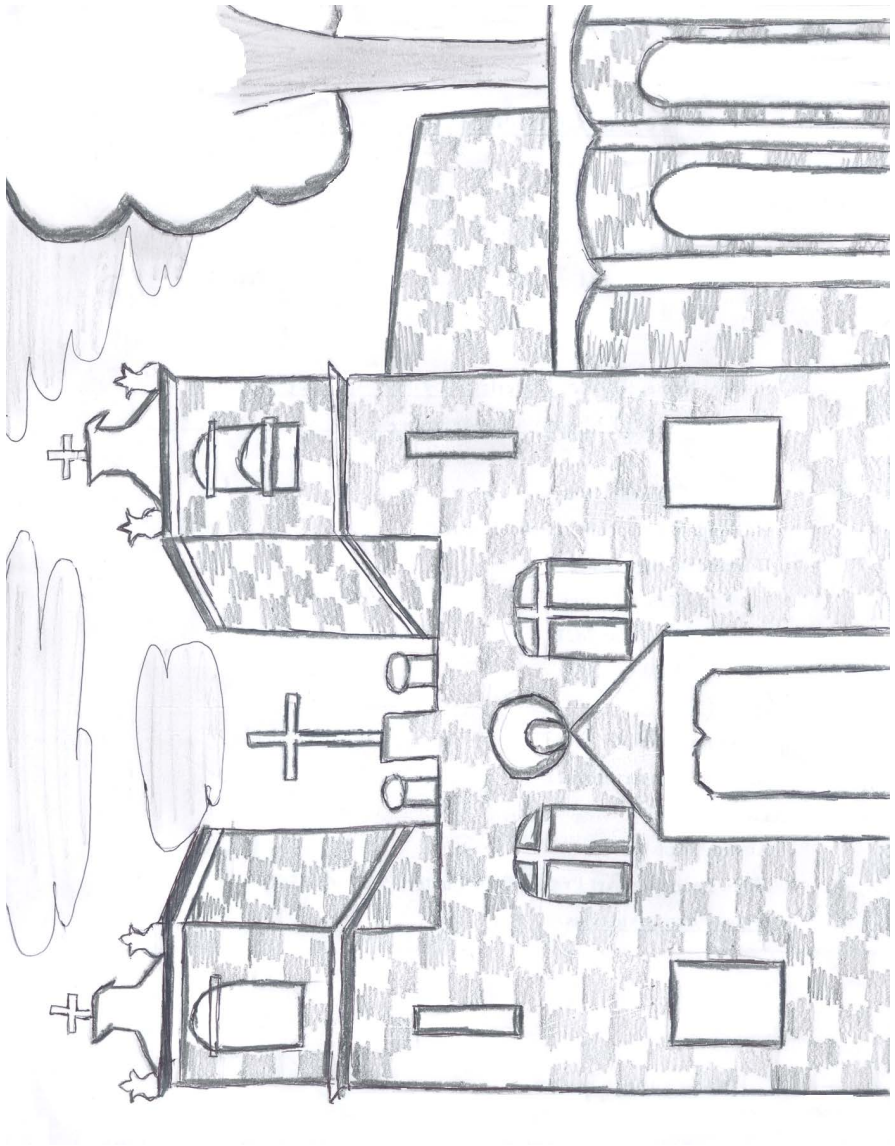
General Counsel

Texas Department of Licensing and Regulation

Effective date: October 20, 2020

For further information, please call: (512) 463-3671





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 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 83. COSMETOLOGISTS

16 TAC §83.72

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 83, §83.72, regarding the Cosmetology Program, without changes to the proposed text as published in the July 31, 2020, issue of the *Texas Register* (45 TexReg 5285). This rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC, Chapter 83, implement Texas Occupations Code, Chapter 1602, Cosmetologists, and Chapter 1603, Regulation of Barbering and Cosmetology.

On February 18, 2020, the Texas Commission of Licensing and Regulation (Commission) adopted amendments to Chapter 83 to implement necessary changes as required by House Bill (HB) 2847, 86th Legislature, Regular Session (2019), and recommendations from the Cosmetology Advisory Board's workgroups to reduce regulatory burdens and provide more clarity to the industry by using updated and standardized terminology. Section 83.72 was one of the rules amended by that rulemaking, and the section was amended effective March 15, 2020.

Due to a clerical error, the amended text of §83.72 incorporated into the Texas Administrative Code is not the text that was published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 42) and adopted by the Commission on February 18, 2020. As a result, incorrect requirements are present in the currently published text of §83.72. As a short-term solution to protect the public health, safety, and welfare, the Commission adopted an emergency rulemaking on June 30, 2020, to correct the errors present in the text of §83.72. This emergency rule was published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4595).

The adopted rule amends §83.72 in a manner identical to the June 30, 2020, emergency rulemaking. The amendments correct errors in the text of §83.72(w)(9) - (10), reverting the requirements for Beauty Culture Schools offering the esthetician and manicurist curriculum standards to those in place prior to the March 15, 2020, changes to the section.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §83.72 by reversing changes to the equipment requirements for Beauty Culture Schools offering the

esthetician curriculum standards (§83.72(w)(9)) and the manicurist curriculum standards (§83.72(w)(10)).

For the esthetician curriculum standards, subsections §83.72(w)(9)(B) - (J) are amended to reflect the equipment requirements in place prior to the March 15, 2020, changes to the section. These changes remove unnecessary equipment related to other cosmetology curricula and include appropriate equipment for instruction of the esthetician curriculum standards.

For the manicurist curriculum standards, subsections §83.72(w)(10)(A) - (J) are amended to reflect the equipment requirements in place prior to the March 15, 2020 changes to the section. These changes remove unnecessary equipment related to other cosmetology curricula and include appropriate equipment for instruction of the manicurist curriculum standards.

The amendments represent a revision to the equipment requirements previously in place for the version of §83.72 effective January 15, 2018 (43 TexReg 81), until March 15, 2020. In the pre-March 15, 2020, version of the rule, the subsections were numbered §83.72(w)(10) - (11).

PUBLIC COMMENTS

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the July 31, 2020, issue of the *Texas Register* (45 TexReg 5285). The deadline for public comments was August 31, 2020. The Department received comments from four interested parties on the proposed rule during the 30-day public comment period. The public comments are summarized below.

Comment: One commenter stated that schools should not reopen at this time.

Department Response: This comment is outside the scope of the current rulemaking; the changes to §83.72 proposed in this rulemaking do not open or close beauty culture schools. The Department has made no changes as a result of this comment.

Comment: One commenter suggested that the rule be updated to require LED lighting instead of UV lighting in subsection (w)(10)(g).

Department Response: The Department disagrees with this comment. Changing the minimum requirements for Beauty Culture Schools is not in keeping with the purpose and scope of this rulemaking. However, this comment has been provided to the appropriate staff for consideration in future rule changes. The department has made no changes as a result of this comment.

Comment: Two commenters from North Texas Central College suggested that the requirement for paraffin baths/waxes in subsections (w)(9)(J) and (w)(10)(H) should be removed as this is an outdated technique that is rarely used.

Department Response: The Department disagrees with these comments. Changing the minimum requirements for Beauty Culture Schools is not in keeping with the purpose and scope of this rulemaking. However, these comments have been provided to the appropriate staff for consideration in future rule changes. The department has made no changes as a result of these comments.

COMMISSION ACTION

At its meeting on September 29, 2020, the Commission adopted the proposed rule as published in the *Texas Register*.

STATUTORY AUTHORITY

The rule is adopted under Texas Occupations Code, Chapters 51, 1602, and 1603, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51, 1602, and 1603. No other statutes, articles, or codes are affected by the adopted rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 30, 2020.

TRD-202004075

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Effective date: October 20, 2020

Proposal publication date: July 31, 2020

For further information, please call: (512) 463-3671



PART 8. TEXAS RACING COMMISSION

CHAPTER 323. DISCIPLINARY ACTION AND ENFORCEMENT

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §323.101, Administrative Penalties, and §313.201, Reporting of Criminal Activity and Convictions, without changes to the text as proposed in the August 7, 2020, issue of the *Texas Register* (45 TexReg 5468). The rules will not be republished.

The amendments to §323.101 delete text that is duplicative of a provision in the Texas Racing Act ("Act") and update a reference to a section of the Act to refer to the Occupations Code instead of Vernon's Civil Statutes. The amendments to §323.201 delete an outdated reference to Vernon's Texas Codes Annotated.

REASONED JUSTIFICATION

The reasoned justification for these amendments is clarity and accuracy of these provisions.

PUBLIC COMMENTS

No comments were submitted in response to the proposal of these amendments.

SUBCHAPTER B. CIVIL REMEDIES

16 TAC §323.101

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 30, 2020.

TRD-202004070

Chuck Trout

Executive Director

Texas Racing Commission

Effective date: October 20, 2020

Proposal publication date: August 7, 2020

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



SUBCHAPTER C. CRIMINAL ENFORCEMENT

16 TAC §323.201

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 30, 2020.

TRD-202004071

Chuck Trout

Executive Director

Texas Racing Commission

Effective date: October 20, 2020

Proposal publication date: August 7, 2020

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



PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §§402.200 (General Restrictions on the Conduct of Bingo), 402.300 (Pull-Tab Bingo), 402.301 (Bingo Card/Paper), 402.400 (General Licensing Provisions), 402.401 (Temporary License), 402.404 (License Classes and Fees), 402.408 (Designation of Members), 402.420 (Qualifications and Requirements for Conductor's License), 402.450 (Request for Waiver), 402.451 (Operating Capital), 402.502 (Charitable Use of Net Proceeds Recordkeeping), 402.511 (Required Inventory Records), 402.601 (Interest on Delinquent Tax), 402.602 (Waiver of Penalty, Settlement of Prize Fees, Rental Tax, Penalty and/or Interest), 402.700 (Denials; Suspensions; Revocations; Hearings), 402.702 (Disqualifying Convictions), and 402.703 (Audit Policy) with changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5724). Rules 402.450, 402.700, and 402.702 will be republished; the other rules will not be republished. The rules include changes to the proposed version made in response to the public comments. Rule 402.450 has been modified to include more specific descriptions of what is included and considered in a waiver application and a credible business plan. Rule 402.700 has been modified to provide that prior to a temporary suspension, a licensee will be given the opportunity to remove the person with the disqualifying criminal background from the organization. Rule 402.702 has been modified to remove Penal Code Chapter 22, Assaultive Offenses, from the list of directly related offenses. Finally, proposed Rule 402.503(j) related to electronic gift cards has been removed from the rule adoption packet.

The rule amendments are a result of both the Commission's recent rule review conducted in accordance with Texas Government Code §2001.039, and several stakeholder meetings between Commission staff and various representatives of the bingo community, including the Bingo Advisory Committee, Texas Charity Advocates, the Bingo Interest Group, Conservative Texans for Charitable Bingo, and the Department of Texas, Veterans of Foreign Wars. The Commission solicited from these representatives any proposed rule changes desired by the bingo community and the proposed changes were discussed at length in the meetings. Many of the bingo community's proposed changes are reflected in this rulemaking proposal, as are certain other changes identified in the rule review and/or desired by the Commission.

The amendments include updates and clarifications of certain terms and remove references and citations that are no longer applicable. The amendments implement procedural guidelines related to temporary suspensions that are required by the Bingo Enabling Act (BEA) and implement procedural changes for processing incomplete license applications that will conserve limited staff resources. The amendments remove record keeping requirements and other restrictions found to be unnecessary to the agency's purpose of ensuring that bingo is conducted fairly and that proceeds go to charities. Finally, the amendments allow organizations to accept and award donated prizes, and to conduct a bingo occasion using a temporary license without having to display verification from the Commission that it received notification of the occasion, all permissible changes that the bingo industry believes will help generate proceeds for charities.

The amendments to Rule 402.200(h) provide that any licensed authorized organization, rather than just those with a non-annual license, may accept or award donated prizes. The amendments to Rule 402.200(i)(4) remove the requirement that organizations maintain final game schedules in their records.

The amendments to Rule 402.300(b)(4) will eliminate the requirement that manufacturers submit a specified number of pull-tab tickets to the Commission for testing after the ticket artwork has been approved. The amendments to Rule 402.301(a)(3) and (11) will clarify that a bonus number can be any number on a bingo card so long as the number is identified as such prior to the start of a bingo game.

The amendments to Rule 402.400(e) provide that an incomplete original application will be returned, rather than denied, 21 days after the Commission requests more information if the applicant fails to respond; amendments to Rule 402.400(l) provide that a license may be placed in administrative hold at any time, rather than only at the time of license renewal; amendments to Rules 402.401(b)(3) and §402.401(d)(3)(D) remove the requirement that a conductor display verification from the Commission during a temporary bingo occasion, thus allowing for the use of temporary-on-demand licenses; amendments to Rule 402.404 remove references to organization license fees, which no longer exist; amendments to Rule 402.408 allow for a designated member of an organization to renew and print licenses online; amendments to Rule 402.420 correct the requirements for licensure of authorized organizations related to time-in-existence; amendments to Rule 402.450 provides clarification on what information a waiver request should include and provides that a business plan will be presumed credible if it includes that information and the requesting organization has not been granted a waiver in the previous three years; and amendments to Rule 402.451(b)(2) provide that bingo account calculations will include prize fees held in the bingo account to be paid to local governments or charitable accounts.

The amendments to Rule 402.502(c)(5) and (6) provide clarification that organizations may, but are not required to, maintain certain documentation for all charitable distributions; and amendments to Rule 402.511 provide that the Commission will create a form for maintaining perpetual inventory that organizations may use.

The amendments to Rules 402.601 and 402.602 remove all references to rental and gross receipts taxes because they are no longer collected.

Amendments to Rule 402.700(b) provide for a temporary suspension process and guidelines. In response to comments requesting additional information regarding the applicability of this rule, and in accordance with Tex. Occ. Code 2001.105, this process will apply to any organization with an officer, board member, or employee with a gambling, gambling-related, or fraud conviction. In accordance with Tex. Occ. Code 2001.154, 202, and 207, this process will apply to any commercial lessor, manufacturer, or distributor that has a person required to be named on the license application with a gambling, gambling-related, or fraud conviction. Rule 402.700(b) has also been modified to provide that, in the cases described above, the Director will give the licensee the opportunity to remove the disqualifying person prior to ordering a temporary suspension.

Finally, amendments to Rule 402.702(c)(2) correct a citation to the Texas Code of Criminal Procedure; amendments to Rule 402.702(d) provide that the Commission "may" treat certain deferred adjudications as convictions, rather than doing so "generally"; amendments to Rule 402.702(e) add manufacture, delivery, or possession with the intent to deliver of a controlled substance to the list of directly related offenses; and amendments to Rule 402.703(c)(3) and (d)(2) provide that audits will be completed within one year of an entrance conference and that organi-

zations will be provided with no more than two letters requesting records in an audit.

A public comment hearing was held on Wednesday, September 9, 2020, at 9:00 a.m. via Zoom webinar, and several persons provided oral and written comments. Additionally, on September 15, 2020, both the Bingo Interest Group and Texas Charity Advocates provided comments that they support the Department of Texas, Veterans of Foreign Wars recommendation to remove Assaultive Offenses from the list of directly related offenses. On September 21, 2020, the Commission received a written comment from the Kickapoo Traditional Tribe of Texas opposing the proposed rule on electronic gift cards.

COMMENT: Steve Bresnen, Bingo Interest Group: The Bingo Interest Group generally supports the rule amendments but would like to see additional explanation in the preamble regarding the applicability of Rule 402.700(b). Mr. Bresnen also suggests a more substantial revision to Rule 402.450 to provide more specificity to organizations requesting waivers. Historically, the Commission's grants or denials of waiver requests have not followed any discernable pattern so that applicants cannot reasonably gauge when a plan will be approved or not. In addition, the current rules do not guide the nonprofit organizations that conduct bingo with sufficient specificity to consistently prepare business plans that are both feasible, realistic and targeted toward resolving their financial difficulties. For example, the current rules talk about goals but not the activities to achieve the goal. Some applications are bare-bones, while others are highly detailed. The proposed changes are meant to reduce the potential for arbitrariness and be both more specific and targeted toward specific activities that will achieve the goal: net proceeds. Additionally, the Bingo Interest Group agrees with the recommendations made by the Department of Texas, Veterans of Foreign Wars regarding the removal of Penal Code Chapter 22, Assault Offenses, from the list of directly related offenses.

RESPONSE: Commission staff has added information about the application of Rule 402.700(b) in the discussion above and has modified the rule to provide licensees with an opportunity to remove a disqualifying person prior to the order of temporary suspension. Commission staff has modified Rule 402.450 to conform with the comments made by the Bingo Interest Group, with additional language providing that the three-year look-back period on previously granted waivers will not include any waivers granted due to force majeure.

COMMENT: Kim Kiplin, Department of Texas, Veterans of Foreign Wars: The Department of Texas, Veterans of Foreign Wars generally supports the rule amendments but asks that the Commission not add Penal Code Chapter 22, Assaultive Offenses, to the list of directly related offenses for the purpose of disqualifying applicants to the bingo worker registry. Most incidents of assault have little to no bearing on a person's fitness to work in the bingo industry, and preventing an applicant, particularly a veteran, with such a criminal history from engaging in full employment at a bingo hall is detrimental to their reintegration into civilian life. Further, adopting a rule that makes assault convictions disqualifying is arguably outside the agency's limited authority to ensure that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose. An employer can choose to employ someone with an assault conviction, but the Commission should not be using its regulatory authority to make that decision. Ms. Kiplin also recommends changes to the agency's processing of applicants and licensees with criminal backgrounds that is beyond the scope of this rule making.

RESPONSE: Commission staff agrees with this comment and recommends not adding Penal Code Chapter 22, Assaultive Offenses, to the list of directly related offenses, as suggested by the Department of Texas, Veterans of Foreign Wars and supported by the Commission's Bingo Advisory Committee, Texas Charity Advocates, and the Bingo Interest Group. Commission staff has engaged with Ms. Kiplin and other industry representatives, and will continue to do so, regarding the agency's processing of applicants and licensees with criminal backgrounds.

COMMENT: Tom Stewart, Texas Charity Advocates: Texas Charity Advocates generally supports the rule amendments as written and supports the changes suggested by both the Bingo Interest Group and the Department of Texas, Veterans of Foreign Wars.

RESPONSE: Commission staff has modified Rule 402.450 as suggested by the Bingo Interest Group and has removed Assaultive Offenses from the list of directly related offenses as suggested by the Department of Texas, Veterans of Foreign Wars.

COMMENT: Juan Garza, Jr., Chairman for the Kickapoo Traditional Tribe of Texas: The Kickapoo Traditional Tribe of Texas requests that the Commission delete the proposed amendment adding Rule 402.503(j) allowing electronic gift cards, because it runs the risk of opening the door for bingo devices that allow credits to be accumulated and replayed like a slot machine. There is no language in the proposed rule that imposes restrictions to prevent the accumulation of credits. Additionally, the Rule's use of the phrase "or otherwise" is vague and may allow for using electronic gift cards as a means for a player to accrue credits and play with them.

RESPONSE: In proposing this amendment, the Commission was not authorizing electronic gift cards that could be used to accumulate credits for replay or to otherwise emulate a slot machine. Upon further consideration of the potential technical issues surrounding this proposal, the Commission will not include this proposed amendment in the final rule adoption. The Commission's Bingo Advisory Committee recommends this subject be considered in future rulemaking with the input from the commenter and bingo industry stakeholders.

SUBCHAPTER B. CONDUCT OF BINGO

16 TAC §402.200

The rule amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004103

Bob Biard

General Counsel

Texas Lottery Commission

Effective date: October 22, 2020

Proposal publication date: August 21, 2020

For further information, please call: (512) 344-5392

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SUBCHAPTER C. BINGO GAMES AND EQUIPMENT

16 TAC §402.300, §402.301

The rule amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004104

Bob Biard

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Texas Lottery Commission

Effective date: October 22, 2020

Proposal publication date: August 21, 2020

For further information, please call: (512) 344-5392

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SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §§402.400, 402.401, 402.404, 402.408, 402.420, 402.450, 402.451

The rule amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

§402.450. Request for Waiver.

(a) Definition. The following word or term, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise: Detrimental charitable purpose waiver (waiver)--A determination by the Commission authorized under §2001.451(k) of the Act to exempt a licensed authorized organization from the requirements of §2001.451 or §2001.457 of the Act because compliance with the requirement(s) of these sections is detrimental to the organization's existing or planned charitable purposes.

(b) Detrimental Charitable Purpose Waiver.

(1) A licensed authorized organization may submit to the Commission an Application for Waiver to be exempt from the requirements that:

(A) bingo operations must result in net proceeds over the organization's license period; or

(B) a licensed authorized organization must disburse the required amount of net proceeds for charitable purposes for a specific calendar quarter.

(2) An application for a waiver under subsection (b)(1) must include the following:

(A) the reason for the request;

(B) an explanation of how compliance with the requirement is detrimental to the organization's existing or planned charitable purposes;

(C) the specific calendar quarter or license year for which the waiver is being requested, as applicable; and

(D) either of the following:

(i) a credible business plan for the organization's conduct of bingo or the organization's existing or planned charitable activities; or

(ii) if the request is due to force majeure as defined in §402.453 of this subchapter, documentation from outside sources supporting force majeure. Examples of acceptable documentation include newspaper articles, copies of local ordinance changes, police or fire department reports, notification of road construction, or photographs.

(3) A Credible Business Plan may, but is not required to include the following:

(A) the specific activity or activities the organization intends to undertake as they apply to the reason for the application for waiver, including:

(i) a timeline for undertaking the activities that is reasonable in light of the requested waiver period;

(ii) the cost of undertaking the activities and how those costs will be managed;

(iii) whether the activity or activities may reasonably be expected to increase the revenues of the organization;

(B) a description of the expenses, if any, that would be avoided or reduced during the period for which the waiver would be applicable; and

(C) an explanation of how the proposed activity or activities will allow the organization to correct its financial difficulties to ensure the bingo operations result in positive net proceeds.

(c) The Commission may request additional information or documentation as needed to consider the application for a waiver.

(d) The licensed authorized organization or unit must provide all information or documentation requested by the Commission within 21 calendar days of notice from the Commission. Failure to provide information or documentation requested by the Commission within the time frame indicated may result in disapproval of the application.

(e) Criteria for Approval of Waiver Applications. The Commission may consider the following in the approval of waiver applications:

(1) the credible business plan or force majeure that necessitates the organization's not meeting the requirements of §2001.451 or §2001.457 of the Act;

(2) the amount of net proceeds from licensed authorized organization's or unit's bingo operations during the past two years;

(3) the length of time the organization has conducted bingo;

(4) the organization's history of compliance during the two-year period prior to the application for the waiver; and

(5) other information that is relevant to a decision whether to grant the application.

(f) Within 21 calendar days of receipt of the written application for waiver and all required attachments and documentation, the Commission will notify the organization or unit in writing of its decision to approve or disapprove the application for a waiver.

(g) A business plan described by subsection (b)(3) shall be presumed credible if:

(1) the application is the organization's first application for a waiver of the net proceeds requirement in the three-year period prior to the application, not including waiver requests made due to force majeure; and

(2) the application is complete and sufficiently detailed to allow the commission to evaluate whether administration of the plan is reasonably within the organization's capabilities.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004105

Bob Biard

General Counsel

Texas Lottery Commission

Effective date: October 22, 2020

Proposal publication date: August 21, 2020

For further information, please call: (512) 344-5392



SUBCHAPTER E. BOOKS AND RECORDS

16 TAC §402.502, §402.511

The rule amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004106

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Effective date: October 22, 2020

Proposal publication date: August 21, 2020

For further information, please call: (512) 344-5392



SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

16 TAC §402.601, §402.602

The rule amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and

Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004107

Bob Biard

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Texas Lottery Commission

Effective date: October 22, 2020

Proposal publication date: August 21, 2020

For further information, please call: (512) 344-5392



SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

16 TAC §§402.700, 402.702, 402.703

The rule amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

§402.700. Denials; Suspensions; Revocations; Hearings.

(a) Denial of application. If the Director of the Charitable Bingo Operations Division determines that an applicant is not eligible for a license on statutory or regulatory grounds, or that the license should be denied on statutory or regulatory grounds which would justify temporary suspension or revocation of an existing license, he/she will notify the applicant in writing that the application has been denied and will state such grounds for the denial. If the applicant desires to contest the denial, the applicant must, within 30 days of the date of the notice of denial, make a written request for a hearing to contest the denial.

(b) Suspension and revocation.

(1) Grounds. The Commission may temporarily suspend or revoke a license or temporary authorization in accordance with the Bingo Enabling Act, §2001.355. If the Commission proposes to revoke or suspend a license it will notify the licensee in writing and will state the grounds for the proposed action.

(2) Temporary suspension. The Director may issue a temporary suspension based on evidence of the following violations: failure to pay prize fees, loss of non-profit status, a conviction for a gambling-related offense or fraud, or the continued involvement of a person with such a conviction following notice and opportunity to remove that person. A temporary suspension is effective immediately. Upon notification of the temporary suspension, the Director will simultaneously serve a notice of a show cause hearing, to be held not later than the 14th day after the date the notice is served, at which the license holder must show cause why the license should not remain suspended. The notice will include any exhibits the Commission has at the time that it intends to rely on at the hearing. If the licensee fails to show cause why the license should not be temporarily suspended, the license will remain suspended pending a final hearing on the merits, notice of which will be provided within 30 days of the show cause hearing.

(c) Hearings.

(1) All hearings will be conducted in accordance with the relevant portions of Title 16, Part 9, Chapter 401, Subchapter C.

(2) After a hearing on the alleged violation and upon finding that a violation did occur, the Commission may temporarily suspend a license or temporary authorization for a period not to exceed one year or may revoke a license or temporary authorization. The period of a suspension begins on the date of the order invoking the suspension, or the date of the order overruling the motion for rehearing, if one was filed.

(3) In the event a licensee has requested an administrative hearing, and has made timely and sufficient application for renewal of its license, the licensee may be issued a temporary authorization to conduct bingo and continue to act pursuant to said authorization until the Commission issues a final decision, regardless of whether said license has expired during the hearing process.

(d) Reapplication. No person or organization whose license has been revoked or forfeited, or whose application has been denied for reasons which would justify a revocation of an existing license will be eligible to apply for another license earlier than one year from the date of forfeiture, revocation, or denial.

§402.702. *Disqualifying Convictions.*

(a) The Commission shall determine, consistent with the requirements of Chapters 53 and 2001, Occupations Code, whether criminal convictions affect the eligibility of an applicant for a new or renewal license or listing in the registry of approved bingo workers under the Bingo Enabling Act (BEA). The Director of the Charitable Bingo Operations Division (Director) shall have the authority to make such determinations pursuant to this section. The Commission will not apply Chapter 53, Occupations Code, to officers, directors, or shareholders of, or other individuals associated with, an applicant that is a non-individual business entity.

(b) If any of the following persons have been convicted of a gambling or gambling-related offense, or criminal fraud, the applicant for a license or a listing in the registry of approved bingo workers will not be eligible for a new or renewal license or registry listing, as applicable: the applicant; or for an applicant for a license, any person whose conviction of any such offense would render the applicant ineligible under the eligibility standards for the particular type of license (*i.e.*, BEA §2001.105(b) for authorized organizations, BEA §2001.154(a)(5) for commercial lessors, BEA §2001.202(9) for manufacturers, and BEA §2001.207(9) for distributors). Such a conviction (which shall not include deferred adjudications and/or nolo contendere pleas) shall be a permanent bar to the applicant obtaining a license or registry listing.

(1) The Commission deems any gambling or gambling-related offense to be any offense listed in Penal Code, Chapter 47, Gambling; the offense of Penal Code, §71.02(a)(2), Engaging in Organized Criminal Activity; or any offense committed, including in another state or Federal jurisdiction, involving substantially similar conduct as an offense cited in Penal Code Chapter 47 or §71.02(a)(2).

(2) The Commission deems any offense involving criminal fraud to be any offense listed in the following Penal Code Chapters and as described below, with the exception of Class C misdemeanors:

- (A) Penal Code, Chapter 32, Fraud;
- (B) Penal Code, Chapter 35, Insurance Fraud;
- (C) Penal Code, Chapter 35A, Medicaid Fraud; or
- (D) Any offense committed, including in another state or Federal jurisdiction, involving substantially similar conduct as an

applicable offense under these enumerated Penal Code, Chapters 32, 35, or 35A.

(c) For criminal convictions that do not fall under the categories addressed in subsection (b) of this section, the Commission may determine an applicant to be ineligible for a new or renewal license or a registry listing based on a criminal conviction for:

- (1) An offense that directly relates to the duties and responsibilities of the licensed or registered activity;
- (2) An offense under §3g, Article 42A.054 of the Code of Criminal Procedure; or
- (3) A sexually violent offense, as defined by Article 62.001 of the Code of Criminal Procedure.

(d) For offenses that do not fall under subsection (b) or (c) of this section, such as offenses for which a person pleaded nolo contendere and/or received deferred adjudication and court supervision, and except as provided in subsection (a) of this section, the Commission may apply the provisions of Chapter 53, Occupations Code, to determine whether or not the applicant is eligible for a new or renewal license, or registry listing, under the BEA. For purposes of applying Chapter 53, the Commission may consider an applicant's deferred adjudication for a gambling or gambling-related offense, or a criminal fraud offense, to be a conviction in accordance with §53.021(d), Occupations Code.

(e) Because the Commission has a duty to exercise strict control and close supervision over the conduct of Charitable Bingo to ensure that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose, and, because bingo games are largely cash-based operations providing opportunities for individuals to have access to cash and/or products that may be exchanged for cash, the Commission finds that prohibited acts under the BEA and convictions for offenses that call into question an applicant's honesty, integrity, or trustworthiness in handling funds or dealing with the public, directly relate to the duties and responsibilities of licensed and registered activities under the BEA. The Commission deems convictions (including deferred adjudications and/or nolo contendere pleas) for certain misdemeanor and felony offenses to directly relate to the fitness of a new or renewal applicant for a license or registry listing under the BEA. Such offenses include the following:

- (1) Penal Code, Chapter 30, Burglary and Criminal Trespass, with the exception of:
 - (A) Penal Code, §30.05, Criminal Trespass; and
 - (B) Penal Code, §30.06, Trespass by Holder of License to Carry Concealed Handgun;
- (2) Penal Code, Chapter 31, Theft, with the exception of:
 - (A) Penal Code, §31.07, Unauthorized Use of a Vehicle;
 - (B) Penal Code, §31.12, Theft of or Tampering with Multichannel Video or Information Services;
 - (C) Penal Code, §31.13, Manufacture, Distribution, or Advertisement of Multichannel Video or Information Services Device; and
 - (D) Penal Code, §31.14, Sale or Lease of Multichannel Video or Information Services Device;
- (3) Penal Code, Chapter 33, Computer Crimes, with the exception of:

(A) Penal Code, §33.05, Tampering With Direct Recording Electronic Voting Machine; and

(B) Penal Code, §33.07, Online Impersonation;

(4) Penal Code, Chapter 34, Money Laundering;

(5) Penal Code, Chapter 36, Bribery and Corrupt Influence, with the exception of Penal Code, §36.07, Acceptance of Honorarium;

(6) Penal Code, Chapter 37, Perjury and Other Falsification;

(7) Penal Code, Chapter 71, Organized Crime;

(8) Tex. Health and Safety Code, Chapter 481, Manufacture, Delivery, or Possession with Intent to Deliver Controlled Substances; and

(9) Any offense committed, including in another state or Federal jurisdiction involving substantially similar conduct as an offense in the applicable sections of Penal Code, Chapters 30, 31, 33, 34, 36, 37, 71, Tex. Health and Safety Code, Chapter 481, or the BEA.

(f) In determining whether a criminal conviction directly relates to the duties and responsibilities of the licensed or registered activity under the BEA, the following factors will be considered:

(1) The nature and seriousness of the crime;

(2) The relationship of the crime to the purposes for which the individual seeks to engage in the regulated conduct;

(3) The extent to which the regulated conduct might offer an opportunity to engage in further criminal activity of the same type as the previous conviction;

(4) The relationship of the conviction to the capacity required to perform the regulated conduct; and

(5) Any other factors appropriate under Chapters 53 or the BEA, including whether a history of multiple convictions or serious conviction(s) would cause an applicant to pose a threat to the safety of bingo participants or workers.

(g) Except for convictions involving gambling or gambling-related offenses, a conviction, deferred adjudication, or nolo contendere plea for a Class C misdemeanor, or traffic offenses, and similar offenses in other state or Federal jurisdictions with a similar range of punishment as a Class C misdemeanor, will not be considered to be a disqualifying offense for purposes of this section.

(h) If the Commission determines that an applicant has a criminal conviction directly related to the duties and responsibilities of the licensed occupation, the Commission shall consider the following in determining whether to take an action against the applicant:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(7) other evidence of the person's fitness, including letters of recommendation and veteran's status, including discharge status.

(i) Upon notification of the Commission's intent to deny a new or renewal application or registry listing, an applicant may provide documentation of mitigating factors that the applicant would like the Commission to consider regarding its application. Such documentation must be provided to the Commission no later than 20 days after the Commission provides notice to an applicant of a denial, unless the deadline is extended in writing or through e-mail by authorized Commission staff.

(j) Upon the Commission's determination that an applicant is not eligible for a new or renewal license or registry listing because of a disqualifying criminal conviction or other criminal offense, the Commission shall take action authorized by statute or Commission rule.

(k) A denial or suspension of a new or renewal application under this section may be contested by the applicant pursuant to §402.700 of this chapter.

(l) The Director shall issue guidelines relating to the practice of the Commission under Chapter 53, Occupations Code, and this section, and may issue amendments to the guidelines as the Director deems appropriate, consistent with §53.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 2, 2020.

TRD-202004108

Bob Biard

General Counsel

Texas Lottery Commission

Effective date: October 22, 2020

Proposal publication date: August 21, 2020

For further information, please call: (512) 344-5392

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER B. SPECIAL PURPOSE

SCHOOL DISTRICTS

19 TAC §61.101

The State Board of Education (SBOE) adopts new §61.101, concerning special purpose school districts. The new section is adopted without changes to the proposed text as published in the July 31, 2020 issue of the *Texas Register* (45 TexReg 5287) and will not be republished. The new section identifies provisions of the Texas Education Code (TEC) that are applicable and provisions that are not applicable to the special purpose school districts operated by Texas Tech University (TTU) and The University of Texas at Austin (UT Austin).

REASONED JUSTIFICATION: The SBOE approved the TTU Independent Study by Correspondence High School Program in September 1993. The SBOE approved the UT High School program in November 1998. For both special purpose districts, the SBOE established the following conditions: no state funds shall be used to support the program; transcripts awarded to students

enrolled in the program shall be consistent with the academic achievement record required by the Texas Administrative Code (TAC); courses offered shall be consistent with courses required by the TAC; requirements for a high school diploma shall be consistent with the state graduation requirements and with exit-level assessment requirements in the TAC; state required testing will be implemented in accordance with existing rules and schedules; and other SBOE rules for curriculum shall be applicable as appropriate.

The 86th Texas Legislature, 2019, passed House Bill 3, which entitled a special-purpose school district operated by TTU or UT Austin to funding under TEC, Chapter 48. If TTU or UT Austin receives state funding for a school year, the special-purpose district may not charge tuition or fees to students enrolled in the district who are residents of Texas for that school year, other than fees authorized under the TEC.

The new section specifies duties or limitations to be imposed on the special-purpose school districts if they opt to receive state funding.

The SBOE approved the proposed new section for first reading and filing authorization at its July 2, 2020 meeting and for second reading and final adoption at its September 2, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the new section for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2021-2022 school year. The earlier effective date will allow the special purpose districts to begin planning for implementation before the beginning of the 2021-2022 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 July 31, 2020, and ended August 31, 2020. The SBOE also provided an opportunity for registered oral and written comments at its September 2020 meeting in accordance with the SBOE board operating policies and procedures. No comments were received.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code, §11.351, which permits the State Board of Education to establish a special-purpose school district for the education of students in special situations whose educational needs are not adequately met by regular school districts. The board is also permitted to impose duties or limitations on the school district as necessary for the special purpose of the district.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §11.351.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 5, 2020.

TRD-202004128

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: October 25, 2020

Proposal publication date: July 31, 2020

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



CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER A. REQUIRED CURRICULUM

19 TAC §74.1, §74.3

The State Board of Education (SBOE) adopts amendments to §74.1 and §74.3, concerning curriculum requirements. The amendment to §74.1 is adopted without changes to the proposed text as published in the July 31, 2020 issue of the *Texas Register* (45 TexReg 5290) and will not be republished. The amendment to §74.3 is adopted with changes to the proposed text as published in the July 31, 2020 issue of the *Texas Register* (45 TexReg 5290) and will be republished. The amendments update the rules to align with recent legislation and with changes to the technology applications and career and technical education (CTE) Texas Essential Knowledge and Skills (TEKS).

REASONED JUSTIFICATION: The 86th Texas Legislature, 2019, passed House Bill (HB) 963, which required the SBOE no later than March 1, 2020, to amend its rules in order to consolidate the TEKS for high school for technology application courses with the TEKS for CTE courses and to eliminate duplicative courses. A discussion item regarding proposed revisions to 19 TAC Chapter 126, Texas Essential Knowledge and Skills for Technology Applications, and Chapter 130, Texas Essential Knowledge and Skills for Career and Technical Education, was presented to the Committee of the Full Board at the November 2019 SBOE meeting, and at the January 2020 meeting the board approved the proposed revisions for first reading and filing authorization. At the April 2020 SBOE meeting, the board approved the proposed revisions for second reading and final adoption. With the update to the courses for technology applications and the addition of a new CTE career cluster in energy, the SBOE will need to align the courses that districts and charter schools are required to make available to students.

Additionally, Senate Bill 11 and HB 18, 86th Texas Legislature, 2019, amended the required curriculum in Texas Education Code, §28.002, to add suicide prevention to the topics included in health education. The statutory changes also clarify that health education must include physical health, including the importance of proper nutrition and exercise, and mental health, including instruction about mental health conditions, substance abuse, skills to manage emotions, establishing and maintaining positive relationships, and responsible decisionmaking.

At the January 2020 meeting, a discussion item on proposed amendments to 19 TAC §74.1 and §74.3 was presented to the Committee on Instruction. The committee requested that Texas Education Agency staff prepare proposed amendments for consideration by the SBOE and indicated that districts should no longer be required to offer specific technology applications courses since they will be included in CTE.

The amendments align the required secondary curriculum with the changes to the technology applications and CTE TEKS and reflect recent legislation.

Since approved for first reading, changes were made in §74.3(b)(2)(G) to clarify that the student enrollment numbers listed in clauses (i)-(vi) reflect the number of students enrolled in high school. The changes better align the language with the new CTE Perkins State Plan. In addition, a technical edit was made to §74.3(b)(2)(C) to correct the course title "Principles of Engineering" to "Engineering Science."

The SBOE approved the proposed amendments for first reading and filing authorization at its July 2, 2020 meeting and for second reading and final adoption at its September 2, 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 2021-2022 school year. The earlier effective date will align the rules with legislation and updates to technology applications and CTE courses as soon as possible. The effective date is 20 days after filing as adopted with the *Texas Register*.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began July 31, 2020, and ended August 31, 2020. The SBOE also provided an opportunity for registered oral and written comments at its September 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. The College Board commented in support of the wording in §74.3(b)(2)(G) in terms of the number of CTE programs districts are required to offer based on student enrollment.

Response. The SBOE agrees that requirement for districts to offer CTE courses is appropriate. At second reading, the SBOE adjusted the language in §74.3(b)(2)(G) to clarify that the student enrollment numbers listed in clauses (i)-(vi) reflect the number of students enrolled in high school.

Comment. The College Board commented in support of the language in §74.3(b)(2)(I) that requires school districts to offer at least one introductory level computer science course.

Response. The SBOE agrees that the requirement for districts to offer one introductory level computer science course is appropriate and maintained the course title as proposed.

Comment. A representative from Microsoft Corporation commented that the SBOE should require all Texas high schools to offer at least one of three introductory high school computer science courses: Fundamentals of Computer Science, Introduction to Computer Science, or Advanced Placement (AP) Computer Science Principles. The commenter stated that computer science is foundational to education and success, computer science is essential to the work force, computer science is not studied enough, and by exposing Texas high school students to computer science, the SBOE can implement long-term and forward-thinking solutions that will help address the nation's skills gap and get the country back to work as it begins the long-term economic recovery from the pandemic.

Response. The SBOE agrees that the requirement for districts to offer one introductory level computer science course is appropriate and maintained the course title as proposed.

Comment. Project Lead the Way commented in support of language in §74.3(b)(2)(I) that requires school districts to offer at least one introductory level computer science course. Project Lead the Way commented that the proposed amendment would help Texas continue to lead the way in attracting business and talent.

Response. The SBOE agrees that the requirement for districts to offer one introductory level computer science course is appropriate and maintained the course title as proposed.

Comment. A parent expressed concern about the wording of §74.3(b)(2)(I) because districts would be required to offer only one computer science course. The commenter stated that stu-

dents who have been diagnosed with dyslexia or other language acquisition issues would be placed at an unfair disadvantage by taking computer science courses because the students would no longer be able to fulfill their languages other than English graduation requirements because school districts would not be required to offer enough computer science courses.

Response. The SBOE disagrees that the requirement in §74.3(b)(2)(I) is problematic and maintained language as proposed. The SBOE provides multiple options for students to meet the languages other than English requirement and more than one option would allow a student to satisfy the requirement by completing courses that are not languages other than English courses.

Comment. An individual opposed the inclusion of comprehensive sexual education in the health education standards.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. An administrator asked whether the proposed revisions to §74.19(a)(2)(F) should include deleting the reference to technology applications.

Response. The SBOE provides the following clarification. Reference to technology applications was deleted because technology applications is now part of CTE.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education to establish curriculum and graduation requirements; and TEC, §28.002(a), as amended by Senate Bill 11 and House Bill 18, 86th Texas Legislature, 2019, which identifies the subjects of the required curriculum.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §7.102(c)(4) and §28.002(a).

§74.3. Description of a Required Secondary Curriculum.

(a) Middle Grades 6-8.

(1) A school district that offers Grades 6-8 must provide instruction in the required curriculum as specified in §74.1 of this title (relating to Essential Knowledge and Skills). The district must ensure that sufficient time is provided for teachers to teach and for students to learn English language arts, mathematics, science, social studies, at least one of the four disciplines in fine arts (art, dance, music, theatre), health, physical education, technology applications, and to the extent possible, languages other than English. The school district may provide instruction in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations to support student attainment of course and grade level standards.

(2) The school district must ensure that, beginning with students who enter Grade 6 in the 2010-2011 school year, each student completes one Texas essential knowledge and skills-based fine arts course in Grade 6, Grade 7, or Grade 8.

(3) A district shall offer and maintain evidence that students have the opportunity to take courses in at least three of the four disciplines in fine arts. The requirement to offer three of the four disciplines in fine arts may be reduced to two by the commissioner of education upon application of a school district with a total middle school enrollment of less than 250 students.

(b) Secondary Grades 9-12.

(1) A school district that offers Grades 9-12 must provide instruction in the required curriculum as specified in §74.1 of this title.

The district must ensure that sufficient time is provided for teachers to teach and for students to learn the subjects in the required curriculum. The school district may provide instruction in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations to support student attainment of course and grade level standards.

(2) The school district must offer the courses listed in this paragraph and maintain evidence that students have the opportunity to take these courses:

(A) English language arts--English I, II, III, and IV and at least one additional advanced English course;

(B) mathematics--Algebra I, Algebra II, Geometry, Precalculus, and Mathematical Models with Applications;

(C) science--Integrated Physics and Chemistry, Biology, Chemistry, Physics, and at least two additional science courses selected from Aquatic Science, Astronomy, Earth and Space Science, Environmental Systems, Advanced Animal Science, Advanced Biotechnology, Advanced Plant and Soil Science, Anatomy and Physiology, Engineering Design and Problem Solving, Food Science, Forensic Science, Medical Microbiology, Pathophysiology, Scientific Research and Design, and Engineering Science. The requirement to offer two additional courses may be reduced to one by the commissioner of education upon application of a school district with a total high school enrollment of less than 500 students. Science courses shall include at least 40% hands-on laboratory investigations and field work using appropriate scientific inquiry;

(D) social studies--United States History Studies Since 1877, World History Studies, United States Government, World Geography Studies, Personal Financial Literacy, and Economics with Emphasis on the Free Enterprise System and Its Benefits;

(E) physical education--at least two courses selected from Foundations of Personal Fitness, Adventure/Outdoor Education, Aerobic Activities, or Team or Individual Sports;

(F) fine arts--courses selected from at least two of the four fine arts areas (art, music, theatre, and dance)--Art I, II, III, IV; Music I, II, III, IV; Theatre I, II, III, IV; or Dance I, II, III, IV;

(G) career and technical education--three or more career and technical education courses for four or more credits with at least one advanced course aligned with a specified number of Texas Education Agency-designated programs of study determined by enrollment as follows:

(i) one program of study for a district with fewer than 500 students enrolled in high school;

(ii) two programs of study for a district with 501-1,000 students enrolled in high school;

(iii) three programs of study for a district with 1,001-2,000 students enrolled in high school;

(iv) four programs of study for a district with 1,001-5,000 students enrolled in high school;

(v) five programs of study for a district with 5,001-10,000 students enrolled in high school; and

(vi) six programs of study for a district with more than 10,000 students enrolled in high school.

(H) languages other than English--Levels I, II, and III or higher of the same language;

(I) computer science--one course selected from Fundamentals of Computer Science, Computer Science I, or Advanced Placement (AP) Computer Science Principles; and

(J) speech--Communication Applications.

(3) Districts may offer additional courses from the complete list of courses approved by the State Board of Education to satisfy graduation requirements as referenced in this chapter.

(4) The school district must provide each student the opportunity to participate in all courses listed in subsection (b)(2) of this section. The district must provide students the opportunity each year to select courses in which they intend to participate from a list that includes all courses required to be offered in subsection (b)(2) of this section. If the school district will not offer the required courses every year, but intends to offer particular courses only every other year, it must notify all enrolled students of that fact. A school district must teach a course that is specifically required for high school graduation at least once in any two consecutive school years. For a subject that has an end-of-course assessment, the district must either teach the course every year or employ options described in Subchapter C of this chapter (relating to Other Provisions) to enable students to earn credit for the course and must maintain evidence that it is employing those options.

(5) For students entering Grade 9 beginning with the 2007-2008 school year, districts must ensure that one or more courses offered in the required curriculum for the recommended and advanced high school programs include a research writing component.

(c) Courses in the foundation and enrichment curriculum in Grades 6-12 must be provided in a manner that allows all grade promotion and high school graduation requirements to be met in a timely manner. Nothing in this chapter shall be construed to require a district to offer a specific course in the foundation and enrichment curriculum except as required by this subsection.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 5, 2020.

TRD-202004129

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: October 25, 2020

Proposal publication date: July 31, 2020

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



CHAPTER 120. OTHER TEXAS ESSENTIAL KNOWLEDGE AND SKILLS

SUBCHAPTER A. CHARACTER TRAITS

19 TAC §§120.1, 120.3, 120.5, 120.7, 120.9

The State Board of Education (SBOE) adopts new §§120.1, 120.3, 120.5, 120.7, and 120.9, concerning other Texas Essential Knowledge and Skills (TEKS). The new sections are adopted without changes to the proposed text as published in the July 31, 2020 issue of the *Texas Register* (45 TexReg 5293) and will not be republished. The new sections add new TEKS for positive character traits for Kindergarten-Grade 12 in accordance with House Bill (HB) 1026, 86th Texas Legislature, 2019.

REASONED JUSTIFICATION: In 2019, the 86th Texas Legislature passed HB 1026, requiring the SBOE to integrate positive character traits into the essential knowledge and skills adopted for Kindergarten-Grade 12, as appropriate. The legislation requires the SBOE to include the following positive character education traits in the standards: courage; trustworthiness, including honesty, reliability, punctuality, and loyalty; integrity; respect and courtesy; responsibility, including accountability, diligence, perseverance, and self-control; fairness, including justice and freedom from prejudice; caring, including kindness, empathy, compassion, consideration, patience, generosity, and charity; good citizenship, including patriotism, concern for the common good and the community, and respect for authority and the law; school pride; and gratitude. The legislation also requires school districts and open-enrollment charter schools to adopt a character education program that includes the required positive character traits.

At the January 2020 SBOE meeting, a discussion item on character traits instruction was presented to the Committee of the Full Board. The committee requested that staff prepare a proposal to add essential knowledge and skills for positive character traits as a new chapter in the Texas Administrative Code.

The new sections implement HB 1026, 86th Texas Legislature, 2019, by establishing TEKS for positive character traits for Kindergarten-Grade 12. The standards address requirements by grade bands, including Kindergarten-Grade 2, Grades 3-5, Grades 6-8, and Grades 9-12. A new section on implementation is included to specify the required frequency of the instruction and how the instruction may be provided. The new sections will be implemented beginning with the 2021-2022 school year.

The SBOE approved the proposed new sections for first reading and filing authorization at its July 2, 2020 meeting and for second reading and final adoption at its September 2, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the new sections for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2021-2022 school year. The earlier effective date will allow districts of innovation that begin school prior to the statutorily required start date to implement the proposed rulemaking when they begin their school year. The effective date is August 1, 2021.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began July 31, 2020, and ended August 31, 2020. The SBOE also provided an opportunity for registered oral and written comments at its September 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. An administrator requested a timeline for when the TEKS for positive character traits will be available.

Response. The SBOE provides the following clarification. The rules as adopted will be effective August 1, 2021, and will be implemented by school districts beginning with the 2021-2022 school year. The adopted TEKS will be available on the Texas Education Agency (TEA) website within a few weeks of the September SBOE meeting.

Comment. An administrator requested guidance on the use of consultants for character education and social and emotional learning. The commenter asked whether vendors not listed on the TEA website may be used and expressed support for the National Educators for Restorative Practices (NEDRP).

Response. This comment is outside the scope of the proposed rulemaking.

Comment. A counselor expressed disagreement with proposed new subsection (a)(3) for Kindergarten-Grade 12, which expects students to develop an awareness of self-identify and recognize multiple perspectives, difference and diversity, biases, and the social and cultural context in which students live. The commenter stated that, although they sound good, the proposed new TEKS for positive character traits should be rejected if subsection (a)(3) is not excluded because it is too broad and open for teachers' viewpoints.

Response. The SBOE disagrees and has determined that the language in introductory subsection (a)(3) was appropriate as proposed.

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §29.906, as amended by House Bill 1026, 86th Texas Legislature, 2019, which requires the SBOE to integrate positive character traits into the essential knowledge and skills adopted for Kindergarten-Grade 12, as appropriate.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4), 28.002(a) and (c), and 29.906.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 5, 2020.

TRD-202004127

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2021

Proposal publication date: July 31, 2020

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



CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL SUBCHAPTER AA. TEACHER APPRAISAL

19 TAC §150.1014, §150.1015

The Texas Education Agency (TEA) adopts new §150.1014 and §150.1015, concerning teacher appraisal. The new sections are adopted without changes to the proposed text as published in the May 15, 2020 issue of the *Texas Register* (45 TexReg 3197) and will not be republished. The adopted new rules implement Texas Education Code (TEC), §21.3521, by establishing rules for teacher designation performance standards and addressing extenuating circumstances arising during the 2019-2020 school year.

REASONED JUSTIFICATION: House Bill 3, 86th Texas Legislature, 2019, added TEC, §21.3521, which establishes a local optional teacher designation system. New §150.1014 and §150.1015 implement the new statute by specifying performance standards for teacher designations and requirements for local optional designation systems to issue designations based on data from previous school years.

Following is a description of new §150.1014 and §150.1015.

§150.1014. Teacher Designation Performance Standards

Adopted new subsection (a) establishes that teacher designations will be determined by meeting teacher appraisal scores assigned using the Texas Teacher Evaluation and Support System (T-TESS) or an equivalent score on a locally developed rubric and student achievement on expected growth targets.

Adopted new subsection (b) specifies the standards for the recognized, exemplary, and master designation levels based on the teacher observation and student growth components established in T-TESS.

Adopted new §150.1014 complements provisions found in §150.1012, Local Optional Teacher Designation System, which became effective July 21, 2020.

§150.1015. Local Optional Teacher Designation System Extenuating Circumstances

Adopted new subsections (a) and (b) establish the requirements and limitation for local optional teacher designation systems to issue designations based on data from previous school years in light of extenuating circumstances arising from the COVID-19 pandemic.

Adopted new subsection (c) establishes July 31, 2021, as the expiration date of this section.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 15, 2020, and ended June 15, 2020. Following is a summary of public comments received and corresponding agency responses.

Comment: The Texas Classroom Teachers Association (TCTA) expressed concern that the term "expected growth" was not defined in proposed new §150.1014.

Response: The agency disagrees with defining the term in rule. There are multiple ways to measure expected growth, depending on the chosen student growth measure and, therefore, one definition would not apply.

Comment: TCTA expressed concern that the proposed student growth performance standards in §150.1014(b)(1)-(3) could not be applied to other student growth measures.

Response: The agency disagrees. The student growth performance standards can apply to multiple student growth measures.

Comment: TCTA expressed concern about proposed §150.1015(a)(1)(B) and (2)(B), stating that mid-year growth was not a valid method of measuring teacher effectiveness in an interrupted school year.

Response: The agency disagrees. The rule complies with the requirements found in the authorizing statute (TEC, §21.3521(a)).

Comment: Good Reason Houston commented that additional rules should be added to proposed §150.1014 to outline the requirements for a valid and reliable student growth measure.

Response: The agency disagrees. The rule references §150.1012(c)(2)(A)(ii), which outlines the requirements for student growth measures.

Comment: Good Reason Houston recommended additional clarity around proposed §150.1015(a)(2) and how districts could move from provisional to regular status.

Response: The agency provides the following clarification. To move from provisional to regular status, a school district will need to reapply and meet the requirements in §150.1012(c).

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §21.3521, as added by House Bill 3, 86th Texas Legislature, 2019, which specifies that the commissioner: (1) shall establish performance standards; (2) shall ensure that local optional teacher designation systems meet the statutory requirements for the system; (3) shall prioritize high needs campuses; (4) shall enter into a memorandum of understanding with Texas Tech University regarding assessment of local iterations of the local optional teacher designation system; (5) shall periodically conduct evaluations of the effectiveness of the local optional teacher designation system; (6) may adopt fees to implement the local optional teacher designation system; and (7) may adopt rules to implement the local optional teacher designation system.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §21.3521, as added by House Bill 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 September 30, 2020.

TRD-202004073

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: October 20, 2020

Proposal publication date: May 15, 2020

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



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

The Commissioner of Insurance adopts amended §§5.4603, 5.4604, 5.4609, 5.4640, and 5.4642; and repeals §5.4606 and replaces it with new §5.4606. These sections concern the process for certifying that structures comply with windstorm building codes for both ongoing and completed improvements. The adopted rules will apply to applications for certificates of compliance submitted on or after the effective date of the rules. The adopted rules are necessary to implement Senate Bill 615 and House Bill 1900, 86th Legislature, Regular Session (2019), and important to maintain uniformity within the Texas Department of Insurance's (TDI's) regulations.

TDI repeals §5.4606 and adopts §§5.4603, 5.4609, and 5.4642 without changes to the proposed text as published in the June 19, 2020, issue of the *Texas Register* (45 TexReg 4150). TDI adopts §§5.4604, new 5.4606, and 5.4640 with changes made in response to public comments. These changes, which are identified below, do not add new requirements, and do not affect additional stakeholders.

REASONED JUSTIFICATION. Amendments to §§5.4603, 5.4604, 5.4609, 5.4640, and 5.4642, and the repeal of the previous §5.4606 and adoption of new §5.4606 are necessary to implement SB 615 and HB 1900, which amended Insurance Code §2210.251 and §2210.2515. TDI must fulfill its new statutory charge, effective June 1, 2020, to regulate the application process for certificates of compliance for completed improvements. While the application process for certificates of compliance for completed improvements moved from the Texas Windstorm Insurance Association (TWIA) to TDI effective June 1, 2020, the adopted rules will apply to applications for certificates of compliance submitted on or after the effective date of the rules.

SB 615 and HB 1900, 86th Legislature. SB 615 and HB 1900 amend Insurance Code §2210.251 and §2210.2515. These amendments require TDI to regulate the application process for certificates of compliance for completed improvements and provide additional disciplinary authority and remedies for TDI to use to address noncompliant applications or structures.

Insurance Code §2210.251 and §2210.2515 govern certificates of compliance that provide evidence of a structure's insurability by TWIA. In 2015, the Legislature passed HB 2439, 84th Legislature, Regular Session (2015), which divided the certificate of compliance process between TWIA and TDI. As required by HB 2439, TWIA oversaw the certificate of compliance process for completed improvements, while TDI oversaw the certificate of compliance process for ongoing improvements.

Under HB 2439, TWIA was required to issue a certificate of compliance for a completed improvement if it received specific statutorily required affirmations from a Texas-licensed professional engineer and a completed TDI-prescribed form. If TDI denied an application for an ongoing improvement for noncompliance, an applicant could apply to TWIA when the improvement was completed. For completed improvements, neither TDI nor TWIA had authority to inspect or verify the application's accuracy or enforcement authority. While HB 2439 was in effect, TDI received complaints about structures that were certified under TWIA's certificate application process, but that did not meet the required windstorm building code standards.

The Sunset Advisory Commission reviewed TWIA in 2018-2019. Following the review, the Sunset Advisory Commission issued a report examining six issues, including windstorm certificates of compliance. The Sunset Review Commis-

sion's report recommended statutory changes to require that a certificate of compliance for a completed improvement be based on some inspection of the improvement. Texas Sunset Advisory Commission, *Staff Report with Final Results*, 46 (2019), www.sunset.texas.gov/public/uploads/files/reports/Texas%20Winstorm%20Insurance%20Association%20Staff%20Report%20with%20Final%20Results.pdf.

With SB 615 and HB 1900, the Legislature put certificates of compliance for completed improvements under TDI regulation. TDI now has authority to deny applications for and rescind certificates of compliance for completed improvements. The bills also authorize TDI to submit a formal complaint on a licensed engineer to the Texas Board of Professional Engineers and Land Surveyors (TBPELS) related to the engineering work in an application for a completed improvement. SB 615, however, prohibits TDI from prescribing a form that requires an engineer to assume liability for the construction of the improvement.

Under SB 615 and HB 1900, TDI continues to regulate certificates of compliance for ongoing improvements. HB 1900 gives TDI authority to impose reasonable penalties on appointed qualified inspectors (AQIs) for failing to provide complete and accurate information in connection with the inspection of an ongoing improvement. The bill states that these reasonable penalties include prohibiting the inspector from applying for certificates of compliance under Insurance Code §2210.2515.

The following paragraphs explain how the adopted rules implement SB 615 and HB 1900.

Section 5.4603. Windstorm Inspection Forms. Section 5.4603 addresses windstorm inspection forms. Amending §5.4603 is necessary because amended Insurance Code §2210.2515 requires TDI to prescribe forms for applying for a certificate of compliance for a completed improvement. The rule lists what is required to apply for a completed-improvement certification. These requirements are listed on a form that TDI has made available on its website—new Certification Form for Completed Improvement, WPI-2E. The rule also identifies new forms for the completed-improvement process available on TDI's website, such as the new certification form for a completed improvement.

Section 5.4604. Certification Form for Completed Improvement. Section 5.4604 addresses the application process for certificates of compliance for completed improvements. Amending §5.4604 is necessary to describe the new application process for completed improvements, including adding new forms prescribed by TDI as required in amended Insurance Code §2210.2515. The adopted rules also implement TDI's authority to deny an application for a certificate of compliance for a completed improvement and to submit a formal complaint to TBPELS. In addition, the adopted rules include nonsubstantive amendments to improve consistency and readability of TDI's regulations.

Section 5.4604 is adopted with the following changes to the text as proposed. Section 5.4604(a)(2)(C), which included a requirement for the postconstruction evaluation report to contain the engineer's seal, was removed because subsection (a)(2) already references the postconstruction evaluation report as being sealed.

In response to a comment, TDI removed subsection (b)(20) and moved "and" from after subsection (b)(19) to after (b)(18).

In response to another comment, TDI added a clarifying statement in a new subsection (d) that identifies expectations for an application using a sealed design, including clarification that TDI

is authorized to verify an engineer's affirmation under subsection (a)(1) of the section and the sealed design that the engineer relies on for the certification application. This statement further clarifies §5.4606(a)(8), which allows for "[a]ny other documentation or other form of evidence that supports statements made in the application, design, or postconstruction evaluation report submitted to TDI."

Repealed §5.4606. Requirements for Temporary Appointment of Qualified Inspectors. Repealed §5.4606 addressed requirements for temporary appointment of qualified inspectors. TDI has repealed this section because it is no longer needed. TDI implemented requirements for temporary appointment of qualified inspectors in 2006 in response to Hurricane Rita in §5.4606, but the response to Hurricane Rita is complete.

New §5.4606. Supporting Evidence for Sealed Postconstruction Evaluation Report and Design for Certificate of Compliance for Completed Improvement. TDI replaces repealed §5.4606 by adopting a new section that addresses supporting evidence requirements as necessitated by amended Insurance Code §2210.2515. Applicants must submit supporting evidence with an application for a completed-improvement certificate. TDI may request additional supporting evidence as identified in this section.

In response to comment, TDI revised the section heading and added language to the text of the section to further clarify that this list provides examples of supporting evidence an applicant can provide to support a postconstruction evaluation report.

Section 5.4609. Application for Qualified Inspector Appointment. Section 5.4609 addresses the application for a qualified-inspector appointment. As amended, TDI deletes §5.4609(d) and (f). This revision is important, because subsections (d) and (f) no longer apply. The subsections addressed engineers appointed as AQIs as of the effective date of §5.4606 under the previous version of Insurance Code §2210.254(a)(2) (Acts 2005, 79th Leg., Ch. 727, §2, 2005 Tex. Gen. Laws 1941 (amended 2011)).

Section 5.4640. Oversight. Amendments to §5.4640 implement TDI's new oversight authority for completed-improvement-certificate applications and issued certificates. The adopted changes specify that TDI can deny an application, rescind an issued certificate, or report an engineer to TBPELS. In response to comment, changes were made to clarify that TDI can audit, inspect, or both audit and inspect structures for which it has received a Certification Form for Completed Improvement, Form WPI-2E, as well as structures for which TDI has issued a Certificate of Compliance for Completed Improvement (Engineered), Form WPI-8E.

Section 5.4642. Disciplinary Action. Section 5.4642 addresses disciplinary actions that TDI may take. The amendments to §5.4642 describe the penalties TDI is authorized to impose on a person acting as an AQI under Insurance Code §2210.254 who has failed to provide complete and accurate information in connection with an inspection for a certificate of compliance.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received comments from three commenters.

Commenters in support of the proposal with changes: Aran + Franklin Engineering, Inc.; the International Code Council (ICC); and TBPELS.

After the end of the comment period stated in the proposal, TDI also received a written comment from a fourth commenter. Be-

cause the comment was not submitted within the stated comment period, it was not addressed in this order.

Comment on §5.4603

Comment: A commenter noted that there have been issues in the past concerning the details and the scope of items required by a professional engineer engaged in the windstorm process. The commenter also asks that, while not having specific changes to recommend for the new WPI-2E form, TDI allow professional engineers to review the form.

Agency Response: To clarify the details and scope of items required by a professional engineer engaged in the windstorm process, TDI has added subsection (d) to §5.4604. TDI has also added language to further clarify that the list in §5.4606 provides examples of supporting evidence an applicant can provide to support a postconstruction evaluation report.

The form has been available on TDI's website since June 1, 2020. TDI published the proposal with an opportunity to comment, and an engineering firm provided timely comment. The adopted rule requires the same information as identified in the proposed rule. Going forward, TDI welcomes any discussion to facilitate clarity for the application process and expectations for practitioners.

Comments on §5.4604

Comment: A commenter requests that TDI add "and" after §5.4604(a)(2)(A), remove "and" from subparagraph (B), and delete in subparagraph (C) "contains the engineer's seal," because subsection (a)(2) already requires that an engineer seal the postconstruction report.

Agency Response: TDI agrees with this comment and has changed §5.4604(a)(2) as proposed to reflect the commenter's recommended edits.

Comment: A commenter recommends TDI delete §5.4604(b)(20), which requires supporting evidence as identified in §5.4606. The commenter suggests that subsection (b)(20) is redundant because subsection (a)(2) already requires that supporting evidence be submitted with a postconstruction evaluation report. The commenter also suggests that (b)(20), requiring submission of supporting evidence with the application, is inapplicable for sealed design submissions described under (a)(1).

Agency Response: TDI agrees with this comment and has deleted subsection (b)(20) to eliminate redundancy. TDI has also added a clarifying statement in a new subsection (d) that identifies expectations for an application using a sealed design under §5.4604(a)(1), including clarifying that TDI is authorized to verify what an engineer has submitted under subsection (a)(1), including verifying an engineer's affirmation and the sealed design that the engineer relies on for the certification application. Subsection (d) further clarifies §5.4606(a)(8), which refers to "[a]ny other documentation or other form of evidence that supports statements made in the application, design, or postconstruction evaluation report submitted to TDI."

Comments on §5.4606

Comment: A commenter supports the rules but asks that TDI directly accept product evaluation reports developed and published by ICC.

Agency Response: TDI will accept product evaluation reports as supporting evidence as described under §5.4606(a)(1), includ-

ing reports from ICC. However, TDI will not limit the reports to a specific entity.

Comment: A commenter requests that TDI edit the language in §5.4606 to clarify that the supporting evidence list is a guideline and not a requirement. The commenter also requests that TDI work with professional engineers practicing in the field of windstorm certification to determine what is necessary prior to the passage of the rule.

Agency Response: In response to this comment, TDI has added language to clarify that the list in §5.4606 provides examples of supporting evidence an applicant can provide to support a post-construction evaluation report. TDI notes that it did consult professional engineers practicing in the field of windstorm certification to determine what was necessary prior to proposing this rule and that, consistent with Government Code Chapter 2001, TDI also published this rule for comment and held a public hearing to discuss it prior to this adoption.

Comment: A commenter supports the rule but recommends that TDI should not require engineers to submit additional documentation for WPI-2E postconstruction evaluation reports unless TDI requests the documentation as part of an oversight. The commenter recommends that engineers maintain the documentation described as part of their records.

Agency Response: TDI declines to make the requested change, because Texas Insurance Code §2210.2515(c)(2)(B) requires submission of supporting documentation for postconstruction evaluation reports. Subsection (d) of §5.4606 requires engineers to retain the supporting documentation and applicable information for five years from the date of the most recent certification application submitted.

Comment on §5.4640

Comment: A commenter asks TDI to identify what parts of the submitted documentation are considered engineering for purposes of §5.4640(b)(2)(B) and clarify what action TDI may take regarding submitted supporting evidence. The commenter recommends a channel of ongoing communication to confer on this issue.

Agency Response: TDI has added language to clarify that TDI can audit, inspect, or both audit and inspect structures for which it has received a Certification Form for Completed Improvement, Form WPI-2E, as well as structures for which TDI has issued a Certificate of Compliance for Completed Improvement (Engineered), Form WPI-8E.

Because TDI is not authorized to regulate professional engineers, TDI does not have authority to identify what acts constitute engineering and what acts do not. TDI adopted the current language of Texas Insurance Code §2210.2515(i), which states that TDI may only refer an engineer to TBPELS for engineering work as reflected in the sealed postconstruction evaluation report or other materials submitted by an engineer. TDI welcomes ongoing communication with TBPELS.

28 TAC §§5.4603, 5.4604, 5.4606, 5.4609, 5.4640, 5.4642

STATUTORY AUTHORITY. The Commissioner adopts amendments to 28 TAC §§5.4603, 5.4604, 5.4609, 5.4640, 5.4642, and new §5.4606 under Insurance Code §§2210.251, 2210.2515, and 36.001.

Insurance Code §2210.251 provides that TDI's issuance of a certificate of compliance demonstrates compliance with the applicable building code under the TWIA plan of operation.

Insurance Code §2210.2515 provides that TDI oversees the certification-of-compliance application process for both ongoing and completed improvements and authorizes the Commissioner to adopt rules as necessary to impose reasonable penalties on qualified inspectors that fail to provide complete and accurate information in connection with an inspection for a certificate of compliance and rescind certificates of compliance.

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.

§5.4604. Certification Form for Completed Improvement.

(a) Persons must submit the following information when applying to TDI for a certificate of compliance for a completed improvement on a structure:

(1) a statement from a professional engineer licensed by the Texas Board of Professional Engineer and Land Surveyors that affirms that the engineer has:

(A) designed the improvement;

(B) affixed the engineer's seal on the design; and

(C) affirmed the design complies with the applicable building code under the plan of operation, and that the improvement was constructed in accordance with the design; or

(2) a sealed postconstruction evaluation report completed and submitted by a professional engineer licensed by the Texas Board of Professional Engineer and Land Surveyors that:

(A) confirms the improvement's compliance with the applicable building code under the plan of operation; and

(B) includes supporting evidence such as that identified in §5.4606 of this title (relating to Supporting Evidence for Sealed Postconstruction Evaluation Report for Certificate of Compliance for Completed Improvement) for the engineer's postconstruction evaluation report.

(b) The following information must also be provided:

(1) the physical address (including street, street number, city, county, and ZIP code);

(2) whether the original transfer of title from the builder to the initial owner of the improvement has occurred or is expected to occur in the future;

(3) whether the improvement is substantially completed;

(4) the wind zone location;

(5) whether the structure is in a Coastal Barrier Resource System Unit;

(6) the property owner's name and contact information, or the name and contact information of the builder or contractor that made the completed improvement;

(7) the name and contact information of the engineer certifying the completed improvement;

(8) the date construction of the completed improvement began;

(9) the date of application for the certificate of compliance for the completed improvement;

(10) the name of the person submitting the application for the certificate of compliance for the completed improvement;

(11) the type of structure to which the completed improvement was made, including the structure's name or number and number of units, if applicable;

(12) the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(13) the building code standard and applicable wind load standard under which the completed improvement was designed or inspected;

(14) the wind-speed conditions that the completed improvement is designed to withstand;

(15) the importance factor or risk category of the structure;

(16) the exposure category of the structure;

(17) information on the protection of exterior openings from windborne debris;

(18) the dates the completed improvement was inspected; and

(19) the signature and Texas Board of Professional Engineers and Land Surveyors registration number of the engineer certifying the completed improvement.

(c) TDI will make available the Certification Form for Completed Improvement, Form WPI-2E on which the information in subsections (a) and (b) of this section may be provided.

(d) If an applicant applies using a sealed design, an engineer must maintain the evidence supporting that design, such as information listed in §5.4606(a)(8) of this title and §5.4623 of this title (relating to Information Required to Inspect Design Documents). TDI may request to view the sealed design and supporting documents, as applicable, to verify that there is a sealed design, designed by the engineer, and to verify the engineer's affirmation that the design complies with the applicable building code under the plan of operation and the improvement was constructed in accordance with the design.

§5.4606. Supporting Evidence for Sealed Postconstruction Evaluation Report and Design for Certificate of Compliance for Completed Improvement.

(a) "Supporting evidence" includes:

(1) Product evaluations;

(2) Installation instructions from the manufacturer for the product;

(3) Test data;

(4) Written evidence from inspections--for example, an inspection report;

(5) Photographs;

(6) Video recording;

(7) Plans, either as-built plans (plans that demonstrate compliance with the applicable building code for the design of the structure), design drawings, shop drawings, or sketches; or

(8) Any other documentation or other form of evidence that supports statements made in the application, design, or postconstruction evaluation report submitted to TDI, as applicable.

(b) To verify that an engineer's postconstruction evaluation report confirms the completed improvement's compliance with the applicable building code under the plan of operation, as required under §5.4604 of this title (relating to Certification Form for Completed Improvement), it must include supporting evidence. TDI may also request

supporting evidence, as applicable, to verify an engineer's application, sealed design, or affirmation under §5.4604(a). The supporting evidence may include the following, as related to the part of the structure being certified:

(1) Roof covering certifications.

(A) Supporting evidence identifying all products and components included in the scope of the certification, including roof covering, fasteners, underlayment, roof deck, roof vents, skylights, and all other parts of the roof-covering assembly.

(B) Manufacturer's installation instructions, product evaluation reports, or test laboratory reports, and code-required installation requirements for all components included in the scope of certification (for example, see subparagraph (A) of this paragraph).

(C) Supporting evidence that the components of the installed building products meet or exceed the code-required design pressures.

(D) Supporting evidence verifying that the roof covering, roof vents, and skylights are installed according to the manufacturer installation instructions, product test reports, and specifications in the applicable windstorm building code.

(E) Applicable information listed in §5.4626 of this title (relating to Substantiating Information).

(2) Building product certifications.

(A) Supporting evidence identifying all products included in the scope of the certification, including windows, side-hinged doors, sliding doors, overhead doors (sectional or rolling), exterior wall coverings, and other applicable building products.

(B) Manufacturer's installation instructions; product evaluation, reports, or test laboratory reports; product certifications; and code-required installation requirements for the building products included in the scope of the certification.

(C) Supporting evidence verifying that design-pressure ratings for all building products meet or exceed the required design pressures as specified in the applicable windstorm building code for the installation.

(D) Supporting evidence verifying that the building products that are required by the applicable windstorm building code were certified by a certification agency, such as the Window and Door Manufacturers Association or the American Architectural Manufacturers Association; are properly labeled; and have valid certifications.

(E) Supporting evidence recording all information on certification labels and verifying that the product test pressure exceeds code-required design pressure, and that building products are within the maximum size tested on each label and are installed exactly as tested.

(F) Supporting evidence specifying the minimum design pressures required by the applicable windstorm building code.

(G) Applicable information listed in §5.4626 of this title.

(H) Where the applicable windstorm building code requires windborne debris protection, supporting evidence either verifying the product is impact-resistant or protected with a windborne debris protection system. Where the applicable code requires windborne debris protection, the protection must be installed according to manufacturers' instructions and product test reports.

(3) Entire new building, existing building, or a new addition to an existing structure.

(A) Supporting evidence verifying complete load path as specified by the applicable windstorm building code, including connections between roof, walls, floor, and foundation.

(B) Supporting evidence verifying roof coverings as specified under paragraph (1) of this subsection.

(C) Supporting evidence verifying building products as specified under paragraph (2) of this subsection.

(D) Building plans, such as structural drawings from the engineer of record or as-built plans that demonstrate compliance with the applicable windstorm building code. The plans must show items such as lateral resisting elements, wall framing, roof framing, floor framing, and other pertinent elements of the structure that are included in the scope of work for the certification.

(E) Supporting evidence verifying the foundation system, such as existing plans or as-built plans. The plans must show the location of anchors, ties, or straps; pile locations; or other pertinent elements of the structural system that are included in the scope of work for the certification.

(F) For additions, supporting evidence verifying whether the addition is attached or detached from main structure. If the addition is attached, the supporting evidence must specify the load on the existing structure, the load imposed by the addition on the existing structure, and if the existing structure and the connection will satisfy the combined loading. Attached additions rely on the existing structure for stability and strength. Detached additions are independent of the existing structure. Supporting evidence must also verify load path from addition to existing structure, if applicable.

(G) Applicable information listed in §5.4626 of this title.

(c) Failure to provide the documents requested by TDI could result in a denial of a Certificate of Compliance for Completed Improvement (Engineered), Form WPI-8E, or other action taken by TDI as stated in §5.4640 of this title (relating to Oversight) or §5.4642 of this title (relating to Disciplinary Action).

(d) For each component inspected, including roof, window, door, garage door, or exterior cladding, the engineer listed on the certificate of compliance for completed improvement must retain the supporting evidence and applicable information described in this section for that component for five years from the date of the most recent certification application submitted on the structure.

§5.4640. Oversight.

(a) Inspection oversight. An appointed qualified inspector is subject to TDI's regulatory authority, which includes oversight inspections conducted by TDI. TDI oversees all aspects of the inspection and notification of compliance of ongoing improvements by an appointed qualified inspector under Insurance Code Chapter 2210 and this chapter.

(b) Certificate of compliance oversight.

(1) Ongoing Improvements. As part of TDI's oversight, TDI may audit the inspections on structures for which it has received an Application for Windstorm Inspection Certificate of Compliance, Form WPI-1, or an Inspection Verification, Form WPI-2, including structures for which TDI has issued a Certificate of Compliance, Form WPI-8. If TDI determines that a structure does not meet the windstorm building code standards, TDI will not issue a Form WPI-8; or if TDI has issued a Form WPI-8 on a structure that is subsequently found not to be in compliance with the windstorm building code standards, TDI may rescind the Form WPI-8.

(2) Completed Improvements.

(A) TDI may deny an application for certificate of compliance if the postconstruction evaluation report or Certification Form for Completed Improvement, Form WPI-2E, is not fully documented as required under §5.4604 of this title (relating to Certification Form for Completed Improvement) or §5.4606 of this title (relating to Supporting Evidence for Sealed Postconstruction Evaluation Report for Certificate of Compliance for Completed Improvement). TDI may audit, inspect, or both audit and inspect structures for which it has received a Certification Form for Completed Improvement, Form WPI-2E.

(B) TDI may submit a formal complaint to the Texas Board of Professional Engineers and Land Surveyors related to the engineering work of a professional engineer, as reflected in the sealed postconstruction evaluation report or other materials submitted by an engineer under §5.4604 and §5.4606 of this title.

(C) TDI may rescind a Certificate of Compliance for Completed Improvement (Engineered), Form WPI-8E, if TDI finds that the improvement does not comply with the applicable building code under the plan of operation. TDI may audit, inspect, or both audit and inspect structures for which TDI has issued a Certificate of Compliance for Completed Improvement (Engineered), Form WPI-8E.

(c) Types of oversight audits. TDI may conduct an oversight audit of an appointed qualified inspector by any one, or a combination, of the following methods:

(1) TDI may conduct an audit of an appointed qualified inspector based on documents and other information submitted to TDI; or

(2) TDI may conduct an on-site audit at the appointed qualified inspector's place of employment or ongoing improvement for which TDI has received a Form WPI-1 or a Form WPI-2.

(d) Notification of audits.

(1) In all audits in which TDI asks the appointed qualified inspector to bring substantiating information to the audit, TDI will expect the audit to take place no less than 15 days after the appointed qualified inspectors receives notice of the audit.

(2) The appointed qualified inspector may request a shorter time frame if a notice period in this subsection would cause a delay in the construction schedule.

(e) Information for oversight audits. In the process of conducting an oversight audit, TDI may require the appointed qualified inspector to provide:

(1) documentation described in §5.4626 of this title (relating to Substantiating Information); and

(2) any other information maintained by the appointed qualified inspector that will demonstrate that the ongoing improvement complies with the appropriate windstorm building code standards, and that the ongoing improvement is eligible for association insurance.

(f) Burden of verification. For oversight audits, the appointed qualified inspector bears the burden of verifying, under §5.4622 of this title (relating to Inspection Verification), that the ongoing improvement complies with the wind load requirements of the applicable building code.

(g) Requirement to provide information. The appointed qualified inspector must provide information related to an audit in the same manner and time frame as required in §5.4615(5) of this title (relating to General Responsibilities of Appointed Qualified Inspectors). Failure to provide the information requested by TDI under this section may

result in the nonissuance or rescission of a Certificate of Compliance, Form WPI-8 for the ongoing improvement, and the appointed qualified inspector may be subject to disciplinary action by TDI, as described in §5.4642 of this title (relating to Disciplinary Action).

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 September 29, 2020.

TRD-202004047

James Person

General Counsel

Texas Department of Insurance

Effective date: October 19, 2020

Proposal publication date: June 19, 2020

For further information, please call: (512) 676-6584



28 TAC §5.4606

STATUTORY AUTHORITY. The Commissioner repeals 28 TAC §5.4606 under Insurance Code §2210.008(b) and §36.001.

Insurance Code §2210.008(b) authorizes the Commissioner to adopt rules as reasonable and necessary to implement Insurance Code Chapter 2210.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 29, 2020.

TRD-202004046

James Person

General Counsel

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Effective date: October 19, 2020

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 365. RURAL WATER ASSISTANCE FUND

SUBCHAPTER C. CLOSING AND RELEASE OF FUNDS

31 TAC §365.41

The Texas Water Development Board (TWDB) adopts an amendment to 31 Texas Administrative Code (TAC) §365.41, regarding Loan Closing for the Rural Water Assistance Fund (RWAFF) program. The proposal is adopted with changes to the text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5845) and will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

TWDB presently has outstanding loans in the RWAFF program for which we receive payments directly from borrowers, rather than through paying agents. In accordance with current TAC §365.41, these borrowers may remit their payments only by wire transfer. Many RWAFF loans require monthly payments, and wire transfers can cost the borrower \$30 or more per transaction for the life of the loan. The adopted rule expands allowable payments forms, including allowing Automated Clearing House (ACH) payments. The adopted rules will save time and reduce costs to TWDB borrowers and improve TWDB's administrative processes.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Section 365.41(a)(2)(J) is amended to add the words "or in a manner acceptable to the Executive Administrator."

All other wording in the rule remains unchanged.

REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or 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 intent of the rulemaking is to reduce the administrative burden for local governments that are the recipients of TWDB financial assistance.

Even if the adopted rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies 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. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather §15.995. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The board evaluated this adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to reduce the administrative burden and processing costs for the remittance of loan repayments to the TWDB. The adopted rule would substantially advance this stated purpose by providing more repayment options to TWDB borrowers

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers the Rural Water Assistance Fund.

Nevertheless, the board further evaluated this adopted rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule reduces the administrative burden and processing costs for the remittance of loan repayments to the TWDB. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS

The comment period ended on September 21, 2020, no comments were received, and no changes were made.

STATUTORY AUTHORITY

The amendment is adopted under the authority of §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §15.995.

This rulemaking affects Water Code, Chapter 15, Subchapter R.

§365.41. *Loan Closing.*

(a) Instruments needed for closing. The documents which shall be required at the time of closing shall include the following:

(1) if not closing under the pre-design funding option, evidence that requirements and regulations of all identified local, state and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;

(2) a certified copy of the bond ordinance, order or resolution adopted by the governing body authorizing the issuance of debt to be sold to the board, or an executed promissory note and loan agreement, that is acceptable to the executive administrator and which shall have sections providing as follows:

(A) if loan proceeds are to be deposited into an escrow account, at the closing on all or a portion of the loan or grant, then an escrow account shall be created that shall be separate from all other accounts and funds, as follows:

(i) the account shall be maintained by an escrow agent as defined in §363.2 of this title (relating to Definitions of Terms);

(ii) funds shall not be released from the escrow account without written approval by the executive administrator;

(iii) upon request of the executive administrator, the escrow account statements shall be provided to the executive administrator;

(iv) the investment of any loan or grant proceeds deposited into an escrow account shall be handled in a manner that complies with the Public Funds Investment Act, Texas Government Code, Chapter 2256; and

(v) the escrow account shall be adequately collateralized in a manner sufficient to protect the board's interest in the project and that complies with the Public Funds Collateral Act, Texas Government Code, Chapter 2257;

(B) that a construction account shall be created which shall be separate from all other accounts and funds of the applicant;

(C) that a final accounting be made to the board of the total sources and authorized use of project funds within 60 days of the completion of the project and that any surplus loan funds be used in a manner as approved by the executive administrator;

(D) that an annual audit of the rural political subdivision, prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant be provided annually to the executive administrator;

(E) that the rural political subdivision shall fix and maintain rates and collect charges to provide adequate operation, maintenance and insurance coverage on the project in an amount sufficient to protect the board's interest;

(F) that the rural political subdivision shall document the adoption and implementation of an approved water conservation program for the duration of the loan;

(G) that the rural political subdivision shall maintain current, accurate and complete records and accounts in accordance with generally accepted accounting principles necessary to demonstrate compliance with financial assistance related legal and contractual provisions;

(H) that the rural political subdivision covenants to abide by the board's rules and relevant statutes, including the Texas Water Code, Chapters 15 and 17;

(I) that the rural political subdivision or an obligated person for whom financial or operating data is presented, will undertake, either individually or in combination with other issuers of the rural political subdivision's obligations or obligated persons, in a written agreement or contract to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the board were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the board and the beneficial owner of the rural political subdivision's obligations, if the board sells or otherwise transfers such obligations, and the beneficial owners of the board's obligations if the rural political subdivision is an obligated person with respect to such obligations under rule 15c2-12;

(J) that all payments shall be made to the board via wire transfer or in a manner acceptable to the Executive Administrator at no cost to the board;

(K) that the partial redemption of bonds or other authorized securities be made in inverse order of maturity;

(L) that insurance coverage be obtained and maintained in an amount sufficient to protect the board's interest in the project;

(M) that the rural political subdivision shall establish a dedicated source of revenue for repayment; and

(N) any other recitals mandated by the executive administrator;

(3) evidence that the rural political subdivision has adopted a water conservation program in accordance with §363.15 of this title (relating to Required Water Conservation Plan);

(4) an unqualified approving opinions of the attorney general of Texas and a certification from the comptroller of public accounts that such debt has been registered in that office;

(5) if obligations are issued, an unqualified approving opinion by a recognized bond attorney acceptable to the executive administrator, or if a promissory note and loan agreement is used, an opinion from the corporation's attorney which is acceptable to the executive administrator;

(6) executed escrow agreement entered into by the entity and an escrow agent satisfactory to the executive administrator, in the event that funds are escrowed, or a certificate of trust as defined in §363.2 of this title, if applicable; and

(7) other or additional data and information, if deemed necessary by the executive administrator.

(b) Certified transcript. At such time as available following the final release of funds the rural political subdivision shall submit a transcript of proceedings relating to the debt purchased by the board which shall contain those instruments normally furnished a purchaser of debt.

(c) Additional closing requirements for bonds. A rural political subdivision shall be required to comply with the following closing requirements if the applicant issues obligations that are purchased by the board:

(1) all bonds shall be closed in book-entry-only form;

(2) the rural political subdivision shall use a paying agent/registrar that is a depository trust company (DTC) participant;

(3) the rural political subdivision shall be responsible for paying all DTC closing fees assessed to the rural political subdivision by the board's custodian bank directly to the board's custodian bank;

(4) the rural political subdivision shall provide evidence to the board that one fully registered bond has been sent to the DTC or to the rural political subdivision's paying agent/registrar prior to closing; and

(5) the rural political subdivision shall provide a private placement memorandum containing a detailed description of the issuance of debt to be sold to the board that is acceptable to the executive administrator.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 5, 2020.

TRD-202004135

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: October 25, 2020

Proposal publication date: August 21, 2020

For further information, please call: (512) 463-7686

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER F. LIMITATION ON APPRAISED VALUE ON CERTAIN QUALIFIED PROPERTIES

34 TAC §§9.1052, 9.1053, 9.1055

The Comptroller of Public Accounts adopts amendments to §9.1052, concerning forms, §9.1053, concerning entity requesting agreement to limit appraised value, and §9.1055, concerning comptroller application review and agreement to limit appraised value, without changes to the proposed text as published in the August 28, 2020, issue of the *Texas Register* (45 TexReg 6043). The rules will not be republished.

The amendments to §9.1052 adopts changes to Form 50-296A, Application for Appraised Value Limitation on Qualified Property; Form 50-826, Texas Economic Development Act Agreement; and Form 50-825, Job Creation Compliance Report. Copies of these forms with changes are available on the comptroller's website at <https://comptroller.texas.gov/economy/local/ch313/forms.php>.

Form 50-296A, Application for Appraised Value Limitation on Qualified Property, requires submission of a hard copy and an electronic copy of the completed form to the comptroller. To move toward paperless submissions, Form 50-296A removes the requirement to submit a hard copy. As a part of this transition to only electronic submissions, §9.1053 is also modified accordingly. Specifically, the amendment to §9.1053 updates the language in subsection (a)(2) by incorporating the requirements in paragraphs (A) and (B) to submit a completed application and supporting documents but in an electronic format. In doing so, subsections (a)(2)(A) and (B) are no longer necessary and are, therefore, deleted.

Other changes are adopted to cleanup and clarify Form 50-296A. The instructions are updated as follows: "within seven days to the Comptroller of Public Accounts" is replaced with "within seven days to the Texas Comptroller of Public Accounts"; "original hard copy of the completed application to the Comptroller, as indicated on page 9 of this application, separating each section of the documents in addition to an electronic copy." is replaced with "completed application to the Comptroller, separating each section of the documents."; "Comptroller rule" is replaced with "Comptroller's rule"; "project, issue" is replaced with "project and issue"; "and prepare an economic impact evaluation" is deleted and "complete)," is replaced with "complete by the Comptroller)". Additional cleanup changes to the form include: question 5 of Section 1, which is no longer necessary, is deleted; "at time of" is replaced with "at the same time" in question 1 of Section 3; "List the" is deleted from questions 2 and 5 of Section 4; Section 5 is modified by deleting "Identify" from question 1, inserting "the most recently" to question 2a, and deleting "List the" from questions 2b and 2c; "(MM/DD/YYYY)" is replaced with "(YYYY)" in question 4 of Section 9; "Identify" is

deleted from questions 1 and 2 of Section 10 and the first letter of "county" is capitalized in question 10; Section 12 is updated by replacing "RZ" with "reinvestment zone" in question 1c and formatting the note below question 1d; "question 1)" phrase is replaced with "statement 1)" and "question 2)" phrase is replaced with "statement 2)" in Section 13; Section 14 is revised by deleting "and TAC 9.1051(b)(1)" from question 3, replacing "TWC" with "Texas Workforce Commission" in question 4 and deleting the phrase "from the four quarterly periods for which data were available" from question 4; question 2 of Section 15 is modified by replacing "supplied by other than the Comptroller's Office" with "supplied by an entity other than the Comptroller's office."; and "Pages of the application..." sentence is deleted from the first row of the "Application Tab Order For Requested Attachments" table.

The change to Form 50-826, Texas Economic Development Act Agreement, corrects a typographical error in Section 9.4A whereby the phrase "Section 7.2" is replaced with "Section 7.1." Another change updates the date in the footer of every page.

A few changes to Form 50-825, Job Creation Compliance Report, which is a pdf form on the comptroller's website. These changes include: the year in the title of the form; new instructions to clarify who should complete the form and what qualifying job information should be reported if a report was submitted in the previous year; the form submission deadline; an update to the "Report Prepared by" question whereby both the preparer's name and the company's name are required; a new field requesting the preparer's phone and email address for any inquiries. Other changes to Form 50-825 are: question 1 is replaced with "Date application determined complete by Comptroller's Office" in Section 1; a field for Texas taxpayer identification number of the agreement holder becomes the new question 2 as the audit division uses this information in its review; the other questions are renumbered accordingly; the old question 6 relating to listing other applicants and describing their relationships is deleted as extraneous information; "employee" is replaced with "authorized representative" in question 2 of Section 2, to allow individuals with legal capacity to act on behalf of the company; question 3 under Section 2 is revised by adding "and relevant dates of amendment to agreements" to track the chain of project amendments; new questions 4 and 5 are added to Section 2 requesting the name of any third party or contractor staffing the project along with their authorized representative that can verify the jobs; and the note on social security numbers under question 2 of Section 2 is repeated below new question 5 as it applies to the authorize representative of the third party or contractor staffing.

The creation of qualifying jobs section of Form 50-825, (i.e. Section 3) is amended as follows: question 1 is updated with "(See Schedule C filed with the application)" to assist with answering the question; question 2 along with parts a, b and c are deleted as extraneous information and a new question 2 requesting the number of new qualifying jobs on the qualified property created in the year covered by the report is added; question 3 is reworded to request verification documentation for those relying on a job waiver; the word "two" is replaced with "2" in question 4a along with deleting the comma and correcting the misspelling of "designated"; questions 6 and 6a relating to the minimum requirements set out in Section 313.021(3) are deleted for clarification purposes; the questions thereafter are renumbered; renumbered question 6 is modified by replacing "from one area" with "in one area" for grammatical correctness and parts a and b are added

to obtain and identifying the number of jobs transferred from facilities; renumbered question 7 is updated to reference the applicable statute and parts 7a and 7b are added to obtain and identify the number of replacement jobs; questions 9 and 9b are reworded for simplification purposes to obtain the annual wage committed to pay in the application; and statements relating to the applicable statutes on qualifying jobs and the comptroller's role are included on page 3 following renumbered question 9.

The table on page 4 of the Form 50-825 is amended for efficiency and clarification as follows: two columns labeled new and old are created under the "Job #" heading to easily identify old and new jobs; the "Employee Name" column is replaced with two columns labeled "Employee Name (of Agreement Holder) First Initial and last name only" column and "Employee Name (of Contractor) First initial and last name only" to distinguish the agreement holder and contractor employees; the first note under the table is replaced with instructions for first-time filers to complete the table; the second note is replaced with instructions for repeat filers to complete the table; the third note is replaced with "See TAC §9.1051(21) for the definition of average weekly wage for manufacturing" and a fourth note is inserted providing "The agreement holder is responsible for providing sufficient documentation that will verify each job meets qualifying jobs requirements." The certification statement is cleaned up and modernized by replacing it with "After this form 50-825 (including any other requested information) is completed it must be reviewed and certified by the agreement holder, or a designee authorized to act on behalf of the agreement holder. By signing below, I certify under penalty of perjury that I am authorized to execute this instrument and the information provided herein is true and correct to the best of my knowledge and belief." The statement below the signature block is updated to eliminate the hard copy submission requirement. The Excel spreadsheet version of the table reflects these changes along with correcting the misspelling of compliance in the title.

One of the amendments to §9.1055 updates the language in subsection (b)(3) to include the requirement in paragraph (A) and to insert "the Texas Education Agency" as another notice recipient in lieu of sending it a copy of the completed application. In this regard, subsections (b)(3)(A) and (B) are deleted. Another amendment modifies subsection (c)(1)(A) to remove "by certified mail return receipt requested," which provides the comptroller with the flexibility to send determinations on ineligible properties by quicker means.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Tax Code, §313.031, which authorizes the comptroller to adopt rules necessary for the implementation and administration of Tax Code, Chapter 313.

The amendments implement Tax Code, Chapter 313.

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 September 30, 2020.

TRD-202004058

Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
Effective date: October 20, 2020
Proposal publication date: August 28, 2020
For further information, please call: (512) 475-0387



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 211. CRIMINAL HISTORY OFFENSE AND ACTION ON LICENSE

SUBCHAPTER A. CRIMINAL OFFENSE AND ACTION ON LICENSE

43 TAC §§211.1 - 211.5

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts new 43 TAC §§211.1 - 211.5, concerning the review of criminal offenses and their effect on a license. The new sections implement licensing requirements in Occupations Code Chapters 53, 2301, and 2302, and Transportation Code Chapter 503, including amendments in House Bill (HB) 1342, 86th Legislature, Regular Session (2019); Senate Bill (SB) 604, 86th Legislature, Regular Session (2019); and SB 1217, 86th Legislature, Regular Session (2019). The department adopts §§211.1 - 211.5 to be effective October 31, 2020.

The department adopts new §211.5 without changes to the proposed text as published in the June 26, 2020, issue of the *Texas Register* (45 TexReg 4298) and in the Notice of Correction published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4840). This section will not be republished. The department adopts new §§211.1 - §211.4 with changes to the proposed text as published in the June 26, 2020, issue of the *Texas Register* (45 TexReg 4298) and in the Notice of Correction published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4840). These sections will be republished.

In conjunction with this proposal, the department has adopted amendments to §215.89 and §221.15, §221.19, §221.111, and §221.112, and the repeal of §215.88, §221.113, and §221.114, concerning licenses under Occupations Code Chapter 2301 and Chapter 2302 and Transportation Code Chapter 503 in this issue of the *Texas Register*.

EXPLANATION. Occupations Code Chapter 53 and §2301.651, §2302.104 and §2302.108, and Transportation Code §503.034 and §503.038 authorize the department and its board to act on an application for a license, or on a license, when a person has committed a criminal offense. New Chapter 211 creates a unified process to promote consistency, efficiency, and predictability in board and department decisions concerning the effect of a criminal offense on licensure and implements the Sunset Advisory Commission's Management Action 4.6, as stated in the Sunset Staff Report with Commission Decisions, 2018-2019, 86th Legislature (2019). The Sunset report directed the department to adopt criminal history evaluation rules consistent with Occupations Code Chapter 53, for salvage industry regulation.

The new sections allow the department to maintain fitness standards related to license holders with prior criminal convictions while implementing the legislature's stated statutory intent in Occupations Code §53.003 to enhance opportunities for a person to obtain gainful employment after the person has been convicted and discharged the sentence for the offense. The department has changed in this adoption the term "licensee" to "license holder" to be consistent with current department practice.

The department must follow the requirements of Occupations Code Chapter 53 in evaluating whether a person's past criminal history can be considered in evaluating the person's fitness for licensing. Occupations Code §53.021 provides that a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (1) an offense that directly relates to the duties and responsibilities of the licensed occupation; (2) an offense listed in Article 42A.054, Code of Criminal Procedure; or (3) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure. An offense's inclusion in Occupations Code §53.021(a)(2) and (3) applies to all license applications. It is the department's duty to determine those offenses that directly relate to the duties and responsibilities of a particular licensed occupation.

Based on a comment received concerning proposed amendments to 43 TAC §215.89, the department considers it necessary to clarify that what is considered to be a conviction results from Occupations Code §53.021(d). Occupations Code §53.021(d) provides that a licensing authority may consider a person to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the person was discharged as described in Occupations Code §53.021(c), which is referred to in the proposal as a "deemed" conviction. To clarify this reference, §211.2(b) has been changed to substitute the word "considered" for "deemed" and add "(d)" after §53.021. The change does not affect persons not on notice of the proposal or add additional costs.

Occupations Code §53.022 sets out criteria for consideration in determining whether an offense directly relates to the duties and responsibilities of the licensed occupation. Based on those criteria, the department has determined that certain offenses directly relate to the duties and responsibilities of the licensed occupations. However, conviction of an offense that directly relates to the duties and responsibilities of the licensed occupations or is listed in Occupations Code §53.021(a)(2) and (3) is not an automatic bar to licensing. The department must consider the factors listed under Occupations Code §53.023 in making its fitness determination. The factors include, among other things, the person's age when the crime was committed, rehabilitative efforts, and overall criminal history.

New §211.1 establishes definitions for terms used in new subchapter A.

New §211.2(a) establishes the persons to whom the subchapter applies. The list mirrors the list of persons currently subject to criminal history review under §215.88(c), which is proposed for repeal in a separate proposal published in this issue of the *Texas Register*.

New §211.2(b) establishes that the convictions in this subchapter include deferred adjudications and prosecutions considered convictions under Occupations Code §53.021(d).

New §211.3 publishes the department's criminal history guidelines as required under Occupations Code §53.025 and addressing the requirements of Occupations Code §§53.021, 53.022, and 53.023.

The licenses issued by the department create positions of trust. The department has defined in §211.1 "retail license types." These license holders interact directly with the public, and include salvage dealers, converters, independent mobility motor vehicle dealers, lease facilitators, and general distinguishing number holders for the following vehicle categories: all-terrain vehicle, light truck, motorcycle, motorhome, moped/motor scooter, medium duty truck, neighborhood vehicle, other, passenger auto, recreational off-highway vehicle, and towable recreational vehicle. The term does not include manufacturers, distributors, and general distinguishing number holders for the following vehicle categories: ambulance, axle, bus, engine, fire truck/fire fighting vehicle, heavy duty truck, transmission, wholesale motor vehicle dealer, and wholesale motor vehicle auction, and other license types that do not usually interact directly with the public.

The adoption changes the definition of retail license types in §211.1(3) to add "wholesale motor vehicle dealer" and "wholesale motor vehicle auction" GDN holders to the list of types that are not included within the scope of retail license types. These two types do not usually interact directly with the public. This change does not affect persons not on notice of the proposal or add additional costs. The department has also removed the word "and" between §211.3(e)(5) and (6) as a typographical error.

The department has determined that retail license types, and the individuals who serve in representative capacities for them, also have as an occupation interaction with the public, and access to confidential information, conveyance, titling, and registration of private property, possession of monies belonging to or owed to private individuals, creditors, and governmental entities, and must comply with federal and state environmental and safety regulations. The department concluded that the activities these license holders engage in would involve the same categories of crimes directly related to the occupation.

The department has determined that other license types that do not usually interact directly with the public, including manufacturers, distributors, and general distinguishing number holders for the following vehicle categories: ambulance, axle, bus, engine, fire truck/fire fighting vehicle, heavy duty truck, transmission, wholesale motor vehicle dealer, and wholesale motor vehicle auction, and the individuals who serve in representative capacities for them, have as an occupation access to confidential information, conveyance, titling, and registration of private property, and must comply with federal and state environmental and safety regulations.

The department considers the following offenses directly relate to all license types:

(1) Offenses involving fraud, theft, deceit, misrepresentation, or that otherwise reflect poorly on the person's honesty or trustworthiness, including an offense defined as moral turpitude, because honesty, integrity, trustworthiness, and a willingness to comply with the law are characteristics necessary for a license holder. A person with a predisposition for crimes involving such activities would have the opportunity to engage in further similar conduct.

(2) Offenses involving forgery, falsification of records, or perjury, because honesty, integrity, trustworthiness, and a willingness to comply with the law are characteristics necessary for a license holder. A person with a predisposition for crimes involving such activities would have the opportunity to engage in further similar conduct.

(3) Offenses involving the offering, paying, or taking of bribes, kickbacks, or other illegal compensation, because they violate the trust inherent in the license and allow a person with a predisposition the opportunity to commit further offenses.

(4) Felony offenses against public administration, because honesty, integrity, trustworthiness, and a willingness to comply with the law are characteristics necessary for a license holder. Offenses of this nature reflect a lack of honesty, integrity, trustworthiness, and a willingness to comply with the law. Further, person involved in offenses of this nature would have an opportunity to impede investigations into unlawful or improper activities.

(5) Felony offenses under a state or federal statute or regulation involving the manufacture, sale, finance, distribution, repair, salvage, or demolition, of motor vehicles, because these statutes regulate the industry that the license holder is involved in and would present a person predisposed to such violations an opportunity to commit an offense.

(6) Felony offenses under a state or federal statute or regulation related to emissions standards, waste disposal, water contamination, air pollution, or other environmental offenses because license holders have access to, store, use and dispose of hazardous materials and must maintain facilities in compliance with federal and state environmental and safety regulations presenting a person predisposed to such violations an opportunity to commit an offense.

(7) Offenses committed while engaged in a licensed activity or on a licensed premise, because the person has shown disregard for the license and a person with a predisposition for crimes involving such activities would have the opportunity to engage in further similar conduct.

(8) Felony offenses involving the possession, manufacture, delivery, or intent to deliver controlled substances, simulated controlled substances, dangerous drugs, or organized criminal activity; because license holders have access to unregistered vehicles and are in a unique position to receive, sell or otherwise distribute illegal goods or substances. A person with a predisposition for crimes involving such activities would have the opportunity to engage in further similar conduct.

The department considers the following offenses directly related to retail license types only:

(9) Felony offenses against real or personal property belonging to another, because license holders can affect property rights presenting a person predisposed to such violations an opportunity to commit an offense.

(10) Offenses involving the sale or disposition of another person's real or personal property, because license holders can affect property rights presenting a person predisposed to such violations an opportunity to commit an offense.

(11) A reportable felony offense conviction under Chapter 62, Texas Code of Criminal Procedure for which the person must register as a sex offender because license holders have direct contact with members of the public often in settings with no one

else present and access to an individual's motor vehicle records, including the individual's address. A person with a predisposition for crimes involving prohibited sexual conduct would have the opportunity to engage in further similar conduct.

(12) A felony stalking offense as described by Penal Code §42.072 because license holders have direct contact with members of the public and access to an individual's motor vehicle records, including the individual's address. A person with a predisposition for crimes involving stalking would have the opportunity to engage in further similar conduct.

(13) An offense against the family as described by Penal Code §§25.02, 25.07, 25.072, or 25.11, because license holders have direct contact with members of the public often in settings with no one else present and access to an individual's motor vehicle records, including the individual's address. A person with a predisposition for crimes involving prohibited sexual conduct or violence in violation of a court order would have the opportunity to engage in further similar conduct.

(14) Felony offenses against the person because license holders have direct contact with members of the public often in settings with no one else present and access to an individual's motor vehicle records, including the individual's address. A person with a predisposition for violence would have the opportunity to engage in further similar conduct.

(15) Felony offenses against public order and decency as described by Penal Code §§43.24, 43.25, 43.251, 43.26, 43.261, or 43.262, because license holders have direct contact with members of the public including and access to an individual's motor vehicle records, including the individual's address. A person with a predisposition for crimes involving prohibited sexual conduct or acts with children would have the opportunity to engage in further similar conduct.

(16) Offenses of attempting or conspiring to commit any of the foregoing offenses applicable to the license type, because the offense was intended.

New §211.3(a) - (c) list the reasons the department has determined that certain offenses directly relate to the duties and responsibilities of the licensed occupation.

New §211.3(d) lists offenses that directly relate to the duties and responsibilities of the licensed occupation. The list is not exclusive; the department may determine, based on the factors set forth in Occupations Code §53.022, that an unlisted offense directly relates to the duties and responsibilities of the licensed occupation.

New §211.3(e) lists the factors that the department must consider in making its evaluation of the applicant's fitness for licensing.

New §211.3(f) states the requirement in new Occupations Code §53.0231(b)(2)(B) that it is the applicant's responsibility to provide evidence concerning the factors listed in §211.3(e).

New §211.4 addresses imprisonment of an applicant, license holder, or person otherwise listed in §211.2(a)(2). Occupations Code §53.021(b) requires an agency to revoke a license holder's license on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. Because the department also licenses persons based on individuals serving in representative capacities, the department will also consider the effect of imprisonment of those persons on the license holder.

Because the revocation is mandatory, the factors and determinations listed in §211.3 do not apply to a person under this section.

New §211.5 implements Occupations Code §53.102 that allows a person to request that a licensing authority issue a criminal history evaluation letter regarding the person's eligibility for a license issued by that authority. As authorized in Occupations Code §53.105, §211.5 also proposes a fee in the amount of \$100 to cover the cost of the review. This provision applies to applicants for certain independent motor vehicle dealer general distinguishing number licenses.

SUMMARY OF COMMENTS.

The department received written comments requesting clarifications in the proposed text from: Lubbock County Tax Assessor-Collector and Tax Assessor-Collectors Association of Texas.

Comment.

Two commenters raised concerns about subsequent convictions and inquired as to the frequency of the criminal history background checks.

Agency Response.

The department agrees with the comment that subsequent criminal history background checks are necessary. Currently, background checks are performed on all new and renewal applications, and for all license amendments that include a change in ownership or control. The additional checks are to discover new offenses, or offenses that were not previously reported as required.

Comment.

A commenter requested clarification as to the time frame will the person be held responsible for a disqualifying criminal offense? Will the criminal convictions history go back over the last 5 years, 10 years, or a lifetime?

Agency Response.

The department disagrees with the comment that further clarification is necessary. All convictions related to the occupation being licensed are considered. The department evaluates the conviction, or pattern of convictions, based on the factors in Occupations Code §53.023 and listed in §211.3(e). The factors include consideration of the individual's age at the time of the offense and the amount of time that has elapsed since the person's last criminal activity.

STATUTORY AUTHORITY. The department adopts new §§211.1 - 211.5 under Occupations Code §2301.155 and §2302.051, and Transportation Code §503.002 and §1002.001.

- Occupations Code §2301.155 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code Chapter 2301 and to govern practice and procedure before the board.

- Occupations Code §2302.051 authorizes the board to adopt rules as necessary to administer Occupations Code Chapter 2302.

- Transportation Code §503.002 authorizes the board to adopt rules that are necessary to administer Transportation Code Chapter 503.

- Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §§53.021, 53.022-53.025, 53.102, 53.104, 2301.651; 2301.651, §2302.104 and §2302.108, and Transportation Code §503.034 and §503.038.

§211.1. *Definitions.*

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

(1) "Department" means the Texas Department of Motor Vehicles.

(2) "License" means any license, registration, or authorization, issued by the department under:

(A) Transportation Code, Chapter 503;

(B) Occupations Code, Chapter 2301;

(C) Occupations Code, Chapter 2302; or

(D) any other license, registration, or authorization, that the department may deny or revoke because of a criminal offense of the applicant or license holder.

(3) "Retail license types" means those license holder types that interact directly with the public, including salvage dealers, converters, independent mobility motor vehicle dealers, lease facilitators, and general distinguishing number holders for the following vehicle categories: all-terrain vehicle, light truck, motorcycle, motorhome, moped/motor scooter, medium duty truck, neighborhood vehicle, other, passenger auto, recreational off-highway vehicle, and towable recreational vehicle, but does not include other license types that do not generally interact directly with the public, including manufacturers, distributors, and general distinguishing number holders for the following vehicle categories: ambulance, axle, bus, engine, fire truck/fire fighting vehicle, heavy duty truck, transmission, wholesale motor vehicle dealer, and wholesale motor vehicle auction.

§211.2. *Application of Subchapter.*

(a) This chapter applies to the following persons:

(1) applicants and holders of any license; and

(2) persons who are acting at the time of application, or will later act, in a representative capacity for an applicant or holder of a license, including the applicant's or holder's officers, directors, members, managers, trustees, partners, principals, or managers of business affairs.

(b) In this chapter a "conviction" includes a deferred adjudication that is considered to be a conviction under Occupations Code §53.021(d).

§211.3. *Criminal Offense Guidelines.*

(a) The licenses issued by the department create positions of trust. License holders provide services to members of the public. License holder services involve access to confidential information, conveyance, titling, and registration of private property, possession of monies belonging to or owed to private individuals, creditors, and governmental entities, and compliance with federal and state environmental and safety regulations. License holders are provided with opportunities to engage in fraud, theft, money laundering, and related crimes and to engage in environmental and safety violations that endanger the public. In addition, licensure provides persons predisposed to commit assaultive or sexual crimes with greater opportunities to engage in such conduct.

(b) Under Occupations Code Chapter 53 the department may suspend or revoke an existing license or disqualify an applicant from

receiving a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed occupation. The department shall consider the factors listed in the Occupations Code §53.022 in determining whether a criminal conviction directly relates to the duties and responsibilities of a license holder.

(c) The department has determined under the factors listed in Occupations Code §53.022 that offenses detailed in subsection (d) of this section directly relate to the duties and responsibilities of license holders, either because the offense entails a violation of the public trust; issuance of a license would provide an opportunity to engage in further criminal activity of the same type; or the offense demonstrates the person's inability to act with honesty, trustworthiness, and integrity. Such offenses include crimes under the laws of another state, the United States, or a foreign jurisdiction, if the offense contains elements that are substantially similar to the elements of an offense under the laws of this state. The list of offenses in subsection (d) of this section is in addition to those that are independently disqualifying under Occupations Code §53.021, including:

(1) an offense listed in Article 42A.054, Code of Criminal Procedure; or

(2) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

(d) The list of offenses in this subsection is intended to provide guidance only and is not exhaustive of the offenses that may relate to a particular regulated occupation. After due consideration of the circumstances of the criminal act and its relationship to the position of trust involved in the particular licensed occupation, the department may find that an offense not described below also renders a person unfit to hold a license based on the criteria listed in Occupations Code §53.022. Paragraphs (1) - (8) of this subsection apply to all license types. Paragraphs (9) - (15) of this subsection apply only to retail license types. Paragraph (16) of this subsection applies to offenses applicable to a license type.

(1) offenses involving fraud, theft, deceit, misrepresentation, or that otherwise reflect poorly on the person's honesty or trustworthiness, including an offense defined as moral turpitude;

(2) offenses involving forgery, falsification of records, or perjury;

(3) offenses involving the offering, paying, or taking of bribes, kickbacks, or other illegal compensation;

(4) felony offenses against public administration;

(5) felony offenses under a state or federal statute or regulation involving the manufacture, sale, finance, distribution, repair, salvage, or demolition, of motor vehicles;

(6) felony offenses under a state or federal statute or regulation related to emissions standards, waste disposal, water contamination, air pollution, or other environmental offenses;

(7) offenses committed while engaged in a licensed activity or on licensed premises;

(8) felony offenses involving the possession, manufacture, delivery, or intent to deliver controlled substances, simulated controlled substances, dangerous drugs, or engaging in an organized criminal activity;

(9) felony offenses against real or personal property belonging to another;

(10) offenses involving the sale or disposition of another person's real or personal property;

(11) a reportable felony offense conviction under Chapter 62, Texas Code of Criminal Procedure for which the person must register as a sex offender;

(12) an offense against the family as described by Penal Code §§25.02, 25.07, 25.072, or 25.11;

(13) felony offenses against the person;

(14) a felony stalking offense as described by Penal Code §42.072;

(15) a felony offense against public order and decency as described by Penal Code §§43.24, 43.25, 43.251, 43.26, 43.261, or 43.262; and

(16) offenses of attempting or conspiring to commit any of the foregoing offenses applicable to the license type.

(e) When determining a person's present fitness for a license, the department shall also consider the following evidence:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(7) other evidence of the person's present fitness, including letters of recommendation.

(f) It is the person's responsibility to obtain and provide to the licensing authority evidence regarding the factors listed in subsection (e) of this section.

§211.4. Imprisonment.

(a) Section 211.3 of this Chapter does not apply to persons who are imprisoned at the time the department considers the conviction.

(b) The department shall revoke a license upon the imprisonment of a license holder following a felony conviction or revocation or felony community supervision, parole, or mandatory supervision.

(c) The department may revoke a license upon the imprisonment for a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision of a person described by §211.2(a)(2) of this chapter who remains employed with the license holder.

(d) A person currently imprisoned because of a felony conviction may not obtain a license, renew a previously issued license, or act in a representative capacity for an application or license holder as described by §211.2(a)(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 October 1, 2020.
TRD-202004082

Tracy Beaver

General Counsel

Texas Department of Motor Vehicles

Effective date: October 31, 2020

Proposal publication date: June 26, 2020

For further information, please call: (512) 465-5665

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER C. LICENSES, GENERALLY

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts the repeal of 43 TAC §215.88 and amendments to 43 TAC §215.89 to update licensing fitness rules under Occupations Code §2301.651 and Transportation Code §503.034, including implementation of Senate Bill 604, 86th Legislature, Regular Session, (2019). The department adopts the repeal of §215.88 and amendments to §215.89 to be effective October 31, 2020.

The department adopts the repeal of §215.88 without changes to the proposed text as published in the June 26, 2020, issue of the *Texas Register* (45 TexReg 4303). The department adopts amendments to §215.89 with changes to the proposed text as published in the June 26, 2020, issue of the *Texas Register* (45 TexReg 4303). The section will be republished.

In conjunction with this proposal, the department has adopted new §§211. 1 - 211. 5, concerning criminal offense and action on licenses, and amendments to §§221.15, 221.19, 221.111, and 221.112, and repeal of §221.113 and §221.114, concerning salvage vehicle dealer licenses, in this issue of the *Texas Register*.

EXPLANATION. Occupations Code §2301.651 and Transportation Code §503.034 and §503.038 require the department and its board to review the fitness of applicants for new and renewal licenses, and license holders. The amendments to §215.89 update the requirements related to review of criminal history information, affiliations, and conform with statute. The repeal of §215.88 is necessary because the determination of an offense that directly relates to the duties or responsibilities of the licensed occupation has been moved to adopted new Chapter 211.

The amendment to §215.89(b)(2) changes the reference from §215.88(j) to adopted new §211.3. The department has adopted new Chapter 211 in this issue of the *Texas Register*. As stated in response to a comment, the department considers it necessary to clarify that what is considered to be a conviction results from statute. Occupations Code §53.021(d) provides that a licensing authority may consider a person to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the person was discharged as described in Occupations Code §53.021(c), which is referred to in the proposal as a deemed conviction. To clarify this reference, §215.89(b)(2) has been changed to substitute or considered convicted under Occupations Code §53.021(d) for the two uses of or deemed convicted. The change does not affect persons not on notice of the proposal or add additional costs.

The amendment to §215.89(b)(3) eliminates the reference to criminal history information. The amendment conforms the requirement to Occupations Code §2301.651(a)(2) and Transportation Code §503.038(6), which do not limit consideration

of material misstatements just to statements regarding criminal history information.

The amendment to §215.89(b)(7) modifies the consideration to include assessments or penalties addressing the acquisition, sale, repair, rebuild, or reconstruction of a salvage motor vehicle or nonrepairable motor vehicle. The change is to conform review to the expansion of the license authority in SB 604.

The amendment to §215.89(b)(8) changes the reference from §215.88 to adopted new §211.2.

The amendments to §215.89(b)(9) and (10) clarify that the department is concerned with affiliations that allow for control of the license holder, and describe control as the power to direct or cause the direction of the management, policies, and activities, of an applicant or license holder, whether directly or indirectly.

SUMMARY OF COMMENTS.

The department received one written comment requesting a change in the proposed text from the Texas Automobile Dealers Association.

§215.89

Comment.

The commenter asserts that to deem a conviction is to have an opinion or belief that a person will be convicted of an offense. Because the decision affects the applicant or license holder's livelihood, the commenter requests that the agency not act upon a belief or opinion that a conviction is about to occur, but only act to deny, revoke or suspend a person's license when a local, state, federal, or foreign authority has actually convicted the applicant or license holder.

Agency Response.

The department agrees with the commenter and does not intend to base a decision on a possible outcome. The department considers it necessary to clarify that what is considered to be a conviction results from statute. Occupations Code §53.021(d) provides that a licensing authority may consider a person to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the person was discharged as described Occupations Code §53.021(c). It applies to cases involving deferred adjudication or deferred prosecution following a plea of guilty or nolo contendere. This is what the department referred to in the proposal as a deemed conviction. To clarify this reference, §215.89(b)(2) has been changed to substitute considered convicted under Occupations Code §53.021(d) for the two uses of or deemed convicted. The change does not affect persons not on notice of the proposal or add additional costs.

43 TAC §215.88

STATUTORY AUTHORITY. The department adopts the repeal of §215.88 under Occupations Code §2301.155 and Transportation Code §503.002 and §1002.001.

-Occupations Code §2301.155 authorizes the board of the Texas Department of Motor Vehicles to adopt rules as necessary or convenient to administer this chapter and to govern practice and procedure before the board.

-Transportation Code §503.002 authorizes the board to adopt rules that are necessary to administer Transportation Code Chapter 503.

-Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §2301.651, and Transportation Code §503.034 and §503.038.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 1, 2020.

TRD-202004083

Tracy Beaver

General Counsel

Texas Department of Motor Vehicles

Effective date: October 31, 2020

Proposal publication date: June 26, 2020

For further information, please call: (512) 465-5665



43 TAC §215.89

STATUTORY AUTHORITY. The department adopts amendments to §215.89 under Occupations Code §2301.155 and Transportation Code §503.002 and §1002.001.

-Occupations Code §2301.155 authorizes the board of the Texas Department of Motor Vehicles to adopt rules as necessary or convenient to administer this chapter and to govern practice and procedure before the board.

-Transportation Code §503.002 authorizes the board to adopt rules that are necessary to administer Transportation Code Chapter 503.

-Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §2301.651, and Transportation Code §503.034 and §503.038.

§215.89. *Fitness.*

(a) In determining a person's fitness for a license issued or to be issued by the department under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, the board or department will consider:

- (1) the requirements of Occupations Code, Chapter 53;
- (2) the provisions of Occupations Code, §2301.651;
- (3) any specific statutory licensing criteria or requirements;
- (4) mitigating factors; and
- (5) other evidence of a person's fitness, as allowed by law, including the standards identified in subsection (b) of this section.

(b) The board or department may determine that a person is unfit to perform the duties and discharge the responsibilities of a license holder and may, following notice and an opportunity for hearing, deny a person's license application or revoke or suspend a license if the person:

- (1) fails to meet or maintain the qualifications and requirements of licensure;
- (2) is convicted, or considered convicted under Occupations Code §53.021(d), by any local, state, federal, or foreign authority of an offense that directly relates to the duties or responsibilities

of the licensed occupation as described in §211.3 of this title (relating to Criminal Offense Guidelines) or is convicted, or considered convicted under Occupations Code §53.021(d), of an offense that is independently disqualifying under Occupations Code §53.021;

(3) omits information or provides false, misleading, or incomplete information on an initial application, renewal application, or application attachment, for a license or other authorization issued by the department or by any local, state, or federal regulatory authority;

(4) is found to have violated an administrative or regulatory requirement based on action taken on a license, permit, or other authorization, including disciplinary action, revocation, suspension, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment, by the board, department, or any local, state, or federal regulatory authority;

(5) is insolvent or fails to obtain or maintain financial resources sufficient to meet the financial obligations of the license holder;

(6) is a corporation that fails to maintain its charter, certificate, registration, or other authority to conduct business in Texas;

(7) is assessed a civil penalty, administrative fine, fee, or similar assessment, by the board, department, or a local, state, or federal regulatory authority, for violation of a requirement governing or impacting the distribution or sale of a vehicle or a motor vehicle, or the acquisition, sale, repair, rebuild, reconstruction, or other dealing of a salvage motor vehicle or nonrepairable motor vehicle, and fails to comply with the terms of a final order or fails to pay the penalty pursuant to the terms of a final order;

(8) was or is a person described in §211.2 of this title (relating to Application of Subchapter) whose actions or omissions could be considered unfit, who is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment;

(9) has an ownership, organizational, managerial, or other business arrangement, that would allow a person the power to direct or cause the direction of the management, policies, and activities, of an applicant or license holder, whether directly or indirectly, when the person could be considered unfit, ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority, has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment, by the board, department, or any local, state, or federal regulatory authority;

(10) is found in an order issued through a contested case hearing to be unfit or acting in a manner detrimental to the system of distribution or sale of motor vehicles in Texas, the economy of the state, the public interest, or the welfare of Texas citizens.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 1, 2020.
TRD-202004084

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Effective date: October 31, 2020
Proposal publication date: June 26, 2020
For further information, please call: (512) 465-5665

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SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §§215.150 - 215.158

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC §§215.150 - 215.158, concerning buyer's temporary tags issued by a federal, state, or local governmental agency. The department adopts the amendments to §§215.150 - 215.158 without changes to the proposed text as published in the June 26, 2020, issue of the *Texas Register* (45 TexReg 4305). The rules will not be republished.

EXPLANATION. The amendments are necessary to implement Transportation Code §503.063(h), as added by House Bill 3760, 86th Legislature, Regular Session (2019), update forms in §215.153, and update §215.154 to conform with Transportation Code Chapter 551 and Chapter 551A related to golf carts and off-highway vehicles. Transportation Code §503.063(h) authorizes a federal, state, or local governmental agency that is exempt from the requirement to obtain a dealer general distinguishing number to issue one temporary buyer's tag for a vehicle sold or otherwise disposed of by the governmental agency under state law. Transportation Code §503.063(h)(1) establishes that a governmental agency that issues such a temporary buyer's tag is subject to statutory provisions applicable to a dealer relating to the buyer's temporary tag database and the unauthorized reproduction, purchase, use, or sale of temporary tags. Transportation Code §503.063(h)(2) exempts the governmental agency from collecting the \$5 registration fee for the tag.

Amendments to §215.150 state the requirements of Transportation Code §503.063(h).

Amendments to §215.151 require a federal, state, or local governmental agency to secure a temporary buyer's tag or preprinted Internet-down temporary tag issued under §215.150(c) in the same manner as a dealer.

Amendments to §215.152 extend the requirements placed on dealers under that section to a federal, state, or local governmental agency.

Amendments to §215.153 remove outdated requirements that do not apply to temporary tags created on-demand with the department's web-based application and available for printing at time of creation. The department also adopts updated tag forms in the attached graphics to reflect current online forms.

Amendments to §215.154 add golf carts and off-highway vehicles to vehicles that cannot be issued temporary tags because the vehicles are not eligible for registration by the public under Transportation Code §§502.140, 551.402, and 551A.052.

Amendments to §215.155 extend the requirements placed on dealers issuing buyer's temporary tags under that section to a federal, state, or local governmental agency. The amendments also provide a federal, state, or local governmental agency is

not required to collect the \$5 fee that dealers must collect under Transportation Code §503.063(g). The amendments also clarify that the \$5 fee must be paid to the county tax-assessor collector. A dealer selling a vehicle to a Texas resident would submit the fee with the title transfer documents. A dealer selling the vehicle to a non-Texas resident must also submit the fee to the county tax-assessor collector even though title transfer documents are not submitted. A federal, state, or local governmental agency selling to any person must also submit the fee, if collected, to the county tax-assessor collector even though title transfer documents are not submitted by the agency on behalf of the buyer.

Amendments to §215.156 extend the requirements placed on dealers to provide buyer's temporary tag receipts under that section to a federal, state, or local governmental agency.

Amendments to §215.157 extend the requirements placed on dealers concerning preprinted Internet-down temporary tags with specific numbers and buyer's temporary tag receipts under that section to a federal, state, or local governmental agency.

Proposed amendments to §215.158 extend the requirements placed on dealers concerning the allocation and safekeeping of preprinted Internet-down temporary tags under that section to a federal, state, or local governmental agency.

SUMMARY OF COMMENTS.

The department received one comment not opposing the proposal from the Tax Assessor-Collector Association of Texas, on behalf of its members.

General.

Comments.

The proposal inserts "federal, state, or local governmental agency" where it speaks to the "dealer."

Agency Response.

The department agrees that the adopted amendments extend requirements and authorizations applicable to dealers to a "federal, state, or local governmental agency" as stated in the adopted sections. The sections do not expand the definition of the term "dealer" to include a "federal, state, or local governmental agency" in any use of the term dealer.

§215.154.

Comment.

A commenter states "The proposed amendments to §215.154 add golf carts and off-highway vehicles to vehicles that cannot be issued temporary tags because the vehicles are not eligible for registration by the public under Transportation Codes §§502.140, 551.402, and 551A.052."

Agency Response.

The department agrees with the statement as stated in the adoption.

§215.155.

Comment.

A commenter states "This proposed rule clarifies language on when the \$5 buyer tag fee is paid and provides the state, local, or federal governmental agencies are not required to obtain a general distinguishing number. It also states that the federal, state or local governmental agency will pay the \$5 buyer tag fee to the county if it is collected."

Agency Response.

The department agrees with the statement as stated in the adoption.

STATUTORY AUTHORITY. The department adopts amendments to §§215.150 - 215.158 under Transportation Code §§503.002, 503.0626, 503.0631, 503.069 and §1002.001.

- Transportation Code §503.002 authorizes the Texas Department of Motor Vehicles Board (board) to adopt rules for the administration of Transportation Code Chapter 503.

- Transportation Code §503.0626 authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0626.

- Transportation Code §503.0631 authorizes the department to adopt rules and prescribe procedures as necessary to implement this §503.0631.

- Transportation Code §503.069 provides that a license plate, other than an in-transit license plate, or a temporary tag issued under this chapter, shall be displayed in accordance with department rules.

- Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code, §503.063.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 1, 2020.

TRD-202004089

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Effective date: October 21, 2020

Proposal publication date: June 26, 2020

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER C. REGISTRATION AND TITLE SYSTEMS

43 TAC §217.74

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC §217.74, concerning access to the department's webDEALER online system (web-DEALER). The department adopts the amendments to §217.74 without changes to the proposed text as published in the June 26, 2020, issue of the *Texas Register* (45 TexReg 4310). The rules will not be republished.

EXPLANATION. The amendments are necessary to conform the existing rules to Transportation Code §520.005(e) as added by Senate Bill (SB) 604, 86th Legislature, Regular Session (2019). Transportation Code §520.005(e) requires each county assessor-collector, not later than September 1, 2020, under §4.08 of

SB 604, to make available to motor vehicle dealers the electronic system designed by the department that allows a motor vehicle dealer to submit a title and registration application online in the name of the purchaser of a motor vehicle. The requirement is included within the Sunset Advisory Commission's Change in Statute Recommendation 5.2, as stated in the Sunset Staff Report with Commission Decisions, 2018-2019, 86th Legislature (2019), which directly refers to webDEALER.

To conform §217.74 with Transportation Code §520.005(e), it is necessary to amend §217.74, including changing county tax assessor-collector's use of webDEALER and requiring each county tax assessor-collector to grant motor vehicle dealers access to webDEALER. In addition, the department is implementing enhancements to webDEALER to support the expansion required by Transportation Code §520.005(e), which include efficiencies and throughput improvements. The amendments to §217.74 do not add fees or change processing requirements for county tax assessor-collectors or users, or change the process for users that are not motor vehicle dealers.

The amendments to §217.74(a) change the requirement for a county tax assessor-collector to make webDEALER available to motor vehicle dealers from permissive to mandatory. The amendment is necessary to implement the requirement that each county tax assessor-collector must allow motor vehicle dealers access to webDEALER.

The amendment to §217.74(b) creates a reference to new §217.74(c), which addresses motor vehicle dealer access to webDEALER. The amendment does not change access to webDEALER by persons who are not motor vehicle dealers or the ability of county tax assessor-collectors to authorize that access.

The new §217.74(c) states the requirement that a county tax assessor-collector must allow motor vehicle dealers to access webDEALER. To clarify the term motor vehicle dealer as used in Transportation Code §520.005(e), the subsection refers to "a holder of a general distinguishing number."

This does not remove the requirement for county tax assessor-collectors to ensure title applications comply with Transportation Code Chapter 501, nor does it require county tax assessor-collectors to approve non-complaint or fraudulent title applications. A county tax assessor-collector who suspects possible fraud, waste, or abuse by a motor vehicle dealer may submit a request to the department for review and possible investigation under the Red Flag process. The department will pursue action as necessary.

SUMMARY OF COMMENTS.

The department received written comments requesting clarifications or changes in the proposed text from: Bexar County Tax Assessor-Collector, Lubbock County Tax Assessor-Collector, and Tax Assessor-Collectors Association of Texas.

Comment.

A commenter stated that county tax assessor-collectors should have full authority to rescind or revoke access if they suspect fraud, waste or abuse.

Agency Response.

The department disagrees with the comment. As added by SB 604, Transportation Code §520.005(e) requires each county tax assessor-collector to make available to motor vehicle dealers the

electronic system designed by the department that allows a motor vehicle dealer to submit a title and registration application online in the name of the purchaser of a motor vehicle. Transportation Code §520.005(e) creates no criteria other than being a motor vehicle dealer. As stated in Transportation Code §503.021, a person may not engage in business as a dealer without a general distinguishing number (GDN). The department issues GDNs and is charged with taking regulatory action against GDN holders.

The statute and amendments do not require a county tax assessor-collector to approve title applications in webDEALER that do not comply with Transportation Code Chapter 501. The amendments also do not change the county tax assessor-collector's ability to revoke, rescind, or cancel the webDEALER access of persons other than dealers.

Comment.

A commenter states that the county tax assessor-collector should report to the department that they have revoked, rescinded or cancelled access to webDEALER.

Agency response.

The department agrees that county tax assessor-collectors can and should take action to report any dealer engaging in fraud, waste, or abuse of the webDEALER system. The process is the Red Flag process outlined in §223.3 of this title. The department does not agree with the assertion that Transportation Code §520.005(e) authorizes a county tax assessor-collector to suspend or revoke a motor vehicle dealer's webDEALER access.

Comment.

A commenter states that a county tax assessor-collector has the responsibility to protect their constituents and their office if fraud, waste or abuse is perpetrated by a user of webDEALER.

Agency Response.

The department agrees with the comment. The statute and amendments do not require a county tax assessor-collector to approve title applications in webDEALER that do not comply with Transportation Code Chapter 501. The amendments also do not change the county tax assessor-collector's ability to revoke, rescind, or cancel the webDEALER access of persons other than dealers. In addition, a county tax assessor-collector can report fraud, waste or abuse using the Red Flag process.

Comment.

A commenter states that the proposed rule requires amendments to comply with the Legislature's intent regarding "grant" language of webDEALER online access and/or termination rules; which was meant to be in coordination with county tax assessor-collectors.

Agency Response.

The department disagrees with the comment. Transportation Code §520.005(e) and SB 604 do not reference termination by the county. In SB 604 the legislature addresses the RTS system in section 4.04 (Transportation Code Chapter 520, Subchapter C, §§520.021-520.023) and the online system (webDEALER) in §4.02. The coordination provision to create clear criteria for the suspension or denial of access to the department's automated registration and titling system in SB 604 §4.07 applies to implementing Transportation Code Chapter 520, Subchapter C.

Comment.

A commenter states that the department's new rule, as written, will in essence require the county assessor-collector to accept any and all types of motor vehicle dealers' request for full access to the department's electronic titling system, without any proper security screening or fiscal accounting or application requirements established by a county assessor-collector.

Agency Response.

The department agrees with the comment. The proposal conforms the existing rule to the statutory requirement in Transportation Code §520.005(e), which states that counties shall provide access and creates no criteria for access other than being a motor vehicle dealer. Motor vehicle dealers must hold a GDN and will be screened for that purpose by the department. Further, the legislature granted access to the state's webDEALER system, not the state's RTS system. Additionally, neither statute or rule require a county tax assessor-collector to approve title applications in webDEALER that do not comply with Transportation Code Chapter 501.

Comment.

A commenter states that the department has made no analysis or study as to the direct or indirect cost to local counties or county assessor-collector offices by requiring un-restricted access to the webDEALER system.

Agency Response.

The department agrees with the comment. The proposal conforms the existing rule to the statutory requirement in Transportation Code §520.005(e), which states that counties shall provide access to motor vehicle dealers. Costs related to that requirement are a result of statute and do not result from the adoption of this rule. County tax assessor-collectors would have the same requirements and costs if no rule existed.

Comment.

A commenter proposes that in order to mitigate concerns and the potential abuse, waste or fraud, the section should be amended to determine provisional access to webDEALER and background application information by the county assessor-collector; including having a motor vehicle dealer to be in compliance with vehicle inventory tax.

Agency Response.

The department disagrees with the comment. As addressed in other comment responses Transportation Code §520.005(e) requires county tax assessor-collector's counties to provide access and creates no criteria for access other than being a motor vehicle dealer. Motor vehicle dealers must hold a GDN and will be screened for that purpose by the department. The statute and rule do not require a county tax assessor-collector to approve title applications in webDEALER that do not comply with Transportation Code Chapter 501.

Comment.

A commenter suggests that a county tax assessor-collector be allowed flexibility to also "suspend" a motor vehicle dealer under §217.74(e). Currently the subsection only allows the county tax assessor-collector to revoke, rescind, or cancel the person's webDEALER access.

Agency Response.

The department disagrees with the comment because motor vehicle dealer access is addressed in §217.74(c). Section

217.74(e) only applies to persons who are not motor vehicle dealers and are accessing the system under §217.74(b). The department declines to make the change because persons affected by the change were not on notice that the change to other relationships would be considered.

STATUTORY AUTHORITY. The department adopts amendments to §217.74 under Transportation Code §§501.0041, 502.0021, 520.003, and §1002.001.

- Transportation Code §501.0041 authorizes the department to adopt rules to administer Transportation Code Chapter 501.

- Transportation Code §502.0021 authorizes the department to adopt rules to administer Transportation Code Chapter 502.

- Transportation Code §520.003 authorizes the department to adopt rules to administer Transportation Code Chapter 520.

- Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§501.022, 501.023, 501.0234, and 520.005.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 1, 2020.

TRD-202004088

Tracey Beaver

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Texas Department of Motor Vehicles

Effective date: October 21, 2020

Proposal publication date: June 26, 2020

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CHAPTER 221. SALVAGE VEHICLE DEALERS

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to Transportation Code §221.15, relating to required license application information; §221.19, related to change of a license holder's name or ownership; §221.111, related to denial of license; and §221.112, related to license suspension, revocation and administrative penalties. The department also adopts the repeal of §221.113 and §221.114. The changes update licensing application, fitness, denial, suspension, revocation, and penalty rules under Occupations Code Chapter 2302, and remove references to salvage vehicle agents and salvage vehicle dealer endorsements to implement Senate Bill (SB) 604, 86th Legislature, Regular Session, (2019). The department adopts amendments to §§221.15, 221.19, 221.111, and 221.112 and the repeal of §221.113 and §221.114, to be effective October 31, 2020.

The department adopts the repeal of §221.113 and §221.114 without changes to the proposed text as published in the June 26, 2020, issue of the *Texas Register* (45 TexReg 4311). These rules will not be republished. The department adopts amendments §§221.15, 221.19, 221.111, and 221.112 with changes to the proposed text as published in the June 26, 2020, issue of the *Texas Register* (45 TexReg 4311). These sections will be republished.

In conjunction with this adoption, the department has adopted new §§211.1 - 211.5, concerning criminal offense and action on licenses, and amendments to §215.89 and the repeal of §215.88, concerning licenses under Occupations Code Chapter 2301 and Transportation Code Chapter 503, in this issue of the *Texas Register*.

EXPLANATION. The amendments to §§221.15, 221.19, 221.111, and 221.112 update and clarify requirements, and establish references concerning the review of criminal history information under new Chapter 211 that has been adopted in accordance with Occupations Code Chapter 53 and the Sunset Advisory Commission's Management Action 4.6, as stated in the Sunset Staff Report with Commission Decisions, 2018-2019, 86th Legislature (2019).

The Sunset report directs the department to adopt criminal history evaluation rules consistent with Occupations Code Chapter 53, for salvage industry regulation. Occupations Code, §53.021, authorizes a licensing authority to suspend or revoke a license, or disqualify a person from receiving a license, if the person has been convicted of a felony or misdemeanor that directly relates to the duties and occupations of the licensed occupation. New Chapter 211 addresses the requirements under Occupations Code Chapter 53 for licenses issued under Chapter 215 and 221.

Under Occupations Code §2302.104, an application for a salvage dealer license must include a statement of the previous history, record, and associations of the applicant to the extent sufficient to establish, to the satisfaction of the department, the business reputation and character of the applicant. Under Occupations Code §2302.105, the department may not issue a license until the department completes an investigation of the applicant's qualifications.

The amendment to §221.15(2) eliminate references to salvage vehicle dealer license endorsements and salvage vehicle agents to conform with changes in SB 604. The paragraphs are renumbered accordingly.

The amendments to §221.15(9) revise the statement to conform with the requirements of Occupations Code §2302.104.

The amendments to §221.15(12) identify the persons who will be considered in the license review under Occupations Code §2302.104.

The amendments to §221.15(13) clarify that the department is concerned with affiliations that allow for control of the license holder, and describe control as "the power to direct or cause the direction of the management, policies, and activities, of an applicant or license holder, whether directly or indirectly."

The amendment to §221.15(14) clarifies which persons are required to submit criminal history information. Criminal history information will be evaluated under new Chapter 211, as addressed in amendments §221.111(a)(3) and §221.112(16).

The amendment to §221.15(15) clarifies that the department collects professional history information to determine business reputation as required in Occupations Code §2302.104.

Section 221.19 requires license holders to keep certain information current with the department. Amendments to §221.19 clarify what types of organizational changes require notice to the department. These changes include a change in entity type, addition of a new person for whom criminal and professional history

information would be required, or a business arrangement that extends control of the license holder to other persons for whom criminal and professional history information would be required.

The amendment to §221.19(c) establishes that the license holder is not required to submit a new application, but just the information that is necessary to address the change. The amendment to §221.19(c) also removes requirements related to a 50% change of ownership, because that is unnecessary based on the amendment to §221.19(b). Finally, the amendment to §221.19 extends the period for compliance to 30 days after the event.

The amendment to §221.111(a) clarifies that the section applies to the board or department's review of an application for issuance or renewal of a license. The amendment to §221.111(a) also replaces "shall" with "may" to clarify that the department's action is discretionary. A license may be denied based on an applicant's prior criminal history after weighing the factors in Occupations Code Chapter 53 and new §211.3, or for reasons authorized in Occupations Code Chapter 2302 and this chapter.

The amendments to §221.111(a)(2) clarify the persons the department will consider in making its evaluation, and in what actions.

The amendments to §221.111(a)(3) clarify the persons who will be subject to criminal history review and the offenses that will be reviewed. Based on a comment received concerning proposed amendments to 43 TAC §215.89, the department considers it necessary to clarify that what is considered to be a conviction results from Occupations Code §53.021(d). Occupations Code §53.021(d) provides that a licensing authority may consider a person to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the person was discharged as described Occupations Code §53.021(c), which is referred to in proposal as a "deemed" conviction. To clarify this reference, §221.111(a)(3) has been changed to substitute "or considered convicted under Occupations Code §53.021(d)" for "or deemed convicted." The change does not affect persons not on notice of the proposal or add additional costs.

The amendment to §221.111(a)(4) clarifies that the department will consider the circumstances related to the revocation of a prior license in its evaluation of fitness for a license under this chapter. The amendment also deletes language addressing the prohibition on applying for a license within one year following revocation of the license under Occupations Code §2302.108. That provision is addressed in new §221.111(c).

The amendment to §221.111(a)(5) focuses the review on control, specifically an ownership, organizational, managerial, or other business arrangement, that would "allow a person the power to direct, management, policies, or activities, of the applicant or license holder, whether directly or indirectly." The references to family members are removed. While a family member could be a person described in the amendment, the person would not be included on the basis that they were a family member.

The amendment to §221.111(a)(6) focuses the review on prior disciplinary activity against specified persons with prior administrative action against a license. The amendment deletes language referencing applicants with a child support payment delinquency, which would be handled as required under Family Code Chapter 232.

The amendment to §221.111(b) clarifies that an applicant may request an administrative hearing when the department pursues denial of an application.

The amendment to §221.111(c) addresses Occupations Code §2302.108, which expressly prohibits a person whose license is revoked from applying for a new license before the first anniversary of the date of the revocation. The department will reject such an application.

The amendment to §221.112 clarifies that either the board or the department may take action on a license that has been issued by the Motor Vehicle Division for certain acts or omissions. The amendment to §221.112(1) clarifies that action on a license may be made for failing to meet qualifications and requirements.

The amendment to §221.112(2) clarifies that the board or department may take action on a person's license if the person violates laws relating to other sectors of the industry for which a license issued by the Motor Vehicle Division is required.

The amendment to §221.112(3) corrects the spelling of "willfully."

The amendment to §221.112(6) clarifies that a person may not engage in business without the required license and eliminates a reference to salvage vehicle dealer license endorsements.

The amendments to §§221.112(12), 221.112(15), and 221.112(20) correct the spelling of "nonrepairable."

The amendment to §221.112(8) clarifies specific information that must be reported by a license holder to the department within 30 days of a change.

The amendment to §221.112(9) clarifies that any changes made under §221.19(b) must be reported to the department within 30 days.

The amendment to §221.112(10) removes the requirement to notify the department that a salvage vehicle agent has been terminated. The following paragraphs are renumbered accordingly.

The amendments to §§221.112(13) - 221.112(15) correct punctuation and grammatical errors, and clarify that action may be taken on a license for a person's violation of law or board rules relating to the motor vehicle industry for which the board has jurisdictional authority.

The amendment to §221.112(16) clarifies the persons who will be subject to criminal history review and the offenses that will be reviewed. Based on a comment received concerning proposed amendments to 43 TAC §215.89, the department considers it necessary to clarify that what is considered to be a conviction results from Occupations Code §53.021(d). Occupations Code §53.021(d) provides that a licensing authority may consider a person to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the person was discharged as described in Occupations Code §53.021(c), which is referred to in the proposal as a "deemed" conviction. To clarify this reference, §221.112(16) has been changed to substitute "or considered convicted under Occupations Code §53.021(d)" for "or deemed convicted." The change does not affect persons not on notice of the proposal or add additional costs.

The amendment to §221.112(19) clarifies that a license holder must pay all administrative penalties imposed by the department, not just those imposed under Occupations Code Chapter 2302.

The amendment to §221.112(20) clarifies that the board or department may take action on a license if a person is engaging in

business without a license that is required under Occupations Code Chapter 2301 or Chapter 2302 or Transportation Code Chapter 503. Additionally, the amendment corrects a punctuation error.

Repeal of §221.113, Suspension or Refusal to Renew Due to Failure to Pay Court Ordered Child Support, is required under Family Code Chapter 232.

Repeal of §221.114, Re-application after Revocation of License, is adopted because the subject matter is now found in §221.111(b).

SUMMARY OF COMMENTS.

The department received one comment not opposing the proposal from the Tax Assessor Collector Association of Texas, on behalf of its members.

SUBCHAPTER B. LICENSING

43 TAC §221.15, §221.19

STATUTORY AUTHORITY. The department adopts amendments to §221.15 and §221.19 under Occupations Code §2301.155 and §2302.051, and Transportation Code and §1002.001.

- Occupations Code §2301.155 authorizes the board of the Texas Department of Motor Vehicles to adopt rules as necessary or convenient to administer Occupations Code Chapter 2301 and to govern practice and procedure before the board.

- Occupations Code §2302.051 authorizes the board to adopt rules as necessary to administer Occupations Code Chapter 2302.

- Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §2302.104 and §2302.108.

§221.15. Required License Application Information.

The following information must be provided on each salvage vehicle dealer application:

- (1) the full legal name of the applicant;
- (2) the full business address, including number, street, municipality, county, and zip code for each location where the applicant will conduct business under the license if each location is in the same county;
- (3) the business telephone number and email address;
- (4) the mailing address;
- (5) a statement acknowledging that the department will consider the applicant's designated mailing address the applicant's last known address for department communication, including service of process under Subchapter E of this chapter (relating to Administrative Procedures). The designated mailing address will be considered applicant's last known address until such time that the mailing address is changed in the licensing records of the department after the license holder submits an amendment to change the license holder's mailing address;
- (6) all assumed names as registered with the secretary of state or county clerk, as applicable;
- (7) if applying as a sole proprietor, the social security number, address and telephone number for the sole proprietor;

(8) if applying as a general partnership, the social security number, address and telephone number for each of the general partners;

(9) if applying as a limited partnership, limited liability company, or corporation, the full name, social security number, address and telephone number for each officer or director of the corporation, each member, officer, or manager of the limited liability company, each partner, and each officer of the limited partnership, including the information for the general partner based on the type of entity;

(10) the state sales tax number;

(11) the National Motor Vehicle Title Information System (NMVTIS) number evidencing that the applicant is registered with NMVTIS;

(12) a statement indicating whether the applicant or any person described in §211.2 of this title (relating to Application of Subchapter) has previously applied for a license under this chapter or the salvage vehicle dealer licensing laws of another jurisdiction, the result of the previous application, and whether the applicant, including a person described in §211.2 of this title, has ever been the holder of a license issued by the department or another jurisdiction that was revoked, suspended, or subject of an order issued by the board or by another jurisdiction to pay an administrative penalty that remains unpaid;

(13) a statement indicating whether the applicant has an ownership, organizational, affiliation, or other business arrangement that would allow a person to direct the management, policies, or activities of an applicant or license holder, whether directly or indirectly, who was the holder of a license issued by the department or by another jurisdiction that was revoked, suspended, or subject of an order issued by the board or by another jurisdiction to pay an administrative penalty that remains unpaid;

(14) details of the criminal history of the applicant and any person described in §211.2 of this title;

(15) details of the professional information of the applicant and any person described in §211.2 of this title;

(16) a statement that the applicant at the time of submitting the application is in compliance, and, after issuance of a license, will remain in compliance, with all ordinances and rules of the municipality or county of each location where the applicant will conduct business; and

(17) an acknowledgement that the applicant understands, is, and will remain in compliance with all state and federal laws relating to the licensed activity.

§221.19. Change of License Holder's Name, Ownership, or Control.

(a) A license holder shall notify the department to amend its license within 30 days of a change in the license holder's business name. Upon submission of an amendment to change the business name, the department shall reflect the new business name in the department's records. The dealer shall retain the same salvage vehicle dealer license number except if the business name change is the result of a change in the type of entity being licensed, such as a sole proprietorship becoming a corporation, or if the ownership of the business changes as discussed in subsection (b) of this section.

(b) A salvage vehicle dealer shall notify the department by submitting a request for license amendment within 30 days of a change to:

(1) the entity type of the applicant or license holder;

(2) the departure or addition of any person reported to the department in the original license application or most recent renewal

application, including any person described in §211.2 of this title (relating to Application of Subchapter);

(3) an ownership, organizational, managerial, or other business arrangement that would allow the power to direct or cause the direction of the management and policies and activities of an applicant or license holder, whether directly or indirectly, to be established in or with a person not described in paragraph (1) or (2) of this subsection.

(c) The license holder must submit to the department a notice of change and all information needed for that specific license modification.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 1, 2020.

TRD-202004085

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Effective date: October 31, 2020

Proposal publication date: June 26, 2020

For further information, please call: (512) 465-5665

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**SUBCHAPTER F. ADMINISTRATIVE
SANCTIONS**

43 TAC §221.111, §221.112

STATUTORY AUTHORITY. The department adopts amended §221.111 and §221.112 under Occupations Code §2301.155 and §2302.051 and Transportation Code §1002.001.

- Occupations Code §2301.155 authorizes the board of the Texas Department of Motor Vehicles to adopt rules as necessary or convenient to administer Occupations Code Chapter 2301 and to govern practice and procedure before the board.

- Occupations Code §2302.051 authorizes the board to adopt rules as necessary to administer Occupations Code Chapter 2302.

- Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §2302.104 and §2302.108.

§221.111. Denial of License.

(a) The board or department may deny an application for a license or a renewal of a license under Occupations Code Chapter 53 or Chapter 2302, and §211.3 of this title (relating to Criminal Offense Guidelines) or this chapter, if:

(1) all the information required on the application is not complete;

(2) the applicant or any owner, officer, director, or other person described in §211.2 of this title (relating to Application of Subchapter) made a false statement, material misrepresentation, or a material omission, on the application to issue, renew, or amend a license;

(3) the applicant, or any owner, officer, director, or other person described in §211.2 of this title, has been convicted, or considered convicted under Occupations Code §53.021(d), by any local,

state, federal, or foreign authority, of an offense that directly relates to the duties or responsibilities of the licensed occupation as described in §211.3 of this title or is convicted of an offense that is independently disqualifying under Occupations Code §53.021;

(4) the applicant's or any owner's, officer's, director's, or other person described in §211.2 of this title, previous license was revoked;

(5) the applicant or license holder has an ownership, organizational, managerial, or other business arrangement that would allow a person the power to direct, management, policies, or activities, of the applicant or license holder, whether directly or indirectly, who is unfit, ineligible for license, or has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, or similar assessment for a current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority; or

(6) the applicant, or any owner, officer, or director, or other person described in §211.2 of this title is unfit to hold the license, is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment.

(b) If the department denies an application for a license to be issued under the authority of Occupations Code Chapter 2302, the applicant may request an administrative hearing in the manner specified in §221.91 of this title (relating to Notice of Department Decision).

(c) In accordance with Occupations Code §2302.108, the board or department shall reject any application for issuance of a new license under Occupations Code Chapter 2302 filed by a person whose license is revoked before the first anniversary of the date of revocation.

§221.112. *Suspension, Revocation and Administrative Penalties.*

The board or department may suspend or revoke a license or impose an administrative penalty if the license holder:

(1) fails to meet or maintain the qualifications and requirements for a license;

(2) violates any law relating to the purchase, sale, exchange, storage, or distribution of motor vehicles, including salvage motor vehicles and nonrepairable motor vehicles;

(3) willfully defrauds a purchaser;

(4) fails to maintain purchase, sales, and inventory records as required by Occupations Code, Chapter 2302, or this chapter;

(5) refuses to permit, or fails to comply with a request by the department to examine, during normal business hours, the license holder's records as required by Occupations Code, Chapter 2302, or this chapter;

(6) engages in motor vehicle or salvage business without the required license;

(7) engages in business as a salvage vehicle dealer at a location for which a license has not been issued by the department;

(8) fails to notify the department of a change of the salvage vehicle dealer's legal business entity name, assumed name, mailing address, email address, physical address or location within 30 days of such change by submitting an amendment to the license;

(9) fails to notify the department of a change described in §221.19(b) of this title (relating to Change of License Holder's Name, Ownership, or Control) as required in that section;

(10) fails to remain regularly and actively engaged in the business for which the salvage vehicle dealer license is issued;

(11) sells more than five (5) nonrepairable motor vehicles or salvage motor vehicles to the same person in a casual sale during a calendar year;

(12) violates any provision of Occupations Code Chapters 2301 or 2302, Transportation Code Chapters 501, 502, or 503, or any board rule or order promulgated under those statutes;

(13) uses or allows use of the salvage vehicle dealer's license or business location for the purpose of avoiding the requirements of Occupations Code Chapters 2301 or 2302, Transportation Code, Chapters 501, 502 or 503, or any board rule or order promulgated under those statutes;

(14) violates any law, ordinance, rule or regulation governing the purchase, sale, exchange, or storage, of salvage motor vehicles or nonrepairable motor vehicles;

(15) sells or offers for sale a nonrepairable motor vehicle or a salvage motor vehicle from any location other than the salvage vehicle dealer's licensed business location;

(16) is, or any owner, officer, director, or other person described in §211.2 of this title (relating to Application of Subchapter), is convicted, or considered convicted under Occupations Code §53.021(d), by any local, state, federal, or foreign authority, of an offense that directly relates to the duties or responsibilities of the licensed occupation as described in §211.3 of this title (relating to Criminal Offense Guidelines) or an offense that is independently disqualifying under Occupations Code §53.021 after initial issuance or renewal of the salvage vehicle dealer license, or that has not been reported to the department as required;

(17) makes a false statement, material misrepresentation, or material omission in any application or other information filed with the department;

(18) fails to timely remit payment for administrative penalties imposed by the department;

(19) engages in business without a license required under Occupations Code Chapters 2301 or 2302, or Transportation Code Chapter 503;

(20) operates a salvage motor vehicle or a nonrepairable motor vehicle on the public highways or allows another person to operate a salvage motor vehicle or a nonrepairable motor vehicle on public highways;

(21) dismantles a salvage motor vehicle or a nonrepairable motor vehicle; or

(22) deals in used automotive parts as more than an incidental part of the salvage vehicle dealer's primary business.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 1, 2020.

TRD-202004086

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Effective date: October 31, 2020

Proposal publication date: June 26, 2020

For further information, please call: (512) 465-5665



43 TAC §221.113, §221.114

STATUTORY AUTHORITY. The department adopts the repeal of §221.113 and §221.114 under Occupations Code §2301.155 and §2302.051 and Transportation Code §1002.001.

- Occupations Code §2301.155 authorizes the board of the Texas Department of Motor Vehicles to adopt rules as necessary or convenient to administer Occupations Code Chapter 2301 and to govern practice and procedure before the board.
- Occupations Code §2302.051 authorizes the board to adopt rules as necessary to administer Occupations Code Chapter 2302.
- Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §2302.104 and §2302.108.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 1, 2020.

TRD-202004087

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Effective date: October 31, 2020

Proposal publication date: June 26, 2020

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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.

Adopted Rule Reviews

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for re-adoption, revision, or repeal 16 Texas Administrative Code (TAC), Chapter 120, Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners. The Notice of Intent to Review was published in the August 14, 2020, issue of the *Texas Register* (45 TexReg 5663). The public comment period closed on September 14, 2020.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Dyslexia Therapy program under Texas Occupations Code, Chapter 403, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 403, Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists. The rules provide details that are not found in the program statutes but are necessary for implementation and operation of this program. For example, the rules detail the continuing education requirements, professional standards, and fees that are specific to this program. In addition, Texas Occupations Code §§403.052 and 403.209 specifically require that rules be adopted for this program.

The Department did not receive any public comments in response to the Notice of Intent to Review.

At its meeting on September 29, 2020, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC, Chapter 120, Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners, in their current form. As a result of the review process, the Department may propose amendments in the future that further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC, Chapter 120, Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners.

TRD-202004090

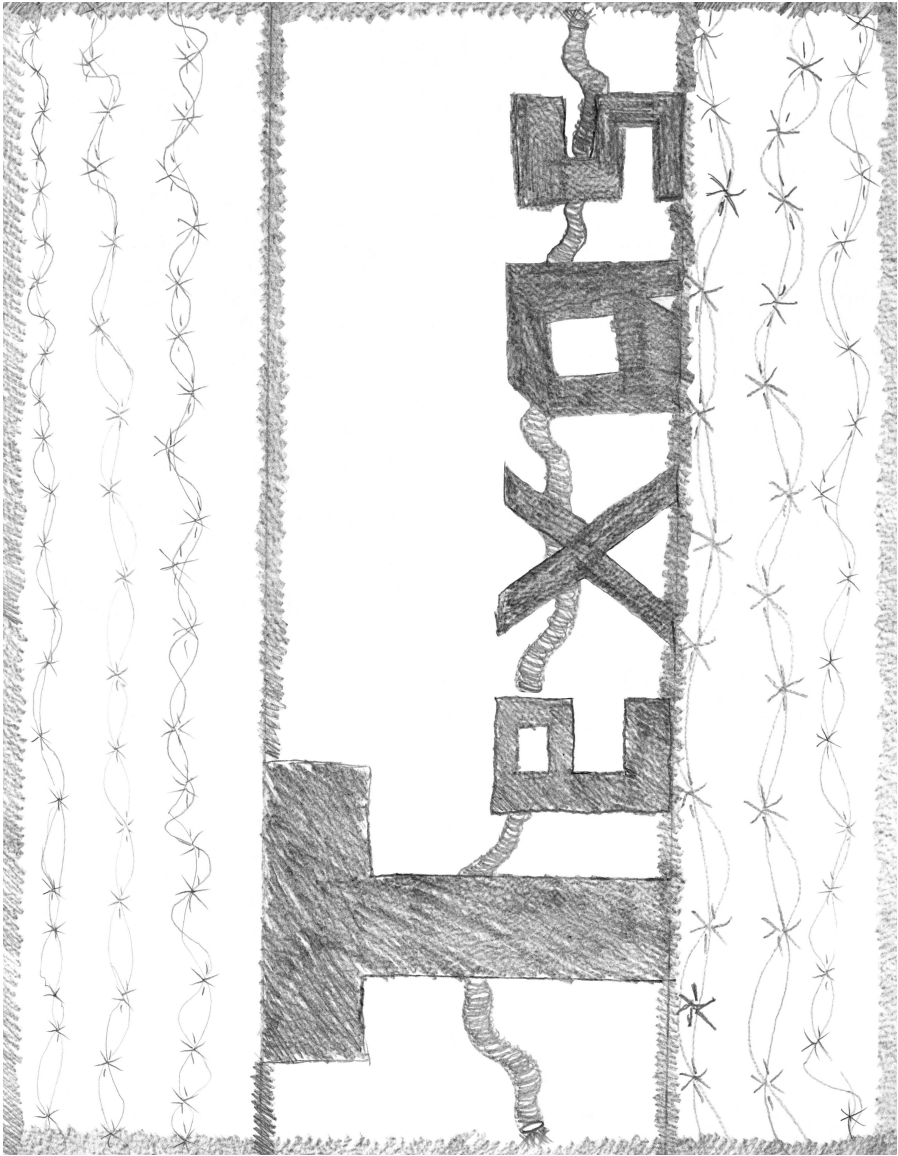
Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Filed: October 1, 2020





TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §402.420

Religious Society:	
Qualifications and Requirements	Necessary Documentation
Must be organized primarily for religious purposes.	<p>A signed and dated copy of the most recent version of all of the organization's organizing instrument(s);</p> <p>Or</p> <p>A copy of the page from the applicant's parent organization religious directory that lists the applicant organization's information.</p> <p>The name of the applicant organization must match the name of the organization on the documents submitted.</p>
Must have been organized in Texas for at least three years.	<p>A copy of a listing in a publication such as a national roster or newspaper article naming the organization;</p> <p>Or</p> <p>A letter or other document provided or issued to the applicant from a government agency.</p> <p>The documents submitted must reflect the applicant's name, Texas address, and establish at least three years of existence.</p>
Must demonstrate that the organization has made significant progress toward the accomplishment of its purposes during the 12 months preceding the date of application.	<p>At least three (3) different types of acceptable documents as proof that organization was continuously engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed. Examples of acceptable documentation include copies of:</p> <ol style="list-style-type: none"> 1. a letter from the diocese, 2. notices of church services, and/or church bulletins, 3. canceled checks for clergy salaries, religious books, materials and/or supplies, maintenance of religious building(s), and 4. records of marriages performed, or records of funerals performed. <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been continuously engaged in furthering its charitable purpose throughout the past twelve months.</p>

	All documents must be dated and indicate the name of the organization.
Must appoint only the organization's members to serve as operators for the organization.	A current membership list with all officers and directors noted. Officers would include a priest, pastor, rabbi, or other head of the church. Membership list will be compared to persons listed on the application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments(s) that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors, and operators.</p> <p>Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements.	<p>Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS.</p> <p>Indicate on application if organization is not required to file Form 990;</p> <p>And</p> <p>If the organization is organized under the law of this state, the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.</p>
Non-Profit Medical Organization:	
Qualifications and Requirements	Necessary Documentation

<p>Main activities must be in support of medical research or treatment programs.</p>	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments.</p> <p>The name of the applicant organization must match the name of the organization on the organizing instruments.</p>
<p>Must have had a governing body or officers elected by the vote of the members or delegates elected by the members for at least three years.</p>	<p>Copies of meeting minutes recording officer elections for three years showing the date of each meeting and signature of an officer;</p> <p>Or</p> <p>A dated list of officers and positions held for three years.</p> <p>A statement signed by an officer indicating which positions were left open if the organization had positions defined in organizing instrument(s) that the organization did not fill.</p> <p>Organizing instrument(s) will be reviewed to ensure that the organization has members who elect officers and to confirm the officer positions.</p>
<p>Must have been affiliated with a state or national organization organized to perform the same purposes for at least three years.</p>	<p>Verification by Parent for Charitable Organization Conductor;</p> <p>And</p> <p>A copy of a listing in a publication such as a national roster or newspaper article naming the organization or a letter or other document provided or issued to the applicant from a government agency.</p> <p>The document submitted must reflect the applicant's name, Texas address, and establish the date the organization was founded and at least three years of existence.</p>
<p>Must hold a valid 501(c) exemption through the Internal Revenue Service.</p>	<p>If the Commission is unable to validate directly with the Internal Revenue Service that the organization has a 501(c) designation, the Commission will request additional documentation from the applicant.</p>
<p>May not distribute any income to members, officers, or governing body except as reasonable compensation for services.</p>	<p>Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS.</p> <p>Indicate on application if organization is not required to file Form 990.</p> <p>A signed and dated copy of the most recent version of all of the organization's organizing instruments.</p>

<p>Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.</p>	<p>At least three (3) different types of acceptable documents as proof that organization was engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed.</p> <p>Acceptable documentation may include:</p> <ol style="list-style-type: none"> 1. canceled checks in support of medical treatment or research programs, i.e., American Cancer Society, Muscular Dystrophy Association, or other recognized organizations dedicated to the elimination of disease; 2. canceled checks for the purchase of medical equipment or to provide medical care for the needy; 3. letters of appreciation from individuals or organizations receiving benefits for treatment; 4. IRS Form 990; and 5. newspaper articles. <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been engaged in furthering its charitable purposes throughout the past twelve months.</p> <p>All documents must be dated and indicate the name of the organization.</p>
<p>May appoint only the organization's members to serve as operators.</p>	<p>A current membership list with officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.</p>
<p>Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and have not been convicted of a criminal fraud offense, with the exception of a</p>	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p>

criminal fraud offense that is a Class C misdemeanor.	The Department of Public Safety will conduct a criminal history check on all officers, directors, and operators. Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.
Section 2001.102 License Application Requirements.	If the organization is organized under the law of this state, the organization must be in good standing with the Secretary of State (SOS) The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.
Volunteer Fire Department:	
Qualifications and Requirements	Necessary Documentation
Organized primarily to provide fire-fighting services.	Proof of membership in a professional fire-fighting organization; Or Copy of a publication that lists the organization and its phone number to call in case of fire; Or A letter from a local government agency recognizing the organization as a volunteer fire department; Or A copy of all organizing instrument(s) which list this purpose for the organization; Or A dated newspaper article which details the organization's activities. The name of the applicant organization must match the name of the applicant on the documents submitted.
Must have been organized in Texas for at least three years.	A copy of a listing in a publication such as a national roster or newspaper article naming the organization; Or A letter or other document provided or issued to the applicant from a government agency.

	The document submitted must reflect the applicant's name, Texas address, and establish the date the organization was founded and at least three years of existence.
Must operate fire-fighting equipment.	Pictures of fire equipment reflecting the name of the volunteer fire department; Or Copies of canceled checks or invoices for fire-fighting equipment.
May not pay members other than nominal compensation.	Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS. Indicate on application if organization is not required to file Form 990. If not required to file Form 990, a copy of a volunteer fire fighter application; Or Copy of an organizing instrument that describes compensation of members.
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	Call List which shows the type of incident and location for the 12 month period prior to the date the application was signed.
May appoint only the organization's members to serve as operators.	Current membership list with all officers and directors noted. Membership list will be compared to the persons listed on application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a	A signed and dated copy of the most recent version of all of the organization's organizing instruments that list the officer and director positions; Or If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.

<p>gambling or gambling-related offense; and have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.</p>	<p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
<p>Section 2001.102 License Application Requirements.</p>	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>If the organization is organized under the law of this state the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.</p>
<p>Veteran Organization:</p>	
<p>Qualifications and Requirements</p>	<p>Necessary Documentation</p>
<p>Must be an unincorporated association or corporation.</p>	<p>A signed copy of the organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>The name of the applicant organization must match the name of the organization on the organizing instruments.</p>
<p>Must hold a valid 501(c) exemption through the Internal Revenue Service.</p>	<p>If the Commission is unable to validate directly with the Internal Revenue Service that the organization has a 501(c) designation, the Commission will request additional documentation from the applicant.</p> <p>Verification by Parent for Charitable Organization Conductor.</p>
<p>Must have been organized in Texas for at least three years.</p>	<p>A copy of a listing in a publication such as a national roster or newspaper article naming the organization;</p> <p>Or</p> <p>A letter or other document provided or issued to the applicant from a government agency.</p>

	The document submitted must reflect the applicant's name, Texas Address, and either be dated three years before the application date or establish the date the organization as founded.
May not distribute any income to members, officers, or governing body except as reasonable compensation for services.	Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS. Indicate on application if organization is not required to file Form 990.
Members must be veterans or dependents of veterans of the United States armed forces.	Verification by Parent for Charitable Organization Conductor.
Must be chartered by the United States Congress.	The Commission will review the list of chartered veteran organizations maintained by the United States Department of Veteran Affairs. Its website link is: http://www1.va.gov/vso/index.cfm?template=view .
Must be organized to advance the interest of veterans or active duty personnel of the US armed forces and their dependents.	A signed and dated copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation. The name of the applicant organization must match the name of the organization on the organizing instruments.
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	At least three (3) different types of acceptable documents as proof that organization was engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed. Examples of acceptable documentation include copies of: 1. activity reports filed with the state and/or national organization, 2. monetary donations to Veterans Administration (VA) hospitals, 3. letters of appreciation from veterans and/or organizations receiving benefits, 4. support of and/or contributions to veterans' funerals and/or their families,

	<p>5. visits to veteran's hospitals,</p> <p>6. newspaper articles, and</p> <p>7. Form 990.</p> <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been engaged in furthering its charitable purpose throughout the past twelve months.</p> <p>All documents must be dated and indicate the name of the organization.</p>
May appoint only the organization's members to serve as operators.	A current membership list with all officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements.	If the organization is organized under the law of this state, the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.
Fraternal Organization:	
Qualifications and Requirements	Necessary Documentation

Must be an Unincorporated Association or Corporation.	A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation. The name of the applicant organization must match the name of the organization on the organizing instruments.
Must be organized to perform and engage in charitable work.	A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation. The name of the applicant organization must match the name of the organization on the organizing instruments.
Must hold a valid 501(c) exemption through the Internal Revenue Service.	If the Commission is unable to validate directly with the Internal Revenue Service that the organization has a 501(c) designation, the Commission will request additional documentation from the applicant; Or Verification by Parent for Charitable Organization Conductor if affiliated with a state or national organization.
May not distribute any income to members, officers, or governing body except as reasonable compensation.	Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS. Indicate on application if organization is not required to file Form 990. A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.
Must have been organized in Texas for at least three years.	A copy of a listing in a publication such as a national roster or newspaper article if not affiliated with a state or national organization; Or A letter or other document provided or issued to the applicant from a government agency. The document submitted to confirm the requirement must reflect organization's name, Texas address, and be either dated prior to the three year period or establish the date the organization was founded.
Must have a bona fide membership.	Current membership list with all officers and directors noted.
Membership actively and continuously engaged in furthering its authorized	Organizing instrument(s) describing the organization's purposes. Copies of minutes from three annual membership meetings reflecting that the organization voted on the election of officers and reported on matters related to furthering the organization's purpose.

<p>purposes for the past three years.</p>	<p>Collectively, the three meeting minutes must encompass a (36) thirty-six month period (i.e. one per year).</p> <p>The meeting minutes must be dated and signed by an officer of the organization.</p>
<p>May not authorize or support a public office candidate.</p>	<p>Organizing instrument(s) reflecting that organization has not authorized support or opposition of a public office candidate.</p>
<p>Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.</p>	<p>At least three (3) different types of acceptable documents as proof that organization was engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed.</p> <p>Examples of acceptable documentation include copies of:</p> <ol style="list-style-type: none"> 1. canceled checks, 2. newspaper articles, 3. brochures, 4. receipts, 5. meeting minutes, and 6. IRS Form 990. <p>All documents must be dated and indicate the organization's name.</p> <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been engaged in furthering its charitable purposes throughout the past twelve months.</p>
<p>May appoint only the organization's members to serve as operators.</p>	<p>A current membership list with all officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.</p>
<p>Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense;</p>	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p>

and have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed. The Department of Public Safety will conduct a criminal history check on all officers, directors and operators. Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.
Section 2001.102 License Application Requirements.	If the organization is organized under the law of this state, the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.
Volunteer Emergency Medical Services Provider:	
Qualifications and Requirements	Necessary Documentation
Must have been organized in Texas for at least three years.	A copy of a listing in a publication such as a national roster or newspaper article naming the organization; Or A letter or other document provided or issued to the applicant from a government agency. The document submitted must reflect the applicant's name, Texas address, and either be dated three years before the application date or establish the date the organization was founded.
Must demonstrate that the organization has made significant progress toward the accomplishment of its purposes during the 12 months preceding the date of application.	A Call List which shows the type of incident and location for the 12 month period prior to the date the application was signed.
Must appoint only the organization's	A current membership list with all officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.

<p>members to serve as operators for the organization.</p>	
<p>Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.</p>	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation, that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
<p>Section 2001.102 License Application Requirements.</p>	<p>Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS.</p> <p>Indicate on application if organization is not required to file Form 990;</p> <p>And</p> <p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation;</p> <p>And</p> <p>If the organization is organized under the law of this state the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.</p>

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Alcoholic Beverage Commission

Correction of Error

The Texas Alcoholic Beverage Commission adopted repeals and new sections under Title 16, Chapter 45, Subchapters A - E, concerning Marketing Practices, in the October 9, 2020, issue of the *Texas Register* (45 TexReg 7244). The agency repealed §§45.1 - 45.19; 45.41 - 45.51; and 45.71 - 45.91, 45.94, and 45.96; and adopted new §§45.1 - 45.12; 45.20 - 45.27; 45.30; 45.40 - 45.43; and 45.50.

Due to an error by the Texas Register, the effective date for the adopted repeals was incorrectly published as "October 15, 2020". The correct effective date is "December 31, 2020".

TRD-202004170

Office of the Attorney General

Notice of Settlement of a Texas Water Code Enforcement Action

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate or inconsistent with the requirements of the law.

Case Title: *United States of America and the State of Texas v. City of Corpus Christi*; Case No. 2:20-cv-00235, in the U.S. District Court for the Southern District of Texas.

Background: The United States and the State of Texas filed a joint Complaint against the City of Corpus Christi, pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. section 1319(b), and provisions of the Texas Water Code. The Complaint seeks, *inter alia*, injunctive relief to address and eliminate illegal discharges, namely sanitary sewer overflows, occurring from the City's wastewater collection and transmission system, and discharges of pollutants from wastewater treatment plants that exceed effluent limits established in state-issued permits.

Proposed Settlement: The lawsuit is to be settled by a Consent Decree in the U.S. District Court, under which the City will implement comprehensive injunctive relief measures to eliminate and prevent future violations. The City will pay a civil penalty of \$1.136 million, which will be shared equally by the United States and the State of Texas.

For a complete description of the settlement, the proposed Consent Decree should be reviewed in its entirety. Requests for copies of the proposed Consent Decree, and written comments on the same, should be directed to Mark A. Steinbach, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, phone (512) 475-4019, facsimile (512) 320-0911, email

address: Mark.Steinbach@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202004102

Lesley French

General Counsel

Office of the Attorney General

Filed: October 2, 2020

Texas Health and Safety Code and Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to Section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Valero Energy Partners LP*; Cause No. D-1-GN-20-000516; in the 459th Judicial District Court, Travis County, Texas.

Background: Defendant, Valero, owns and operates a petroleum refinery located at 9701 Manchester Street, Houston, Harris County, Texas (the "Refinery"). From August 27, 2017, through September 14, 2017, an unauthorized air emissions event occurred from an external floating roof tank at the Refinery. The State initiated a lawsuit, on behalf of the Texas Commission on Environmental Quality ("TCEQ"), against Valero for its violation of the Texas Clear Air Act and TCEQ rules promulgated thereunder.

Proposed Settlement: The parties propose an Agreed Final Judgment, which provides for an award of civil penalties of \$245,000, plus attorney's fees to the State in the amount of \$40,000.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. The proposed judgment may be obtained by mail for the cost of copying. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to David Terry, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911, David.Terry@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202004137

Lesley French

General Counsel

Office of the Attorney General

Filed: October 5, 2020

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/12/20 - 10/18/20 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/12/20 - 10/18/20 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and 303.009³ for the period of 10/01/20 - 10/31/20 is 18% or Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and 303.009 for the period of 10/01/20 - 10/31/20 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.

³ For variable rate commercial transactions only.

TRD-202004150

Leslie L. Pettijohn
Commissioner

Office of Consumer Credit Commissioner

Filed: October 6, 2020

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 **November 17, 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 commissions 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 commissions 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 **November 17, 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, pro-

vides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Central Texas College District; DOCKET NUMBER: 2020-1021-PWS-E; IDENTIFIER: RN105674410; LOCATION: Killeen, Bell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(z), by failing to create a nitrification action plan for a system distributing chloraminated water; and 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; PENALTY: \$360; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: City of Friendswood; DOCKET NUMBER: 2020-0898-WQ-E; IDENTIFIER: RN111033395; LOCATION: Friendswood, Galveston County; TYPE OF FACILITY: collection system; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of sewage into or adjacent to any water in the state; PENALTY: \$4,875; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: City of Harlingen; DOCKET NUMBER: 2019-1462-WQ-E; IDENTIFIER: RN105535306; LOCATION: Harlingen, Cameron County; TYPE OF FACILITY: municipal separate storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater under Texas Pollutant Discharge Elimination System General Permit for small municipal separate storm sewer systems; PENALTY: \$3,375; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,700; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: EAST LAMAR WATER SUPPLY CORPORATION; DOCKET NUMBER: 2020-0429-PWS-E; IDENTIFIER: RN101435881; LOCATION: Center, Shelby County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(e)(4)(A), by failing to maintain a full face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards and is readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency; 30 TAC §290.42(j), by failing to use an approved chemical or media for the treatment of potable water that conforms to the American National Standards Institute/National Sanitation Foundation Standard 61 for Drinking Water System Components; 30 TAC §290.44(d) and §290.46(r), by failing to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and 20 psi during emergencies such as firefighting; 30 TAC §290.46(e) and Texas Health and Safety Code, §341.033(a), by failing to use a water works operator who holds an applicable, valid license issued by the executive director; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(q)(1), by failing to issue a boil water notice to the customers of the facility using the prescribed format in 30 TAC §290.47(c); and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan at each water treatment plant that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring

requirements; PENALTY: \$3,383; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: EXPLORER PIPELINE COMPANY; DOCKET NUMBER: 2020-0959-IWD-E; IDENTIFIER: RN100225432; LOCATION: Houston, Harris County; TYPE OF FACILITY: waste water treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0004965000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and §319.5(b), and TPDES Permit Number WQ0004965000, Effluent Limitations and Monitoring Requirements Number 1, by failing to collect and analyze effluent samples at the intervals specified in the permit; PENALTY: \$4,776; ENFORCEMENT COORDINATOR: Alyssa Loveday; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Gene Hargraves dba Hargraves Tire & Auto; DOCKET NUMBER: 2019-0406-MSW-E; IDENTIFIER: RN108821786; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: automotive service shop; RULES VIOLATED: 30 TAC §324.1 and 40 Code of Federal Regulations §279.22(c)(1), by failing to mark or clearly label used oil storage containers with the words "Used Oil"; and 30 TAC §328.25(b) and Texas Health and Safety Code, §371.105(b), by failing to maintain, as a generator, a copy of the bill of lading for each shipment of used oil filters; PENALTY: \$450; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(7) COMPANY: Harris County Municipal Utility District Number 449; DOCKET NUMBER: 2020-0657-PWS-E; IDENTIFIER: RN107816019; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; PENALTY: \$314; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: HT & T, LLC; DOCKET NUMBER: 2020-0389-AGR-E; IDENTIFIER: RN106739022; LOCATION: Hempstead, Waller County; TYPE OF FACILITY: Aquaculture; RULES VIOLATED: 30 TAC §305.125(1) and §319.5(b), and Texas Pollutant Discharge Elimination System General Permit Number TXG130079, Part III. Permit Requirements, Section A. Effluent Limitations, by failing to collect and analyze effluent samples at the intervals specified in the permit; PENALTY: \$16,918; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: New Horizons Ranch and Center, Incorporated; DOCKET NUMBER: 2020-0886-MWD-E; IDENTIFIER: RN101278471; LOCATION: Goldthwaite, Mills County; TYPE OF FACILITY: surface water treatment facility; RULES VIOLATED: 30 TAC §305.42(a), and TWC, §26.121(a)(1) by failing to obtain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: \$1,175; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Occidental Permian Ltd.; DOCKET NUMBER: 2020-0472-AIR-E; IDENTIFIER: RN106330665; LOCATION:

Seminole, Gaines County; TYPE OF FACILITY: gas processing site; RULES VIOLATED: 30 TAC §106.6(c), Permit by Rule Registration Number 108630, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$2,551; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(11) COMPANY: PRIME TIME GROCERY, LLC, dba E Z Buy; DOCKET NUMBER: 2020-0627-PST-E; IDENTIFIER: RN102873031; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(2)(C) and (4)(C) and TWC, §26.3475(d), by failing to inspect the corrosion protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, and failing to inspect and test the corrosion protection system for operability and adequacy of protection at least once every three years; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$9,843; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: Safeway Incorporated dba Albertsons Express 226; DOCKET NUMBER: 2019-0966-PST-E; IDENTIFIER: RN102231503; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the underground storage tank (UST) to the TCEQ within 30 days from the date of the occurrence of the change or addition; 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 UST; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: \$8,717; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: SEZAA, INCORPORATED dba Korner Food Mart; DOCKET NUMBER: 2020-0554-PST-E; IDENTIFIER: RN101436202; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank (USTs); 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.10(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; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (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 provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.606, by failing to maintain required operator training certification records on-site and make them available for inspection upon request by agency personnel; PENALTY: \$10,021; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924;

REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Town of Quintana; DOCKET NUMBER: 2020-0986-PWS-E; IDENTIFIER: RN101242907; LOCATION: Quintana, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(e)(2), by failing to conduct an operation evaluation and submit a written operation evaluation report to the executive director within 90 days after being notified of analytical results that caused an exceedance of the operational evaluation level for total trihalomethanes (TTHM) for Stage 2 Disinfection Byproducts at Site 1 during the first quarter of 2020; and 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for TTHM based on the locational running annual average; PENALTY: \$1,150; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Trinity Bay Conservation District; DOCKET NUMBER: 2020-0763-MWD-E; IDENTIFIER: RN102076304; LOCATION: Hankamer, Chambers County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015039001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$4,312; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202004144

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 6, 2020



Enforcement Orders

An agreed order was adopted regarding IMEX ENTERPRISES, LLC dba AMERICAN DEPOT, Docket No. 2019-1003-PST-E on October 6, 2020, assessing \$4,687 in administrative penalties with \$937 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SAIF MART LLC dba Reds, Docket No. 2019-1151-PST-E on October 6, 2020, assessing \$1,876 in administrative penalties with \$375 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NAPCO Precast, LLC, Docket No. 2019-1657-WQ-E on October 6, 2020, assessing \$5,052 in administrative penalties with \$1,010 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Southwestern Bell Telephone Company, Docket No. 2019-1744-PST-E on October 6, 2020, assessing \$2,955 in administrative penalties with \$591 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Smith, Enforcement Coordinator at (512) 239-2545, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Lubrizol Corporation, Docket No. 2019-1754-AIR-E on October 6, 2020, assessing \$3,413 in administrative penalties with \$682 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD., Docket No. 2020-0131-EAQ-E on October 6, 2020, assessing \$938 in administrative penalties with \$187 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kalika Malika Inc dba One Stop Market, Docket No. 2020-0164-PST-E on October 6, 2020, assessing \$5,958 in administrative penalties with \$1,191 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, 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 BRM Trucking & Construction LLC, Docket No. 2020-0183-WQ-E on October 6, 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.

An agreed order was adopted regarding MILLER WASTE MILLS, INCORPORATED, Docket No. 2020-0289-IWD-E on October 6, 2020, assessing \$6,300 in administrative penalties with \$1,260 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Equistar Chemicals, LP, Docket No. 2020-0290-AIR-E on October 6, 2020, assessing \$6,150 in administrative penalties with \$1,230 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, 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 Tarrant County Hospital District, Docket No. 2020-0292-PST-E on October 6, 2020, assessing \$6,375 in administrative penalties with \$1,275 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding INEOS Styrolution America LLC, Docket No. 2020-0312-AIR-E on October 6, 2020, assessing \$5,437 in administrative penalties with \$1,087 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, 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 43 VENTURES, L.L.C. dba Corner Market TX0341, Docket No. 2020-0454-PST-E on October 6, 2020, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512)

239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Schumacher Co., LLC, Docket No. 2020-0483-AIR-E on October 6, 2020, assessing \$3,773 in administrative penalties with \$754 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, 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 Jonestown Water Supply Corporation, Docket No. 2020-0508-PWS-E on October 6, 2020, assessing \$2,512 in administrative penalties with \$502 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Conner, 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 Plains, Docket No. 2020-0532-MWD-E on October 6, 2020, assessing \$1,063 in administrative penalties with \$212 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.

A field citation was adopted regarding Clovis C. Willhelm, Docket No. 2020-0561-WOC-E on October 6, 2020, assessing \$175 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.

A field citation was adopted regarding Howard D. Ferguson, Docket No. 2020-0619-WOC-E on October 6, 2020, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Ellen Ojeda, 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 Enterprise Products Operating LLC, Docket No. 2020-0751-AIR-E on October 6, 2020, assessing \$938 in administrative penalties with \$187 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, 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 LOTSA LOOT, LLC, Docket No. 2020-0814-AIR-E on October 6, 2020, assessing \$938 in administrative penalties with \$187 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, 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 LOTSA LOOT 1, LLC, Docket No. 2020-0823-AIR-E on October 6, 2020, assessing \$938 in administrative penalties with \$187 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, 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 Guinn Enterprises, Inc., Docket No. 2020-0825-AIR-E on October 6, 2020, assessing \$938 in administrative penalties with \$187 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LOTSA LOOT 3, LLC, Docket No. 2020-0833-AIR-E on October 6, 2020, assessing \$938 in admin-

istrative penalties with \$187 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, 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 Kyle Doby, Docket No. 2020-0844-WQ-E on October 6, 2020, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Ellen Ojeda, 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 Ryan Beane, Docket No. 2020-0860-WOC-E on October 6, 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.

TRD-202004166
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 7, 2020

◆ ◆ ◆
Enforcement Orders

An agreed order was adopted regarding KM Liquids Terminals LLC, Docket No. 2017-1722-AIR-E on October 7, 2020, assessing \$80,277 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding ASLAM CORPORATION dba Xpress Beer & Wine, Docket No. 2018-0567-PST-E on October 7, 2020, assessing \$30,962 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Benjamin Warms, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding OM TJ, INC. dba T J Mart, Docket No. 2018-1564-PST-E on October 7, 2020, assessing \$26,140 in administrative penalties with \$5,228 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Robert Lynn Goodloe and Roy King Carrell dba Rock Ridge Dairy, Docket No. 2019-0451-AGR-E on October 7, 2020, assessing \$9,187 in administrative penalties with \$1,837 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Frey, Inc., Docket No. 2019-0458-MLM-E on October 7, 2020, assessing \$19,465 in administrative penalties with \$3,892 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Brandon Bass dba Brando Custom Paint, Docket No. 2019-0464-AIR-E on October 7, 2020, assessing \$1,312 in administrative penalties. Information concerning any

aspect of this order may be obtained by contacting Kevin R. Bartz, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ACME BRICK COMPANY, Docket No. 2019-0534-MWD-E on October 7, 2020, assessing \$29,452 in administrative penalties with \$5,890 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Yara Freeport LLC, Docket No. 2019-1308-AIR-E on October 7, 2020, assessing \$42,750 in administrative penalties with \$8,550 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SAHI-4 INVESTMENTS, Inc dba Pronto Food Mart, Docket No. 2019-1368-PST-E on October 7, 2020, assessing \$40,526 in administrative penalties with \$8,105 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 122nd & FRANKFORD / DISCOUNT SHOP RENTALS, INC., Docket No. 2019-1502-PWS-E on October 7, 2020, assessing \$900 in administrative penalties with \$516 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Rio Hondo, Docket No. 2019-1537-PWS-E on October 7, 2020, assessing \$868 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kingsville Independent School District, Docket No. 2019-1555-PST-E on October 7, 2020, assessing \$11,350 in administrative penalties with \$2,270 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Thalia Water Supply Corporation, Docket No. 2019-1654-PWS-E on October 7, 2020, assessing \$250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Gill Water Supply Corporation, Docket No. 2019-1659-PWS-E on October 7, 2020, assessing \$1,725 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, 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 CARBINE KILO INC dba Gina's Kwik Pantry, Docket No. 2019-1714-PST-E on October 7, 2020, assessing \$10,667 in administrative penalties with \$2,133 deferred. Information concerning any aspect of this order may be obtained by contacting Carolyn Kent, 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 South Hampton Resources, Inc., Docket No. 2020-0172-AIR-E on October 7, 2020, assessing \$27,192 in administrative penalties with \$5,438 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ETC Texas Pipeline, Ltd., Docket No. 2020-0384-AIR-E on October 7, 2020, assessing \$24,050 in administrative penalties with \$4,810 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, 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 INVISTA S.a.r.l., Docket No. 2020-0402-AIR-E on October 7, 2020, assessing \$14,850 in administrative penalties with \$2,970 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202004167

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 7, 2020



Notice of Public Hearing and Comment on Proposed Revisions to 30 TAC Chapters 35 and 291

The Texas Commission on Environmental Quality (TCEQ or commission) will offer a virtual public hearing on November 10, 2020 at 10:00 a.m. Central Standard Time.

The hearing is offered to receive testimony regarding implementation of House Bill 3542 and Senate Bill 700, 86th Texas Legislature, 2019, to amend sections to reflect changes to Texas Water Code, Chapters 5 and 13. This rulemaking would amend TCEQ rules relating to the economic regulation of water and sewer utilities as directed by the legislature.

The virtual hearing is structured for the receipt of oral comments only. Individuals who register may present oral statements when called upon in order of registration. Open discussion will not be permitted during the virtual hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing via the Teams Live Event Q&A chat function.

Registration. The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments or want their attendance on record must register by November 6, 2020. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on November 9, 2020 to those who registered for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_NWY-0ZjlyM2YtNjc1OC00YWVmLWE1NjAtNDJlYWVhMTc2ZWV5%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-

4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%220ab3b264-6a49-48c6-afc8-8225e4a7b0ac%22%2c%22IsBroadcastMeeting%22%3atru%7d.

Persons who do not have internet access or who have special communication or other accommodation needs who plan to attend the hearing should contact Sandy Wong, General Law Division at (512) 239-1802 or 1-800-RELAY-TX (TDD) to register. Accommodation requests should be made as far in advance as possible.

Written Comments. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. All comments should reference Rule Project No. 2020-011-291-OW. The comment period closes on November 17, 2020. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Brian Dickey, Plan and Technical Review Section, (512) 239-0963.

TRD-202004111

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 2, 2020



Notice of Water Rights Application

Notices issued September 30, 2020

APPLICATION NO. 13618; Oiltanking Texas City, L.P. 2800 Loop 197 S, Texas City, Texas 77590, Applicant, has applied for a Water Use Permit to divert and use not to exceed 500 acre-feet of water per from four points on Industrial Canal, San Jacinto-Brazos Coastal Basin, for industrial purposes in Galveston County. The application and fees were received on July 9, 2019. Additional information was received on July 24, 2019. The application was declared administratively complete and filed with the Office of the Chief Clerk on July 31, 2019. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions and installation of a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 13672; Oiltanking Texas Independent Deepwater Expansion, LLC P.O. Box 29, Texas City, Texas 77592, Applicant, has applied for a Water Use Permit to divert and use not to exceed 500 acre-feet of water per year from a point and three diversion reaches on the Texas City Ship Channel, San Jacinto-Brazos Coastal Basin, for industrial purposes in Galveston County. The application and fees were received on January 8, 2020. Additional fees were received on Feb-

ruary 21, 2020. The application was declared administratively complete and filed with the Office of the Chief Clerk on March 11, 2020. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to installing a measuring device. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 13679; Select Energy Services, LLC, 1000 Central Parkway N, Suite 270, San Antonio, Texas 78232, Applicant seeks a temporary water use permit to divert and use not to exceed 387 acre-feet of water within a period of three years from Cibolo Creek, San Antonio River Basin at a maximum diversion rate of 11.64 cfs (5,226 gpm) for mining purposes in Karnes County. The application was received on February 11, 2020. Additional information and fees were received on April 15, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on May 6, 2020. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions and installing a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by October 19, 2020.

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-202004122

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 2, 2020

General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of September 26, 2020 to October 2, 2020. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, October 9, 2020. The public comment period for this project will close at 5:00 p.m. on Sunday, November 8, 2020.

FEDERAL AGENCY ACTIONS:

Applicant: Port of Corpus Christi Authority

Location: project is located in Inner Harbor, at Corpus Christi, Nueces County, Texas

Latitude & Longitude (NAD 83): 27.820239, -97.432778

Project Description: The applicant proposes to conduct dredging, install a sheet pile cofferdam and bulkhead, and place rip rap fill material and appurtenances into navigable waters in an effort to expand the existing Oil Dock 3 facilities. The project would consist of removing approximately 198 linear feet of existing bulkhead, removing 1,240 square feet of existing rock berms, and removing four existing piles. Also, the project would consist of the installation of approximately 375 linear feet of new steel sheet pile bulkhead with a concrete cap below the Mean High Water (MHW), the discharge of approximately 4,667 cubic yards of rock into approximately 0.12 acre to create a twenty-foot rock mattress for bulkhead/slope stabilization below the High Tide Line (HTL), installation of eight new mooring structures with floating fenders, excavation of approximately 12,650 cubic yards of dry land and dredging of approximately 216,100 cubic yards of material from 4.25-acres of bay bottom to -54 feet mean lower low water, plus a two-foot over-dredge and four feet of advanced maintenance, resulting in a total estimated dredge volume of approximately 252,300 cubic yards. The proposed dredging would result in elevations consistent with elevations within the deepened federal channel. Dry excavation material would be temporarily placed at the project site within adjacent uplands. Dredge material would be placed within nearby placement areas PA8, PA3A, PA3B, PA1, PAZ, PA6, or PA2. A temporary

285-linear-foot steel sheet pile cofferdam would be installed adjacent to the existing bulkhead.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-1995-00318. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

CMP Project No: 21-1039-F1

Applicant: Axis Midstream Holdings, LLC

Location: project is located in several towns, waterways, and counties including Taft, Gregory, Ingleside, and Aransas Pass, in San Patricio County, Texas

Latitude & Longitude (NAD 83): 27.90524, -97.40482 (Midway Tank Farm) to 27.844767, -97.083002 (Harbor Island Loading Terminal)

Project Description: The applicant proposes to construct a series of facilities and pipelines to store, transport, and load crude oil into marine transport vessels. The proposed project components are composed of: (A) The Midway Tank Farm (Midway Facility) located south of the City of Taft, Texas. (B) The Aransas Pass Staging Facility (Aransas Facility) located west of the City of Aransas Pass. (C) A pipeline bundle that would connect the Aransas and Midway Facilities. This pipeline bundle would consist of one (1) 2-inch fiber optic; one (1) 6-inch gas supply (last mile); and two (2) 36-inch crude oil pipelines. (D) Harbor Island Loading Terminal (Harbor Island Terminal) located on the west side of the CCSC on Harbor Island in Port Aransas, Texas. (E) A pipeline bundle that would connect the Aransas and Harbor Island Facilities. This pipeline bundle would consist of one (1) 2-inch fiber optic; one (1) 6-inch gas supply; one (1) 16-inch intermix return; and two (2) 42-inch crude oil pipelines. The installation of the proposed Midway to Aransas pipeline bundle would result in 13.94 acres of temporary trench and fill impacts in waters of the US, including wetlands. The construction of the proposed Aransas Facility would total 16.8 acres of permanent fill impacts to waters of the US, specifically estuarine wetlands mainly comprised of *Distichlis spicata* (saltgrass), and fringed with *Borrchia frutescens* (sea oxeye daisy). The installation of the proposed Aransas to Harbor Island pipeline bundle would result in 18.58 acres of temporary trench and fill impacts to waters of the US; specifically, 7.81 acres to submerged aquatic vegetation (SAV) mainly comprised of *Halodule wrightii* (shoal grass), 0.002 acres to small stands of *Spartina alterniflora* (smooth cordgrass), 10.65 acres are to unvegetated tidal sand flats, 0.41 acres are to black mangrove (*Avicennia germinans*), and 0.11 acres to estuarine wetlands mainly consisting of salt grass and sea oxeye daisy. No impacts to waters of the US would result in the construction of the Midway Facility and the upland portion of the Harbor Island Facility. The construction of the vessel berth would result in 70 acres of new work material being dredged and placed onsite for shoreline restoration, beneficial use (BU), and/or in one of the identified and listed placement areas.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2018-00789. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Railroad Commission as part of its certification under §401 of the Clean Water Act.

CMP Project No: 19-1421-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the

Texas General Land Office Coastal Management Program Coordinator
at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202004147

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: October 6, 2020

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Texas Health and Human Services Commission

Public Notice -- Amendment to the Health Texas Women
(HTW) Waiver

The Health and Human Services Commission (HHSC) plans to submit a request to the Centers for Medicare & Medicaid Services (CMS) for an amendment to the Healthy Texas Women (HTW) waiver under section 1115 of the Social Security Act. CMS has approved this waiver through December 31, 2024.

This amendment is being requested to comply with Texas Health and Safety Code, Section 32.102, as added by Senate Bill (S.B.) 750, 86th Legislature, Regular Session, 2019. Section 32.102 requires HHSC to evaluate postpartum care services provided to women enrolled in the HTW program after the first 60 days of the postpartum period, and based on the evaluation, develop enhanced, cost-effective, and limited postpartum care services for women enrolled in the program. HHSC launched the enhanced postpartum care services package, called HTW Plus, for eligible women enrolled in HTW on September 1, 2020 using state general revenue funds.

Section 23 of S.B. 750 directs HHSC to seek an amendment to the Section 1115 Demonstration Waiver to obtain CMS approval to draw down federal funds for the postpartum care services.

The postpartum care services will focus on treating major health conditions recognized as contributing to maternal morbidity and mortality in Texas. A description of the health conditions and the services offered to treat them are as follows:

Postpartum depression and other mental health conditions

- individual, family and group psychotherapy services
- peer specialist services

Cardiovascular and coronary conditions

- cardiovascular evaluation imaging and laboratory studies
- blood pressure monitoring
- anticoagulant, antiplatelet, and antihypertensive medications

Substance use disorders

- screening, brief intervention, and referral for treatment
- outpatient substance use counseling
- smoking cessation services
- medication-assisted treatment
- peer specialist services

Diabetes

- glucose monitoring supplies

Asthma

- treatment services

If approved by CMS, the waiver amendment proposed by HHSC will provide federal matching funds for postpartum care services for women enrolled in HTW, with an effective date of April 1, 2021.

An individual may obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments regarding this amendment by contacting Amanda Sablan by U.S. mail, telephone, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Amanda Sablan, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 487-3446

Email

TX_Medicaid_Waivers@hhsc.state.tx.us

TRD-202004146

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 6, 2020

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the second half of July 2020, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Business Filing and Verification Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Borger	GPCH LLC	L07069	BORGER	00	07/28/20
Fort Worth	UPNT CANCER LLC	L07068	FORT WORTH	00	07/28/20
Throughout TX	EYNCON LLC	L07070	ENNIS	00	07/30/20

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Amarillo	BSA HOSPITAL LLC	L06573	AMARILLO	012	07/30/20
Andrews	ANDREWS COUNTY HOSPITAL DISTRICT	L03158	ANDREWS	029	07/30/20
Andrews	ANDREWS COUNTY HOSPITAL DISTRICT	L03158	ANDREWS	029	07/30/20
Austin	ARA ST DAVIDS IMAGING LP	L05862	AUSTIN	102	07/30/20
Austin	AUSTIN RADIOLOGICAL ASSOCIATION	L00545	AUSTIN	228	07/30/20
Bay City	OQ CHEMICALS CORPORATION	L06073	BAY CITY	005	07/29/20
Beasley	HUDSON PRODUCTS CORPORATION	L02370	BEASLEY	055	07/16/20
Brownsville	VHS BROWNSVILLE HOSPITAL COMPANY LLC	L06500	BROWNSVILLE	009	07/27/20
Corsicana	NAVARRO HOSPITAL LP	L02458	CORSICANA	37	07/30/20
Dallas	JUBILANT DRAXIMAGE RADIOPHARMACIES INC	L06943	DALLAS	010	07/29/20
Dallas	UNIV OF TX SOUTHWESTERN MED CTR @ DALLAS	L00384	DALLAS	134	07/17/20
Denton	TEXAS WOMANS UNIVERSITY	L00304	DENTON	071	07/31/20
El Paso	TENET HOSPITALS LIMITED	L06152	EL PASO	035	07/30/20
El Paso	TENET HOSPITALS LIMITED	L02365	EL PASO	115	07/30/20
El Paso	TENET HOSPITALS LIMITED	L02353	EL PASO	148	07/30/20
Fort Worth	ONCOLOGY HEMATOLOGY CONSULTANTS PA	L05919	FORT WORTH	029	07/31/20

AMENDMENTS TO EXISTING LICENSES ISSUED:(Continued)

Houston	SOUTH TEXAS NUCLEAR PHARMACY	L05304	HOUSTON	017	07/28/20
Houston	TEXAS CHILDRENS HOSPITAL	L04612	HOUSTON	078	07/16/20
Lewisville	COLUMBIA MED CTR OF LEWISVILLE SUBSIDIAR	L02739	LEWISVILLE	085	07/16/20
McAllen	MCALLEN HOSPITALS LP	L01713	MCALLEN	99	07/28/20
Midland	EUROFINS XENCO LLC	L05499	MIDLAND	014	07/28/20
Midland	MIDLAND COUNTY HOSPITAL DISTRICT	L00728	MIDLAND	119	07/30/20
Mineral Wells	PARKER HANNIFIN FILTRATION (US) INC	L00330	MINERAL WELLS	047	07/29/20
Pasadena	TURNER INDUSTRIES GROUP LLC	L06235	PASADENA	013	07/16/20
Stafford	ALOKI ENTERPRISE INC	L06257	STAFFORD	054	07/30/20
Sunnyvale	TEXAS REGIONAL MEDICAL CENTER LLC	L06692	SUNNYVALE	007	07/31/20
Throughout TX	UNITED STATES ENVIRONMENTAL SVCS LLC	L05801	DEER PARK	015	07/31/20
Throughout TX	GORRONDONA & ASSOCIATES INC	L06359	FORT WORTH	009	07/17/20
Throughout TX	PROBE TECHNOLOGY SERVICES INC	L05112	FORT WORTH	38	07/31/20
Throughout TX	NEXTIER COMPLETION SOLUTIONS INC	L06712	HOUSTON	015	07/28/20
Throughout TX	TEXAS GAMMA RAY LLC	L05561	HOUSTON	123	07/16/20
Throughout TX	BAKER HUGHES OILFIELD OPERATIONS LLC	L00446	HOUSTON	198	07/28/20
Throughout TX	PHOENIX INDUSTRIAL SERVICES 1 LP	L07015	LA PORTE	004	07/28/20
Throughout TX	ADVANCED CORROSION TECHNOLOGIES & TRAINING LLC	L06508	LA PORTE	021	07/28/20

AMENDMENTS TO EXISTING LICENSES ISSUED:(Continued)

Throughout TX	PETROCHEM INSPECTION SERVICES INC	L04460	LA PORTE	135	07/28/20
Throughout TX	INTERTEK ASSET INTEGRITY MANAGEMENT INC	L06801	LONGVIEW	015	07/16/20
Throughout TX	PROFESSIONAL SERVICE INDUSTRIES INC	L03642	SPRING	032	07/31/20

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Throughout TX	RODRIGUEZ ENGINEERING LABORATORIES LLC	L04700	AUSTIN	028	07/28/20
Throughout TX	PROFESSIONAL SERVICE INDUSTRIES INC	L04944	HARLINGEN	014	07/16/20
Throughout TX	SCHLUMBERGER TECHNOLOGY CORPORATION	L06303	SUGAR LAND	017	07/30/20

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Huntsville	SERVICE AND COMPLIANCE CONSULTANTS	L03873	HUNTSVILLE	024	07/17/20
Port Neches	HUNTSMAN PETROCHEMICAL LLC	L06323	PORT NECHES	006	07/17/20

TRD-202004081

Barbara L. Klein
General Counsel
Department of State Health Services
Filed: October 1, 2020

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Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Connecticut Attorneys Title Insurance Company, a foreign title company. The home office is in South Burlington, Vermont.

Application for London Life Reinsurance Company, a foreign life, accident and/or health company, to change its name to Canada Life Reinsurance Company. The home office is in Blue Bell, Pennsylvania.

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-202004164
James Person
General Counsel
Texas Department of Insurance
Filed: October 7, 2020

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Texas Windstorm Insurance Association -- Application Form Filings

Reference Number: P-1002-10

SERFF State Tracking Nos.: S684006 and S684060 (residential); S684007 (commercial)

Pursuant to 28 TAC §5.4911, the Texas Windstorm Insurance Association (TWIA) has filed revised residential and commercial application forms with TDI for approval.

The revised application forms add credit card and installment payment options for policyholders. The revisions are part of TWIA's efforts to implement Senate Bill 615, 86th Legislature, Regular Session (2019), which required TWIA to accept payment of premiums by credit card and to provide policyholders with the option to make premium payments in installments.

You can get a copy of the filings from the Office of the Chief Clerk, Mail Code 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or online at www.tdi.texas.gov/submissions/indextwia.html#form.

Public Comment: Send comments on the filings to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, Mail Code 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 by 5:00 p.m., Central time, on November 16, 2020.

Hearing Requests: To request a public hearing, you must submit a request separately by 5:00 p.m., Central time, on November 5, 2020.

Send the request for a hearing by email to ChiefClerk@tdi.texas.gov, or by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 112-2A, P.O. Box 149104, Austin, Texas 78714-9104.

TRD-202004171
James Person
General Counsel
Texas Department of Insurance
Filed: October 7, 2020

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Texas Lottery Commission

Scratch Ticket Game Number 2270 "CAESARS®"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2270 is "CAESARS®". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2270 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2270.

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: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 1 DICE SYMBOL, 2 DICE SYMBOL, 3 DICE SYMBOL, 4 DICE SYMBOL, 5 DICE SYMBOL, 6 DICE SYMBOL, BAR SYMBOL, BELL SYMBOL, CHERRY SYMBOL, CHEST SYMBOL, CLOVER SYMBOL, COIN SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL, KEY SYMBOL, LIGHTNING SYMBOL, ORANGE SYMBOL, POT OF GOLD SYMBOL, RING SYMBOL, SCALE SYMBOL, STAR SYMBOL, TROPHY SYMBOL, 2 CARD SYMBOL, 3 CARD SYMBOL, 4 CARD SYMBOL, 5 CARD SYMBOL, 6 CARD SYMBOL, 7 CARD SYMBOL, 8 CARD SYMBOL, 9 CARD SYMBOL, 10 CARD SYMBOL, J CARD SYMBOL, Q CARD SYMBOL, K CARD SYMBOL, A CARD SYMBOL, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$1,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2270 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	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	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
1 DICE SYMBOL	ONE
2 DICE SYMBOL	TWO

3 DICE SYMBOL	THREE
4 DICE SYMBOL	FOUR
5 DICE SYMBOL	FIVE
6 DICE SYMBOL	SIX
BAR SYMBOL	BAR
BELL SYMBOL	BELL
CHERRY SYMBOL	CHERRY
CHEST SYMBOL	CHEST
CLOVER SYMBOL	CLOVER
COIN SYMBOL	COIN
CROWN SYMBOL	CROWN
DIAMOND SYMBOL	DIAMOND
GOLD BAR SYMBOL	GOLD
KEY SYMBOL	KEY
LIGHTNING SYMBOL	LIGHTN
ORANGE SYMBOL	ORANGE
POT OF GOLD SYMBOL	POTGOLD
RING SYMBOL	RING
SCALE SYMBOL	SCALE
STAR SYMBOL	STAR
TROPHY SYMBOL	TROPHY
2 CARD SYMBOL	TWO
3 CARD SYMBOL	THR
4 CARD SYMBOL	FOR
5 CARD SYMBOL	FIV
6 CARD SYMBOL	SIX
7 CARD SYMBOL	SEV
8 CARD SYMBOL	EGH
9 CARD SYMBOL	NIN
10 CARD SYMBOL	TEN
J CARD SYMBOL	JAK
Q CARD SYMBOL	QUE
K CARD SYMBOL	KNG
A CARD SYMBOL	ACE
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$25.00	TWV\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN

\$1,000	ONTH
\$100,000	100TH

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 (2270), 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: 2270-0000001-001.

H. Pack - A Pack of "CAESARS®" 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 "CAESARS®" Scratch Ticket Game No. 2270.

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 "CAESARS®" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-eight (48) Play Symbols. ROULETTE: The player will scratch the entire roulette wheel to reveal 1 WINNING NUMBER Play Symbol and 6 YOUR NUMBERS Play Symbols. If any of the YOUR NUMBERS Play Symbols match the WINNING NUMBER Play Symbol, the player wins the prize for that number. 7-11: If the total of the YOUR DICE Play Symbols equal 7 or 11 in any ROLL, the player wins the PRIZE for that ROLL. SLOTS: If the player reveals 3 matching Play Symbols in the same PULL, the player wins the PRIZE for that PULL. 2 OF A KIND: If the player reveals 2 matching Play Symbols, the player wins the PRIZE. 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-eight (48) 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-eight (48) 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-eight (48) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-eight (48) 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 sixteen (16) 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 otherwise restricted by other parameters, play action or prize structure.

D. ROULETTE: Consecutive Tickets will have different YOUR NUMBERS Play Symbols.

E. ROULETTE: Non-winning YOUR NUMBERS Play Symbols will all be different.

F. ROULETTE: Non-winning Prize Symbols will never appear more than two (2) times.

G. ROULETTE: Non-winning Prize Symbol(s) will never be the same as winning Prize Symbol(s).

H. ROULETTE: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 5 and \$5).

I. SLOTS: Non-winning Play Symbol(s) from one (1) PULL will not match winning Play Symbol(s) from another PULL.

J. SLOTS: No three (3) or more matching non-winning Play Symbols will appear in adjacent spots diagonally or in a column.

K. SLOTS: No more than two (2) matching non-winning Play Symbols will appear in one (1) PULL.

L. SLOTS: There will be no matching non-winning PULLs in this game. PULLs are considered matching if they have the same Play Symbols in the same spots.

M. SLOTS: Non-winning Prize Symbol(s) will never be the same as winning Prize Symbol(s).

N. SLOTS: Non-winning Prize Symbols will never appear more than two (2) times.

O. 7-11: Non-winning Prize Symbols will never appear more than two (2) times.

P. 7-11: There will be no matching ROLLs in this game. ROLLs are considered matching if they have the same Play Symbols in the same spots.

Q. 7-11: There will not be two (2) adjacent vertical Play Symbols which equal to seven (7) or eleven (11), unless restricted by other parameters, play action or prize structure.

R. 7-11: Non-winning Prize Symbol(s) will never be the same as winning Prize Symbol(s).

2.3 Procedure for Claiming Prizes.

A. To claim a "CAESARS®" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery

Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$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 "CAESARS®" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CAESARS®" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

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 14 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 "CAESARS®" 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 "CAESARS®" 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 "CAESARS®" 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 7,200,000 Scratch Tickets in the Scratch Ticket Game No. 2270. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2270 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	864,000	8.33
\$10.00	768,000	9.38
\$20.00	192,000	37.50
\$50.00	96,000	75.00
\$100	24,000	300.00
\$500	100	72,000.00
\$1,000	40	180,000.00
\$100,000	4	1,800,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.70. 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. 2270 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. 2270, 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-202004148

Bob Biard

General Counsel

Texas Lottery Commission

Filed: October 6, 2020



Scratch Ticket Game Number 2298 "MILLION DOLLAR LOTERIA"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2298 is "MILLION DOLLAR LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2298 shall be \$20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2298.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are:

THE ARMADILLO SYMBOL, THE BAT SYMBOL, THE BICYCLE SYMBOL, THE BLUEBONNET SYMBOL, THE BOAR SYMBOL, THE BUTTERFLY SYMBOL, THE CACTUS SYMBOL, THE CARDINAL SYMBOL, THE CHERRIES SYMBOL, THE CHILE PEPPER SYMBOL, THE CORN SYMBOL, THE COVERED WAGON SYMBOL, THE COW SYMBOL, THE COWBOY SYMBOL, THE COWBOY HAT SYMBOL, THE DESERT SYMBOL, THE FIRE SYMBOL, THE FOOTBALL SYMBOL, THE GEM SYMBOL, THE GUITAR SYMBOL, THE HEN SYMBOL, THE HORSE SYMBOL, THE HORSESHOE SYMBOL, THE JACKRABBIT SYMBOL, THE LIZARD SYMBOL, THE LONE STAR SYMBOL, THE MARACAS SYMBOL, THE MOCKINGBIRD SYMBOL, THE MOONRISE SYMBOL, THE MORTAR PESTLE SYMBOL, THE NEWSPAPER SYMBOL, THE OIL RIG SYMBOL, THE PECAN TREE SYMBOL, THE PIÑATA SYMBOL, THE RACE CAR SYMBOL, THE RATTLESNAKE SYMBOL, THE ROADRUNNER SYMBOL, THE SADDLE SYMBOL, THE SHIP SYMBOL, THE SHOES SYMBOL, THE SOCCERBALL SYMBOL, THE SPEAR SYMBOL, THE SPUR SYMBOL, THE STRAWBERRY SYMBOL, THE SUNSET SYMBOL, THE WHEEL SYMBOL, THE WINDMILL SYMBOL, CHECK SYMBOL, COINS SYMBOL, HEART SYMBOL, MONEYBAG SYMBOL, STAR SYMBOL, ARMORED CAR SYMBOL, BANK SYMBOL, GOLD BAR SYMBOL, STACK OF BILLS SYMBOL, VAULT SYMBOL, \$10.00, \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$200, \$500, \$1,000, \$5,000, \$20,000 and \$1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2298 - 1.2D

PLAY SYMBOL	CAPTION
THE ARMADILLO SYMBOL	THEARMADILLO
THE BAT SYMBOL	THE BAT
THE BICYCLE SYMBOL	THE BICYCLE
THE BLUEBONNET SYMBOL	THEBLUEBONNET
THE BOAR SYMBOL	THE BOAR
THE BUTTERFLY SYMBOL	THEBUTTERFLY
THE CACTUS SYMBOL	THE CACTUS
THE CARDINAL SYMBOL	THECARDINAL
THE CHERRIES SYMBOL	THECHERRIES
THE CHILE PEPPER SYMBOL	THECHILEPEPPER
THE CORN SYMBOL	THE CORN
THE COVERED WAGON SYMBOL	THECOVEREDWAGON
THE COW SYMBOL	THE COW
THE COWBOY SYMBOL	THECOWBOY
THE COWBOY HAT SYMBOL	THECOWBOYHAT
THE DESERT SYMBOL	THE DESERT
THE FIRE SYMBOL	THE FIRE
THE FOOTBALL SYMBOL	THEFOOTBALL
THE GEM SYMBOL	THE GEM
THE GUITAR SYMBOL	THE GUITAR
THE HEN SYMBOL	THE HEN
THE HORSE SYMBOL	THE HORSE
THE HORSESHOE SYMBOL	THEHORSESHOE
THE JACKRABBIT SYMBOL	THEJACKRABBIT
THE LIZARD SYMBOL	THELIZARD
THE LONE STAR SYMBOL	THELONESTAR
THE MARACAS SYMBOL	THEMARACAS

THE MOCKINGBIRD SYMBOL	THEMOCKINGBIRD
THE MOONRISE SYMBOL	THE MOONRISE
THE MORTAR PESTLE SYMBOL	THEMORTARPESTLE
THE NEWSPAPER SYMBOL	THENEWS PAPER
THE OIL RIG SYMBOL	THEOILRIG
THE PECAN TREE SYMBOL	THEPECANTREE
THE PIÑATA SYMBOL	THE PIÑATA
THE RACE CAR SYMBOL	THERACECAR
THE RATTLESNAKE SYMBOL	THERATTLESNAKE
THE ROADRUNNER SYMBOL	THEROADRUNNER
THE SADDLE SYMBOL	THESADDLE
THE SHIP SYMBOL	THE SHIP
THE SHOES SYMBOL	THE SHOES
THE SOCCERBALL SYMBOL	THESOCCERBALL
THE SPEAR SYMBOL	THE SPEAR
THE SPUR SYMBOL	THE SPUR
THE STRAWBERRY SYMBOL	THESTRAWBERRY
THE SUNSET SYMBOL	THE SUNSET
THE WHEEL SYMBOL	THE WHEEL
THE WINDMILL SYMBOL	THEWINDMILL
CHECK SYMBOL	CHECK
COINS SYMBOL	COINS
HEART SYMBOL	HEART
MONEYBAG SYMBOL	MONEYBAG
STAR SYMBOL	STAR
ARMORED CAR SYMBOL	ARMCAR
BANK SYMBOL	BANK
GOLD BAR SYMBOL	GOLD BAR
STACK OF BILLS SYMBOL	STACKOFBILLS

VAULT SYMBOL	VAULT
\$10.00	TEN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$40.00	FRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$5,000	FVTH
\$20,000	20TH
\$1,000,000	TPPZ

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2298), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2298-0000001-001.

H. Pack - A Pack of the "MILLION DOLLAR LOTERIA" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "MILLION DOLLAR LOTERIA" Scratch Ticket Game No. 2298.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "MILLION DOLLAR LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 78 (seventy-eight) Play Symbols. PLAYBOARD 1: 1) The player completely scratches the CALLER'S CARD area to reveal 27 symbols. 2) The player scratches ONLY the symbols on the PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. 3) If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. PLAYBOARDS 2: The player scratches ONLY the symbols on each PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals all 4 symbols in a column, the player wins the PRIZE for that column. PLAY AREA 3 (BONUS GAMES): The player scratches ONLY the symbols on the BONUS GAMES that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals 2 symbols in the same GAME, the player wins the PRIZE for that GAME. PLAY AREA 4 (BONUS): If the player reveals 2 matching symbols in the BONUS \$100, the player wins \$100. If the player reveals 2 matching symbols in the BONUS \$200, the player wins \$200. TABLA DE JUEGO 1: 1) El jugador raspa completamente la CARTA DEL GRITÓN para revelar 27 símbolos. 2) El jugador SOLAMENTE raspa los símbolos en la TABLA DE JUEGO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. 3) Si el jugador revela una línea completa horizontal, vertical o diagonal, el jugador gana el premio para esa línea. TABLAS DE JUEGO 2: El jugador SOLAMENTE raspa los símbolos en cada de las TABLAS DE JUEGO que son exactamente iguales a los símbolos revelados in la CARTA DEL GRITÓN. Si el jugador revela todos los 4 símbolos en una columna, el jugador gana el PREMIO para esa columna. ÁREA DE JUEGO 3 (JUEGOS DE

BONO): El jugador SOLAMENTE raspa los símbolos en los JUEGOS DE BONO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. Si el jugador revela 2 símbolos en el mismo JUEGO, el jugador gana el PREMIO para ese JUEGO. ÁREA DE JUEGO 4 (BONO): Si el jugador revela 2 símbolos iguales en el área de BONO \$100, el jugador gana \$100. Si el jugador revela 2 símbolos iguales en el área de BONO \$200, el jugador gana \$200. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 78 (seventy-eight) 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 78 (seventy-eight) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
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 78 (seventy-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 78 (seventy-eight) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket

Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to fourteen (14) times in accordance with the approved prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. PLAYBOARD 1/TABLA DE JUEGO 1: No matching Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

D. PLAYBOARD 1/TABLA DE JUEGO 1: At least eight (8) but no more than twelve (12) CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will match a Play Symbol on the PLAYBOARD 1/TABLA DE JUEGO 1 play area.

E. PLAYBOARD 1/TABLA DE JUEGO 1: CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will have a random distribution on the Ticket, unless restricted by other parameters, play action or prize structure.

F. PLAYBOARD 1/TABLA DE JUEGO 1: No matching Play Symbols are allowed on the same PLAYBOARD 1/TABLA DE JUEGO 1 play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "MILLION DOLLAR LOTERIA" Scratch Ticket Game prize of \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$150, \$200, \$250 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$40.00, \$50.00, \$100, \$150, \$200, \$250 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes

under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MILLION DOLLAR LOTERIA" Scratch Ticket Game prize of \$1,000, \$5,000, \$20,000 or \$1,000,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MILLION DOLLAR LOTERIA" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

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 "MILLION DOLLAR LOTERIA" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "MILLION DOLLAR LOTERIA" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 12,000,000 Scratch Tickets in Scratch Ticket Game No. 2298. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2298 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$20	1,440,000	8.33
\$30	840,000	14.29
\$40	240,000	50.00
\$50	480,000	25.00
\$100	472,000	25.42
\$150	96,000	125.00
\$200	62,900	190.78
\$250	31,200	384.62
\$500	5,600	2,142.86
\$1,000	800	15,000.00
\$5,000	160	75,000.00
\$20,000	20	600,000.00
\$1,000,000	6	2,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.27. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2298 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. 2298, 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-202004151

Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: October 6, 2020



Scratch Ticket Game Number 2313 "DOUBLE DOUBLER"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2313 is "DOUBLE DOUBLER". The play style is "multiple multipliers".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2313 shall be \$1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2313.

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: 2X SYMBOL, 4X SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$50.00, \$80.00, \$100, \$200, \$500 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2313 - 1.2D

PLAY SYMBOL	CAPTION
2X SYMBOL	DBL
4X SYMBOL	WINX4
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$40.00	FRTY\$
\$50.00	FFTY\$
\$80.00	ETTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2313), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start

with 001 and end with 150 within each Pack. The format will be: 2313-0000001-001.

H. Pack - A Pack of the "DOUBLE DOUBLER" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable

rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "DOUBLE DOUBLER" Scratch Ticket Game No. 2313.

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 "DOUBLE DOUBLER" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose nine (9) Play Symbols. If the player reveals 3 matching prize amounts, the player wins that amount. If the player reveals 2 matching prize amounts and a "2X" Play Symbol, the player wins DOUBLE that amount. If the player reveals 2 matching prize amounts and a "4X" Play Symbol, the player wins 4 TIMES that amount. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly nine (9) 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 nine (9) 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 nine (9) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the nine (9) 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 one (1) time 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 otherwise restricted by other parameters, play action or prize structure.

D. No more than three (3) matching Prize Symbols.

E. No more than one (1) set of three (3) matching Prize Symbols within the game (i.e., three (3) \$10 Prize Symbols or three (3) \$20 Prize Symbols).

F. Winning Tickets that contain a "2X" (DBL) or "4X" (WINX4) Play Symbol will never contain more than one (1) pair of matching Prize Symbols.

G. Winning Tickets with three (3) matching Prize Symbols will never contain a "2X" (DBL) or "4X" (WINX4) Play Symbol.

H. Winning Tickets will contain three (3) matching Prize Symbols, two (2) matching Prize Symbols and a "2X" (DBL) Play Symbol or two (2) matching Prize Symbols and a "4X" (WINX4) Play Symbol.

I. On winning Tickets, all non-winning Prize Symbols will be different from the winning Prize Symbols.

J. No Ticket will contain both the "2X" (DBL) and "4X" (WINX4) Play Symbols.

K. Non-Winning Tickets will never have more than two (2) matching Prize Symbols.

L. The "2X" (DBL) and "4X" (WINX4) Play Symbols will never appear on a Non-Winning Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "DOUBLE DOUBLER" Scratch Ticket Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$8.00, \$10.00, \$20.00, \$40.00, \$50.00, \$80.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$40.00, \$50.00, \$80.00, \$100, \$200 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 "DOUBLE DOUBLER" Scratch Ticket Game prize of \$1,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DOUBLE DOUBLER" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

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 "DOUBLE DOUBLER" 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 "DOUBLE DOUBLER" 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. 2313. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2313 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1.00	1,094,400	8.33
\$2.00	547,200	16.67
\$4.00	45,600	200.00
\$5.00	30,400	300.00
\$8.00	60,800	150.00
\$10.00	30,400	300.00
\$20.00	60,800	150.00
\$40.00	9,500	960.00
\$50.00	5,700	1,600.00
\$80.00	1,520	6,000.00
\$100	380	24,000.00
\$200	228	40,000.00
\$500	76	120,000.00
\$1,000	35	260,571.43

*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 4.83. 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. 2313 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. 2313, 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-202004149
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: October 6, 2020

◆ ◆ ◆

Supreme Court of Texas

Approval of Referendum on Proposed Amendments to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure

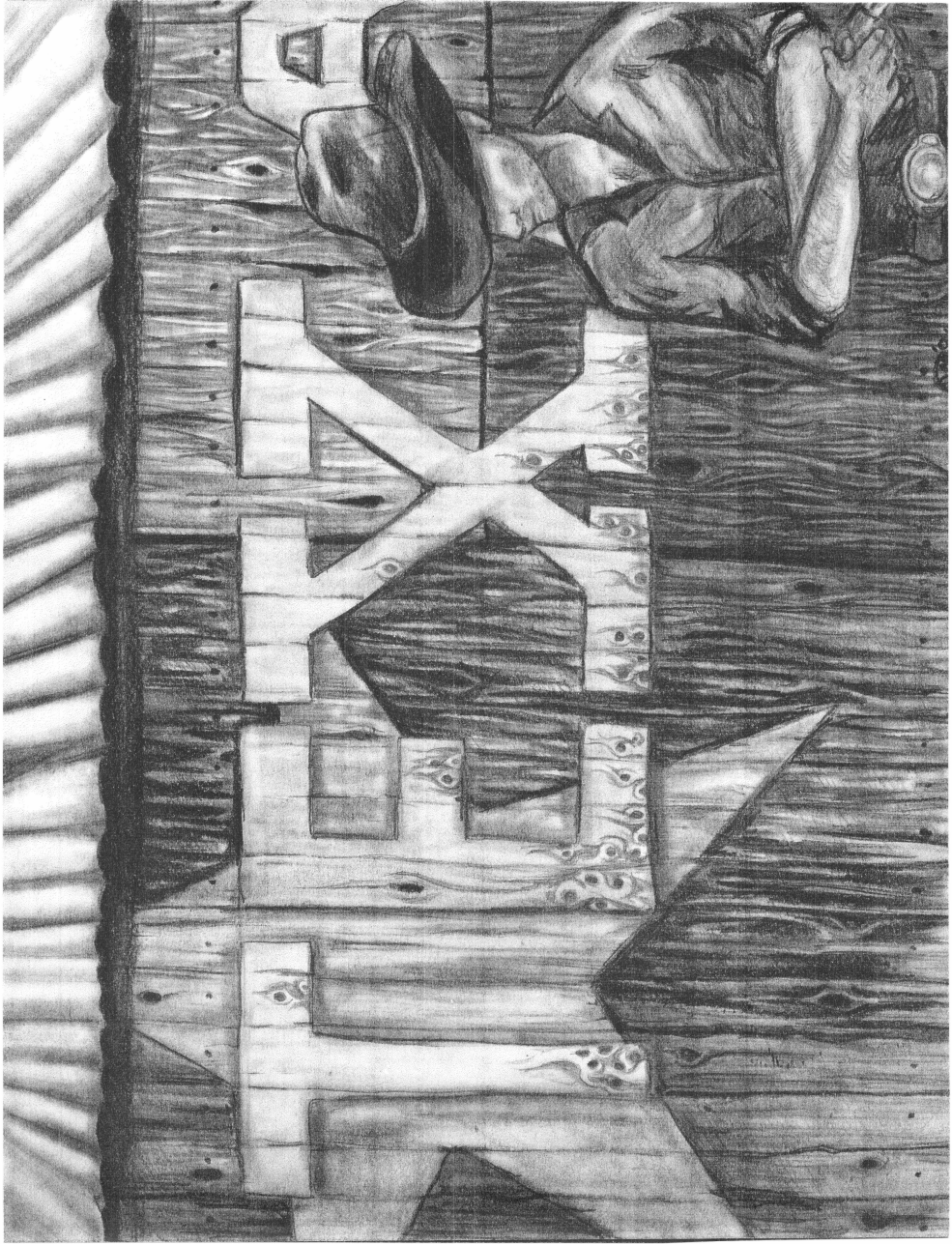
(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure is not included

in the print version of the Texas Register. The figure is available in the on-line version of the October 16, 2020, issue of the Texas Register.)

TRD-202004079

Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: October 1, 2020





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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