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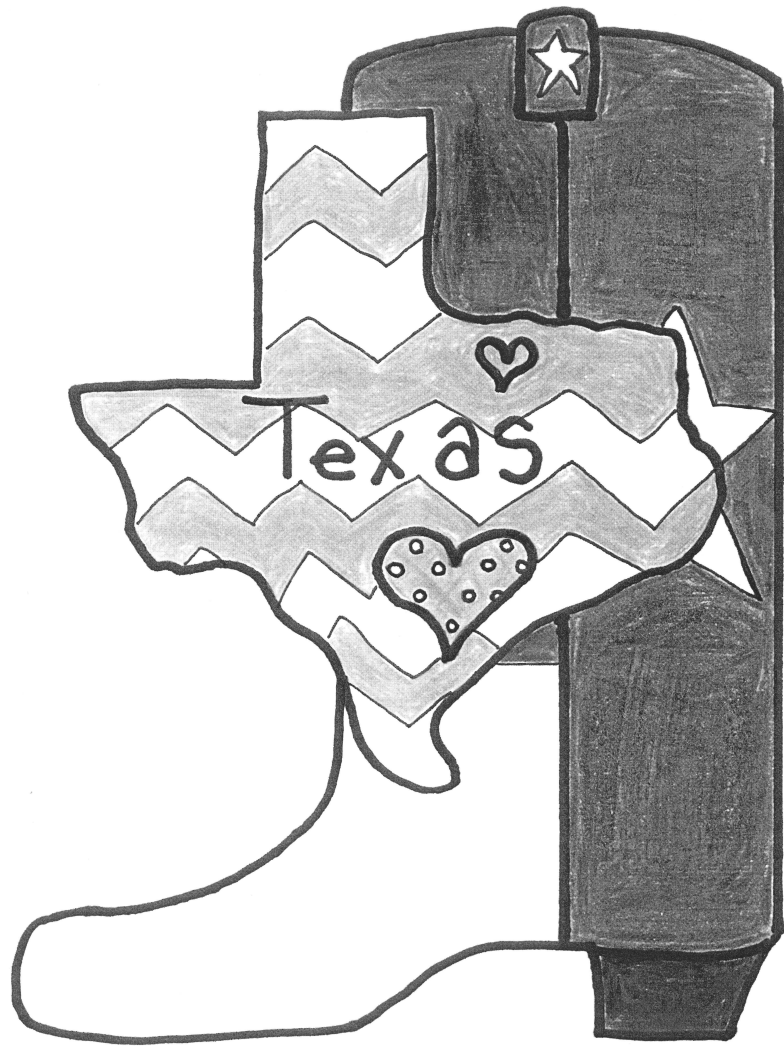
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THE GOVERNOR

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

Appointments

Appointments for October 12, 2020

Appointed to the Texas Southern University Board of Regents, for a term to expire February 1, 2021, Mary Evans Sias, Ph.D. of Richardson, Texas (replacing Derrick M. Mitchell of Houston, who resigned).

Appointed to the Texas Southern University Board of Regents, for a term to expire February 1, 2023, James M. Benham of College Station, Texas (replacing Hasan Mack of Austin, who resigned).

Appointed to the Texas Southern University Board of Regents, for a term to expire February 1, 2025, Stephanie Nellons-Paige of Houston, Texas (replacing Jay S. Zeidman of Houston, who resigned).

Appointments for October 13, 2020

Appointed to the Governor's University Research Initiative Advisory Board, for a term to expire at the pleasure of the Governor, Mimi "Mica" Espinoza Short of El Paso, Texas (replacing Cynthia T. "Cindy" Conroy of El Paso, who resigned).

Greg Abbott, Governor

TRD-202004265



Proclamation 41-3776

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 renewed the disaster declaration for all Texas counties; and

WHEREAS, I issued Executive Order GA-31 on September 17, 2020, relating to hospital capacity during the COVID-19 disaster;

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, do hereby amend the paragraph of Executive Order GA-31 that defines "areas with high hospitalizations" to read as follows, effective at 12:01 a.m. on October 14, 2020:

"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.

This proclamation shall remain in effect and in full force for as long as Executive Order GA-31 is in effect and in full force, unless otherwise modified, amended, rescinded, or superseded by the governor.

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 8th day of October, 2020.

Greg Abbott, Governor

TRD-202004188



Proclamation 41-3777

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the resignation of the Honorable Pat Fallon, and its acceptance, has caused a vacancy to exist in Texas State Senate District No. 30, which consists of Archer, Clay, Cooke, Erath, Grayson, Jack, Montague, Palo Pinto, Parker, Wichita, Wise, and Young counties and parts of Collin and Denton counties; and

WHEREAS, an emergency special election to fill the vacancy in Senate District No. 30 was held on Tuesday, September 29, 2020, and the results of that special election have been officially declared; and

WHEREAS, no candidate in the special election received a majority of the votes cast, as required by Section 203.003 of the Texas Election Code; and

WHEREAS, Section 2.021 of the Texas Election Code requires that a runoff election be held if no candidate receives the votes necessary to be elected; and

WHEREAS, Section 2.025(d) of the Texas Election Code provides that a runoff election for a special election to fill a vacancy in the legislature must be held not earlier than the 70th day or later than the 77th day after the date the final canvass of the main election is completed; and

WHEREAS, Section 3.003(a)(3) of the Texas Election Code requires a special runoff election to be ordered by proclamation of the governor;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and statutes of the State of Texas, do hereby order a special runoff election to be held in Texas State Senate District No. 30 on Saturday, December 19, 2020, for the purpose of electing a state senator to serve out the unexpired term of the Honorable Pat Fallon.

Early voting by personal appearance shall begin on Wednesday, December 9, 2020, in accordance with Section 85.001(b) of the Texas Election Code.

A copy of this order shall be mailed immediately to the County Judges of all counties contained within Texas State Senate District No. 30, and all appropriate writs shall be issued and all proper proceedings shall be followed to the end that said special runoff election may be held to fill the vacancy in Texas State Senate District No. 30 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 10th day of October, 2020.

TRD-202004227



Greg Abbott, Governor

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0381-KP

Requestor:

The Honorable Brett W. Ligon

Montgomery County District Attorney

207 West Phillips, 2nd Floor

Conroe, Texas 77301

The Honorable B.D. Griffin

Montgomery County Attorney

207 West Phillips, 2nd Floor

Conroe, Texas 77301

Re: Whether a driver's license is required to operate a golf cart on a publicly maintained road, as authorized by sections 551.403 and 551.404 of the Transportation Code (RQ-0381-KP)

Briefs requested by November 5, 2020

RQ-0382-KP

Requestor:

The Honorable Charles Perry

Chair, Senate Committee on Water & Rural Affairs

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Ector County's compliance with chapter 387 of the Local Government Code, regarding creation of a county assistance district (RQ-0382-KP)

Briefs requested by November 6, 2020

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

TRD-202004256

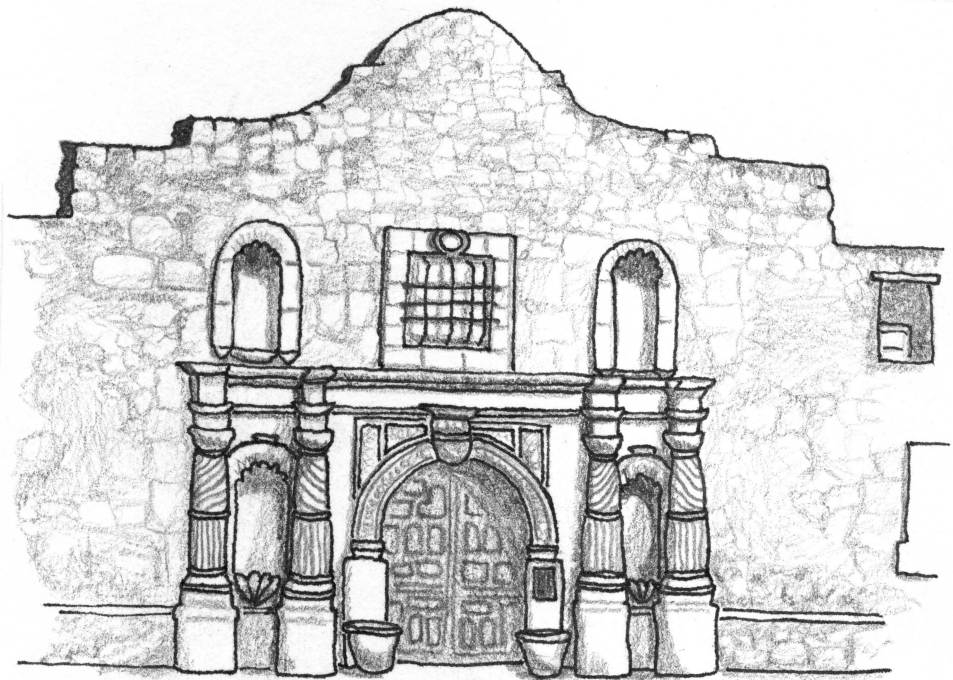
Lesley French

General Counsel

Office of the Attorney General

Filed: October 13, 2020





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 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER B. ESTABLISHMENT AND ADJUSTMENT OF REIMBURSEMENT RATES FOR MEDICAID

1 TAC §355.205

The Texas Health and Human Services Commission is renewing the effectiveness of emergency new §355.205 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 4429).

Filed with the Office of the Secretary of State on October 15, 2020.

TRD-202004276

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Original effective date: June 19, 2020

Expiration date: December 15, 2020

For further information, please call: (512) 431-7028



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 500. COVID-19 EMERGENCY HEALTH CARE FACILITY LICENSING SUBCHAPTER B. END STAGE RENAL DISEASE FACILITIES

26 TAC §500.21

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 500 COVID-19 Emergency Health Care Facility Licensing, new §500.21, concerning an emergency rule in response to COVID-19 in order to update and continue the regulatory requirements for end stage renal disease (ESRD) facilities to reduce barriers to treatment during the COVID-19 pandemic. As authorized by Texas Government Code §2001.034, the Commission may adopt an emer-

gency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this rule for ESRD Facility Requirements During the COVID-19 Pandemic.

To protect dialysis patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to reduce barriers to treatment for dialysis patients by updating ESRD facility regulatory guidelines regarding staffing ratios, in-home visits, telemedicine, incident reporting, and education and training requirements for staff.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §251.003 and §251.014. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §251.003 authorizes the Executive Commissioner of HHSC to adopt rules governing ESRD facilities. Texas Health and Safety Code §251.014 requires these rules to include minimum standards to protect the health and safety of a patient of an ESRD facility.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code §251.003 and §251.014.

§500.21. ESRD Facility Requirements During the COVID-19 Pandemic.

(a) Based on Governor Greg Abbott's March 13, 2020, declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission (HHSC) adopts this emergency rule to establish continuing requirements and flexibilities to protect public

health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to Texas Government Code §418.014.

(b) Notwithstanding 25 TAC §117.43(e), core staff members shall actively participate in quality assessment and performance improvement (QAPI) activities and attend meetings every other month.

(c) Notwithstanding 25 TAC §117.45(c)(3), all verbal or telephone physician orders shall be documented and authenticated or countersigned by the physician not more than 30 calendar days from the date the order was given.

(d) Notwithstanding 25 TAC §117.45(i)(2)(C), at a minimum, each patient receiving dialysis in the facility shall be seen by a physician on the medical staff once per month during the patient's treatment time. Home dialysis patients shall be seen by a physician, advanced practice registered nurse, or physician's assistant no less than one time a month. If home dialysis patients are seen by an advanced practice registered nurse or a physician's assistant, the physician shall see the patient at least one time every three months. This visit may be conducted using telemedicine medical services. The record of these contacts shall include evidence of assessment for new and recurrent problems and review of dialysis adequacy each month.

(e) Notwithstanding 25 TAC §117.45(j)(4), the staffing level for home dialysis patients, including all modalities, shall be one full-time equivalent registered nurse per 25 patients, or portion thereof.

(f) Notwithstanding 25 TAC §117.45(j)(5)(A), the home dialysis training curriculum shall be conducted by a registered nurse with at least 12 months clinical experience and three months experience in the specific modality with the responsibility for training the patient and the patient's caregiver.

(g) Notwithstanding 25 TAC §117.45(j)(9)(A), an initial monitoring visit of a patient's home adaptation prior to the patient beginning training for the selected home modality may be conducted from outside the patient's home if the visit is performed using a synchronous audiovisual interaction between the registered nurse and the patient while the patient is at home. The visit must be conducted to the same review standards as a normal face-to-face visit. If the visit is incapable of being performed using a synchronous audiovisual interaction between the registered nurse and the patient, the visit must be conducted in the patient's home.

(h) A home patient visit required by 25 TAC §117.45(j)(9)(B) may be conducted using telemedicine medical services.

(i) Notwithstanding 25 TAC §117.46(c)(2), each registered nurse who is assigned charge nurse responsibilities shall have at least 12 months of clinical experience and have three months of experience in hemodialysis subsequent to completion of the facility's training program. In addition:

(1) The registered nurse must be able to demonstrate competency for the required level of responsibility and the facility shall maintain documentation of that competency.

(2) The registered nurse must be certified by the facility's medical director and governing body.

(3) The hemodialysis experience shall be within the last 24 months.

(4) A registered nurse who holds a current certification from a nationally recognized board in nephrology nursing or hemodialysis may substitute the certification for the three months experience in dialysis obtained within the last 24 months.

(j) Notwithstanding 25 TAC §117.46(c)(4), if patient self-care training is provided, a registered nurse who has at least 12 months clinical experience and three months experience in the specific modality shall be responsible for training the patient or family in that modality. When other personnel assist in the training, supervision by the qualified registered nurse shall be demonstrated.

(k) Notwithstanding the deadline provision of 25 TAC §117.48(a), a facility shall report an incident listed in 25 TAC §117.48(a)(1) - (5) to HHSC within 20 working days of the incident.

(l) Notwithstanding 25 TAC §117.62(i), for persons with no previous experience in direct patient care, a minimum of 80 clock hours of classroom education and 200 clock hours of supervised clinical training shall be required for dialysis technicians. Training programs for dialysis technician trainees who have confirmed previous direct patient care experience may be shortened to a total of 40 clock hours of combined classroom education and clinical training if they demonstrate competency with the required knowledge and skills and there has not been more than a year of time elapsed since they provided patient care in a licensed ESRD facility setting.

(m) To the extent this emergency rule conflicts with 25 TAC Chapter 117, this emergency rule controls.

(n) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority that is more restrictive than this section or any minimum standard relating to an ESRD facility, the ESRD facility must comply with the executive order or other direction.

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

Filed with the Office of the Secretary of State on October 12, 2020.

TRD-202004231

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: October 13, 2020

Expiration date: February 9, 2021

For further information, please call: (512) 834-4591



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 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.23, §18.24

The Texas Ethics Commission (the Commission) proposes amendments to Texas Ethics Commission rules in Chapter 18. Specifically, the Commission proposes amendments to §18.23, regarding Administrative Waiver of Fine, and §18.24, regarding General Guidelines for Other Administrative Waiver or Reduction of Fine.

Current rules concerning the administrative waiver process, which determine whether a filer is eligible for a waiver or reduction of a penalty for filing a report late, were created to afford a uniform and objective process by which all filers are adjudged against the same set of standards. The proposed amendments would make some improvements to this process. They would address uncertainties that arise when the rules are applied. A definition for what a "prior offense" means under the administrative waiver process has been added, which will assist filers with determining when they will not be eligible for a waiver or reduction of a late-filing penalty. The proposed amendment would allow the Executive Director to reconsider determinations if a filer files an appeal. These proposed amendments will also allow commission staff to determine whether a filer is eligible for a waiver or reduction of a late-filing penalty more efficiently and expeditiously. Simplifying the rules will allow the public to understand more clearly the rules by which the Commission uses in determining if a late-filing penalty is eligible for a waiver or reduction.

J.R. Johnson, General Counsel, has determined that for the first five-year period the proposed amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

The General Counsel has also determined that for each year of the first five years the proposed amended rules are in effect, the public benefit will be consistency, simplicity and clarity in the Commission's rules that set out the administrative waiver process. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rules.

The General Counsel has determined that during the first five years that the proposed amended rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing

employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules' applicability; or not positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rules may do so at any Commission meeting during the agenda item relating to the proposed amended rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

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

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The proposed amended rules affect Title 15 of the Election Code.

§18.23. *Administrative Waiver of Fine.*

(a) A filer may request the executive director to waive a late fine by submitting an affidavit to the executive director that states facts that establish that:

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

(6) the filer of the campaign finance report:

(A) had filed all previous reports by the applicable deadline;

(B) had no new contributions, expenditures, or loans to report during the filing period; and

(C) filed the report no later than 30 days after the filer first learned [was notified] that the report was [appeared to be] late;

(7) the filer reasonably relied on incorrect information given to the filer by the agency; or

(8) other administrative error by the agency.

(b) (No change.)

§18.24. *General Guidelines for Other Administrative Waiver or Reduction of Fine.*

(a) (No change.)

(b) For purposes of determining a waiver or reduction of a late fine under §18.25 and §18.26 of this title, a late report will be classified by report type, as follows:

(1) Any report that is not a critical report as defined under paragraph (2) of this subsection will be classified as Report Type I and considered under §18.25 of this title.

(2) A critical report will be classified as Report Type II and considered under §18.26 of this title. A "critical report" is:

(A) a campaign finance pre-election report due 30 days before an election;

(B) a campaign finance pre-election report due 8 days before an election;

(C) a runoff report;

(D) a daily special pre-election report required under §254.038 or §254.039, Election Code; or

(E) a semiannual report subject to the higher statutory fine under §254.042, Election Code. ~~;~~ ~~or~~

~~[(F) a personal financial statement required under §572.027, Government Code, if the filer is a candidate with an opponent on the ballot in a primary election.]~~

(c) For purposes of determining a waiver or reduction of a late fine under §18.25 and §18.26 of this title, a filer requesting a waiver or reduction of a late fine will be categorized by filer type, as follows:

(1) Category A includes candidates for and officeholders of the following offices and specific-purpose committees supporting candidates for and officeholders of the following offices:

(A) statewide office;

(B) legislative office;

(C) district judge;

(D) state appellate court justice;

(E) State Board of Education member; and

(F) Secretary of State.

(2) Category B includes all filers not categorized in Category A, as defined by paragraph (1) of this subsection, or Category C, as defined by paragraph (3) of this subsection. Examples of Category B filers include the following filer types:

(A) lobbyists;

(B) salaried non-elected officials;

(C) candidates for and officeholders of district attorney;

(D) candidates for and officeholders of political party chair; ~~and~~

(E) political committees with \$3,000 or more in annual activity in the calendar year in which the late report was due; ~~and~~ ~~[-]~~

(F) a legislative caucus.

(3) Category C includes:

(A) unsalaried appointed board members and officials; and

(B) political committees with less than \$3,000 in annual activity in the calendar year in which the late report was due.

(d) For purposes of a reduction of a late fine under §18.25 and §18.26 of this title, ~~[the following explanations will be accepted as showing]~~ good cause includes, but is not limited to, the following:

(1) The report was filed no later than three days after the date it was due ~~[more than one date late].~~

(2) The filer filed the report within five days after first learning the report was late from a late notice sent by the commission. ~~[The report was filed within seven days of receipt of a late notice.]~~

(3) The report was not a critical report and was prepared and placed in the mail on time but not postmarked by the deadline.

(4) The filer had technical difficulties after regular business hours, but the report was filed no later than ~~[on]~~ the next business day after ~~[that]~~ the commission's technical support staff fixed the technical difficulty ~~[was at work].~~

~~[(5) The filer's address changed and the filer did not receive notice of the filing deadline.]~~

(5) ~~[(6)]~~ There are no funds in the filer's campaign or officeholder account and the filer is unemployed.

(6) ~~[(7)]~~ A first-time filer that is required to file campaign finance reports with a county filing authority and personal financial statements with the commission, who mistakenly files the personal financial statement with the county on the filing deadline and then correctly files with the commission within seven days of realizing the mistake.

(e) For purposes of determining whether a filer is eligible for a waiver or reduction of a late fine under §18.25 or §18.26 of this title, a prior offense is any prior late report in which a late-filing penalty was assessed except:

(1) the late-filing penalty for that prior late report was waived under Sections 18.23(a)(1) - (3) of this title; or

(2) no late notices were sent for that prior late report and the filer did not file a request that the late-filing penalty be waived or reduced for the prior late report.

~~[(e) For purposes of a reduction of a late fine under §18.25 and §18.26 of this title, the following explanations will not be accepted as showing good cause:~~

~~[(1) The filer did not know the report was due.~~

~~[(2) The filer forgot or the person assigned by the filer to prepare the report forgot.~~

~~[(3) The campaign was very time-consuming.~~

~~[(4) The filer's job was very time-consuming.~~

~~[(5) The filer was too overwhelmed by responsibilities to file the report on time.~~

~~[(6) The filer was a candidate who lost an election and did not know to terminate his or her campaign treasurer appointment and file a final report.~~

~~[(7) The filer left his or her position and did not know he or she was still required to file a report.]~~

(f) A late fine that is reduced under §18.25 or §18.26 of this title will revert to the full amount originally assessed if the reduced fine is not paid within thirty (30) calendar days from the date of the letter informing the filer of the reduction.

(g) A filer may appeal a determination made under §18.25 or §18.26 of this title by submitting a request in writing to the commission.

(1) The request for appeal should state the filer's reasons for requesting an appeal, provide any additional information needed to support the request, and state whether the filer would like the opportunity to appear before the commission and offer testimony regarding the appeal.

(2) The Executive Director may review the appeal and reconsider the determination made under §18.25 or §18.26 of this title or set the appeal for a hearing before the commission.

(3) [(2)] After hearing a request for appeal, the commission may affirm the determination made under §18.25 or §18.26 of this title or make a new determination based on facts presented in the appeal.

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-202004143

J.R. Johnson

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: November 22, 2020

For further information, please call: (512) 463-5800



CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1

The Texas Ethics Commission (the Commission) proposes amendments to the Texas Ethics Commission rule in Chapter 50. Specifically, the Commission proposes amendments to §50.1, regarding Legislative Per Diem.

The rule as amended would set the per diem for members of the legislature and the lieutenant governor at \$224 for each day during the regular session and any special session.

J.R. Johnson, General Counsel, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule. The fiscal implication for the state over the first five years will be \$17,028,480, which may increase if one or more special sessions are called. Of that total amount, \$228,060 is attributed to the increase in the amount of per diem under the proposed rule from the current rate of \$221 to \$224.

The General Counsel has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefit will be a determination, in compliance with the Texas Constitution, of the per diem entitled to be received by each member of the legislature and the lieutenant governor under the Texas Constitution, Article III, §24, and Article IV, §17, during the regular session and any special session. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rule.

The General Counsel has determined that during the first five years that the proposed amended rule is in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appro-

priations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; or increase or decrease the number of individuals subject to the rules' applicability.

The Commission invites comments on the proposed amended rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rule may do so at any Commission meeting during the agenda item relating to the proposed amended rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The proposed amended rule affects amendment affects the Texas Constitution, Article III, §24; Article III, §24a; and Article IV, §17.

§50.1. Legislative Per Diem.

(a) The legislative per diem is ~~\$224~~ [§224]. The per diem is intended to be paid to each member of the legislature and the lieutenant governor for each day during the regular session and for each day during any special session.

(b) If necessary, this rule shall be applied retroactively to ensure payment of the ~~\$224~~ [§224] per diem for ~~2021~~ [2019].

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

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J.R. Johnson

General Counsel

Texas Ethics Commission

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For further information, please call: (512) 463-5800



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER B. ESTABLISHMENT AND ADJUSTMENT OF REIMBURSEMENT RATES FOR MEDICAID

1 TAC §355.205

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Texas Administrative Code (TAC) Title 1, Part 15, Chapter 355, Subchapter B, new §355.205, concerning Rule for Emergency Temporary Reimbursement Rate Increases and Limitations on Use of Emergency Temporary Funds for Medicaid in Response to Novel Coronavirus (COVID-19).

BACKGROUND AND PURPOSE

The proposed new rule outlines the process by which HHSC will restrict eligible Medicaid providers from using temporarily increased reimbursement rates to increase hourly wages paid to direct care staff on an ongoing basis. In accordance with the contingencies placed upon use of the funds, use of the funds for staff compensation is limited to overtime payments, lump sum bonuses, bonuses for hazard pay, or other types of compensation that will not result in future reductions to hourly wages when the emergency temporary reimbursement rate increase is discontinued. Reimbursement rates were increased effective April 1, 2020, to ensure that these providers are able to purchase personal protective equipment, ensure adequate staff-to-client ratios, and take other necessary steps to serve clients individually rather than in congregate settings to protect the health and safety of the clients in their care.

This new rule is based on an existing emergency rule adopted in response to the COVID-19 pandemic: §355.205, Emergency Rule for Emergency Temporary Reimbursement Rate Increases and Limitations on Use of Emergency Temporary Funds for Medicaid in Response to Novel Coronavirus (COVID-19). The provisions of this new rule are the same as the emergency rule. Except for a minor edit in the title of the rule and a clarifying edit in the text, there are no changes.

SECTION-BY-SECTION SUMMARY

Proposed new §355.205(a) and (b) introduce the emergency reimbursement and outline eligibility criteria for the increases. Subsection (c) provides a deadline by which a provider must submit an electronic attestation or be subject to recoupment. Subsection (d) and (e) specify the reconciliation process and how overpayments will be recouped if a provider fails to submit the attestation required in subsection (c). Subsections (f) and (g) provide guidance on procedures in the event of a disallowance of federal funds and the termination of the emergency temporary rate increases.

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, there will be no fiscal impact on state government because of enforcing and administering the rule.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there is no adverse economic impact on small businesses, micro-businesses, and rural communities required to comply with the new rule as there is no requirement to alter current business practices. The attestation requirement is currently in place.

LOCAL EMPLOYMENT IMPACT

There is no anticipated negative impact on local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to receive a source of federal funds and is necessary to protect the health, safety, and welfare of the residents of this state.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public will benefit from adoption of the new rule. The public benefit anticipated as a result of enforcing or administering the new rule is availability of temporary emergency rate increases for impacted providers in response to the Novel Coronavirus (COVID-19).

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 as the rule does not impose any new fees or costs on those required to comply.

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

Questions about the content of this proposal may be directed to HHSC Provider Finance Department emergency line at (512) 730-7401.

Written comments on the proposal may be submitted to the HHSC Provider Finance Department, Mail Code H-400, 4900 North Lamar Blvd., Austin, TX 78714-9030; by fax to (512) 730-7475; or by email to RateAnalysisDept@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 21R015" in the subject line.

STATUTORY AUTHORITY

The new rule is authorized by Texas Government Code §531.0055, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system; Texas Government Code

§531.033, which allows the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

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

§355.205. Rule for Emergency Temporary Reimbursement Rate Increases and Limitations on Use of Emergency Temporary Funds for Medicaid in Response to Novel Coronavirus (COVID-19).

(a) Introduction. The Texas Health and Human Services Commission (HHSC) uses the methodology described in this section to establish emergency temporary reimbursement rate increases while limiting use of the funds received by the provider through the increases. This section also describes the circumstances in which recoupments will be necessary for certain provider types or services during the COVID-19 federal public health emergency period. Provider types and services that are eligible for increased reimbursement rates under this section include:

(1) all provider types and services for which a reimbursement rate methodology is described in this chapter; and

(2) any other provider or service that is established in response to COVID-19.

(b) Eligibility. To receive and retain emergency temporary reimbursement rate increases from HHSC under this section:

(1) the provider must be enrolled as a Medicaid provider with HHSC;

(2) the provider must be actively providing and billing for services provided to fee-for-service Medicaid clients;

(3) the provider must agree not to use the reimbursement rate increases to increase hourly wages paid to direct care staff on an ongoing basis, and to limit use of the funds to overtime payments, lump sum bonuses, bonuses for hazard pay, or other types of compensation that will not result in future reductions to hourly wages when the emergency temporary reimbursement rate increase is discontinued; and

(4) HHSC must receive approval from Centers for Medicare & Medicaid Services (CMS) for the provider type or specific service to be reimbursed through this section.

(c) Attestation of agreement. The provider must submit an electronic attestation of agreement to comply with subsection (b)(3) of this section either within 90 days of the effective date of the reimbursement rate increase, or by September 30, 2020, whichever date is later.

(d) Reconciliation process. HHSC uses the methodology in this subsection to recoup the temporary emergency payments made under this section if a provider fails to submit the attestation of agreement under subsection (c) of this section.

(1) HHSC will reduce reimbursement rates for any claim for services to the amount that would have been paid to the provider absent the emergency temporary reimbursement rate increase.

(2) The provider's claims will be reprocessed at the lower reimbursement rate under paragraph (1) of this subsection and an accounts receivable will be established.

(3) The provider will be paid on a normal per claim basis after the equivalent amount of the account receivable has been collected by HHSC, or its designee.

(4) After 270 days from the date of the establishment of the account receivable under paragraph (1) of this subsection, HHSC will recoup any overpayments owed under paragraph (1) of this subsection by demanding immediate repayment of any outstanding amount.

(c) Overpayment.

(1) If payments under this section result in an overpayment to a provider, HHSC, or its designee, may recoup an amount equivalent to the overpayment.

(2) Payments made under this section may be subject to any adjustments for payments made in error or due to fraud, including, without limitation, adjustments made under the Texas Administrative Code, the Code of Federal Regulations, and state and federal statutes. HHSC, or its designee, may recoup an amount equal to any such adjustments from the providers in question. This section may not be construed to limit the independent authority of another federal or state agency or organization to recover from the provider for a payment made due to fraud.

(f) Disallowance of federal funds. If payments under this section are disallowed by CMS, HHSC may recoup the amount of the disallowance from providers that participated in the program associated with the disallowance. If the recoupment from a provider for such a disallowance results in a subsequent disallowance, HHSC will recoup the amount of that subsequent disallowance from the same entity.

(g) Termination of emergency temporary rate increases. HHSC will terminate the emergency temporary rate increases at the earlier of either the termination of the federally declared public health emergency, including any extensions, or at the time that HHSC determines rate increases are no longer necessary pursuant to §355.201(c)(3) of this chapter (relating to Establishment and Adjustment of Reimbursement Rates for Medicaid). However, HHSC will continue to enforce the reconciliation and recoupment processes described in subsections (d), (e), and (f) of this section after the termination of the temporary emergency rate increases.

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 8, 2020.

TRD-202004182

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 22, 2020

For further information, please call: (512) 730-7401



TITLE 22. EXAMINING BOARDS

PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND
REGULATION OF MARRIAGE AND
FAMILY THERAPISTS
SUBCHAPTER C. APPLICATIONS AND
LICENSING

22 TAC §801.204

The Texas Behavioral Health Executive Council proposes new §801.204, relating to Licensing of Military Service Members, Military Veterans, and Military Spouses.

Overview and Explanation of the Proposed Rule. The proposed rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501-503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed amendment pertains to licensing persons with criminal convictions as marriage and family therapists; therefore, the rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Marriage and Family Therapists, in accordance with §502.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Tex. Occ. Code and may propose the rule amendment.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Counsel, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules by aligning with current legal standards. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with the rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it clarifies a rule that was repealed so it may better align with current legal standards; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Rules@bhec.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes the rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes the rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose the rule.

Lastly, the Executive Council proposes the rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.204. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) An applicant for licensure under this section must comply with Council §882.60 of this title (relating to Special Provisions Applying to Military Service Members, Veterans, and Spouses).

(b) Licensed by another United States jurisdiction.

(1) If an applicant has been licensed as an LMFT in another United States jurisdiction for the two years immediately preceding the date the application is received, and has no disciplinary history, the academic (including the internship) and experience requirements shall be considered met.

(2) If an applicant has been licensed as an LMFT in another United States jurisdiction for less than two years immediately preceding the date the application is received, and has no disciplinary history, staff may grant one month of credit for every two months of independent marriage and family therapy practice toward any deficit in the academic internship or experience requirements.

(c) Upon request, an applicant must provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant must provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(d) For an application for a license submitted by a verified military service member or military veteran, the applicant will receive credit towards any licensing or apprenticeship requirements, except an examination requirement, for verified military service, training, or education relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has a disqualifying criminal history as described by the Act, the Council Act, or Council rules.

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

Filed with the Office of the Secretary of State on October 8, 2020.

TRD-202004183

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: November 22, 2020

For further information, please call: (512) 305-7706

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SUBCHAPTER D. SCHEDULE OF SANCTIONS

22 TAC §801.305

The Texas Behavioral Health Executive Council proposes amended §801.305, relating to Schedule of Sanctions.

Overview and Explanation of the Proposed Rule. The proposed amendment is being made so the schedule of sanctions better aligns with §801.302, regarding severity level and sanction guide.

If a rule will pertain to a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed amendment pertains to a schedule of sanctions for marriage and family therapists; therefore, the rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Marriage and Family Therapists, in accordance with §502.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this amended rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Tex. Occ. Code and may propose the rule amendment.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Counsel, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public

benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with the rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation but clarifies an existing rule; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701, or via email to Rules@bhec.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small busi-

nesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes the rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes the rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose the rule.

Lastly, the Executive Council proposes the rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.305. Schedule of Sanctions.

The following standard sanctions shall apply to violations of Texas Occupations Code, Chapter 502 and 22 Texas Administrative Code, Part 35.

Figure 22 TAC §801.305

~~[Figure 22 TAC §801.305]~~

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 8, 2020.

TRD-202004185

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: November 22, 2020

For further information, please call: (512) 305-7706



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 415. PROVIDER CLINICAL RESPONSIBILITIES--MENTAL HEALTH SERVICES

SUBCHAPTER C. USE AND MAINTENANCE OF DEPARTMENT OF STATE HEALTH SERVICES/DEPARTMENT OF AGING AND DISABILITY SERVICES DRUG FORMULARY

25 TAC §§415.101 - 415.111

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §415.101, concerning Purpose; §415.102, concerning Application; §415.103, concerning Definitions; §415.104, concerning General Requirements; §415.105, concerning Organization of DSHS/DADS Drug Formulary; §415.106, concerning Executive Formulary Committee; §415.107, concerning Responsibilities of the Executive Formulary Committee; §415.108, concerning Applying to Have a Drug Added to the Formulary; §415.109, concerning Changing the DSHS/DADS Drug Formulary; §415.110, concerning Prescribing Non-formulary Drugs; and §415.111, concerning Adverse Drug Reactions.

BACKGROUND AND PURPOSE

The proposed repeals are necessary to reflect the transition of programs from the Department of State Health Services (DSHS) to HHSC. Rules in Texas Administrative Code (TAC) Title 25, Part 1, Chapter 415, Subchapter C are repealed, updated, reorganized, and proposed in 26 TAC Chapter 306, Subchapter G. The new rules are proposed simultaneously elsewhere in this issue of the *Texas Register*.

SECTION-BY-SECTION

The proposed rule repeals delete the rules in 25 TAC Chapter 415, Subchapter C, to reorganize and update the rules to be relocated to 26 TAC Chapter 306, Subchapter G.

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) implementation of the proposed repeals will not affect the number of HHSC employee positions;
- (3) implementation of 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 proposed repeals do not impose any additional costs on small businesses, 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

Timothy E. Bray, Associate Commissioner of State Hospitals, and Scott Schalchlin, Associate Commissioner of State Supported Living Centers, have determined that for each year of the first five years the repeals are in effect, the public will benefit from the elimination of rules that refer to an agency, Texas Department of Mental Health and Mental Retardation, 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.

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, Health and Specialty Care System, 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 Rules 19R052 Drug Formulary" 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 §533.0356 which allows the Executive Commissioner of HHSC to adopt rules to govern the operations

of local behavioral health authorities; §571.006, which provides the Executive Commissioner of HHSC with authority to adopt rules as necessary for the proper and efficient treatment of persons with mental illness; and §534.052, which requires the adoption of rules necessary and appropriate to ensure the adequate provision of mental health services through a local authority.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code §533.0356, §571.006, and §534.052.

- §415.101. *Purpose.*
- §415.102. *Application.*
- §415.103. *Definitions.*
- §415.104. *General Requirements.*
- §415.105. *Organization of DSHS/DADS Drug Formulary.*
- §415.106. *Executive Formulary Committee.*
- §415.107. *Responsibilities of the Executive Formulary Committee.*
- §415.108. *Applying to Have a Drug Added to the Formulary.*
- §415.109. *Changing the DSHS/DADS Drug Formulary.*
- §415.110. *Prescribing Non-formulary Drugs.*
- §415.111. *Adverse Drug Reactions.*

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 6, 2020.

TRD-202004160

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: November 22, 2020

For further information, please call: (512) 206-5084



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM

SUBCHAPTER G. USE AND MAINTENANCE OF THE HEALTH AND HUMAN SERVICES COMMISSION PSYCHIATRIC DRUG FORMULARY

26 TAC §§306.351 - 306.360

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §306.351, concerning Purpose; §306.352, concerning Application; §303.353, concerning Definitions; §306.354, concerning General Requirements; §306.355, concerning Organization of HHSC Psychiatric Drug Formulary; §306.356, concerning Responsibilities of the Psychiatric Executive Formulary Committee; §306.357, concerning Adding a Drug to the HHSC Psychiatric Drug Formulary; §306.358, concerning Changing the HHSC Psychiatric Drug

Formulary; §306.359, concerning Prescribing Non-formulary Drugs; and §306.360, concerning Adverse Drug Reactions.

BACKGROUND AND PURPOSE

The purpose of the proposed new rules is to move HHSC rules in Texas Administrative Code (TAC) Title 25, Chapter 415, Subchapter C and 40 TAC Chapter 5, Subchapter C to 26 TAC Chapter 306, Subchapter G as part of consolidating HHSC rules. The rules are repealed, updated, and reorganized, as they have not been reviewed since 2002, and are placed in 26 TAC Chapter 306. The rule project workgroup has updated the rules for clarity using plain language where possible and to provide a simpler description of the composition and operation of the agency's formulary committee. The repeal of those rules is proposed simultaneously elsewhere in this issue of the *Texas Register*.

SECTION-BY-SECTION SUMMARY

Proposed §306.351 states the purpose of the new subchapter.

Proposed §306.352 provides that the rules apply to the listed facilities.

Proposed §306.353 provides the definitions used in the subchapter.

Proposed §306.354 describes the general requirements for the HHSC Psychiatric Drug Formulary.

Proposed §306.355 describes how drugs will be listed in the HHSC Psychiatric Drug Formulary, recommended doses, limitations, and provides that the Interim Formulary Update confirms to the same form as the formulary.

Proposed §306.356 lists the responsibilities of the Psychiatric Executive Formulary Committee (PEFC), which includes recommending standards of drugs, periodically reviewing the drugs listed in the formulary, and considering applications submitted to have drugs added to the formulary.

Proposed §306.357 provides the procedures for applying to have a drug added to the formulary.

Proposed §306.358 provides that changes to the formulary is based on need, effectiveness, risk, and cost and the formulary is updated and published once a year, at a minimum.

Proposed §306.359 provides the procedure for prescribing a non-formulary drug.

Proposed §306.360 provides that each local authority develop written policies and procedures to report adverse drug reactions and HHSC will develop policies and procedures for HHSC facilities.

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 from 25 TAC and 40 TAC;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

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

The proposed 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

Timothy E. Bray, Associate Commissioner of State Hospitals, and Scott Schalchlin, Associate Commission of State Supported Living Centers, have determined that for each year of the first five years the rules are in effect, the public benefit will be rules that reference the correct agency, HHSC.

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. The proposed rules codify and combine existing agency practices under 26 TAC. There is no requirement for providers 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, Health and Specialty Care System, 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 Rules 19R052 Drug Formulary" 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; Texas Health and Safety Code §533.0356 which allows the Executive Commissioner of HHSC to adopt rules to govern the operations of local behavioral health authorities; §571.006 which provides the Executive Commissioner of HHSC with authority to adopt rules as necessary for the proper and efficient treatment of persons with mental illness; §534.052, which requires the adoption of rules necessary and appropriate to ensure the adequate provision of mental health services through a local authority; §591.004 which provides that the Executive Commissioner of HHSC shall adopt rules to implement the Persons with an Intellectual Disability Act; and §533A.0355 which provides that the Executive Commissioner of HHSC shall adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code §533.0356, §571.006, §534.052, §591.004, and §533A.0355.

§306.351. Purpose.

The purpose of this subchapter is to require the use and maintenance of the Texas Health and Human Services Commission (HHSC) Psychiatric Drug Formulary.

§306.352. Application.

(a) This subchapter applies to HHSC facilities, HHSC-funded community behavioral health centers (including substance use treatment providers), local authorities, and their respective contractors for medications and medication-related services funded by HHSC. The HHSC Psychiatric Drug Formulary in its entirety applies to all HHSC facilities in all circumstances except when HHSC transfers an individual to a general hospital to receive non-mental health acute care services.

(b) HHSC facilities and local authorities are responsible for drafting contracts with their contractors that provide HHSC-funded medications and medication-related services to ensure that contractors comply with this subchapter.

§306.353. Definitions.

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

(1) Adverse drug reaction--Any response to a drug that is noxious and unintended and occurs at doses normally used in humans.

(2) Contractor--An entity that provides HHSC-funded mental health services pursuant to a contract with a service system component or HHSC.

(3) Drug entity--A specific chemical compound and all its pharmaceutically equivalent salt forms that are used in the diagnosis, cure, mitigation, treatment or prevention of disease.

(4) Emergency--A situation in which it is immediately necessary to administer medication to an individual to prevent:

(A) imminent probable death or substantial bodily harm to the individual because the individual:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the individual is unable to satisfy the individual's need for nourishment, essential medical care, or self-protection; or

(B) imminent serious physical or emotional harm to others as indicated by threats, attempts, or other acts the individual overtly or continually makes or commits.

(5) HHSC--Texas Health and Human Services Commission.

(6) HHSC facility--A facility operated by HHSC, including state hospitals and state supported living centers.

(7) HHSC Psychiatric Drug Formulary--A listing by non-proprietary name of all drugs approved for use by service system components and their contractors that is updated annually, at a minimum.

(8) Individual--Any person receiving services from a service system component or contractor.

(9) Interim Formulary Update--An update to the HHSC Psychiatric Drug Formulary, which is incorporated into the HHSC Psychiatric Drug Formulary.

(10) Local authority--A local mental health authority designated in accordance with Texas Health and Safety Code, §533.035(a), a local behavioral health authority designated in accordance with Texas Health and Safety Code, §533.0356, and a local intellectual and developmental disability authority designated in accordance with Texas Health and Safety Code §533A.035(a).

(11) Mental health services--Any services concerned with the diagnosis, treatment, and care of individuals for a mental illness (known as serious emotional disturbance in reference to children and adolescents), which may be accompanied by a co-occurring diagnosis.

(12) PEFC--Psychiatric Executive Formulary Committee. A committee composed of representatives from the state hospitals, state supported living centers, community behavioral health entities, and others as selected by the state hospitals associate commissioner in consultation with the state supported living center associate commissioner, the behavioral health services associate commissioner, and the intellectual and developmental services associate commissioner. The committee is responsible for the formulation of broad professional policies regarding the evaluation, selection, handling, use, administration, and all other matters relating to the use of drugs and devices in an HHSC facility, local authority, and their respective contractors for medications and medication-related services funded by HHSC.

(13) Pharmacy and Therapeutics Committee--An HHSC facility committee composed of physicians, pharmacists, registered nurses, and others as selected by the facility head, or their designee, that assists in the formulation of broad professional policies regarding the evaluation, selection, distribution, handling, use, administration, and all other matters relating to the use of drugs and devices in the facility.

(14) Practitioner--A person who acts within the scope of a professional license to prescribe, distribute, administer, or dispense a prescription drug or device, (e.g. a physician, registered nurse, advanced practice registered nurse, physician assistant, licensed vocational nurse, pharmacist, or dentist).

(15) Reserve drug--A formulary drug with specific guidelines for use as described in the HHSC Psychiatric Drug Formulary.

(16) Service system component--HHSC, an HHSC facility, and a local authority.

§306.354. General Requirements.

(a) HHSC maintains a closed formulary (HHSC Psychiatric Drug Formulary) that lists drugs approved by the PEFC for use by service system components and their contractors.

(b) A drug is not available for general use by service system components or their contractors unless it is approved by the PEFC. Drugs not listed in the HHSC Psychiatric Drug Formulary or Interim Formulary Update may not be used except under the limited circumstances described in §306.359 of this subchapter (relating to Prescribing Non-formulary Drugs).

(c) The use of formulary drugs in unusual clinical situations or the use of unusual drug combinations must be accompanied by written justification in the individual's medical record. Additional clinical consultation in these situations should occur as deemed necessary by the prescribing physician.

(d) Reserve drugs may be prescribed for use outside the guidelines described in the formulary if the prescription is justified in the individual's medical record and reviewed in audits of reserve drug use conducted by the service system component as clinically indicated.

(e) Drug research conducted at an HHSC facility is governed by 25 TAC Chapter 414, Subchapter P (relating to Research in TDMHMR Facilities). Local authorities conducting drug research must comply with all applicable state and federal laws, rules, and regulations, including 45 CFR Part 46, as required by §301.325 of this title (relating to Rights and Protection).

§306.355. Organization of HHSC Psychiatric Drug Formulary.

(a) Drugs are listed in the HHSC Psychiatric Drug Formulary by their nonproprietary names. The list is based on a modified format of the American Hospital Formulary Service Drug Information and includes an alphabetical index. The use of proprietary names, which may follow in parentheses, is for information purposes only and is not meant to be an endorsement. Cost comparisons and prescribing information are provided as determined necessary by the PEFC. The HHSC Psychiatric Drug Formulary provides tables summarizing the recommended dosage ranges for the psychotropic drugs for clinician reference. These tables are intended as guidelines and are not intended to replace other references or the clinician's clinical judgment. Clinicians should consult the approved Food and Drug Administration product labeling or other clinical resources on the appropriate prescribing of psychoactive medications. The HHSC Psychiatric Drug Formulary notes limitations recommended by the PEFC regarding the use of a drug, including specific limitations or guidelines for the use of a reserve drug.

(b) The Interim Formulary Update conforms to the same format as the HHSC Psychiatric Drug Formulary and shall be incorporated into the annual HHSC Psychiatric Drug Formulary.

§306.356. Responsibilities of the Psychiatric Executive Formulary Committee.

(a) The PEFC maintains and updates the HHSC Psychiatric Drug Formulary by:

(1) recommending standards of drug use that discourage unnecessary duplication of therapeutic alternatives and encourage the highest standards of medical and pharmacy practice;

(2) periodically reviewing the drugs listed in the formulary to ensure consistency with need, effectiveness, risk, and cost;

(3) consulting with experts in clinical pharmacy, pharmacology, and other medical specialties as necessary to objectively assess drugs under consideration; and

(4) considering the applications submitted in accordance with §306.357 of this subchapter (relating to Adding a Drug to the HHSC Psychiatric Drug Formulary) or as:

(A) presented by committee members; or

(B) submitted by other qualified persons at the invitation of the PEFC chairperson.

(b) The PEFC may make other recommendations concerning drug use and policy.

(c) Approval of a drug entity for inclusion in the HHSC Psychiatric Drug Formulary does not imply approval of all formulations for that drug. The PEFC designates the formulations that are allowed for general use by service system components and their contractors.

(d) Approval of a drug formulation constitutes approval of all brands of the product that have been proven to be bioequivalent as listed in the then-current Approved Drug Products with Therapeutic Equivalence Evaluations, published by the United States Food and Drug Administration.

(e) For a drug entity that has known bioequivalency problems, the PEFC may limit its use to a specific brand based on objective clinical pharmacokinetic data.

§306.357. Adding a Drug to the HHSC Psychiatric Drug Formulary.

(a) Applying to have a drug added to the HHSC Psychiatric Drug Formulary.

(1) Any member of the PEFC, any service system component practitioner, or any contract practitioner may apply to have a drug added to the HHSC Psychiatric Drug Formulary by completing the New Drug Application form found in the HHSC Psychiatric Drug Formulary on the HHSC Psychiatric Formulary website.

(2) Include the following with the New Drug Application form:

(A) published articles in biomedical literature that substantiate the efficacy and safety of the proposed drug;

(B) information on the advantages of the proposed drug compared with similar formulary drugs;

(C) a list of formulary drugs that the proposed drug would replace or supplement; and

(D) cost effectiveness data.

(b) Submitting the application.

(1) An HHSC facility practitioner or HHSC facility contract practitioner shall submit the application to the facility's pharmacy and therapeutics committee for approval. If the committee approves the application, the committee forwards the application to the PEFC.

(2) A non-facility service system component practitioner or non-facility service system component contract practitioner shall submit the application to the component's clinical/medical director or designee who determines if the application is appropriate and complete, and if so, shall forward the application to the PEFC.

(3) A member of the PEFC shall submit the application directly to the PEFC.

(c) Considering the application. The PEFC considers the drug application and shall:

(1) approve the proposed drug's inclusion and, if appropriate, approve audit criteria and recommend dosage guidelines;

(2) approve the proposed drug on a trial basis for a specified period of time;

(3) approve the proposed drug as a reserve drug, with guidelines;

(4) postpone the decision until a later meeting; or

(5) deny the proposed drug's inclusion.

§306.358. Changing the HHSC Psychiatric Drug Formulary.

(a) Changes to the HHSC Psychiatric Drug Formulary are based on need, effectiveness, risk, and cost as contained in current and unbiased biomedical literature.

(b) The HHSC Psychiatric Drug Formulary is updated and published once a year, at a minimum. Quarterly updates to the HHSC Psychiatric Drug Formulary, if any, will be listed in an Interim Formulary Update.

§306.359. Prescribing Non-formulary Drugs.

(a) Non-formulary drugs may be prescribed:

(1) if no formulary drug exists that is as safe or effective in the specified situation;

(2) if a limited trial of the drug appears to be safer or more effective than any drug listed in the formulary and the prescribing practitioner anticipates applying to have the drug added to the formulary;

(3) if the course of therapy established prior to the individual's admission to the facility where he or she is being treated would be interrupted; or

(4) in an emergency.

(b) Each local authority shall develop and enforce written policies and procedures for monitoring and approving the prescribing of non-formulary drugs by its practitioners and contract practitioners.

(c) HHSC shall develop and enforce written policies and procedures for monitoring and approving the prescribing of non-formulary drugs by HHSC facility practitioners and facility contract practitioners.

§306.360. Adverse Drug Reactions.

(a) Each local authority shall develop written policies and procedures for reporting adverse drug reactions to the Food and Drug Administration.

(b) HHSC shall develop written policies and procedures for HHSC facilities for reporting adverse drug reactions to the Food and Drug Administration.

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 6, 2020.

TRD-202004161

Karen Ray
Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: November 22, 2020

For further information, please call: (512) 206-5084



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 9. TITLE INSURANCE
SUBCHAPTER A. BASIC MANUAL OF
RULES, RATES AND FORMS FOR THE
WRITING OF TITLE INSURANCE IN THE
STATE OF TEXAS

28 TAC §9.1

The Department of Insurance (TDI) proposes to amend 28 TAC §9.1 to adopt by reference an amended version of the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual). The amendment to the Basic Manual updates Form T-51, Purchaser/Seller Insured Closing Service Letter (Form T-51) to implement House Bill 1614, 86th Legislature, Regular Session (2019).

EXPLANATION. Form T-51, which is part of the Basic Manual, is an insured closing letter that protects the buyer or seller if escrow funds are lost because of fraud or dishonesty by a title agent. Under Insurance Code §2702.002, Form T-51 can only be given if the sales price of real estate is more than the maximum amount for a covered claim under the Texas Title Insurance Guaranty Act (Guaranty Act).

The amendment to Form T-51 updates the minimum sales prices that can be covered under the form. The update is necessary to implement a change made by HB 1614.

HB 1614 amended Insurance Code §2602.256 to increase the maximum amount for a covered claim under the Guaranty Act from \$250,000 to \$500,000. The rule amendment updates Form T-51 to show \$500,000 as the new threshold amount for coverage.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. David Muckerheide, assistant director of the Property and Casualty Lines Office, has determined that during each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. Mr. Muckerheide made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments. Mr. Muckerheide does not anticipate any measurable effect on local employment or the local economy because of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Mr. Muckerheide expects that enforcing the proposed amendment will have the public benefit of ensuring that TDI's rules conform to Insurance Code §2602.256, which HB 1614 amended to increase the maximum amount for a covered claim under the Guaranty Act, and Insurance Code §2702.002, which ties the threshold amount for coverage under Form T-51 to the maximum covered claim amount under the Guaranty Act.

Mr. Muckerheide expects that the proposed amendment will not increase the cost of compliance with Insurance Code §2702.002 because the amendment does not impose requirements beyond those in the statute. Insurance Code §2702.002 requires that the insured closing letter be used only if the amount of the transaction exceeds the limit established by the Guaranty Act. As a result, any cost associated with the amended Form T-51 results

from statutory requirements and not from the proposed amendment.

Additionally, Mr. Muckerheide expects that while the proposed amendment will necessitate updating a form, it will not impose an economic cost on those required to comply with the amendment. All title forms used in Texas are promulgated by TDI, and title agents and underwriters subscribe to software vendors that electronically update any form changes and provide the most current form. There is typically no additional charge to update forms. Therefore, the proposed rule amendment does not impose a cost on regulated persons.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses, or on rural communities. As discussed in the Public Benefit and Cost Note section, the cost attributable to this proposal is the cost to update the amended form. The update requires only a minor change to the form to make the form consistent with statutory changes. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that the proposed amendment will not impose a cost on regulated persons. Also, no additional rule amendments would be required under Government Code §2001.0045 because the proposed amendment to Form T-51 is necessary to implement legislation. The proposed rule implements Insurance Code §2602.256, as amended by House Bill 1614, and Insurance Code §2702.002.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or eliminate existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI 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. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., Central Time, on November 23, 2020. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78711-2040.

To request a public hearing on the proposal, submit a request before the end of the comment period and separate from any comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78711-2040. The request for public hearing must be received by TDI no later than 5:00 p.m., Central Time, on November 23, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes to amend §9.1 under Insurance Code §2702.002, §2551.003, and Insurance Code §36.001.

Insurance Code §2702.002 requires that insured closing and settlement letters be issued in the form and manner prescribed by the Commissioner.

Insurance Code §2551.003 authorizes the Commissioner to adopt rules that are necessary for the business of title insurance.

Insurance Code §36.001 authorizes the Commissioner to adopt any rules necessary to implement the powers and duties of the department under the Insurance Code and laws of this state.

CROSS-REFERENCE TO STATUTE. Section 9.1 implements Insurance Code §2602.256, as amended by HB 1614, and Insurance Code §2702.002.

§9.1. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

The Texas Department of Insurance adopts by reference the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* as amended, effective February 1, 2021 [March 7, 2019]. The document is available from the Texas Department of Insurance, Mail Code 104-PC, P.O. Box 149104, Austin, Texas 78711-2040. The document is also available on the TDI website at www.tdi.texas.gov, and by email from ChiefClerk@tdi.texas.gov.

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 6, 2020.

TRD-202004145

James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: November 22, 2020

For further information, please call: (512) 676-6587



CHAPTER 19. LICENSING AND REGULATION OF INSURANCE PROFESSIONALS
SUBCHAPTER R. UTILIZATION REVIEWS FOR HEALTH CARE PROVIDED UNDER A HEALTH BENEFIT PLAN OR HEALTH INSURANCE POLICY

28 TAC §§19.1702, 19.1705, 19.1709 - 19.1711, 19.1716 - 19.1718

The Texas Department of Insurance proposes to amend 28 TAC §§19.1702, 19.1705, 19.1709 - 19.1711, and 19.1716 - 19.1718, concerning utilization reviews for health care that is provided under a health benefit plan or a health insurance policy. These

amendments implement House Bill 1584, HB 2486, HB 3041, and Articles 2 and 3 of Senate Bill 1742, all enacted by the 86th Legislature, Regular Session (2019).

EXPLANATION. Amending §§19.1702, 19.1705, 19.1709 - 19.1711, and 19.1716 - 19.1718 aligns the rules with statute and with one another, and it implements HB 1584, HB 2486, HB 3041, and SB 1742. All of these bills include statutory changes relating to utilization reviews for health care.

HB 1584 prohibits a health benefit plan that provides coverage for stage-four, advanced metastatic cancer and associated conditions (stage-IV cancer) from requiring the enrollee to fail to successfully respond to a different drug or prove history of failure of a different drug before providing coverage of a prescription drug that is consistent with best practices; supported by peer-reviewed, evidence-based literature; and approved by the United States Food and Drug Administration.

HB 2486 specifies preauthorization requirements for employee benefit plans or health policies that provide dental benefits.

HB 3041 requires health benefit plan issuers that are subject to Insurance Code Chapter 1222 and that require preauthorization as a condition of payment to provide a preauthorization renewal process that allows a provider to request renewal of an existing preauthorization at least 60 days before it expires. It also requires insurers receiving a request to renew an existing preauthorization to review the request and issue a determination before the existing preauthorization expires, if practicable.

SB 1742 includes provisions requiring the following:

--a shorter response time for a health maintenance organization (HMO) to provide certain information concerning the preauthorization process to a participating physician or provider who requests it,

--a shorter response time for a preferred or exclusive provider health benefit plan issuer to provide certain information concerning the preauthorization process to a preferred provider who requests it,

--requirements for HMOs and preferred or exclusive provider health benefit plan issuers (collectively, health benefit plan issuers) to post certain preauthorization information on their websites, and

--new requirements utilization review agents (URAs) must meet.

The proposed amendments to the sections are described in the following paragraphs.

Section 19.1702. Applicability. A proposed amendment to §19.1702(b) adds Insurance Code Chapter 1222 and Chapter 1451, Subchapter E to the list of Insurance Code provisions that apply to the rules in 28 TAC Chapter 19, Subchapter R.

In addition, nonsubstantive punctuation and grammatical changes that reflect updates to statutory language are made to §19.1702(a)(1) to change existing rule text to say "the medical necessity, the appropriateness, or the experimental or investigational nature."

Section 19.1705. General Standards of Utilization Review. A proposed amendment to §19.1705(a) adds a requirement that the physician who reviews and approves a URA's utilization review plan be licensed to practice medicine in Texas.

The proposed amendments to §19.1705(b) designates the existing text as paragraph (1). Proposed paragraphs (2) and (3) are

added to prohibit a health benefit plan that provides coverage for stage-IV cancer from requiring that an enrollee with stage-IV cancer fail to successfully respond to a different drug or prove history of failure of a different drug before the plan provides coverage for certain prescription drugs.

In addition, nonsubstantive punctuation and grammatical changes that reflect updates to statutory language are made to §19.1705(d) to change existing rule text to say "the medical necessity, the appropriateness, or the experimental or investigational nature."

Section 19.1709. Notice of Determinations Made in Utilization Review. As proposed to be amended, the section is revised to provide timeframes for requesting renewal of an existing preauthorization and issuing the determination on the request.

The amendments add new subsection (b), which provides that health benefit plan issuers that require preauthorization as a condition for payment must provide a renewal process that allows for the renewal of a preauthorization to be requested at least 60 days before the existing preauthorization expires. The subsections that follow new subsection (b) are redesignated as appropriate to reflect the addition of the new subsection.

The amendments also add new paragraph (4) to redesignated subsection (e). Proposed new §19.1709(e)(4) requires that a URA review a request to renew a preauthorization and make and issue a determination before the existing preauthorization expires, if practicable.

Section 19.1710. Requirements Prior to Issuing an Adverse Determination. The proposed amendments to §19.1710 are non-substantive punctuation and grammatical changes that reflect updates to statutory language in the first paragraph of §19.1710 to change existing rule text to say "the medical necessity, the appropriateness, or the experimental or investigational nature."

Section 19.1711. Written Procedures for Appeal of Adverse Determinations. The proposed amendments to §19.1711(a)(6) add text to clarify that the requirements of the paragraph concerning review by a particular type of specialty provider are available to the health care provider either when appealing an adverse determination or after an adverse determination appeal has been denied. The proposed amendments to paragraph (6) also revise text to clarify that the health care provider merely needs to request a particular type of specialty provider review the case and is no longer required to provide good cause in writing for the request.

The proposed amendments to §19.1711(a)(7) revise text to clarify that the requirement to have a method for expedited appeals applies in regard to denial of another service if the requesting health care provider includes a written statement with supporting documentation that the service is necessary to treat a life-threatening condition or prevent serious harm to the patient.

In addition, nonsubstantive punctuation and grammatical changes that reflect updates to statutory language are made to §19.1711(a)(5) to change existing rule text to say "the medical necessity, the appropriateness, or the experimental or investigational nature." Another nonsubstantive grammatical change was made to §19.1711(a)(7) to move the placement of existing rule text "is available" to improve the rule's clarity.

Section 19.1716. Specialty URA. The proposed amendments to §19.1716 revise subsections (b) and (d) to specify that utilization review of specialty health care services must be conducted by a

health care provider licensed or authorized in Texas to provide the specialty health care service being reviewed.

In addition, nonsubstantive punctuation and grammatical changes that reflect updates to statutory language are made to §19.1716(f), changing existing rule text to say "the medical necessity, the appropriateness, or the experimental or investigational nature."

Section 19.1717. Independent Review of Adverse Determinations. The proposed amendment to §19.1717(a) revises a reference to §19.1709(d)(3), changing it to §19.1709(e)(3) to reflect the proposed redesignation of subsection (d) as (e) in that section. In addition, a nonsubstantive punctuation change is made to §19.1717(c) to reflect TDI's current rule drafting style that "internet" not be capitalized.

Section 19.1718. Preauthorization for Health Maintenance Organizations and Preferred Provider Benefit Plans. The proposed §19.1718(c) revises the deadline for health benefit plan issuers that use a preauthorization process to provide a list of the medical care and health care services that require preauthorization as well as information about the preauthorization process to preferred providers who request this information, changing the deadline from the 10th to the fifth working day after the date a request is made, for consistency with the provisions of SB 1742. In addition, it replaces the "and" in existing text with "or" to reflect a change in statutory language so that the subsection applies to health benefit plan issuers that use a preauthorization process for "medical care or health care services."

The amendments add new subsection (j) to address the posting of preauthorization requirements for medical and health care services. This subsection requires an HMO or a preferred provider benefit plan that uses a preauthorization process for medical care or health care services to make the requirements and information about the preauthorization process readily accessible to enrollees, physicians, health care providers, and the general public by posting the requirements and information on the HMO's or the preferred provider benefit plan's public internet website. The subsection describes requirements applicable to the preauthorization requirements and information; it addresses how an HMO or preferred provider benefit plan should handle licensed, proprietary, or copyrighted material; it addresses changes to preauthorization requirements; it provides a remedy for noncompliance with the subsection; and it specifies that the provisions of the subsection may not be waived, voided, or nullified by contract.

The amendments add new subsection (k), to address preauthorizations for employee benefit plans or health policies that provide dental benefits. The subsection addresses applicability of relevant definitions to prior authorization for dental care services under an employee benefit plan or health insurance policy. The subsection also addresses what an employee benefit plan or health insurance policy provider or issuer must provide to a dentist in a written prior authorization of benefits for a dental care service. The subsection also addresses what an employee benefit plan or health insurance policy provider or issuer must provide in a denial of a dental care service.

The amendments add new subsection (l), to address preauthorization requests to renew existing preauthorizations. The subsection specifies requirements that apply if preauthorization is required as a condition of payment for a medical or health care service, stating that a preauthorization renewal process must be provided that allows the renewal of an existing preauthorization

to be requested by a physician or health care provider at least 60 days before the date the preauthorization expires. The subsection also states that if a request from a physician or health care provider to renew an existing preauthorization is received before an existing preauthorization expires, the request must be reviewed and a determination indicating whether the medical or health care service is preauthorized issued before the existing preauthorization expires, if practicable.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Debra Diaz-Lara, director of the Managed Care and Quality Assurance Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Diaz-Lara does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Diaz-Lara expects that enforcing the proposed amendments will have the public benefits of ensuring that TDI's rules conform with statutory changes regarding preauthorization and utilization reviews adopted by HB 1584, HB 2486, HB 3041 and SB 1742.

Ms. Diaz-Lara expects that the proposed amendments will not increase the cost of compliance with HB 1584, HB 2486, HB 3041 and SB 1742 because they do not impose requirements beyond those explicitly provided for in the statutes and do not include any discretionary decisions or interpretations by TDI.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. This is because the proposed amendments implement the statutory changes adopted in HB 1584, HB 2486, HB 3041, and SB 1742. Regardless of whether TDI adopts the proposed amendments, small or micro businesses are required to comply with the statutes. The proposed amendments do not go beyond the explicit statutory requirements and do not include any discretionary decisions or interpretations by TDI. The proposed amendments do not apply to any rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a cost on regulated persons and no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments to §§19.1702, 19.1705, 19.1709 - 19.1711, 19.1716 - 19.1718 do not go beyond the requirements provided in the legislation they implement and do not include any discretionary interpretations or decisions. The proposed rule amendments implement the following provisions:

--Insurance Code §1222.0003 and §1222.0004, as added by HB 3041;

--Insurance Code §1369.213, as added by HB 1584;

--Insurance Code §1451.208, as amended by HB 2486; and

--Insurance Code §§843.348, 843.3481 - 3483, 1301.135, 1301.1351 - 1353, 4201.151, 4201.206, 4201.356, 4201.357, and 4201.453, as added or amended by SB 1742.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand an existing regulation and will not limit or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI 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. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m. Central Time, on November 23, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be received by the department no later than 5:00 p.m. Central Time, on November 23, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §§19.1702, 19.1705, 19.1709 - 19.1711, 19.1716 - 19.1718 under Insurance Code §§843.151, 1301.007, 4201.003, and 36.001.

Insurance Code §843.151 allows the Commissioner to adopt reasonable rules as necessary and proper to implement Insurance Chapter 843, addressing HMOs.

Insurance Code §1301.007 provides that the Commissioner adopt rules as necessary to implement Chapter 1301 addressing preferred provider plans.

Insurance Code §4201.003 allows the Commissioner to adopt rules to implement Chapter 4201 addressing URAs.

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.

CROSS-REFERENCE TO STATUTE. The amendments to §19.1702 implement Insurance Code §§1222.0003, 1222.0004, and 1451.208.

The amendments to §19.1705 implement Insurance Code §4201.151 and §1369.213.

The amendments to §19.1709 implement Insurance Code §1222.0003 and §1222.0004.

The amendments to §19.1710 implement Insurance Code §4201.206.

The amendments to §19.1711 implement Insurance Code §4201.356 and §4201.357.

The amendments to §19.1716 implement Insurance Code §4201.453 and §4201.454.

The amendment to §19.1717 implements Insurance Code §4201.304.

The amendments to §19.1718 implement Insurance Code §§843.348, 843.3481 - 843.3483, 1301.135, 1301.1351 - 1301.1353, 1451.208, 1222.0003, and 1222.0004.

§19.1702. Applicability.

(a) Limitations on applicability. Except as provided in Insurance Code Chapter 4201, this subchapter applies to utilization review performed under a health benefit plan or a health insurance policy.

(1) This subchapter does not apply to utilization review performed under workers' compensation insurance coverage.

(2) This subchapter does not apply to a person who provides information to an enrollee; an individual acting on behalf of an enrollee; or an enrollee's physician, doctor, or other health care provider about scope of coverage or benefits, and does not determine the medical necessity, [ø] appropriateness, or the experimental or investigational nature of health care services.

(b) Applicability of other law. In addition to the requirements of this subchapter, provisions of Insurance Code Chapter 843, concerning Health Maintenance Organizations; Insurance Code Chapter 1222, concerning Preauthorization for Medical or Health Care Service; Insurance Code Chapter 1301, concerning Preferred Provider Benefit Plans; Insurance Code Chapter 1352, concerning Brain Injury; [and] Insurance Code Chapter 1369, concerning Benefits Related to Prescription Drugs and Devices and Related Services; and Insurance Code Chapter 1451, Subchapter E, concerning Dental Care Benefits in Health Insurance Policies or Employee Benefit Plans, apply to this subchapter.

§19.1705. General Standards of Utilization Review.

(a) Review of utilization review plan. The utilization review plan must be reviewed and approved by a physician licensed to practice medicine in Texas and conducted under standards developed and periodically updated with input from both primary and specialty physicians, doctors, and other health care providers, as appropriate.

(b) Special circumstances.

(1) A utilization review determination must be made in a manner that takes into account special circumstances of the case [into account] that may require deviation from the norm stated in the screening criteria or relevant guidelines. Special circumstances include, but are not limited to, an individual who has a disability, acute condition, or life-threatening illness.

(2) If coverage is available for stage-four advanced, metastatic cancer and associated conditions, as defined by Insurance Code §1369.211, the URA cannot require, before coverage of a prescription drug, that the enrollee:

(A) fail to successfully respond to a different drug; or

(B) prove a history of failure of a different drug.

(3) Paragraph (2) of this subsection only applies to a drug the use of which is:

(A) consistent with best practices for the treatment of stage-four advanced, metastatic cancer or an associated condition, as defined by Insurance Code §1369.211;

(B) supported by peer-reviewed, evidence-based literature; and

(C) approved by the United States Food and Drug Administration.

(c) Screening criteria. Each URA must utilize written screening criteria that are evidence-based, scientifically valid, outcome-focused, and that comply with the requirements in Insurance Code §4201.153. The screening criteria must also recognize that if evidence-based medicine is not available for a particular health care service provided, the URA must utilize generally accepted standards of medical practice recognized in the medical community.

(d) Referral and determination of adverse determinations. Adverse determinations must be referred to and may only be determined by an appropriate physician, doctor, or other health care provider with appropriate credentials under §19.1706 of this title (relating to Requirements and Prohibitions Relating to Personnel) to determine the medical necessity, the [ø] appropriateness, or the experimental or investigational nature[;] of health care services.

(e) Delegation of review. A URA, including a specialty URA, may delegate the utilization review to qualified personnel in a hospital or other health care facility in which the health care services to be reviewed were, or are, to be provided. The delegation does not relieve the URA of full responsibility for compliance with this subchapter and Insurance Code Chapter 4201, including the conduct of those to whom utilization review has been delegated.

(f) Complaint system. The URA must develop and implement procedures for the resolution of oral or written complaints initiated by enrollees, individuals acting on behalf of the enrollee, or health care providers concerning the utilization review. The URA must maintain records of complaints for three years from the date the complaints are filed. The complaints procedure must include a requirement for a written response to the complainant by the agent within 30 calendar days. The written response must include TDI's address, toll-free telephone number, and a statement explaining that a complainant is entitled to file a complaint with TDI.

§19.1709. Notice of Determinations Made in Utilization Review.

(a) Notice requirements. A URA must send written notification to the enrollee or an individual acting on behalf of the enrollee and the enrollee's provider of record, including the health care provider who rendered the service, of a determination made in a utilization review.

(b) Renewal of existing preauthorizations. If a health benefit plan issuer subject to Insurance Code Chapter 1222 requires preauthorization as a condition of payment for a medical or health care service, the URA must provide a preauthorization renewal process that allows a physician or health care provider to request renewal of an existing preauthorization at least 60 days before the date the preauthorization expires.

(c) [(b)] Required notice elements. In all instances of a prospective, concurrent, or retrospective utilization review adverse determination, written notification of the adverse determination by the URA must include:

- (1) the principal reasons for the adverse determination;
- (2) the clinical basis for the adverse determination;
- (3) a description or the source of the screening criteria that were utilized as guidelines in making the determination;
- (4) the professional specialty of the physician, doctor, or other health care provider that made the adverse determination;
- (5) a description of the procedure for the URA's complaint system as required by §19.1705 of this title (relating to General Standards of Utilization Review);

(6) a description of the URA's appeal process, as required by §19.1711 of this title (relating to Written Procedures for Appeal of Adverse Determination);

(7) a copy of the request for a review by an IRO form, available at www.tdi.texas.gov [www.tdi.texas.gov/forms];

(8) notice of the independent review process with instructions that:

(A) request for a review by an IRO form must be completed by the enrollee, an individual acting on behalf of the enrollee, or the enrollee's provider of record and be returned to the insurance carrier or URA that made the adverse determination to begin the independent review process; and

(B) the release of medical information to the IRO, which is included as part of the independent review request for a review by an IRO form, must be signed by the enrollee or the enrollee's legal guardian; and

(9) a description of the enrollee's right to an immediate review by an IRO and of the procedures to obtain that review for an enrollee who has a life-threatening condition or who is denied the provision of prescription drugs or intravenous infusions for which the patient is receiving benefits under the health insurance policy.

(d) [(e)] Determination concerning an acquired brain injury. In addition to the notification required by this section, a URA must comply with this subsection in regard to a determination concerning an acquired brain injury as defined by §21.3102 of this title (relating to Definitions). Not later than three business days after the date an individual requests utilization review or requests an extension of coverage based on medical necessity or appropriateness, a URA must provide notification of the determination through a direct telephone contact to the individual making the request. This subsection does not apply to a determination made for coverage under a small employer health benefit plan.

(e) [(f)] Prospective and concurrent review.

(1) Favorable determinations. The written notification of a favorable determination made in utilization review must be mailed or electronically transmitted as required by Insurance Code §4201.302.

(2) Preauthorization numbers. A URA must ensure that preauthorization numbers assigned by the URA comply with the data and format requirements contained in the standards adopted by the U.S. Department of Health and Human Services in 45 C.F.R. §162.1102, (relating to Standards for Health Care Claims or Equivalent Encounter Information Transaction), based on the type of service in the preauthorization request.

(3) Required time frames. Except as otherwise provided by the Insurance Code, the time frames for notification of the adverse determination begin from the date of the request and must comply with Insurance Code §4201.304. A URA must provide the notice to the provider of record or other health care provider not later than one hour after the time of the request when denying post-stabilization care subsequent to emergency treatment as requested by a provider of record or other health care provider. The URA must send written notification within three working days of the telephone or electronic transmission.

(4) Required timeframe for preauthorization renewal requests. A URA must review a request to renew a preauthorization for a medical or health care service and make and issue a determination before the existing preauthorization expires, if practicable. The determination must indicate whether the medical or health care service is preauthorized.

(f) [(g)] Retrospective review.

(1) The URA must develop and implement written procedures for providing the notice of adverse determination for retrospective utilization review, including the time frames for the notice of adverse determination, that comply with Insurance Code §4201.305 and this section.

(2) When a retrospective review of the medical necessity, [e] appropriateness, or the experimental or investigational nature of the health care services is made in relation to health coverage, the URA may not require the submission or review of a mental health therapist's process or progress notes that relate to the mental health therapist's treatment of an enrollee's mental or emotional condition or disorder. This prohibition extends to requiring an oral, electronic, facsimile, or written submission or rendition of a mental health therapist's process or progress notes. This prohibition does not preclude requiring submission of:

(A) an enrollee's mental health medical record summary; or

(B) medical records or process or progress notes that relate to treatment of conditions or disorders other than a mental or emotional condition or disorder.

§19.1710. Requirements Prior to Issuing an Adverse Determination.

In any instance in which the URA is questioning the medical necessity, the [e] appropriateness, or the experimental or investigational nature[?] of the health care services prior to the issuance of an adverse determination, the URA must afford the provider of record a reasonable opportunity to discuss the plan of treatment for the enrollee with a physician. The discussion must include, at a minimum, the clinical basis for the URA's decision and a description of documentation or evidence, if any, that can be submitted by the provider of record that, on appeal, might lead to a different utilization review decision.

(1) The URA must provide the URA's telephone number so that the provider of record may contact the URA to discuss the pending adverse determination.

(2) The URA must maintain, and submit to TDI on request, documentation that details the discussion opportunity provided to the provider of record, including the date and time the URA offered the opportunity to discuss the adverse determination, the date and time that the discussion, if any, took place, and the discussion outcome.

§19.1711. Written Procedures for Appeal of Adverse Determinations.

(a) Appeal of prospective or concurrent review adverse determinations. Each URA must comply with its written procedures for appeals. The written procedures for appeals must comply with Insurance

Code Chapter 4201, Subchapter H, concerning Appeal of Adverse Determination, and must include provisions that specify the following:

(1) Time frames for filing the written or oral appeal, which may not be less than 30 calendar days after the date of issuance of written notification of an adverse determination.

(2) An enrollee, an individual acting on behalf of the enrollee, or the provider of record may appeal the adverse determination orally or in writing.

(3) An appeal acknowledgement letter must:

(A) be sent to the appealing party within five working days from receipt of the appeal;

(B) acknowledge the date the URA received the appeal;

(C) include a list of relevant documents that must be submitted by the appealing party to the URA; and

(D) include a one-page appeal form to be filled out by the appealing party when the URA receives an oral appeal of an adverse determination.

(4) Appeal decisions must be made by a physician who has not previously reviewed the case.

(5) In any instance in which the URA is questioning the medical necessity, the [ø] appropriateness, or the experimental or investigational nature, of the health care services prior to issuance of adverse determination, the URA must afford the provider of record a reasonable opportunity to discuss the plan of treatment for the enrollee with a physician. The provision must require that the discussion include, at a minimum, the clinical basis for the URA's decision.

(6) If an appeal is requested or denied and, within 10 working days from the request or denial, the health care provider requests [sets forth in writing good cause for having] a particular type of specialty provider review the case, the appeal or the decision denying the appeal [denial] must be reviewed by a health care provider in the same or similar specialty that typically manages the medical, dental, or specialty condition, procedure, or treatment under discussion for review of the adverse determination. The specialty review must be completed within 15 working days of receipt of the request. The provision must state that notification of the appeal under this paragraph must be in writing.

(7) In addition to the written appeal, a method for expedited appeals is available for denials of emergency care, [denials, denials of care for life-threatening conditions, denials of] continued stays for hospitalized enrollees, or [denials of] prescription drugs or intravenous infusions for which an enrollee is receiving benefits under the health insurance policy; [; and] adverse determinations of a step therapy protocol exception request under Insurance Code §1369.0546; or a denial of another service if the requesting health care provider includes a written statement with supporting documentation that the service is necessary to treat a life-threatening condition or prevent serious harm to the patient [is available]. The provision must state that:

(A) the procedure must include a review by a health care provider who has not previously reviewed the case and who is of the same or a similar specialty as the health care provider that typically manages the medical condition, procedure, or treatment under review;

(B) an expedited appeal must be completed based on the immediacy of the medical or dental condition, procedure, or treatment, but may in no event exceed one working day from the date all information necessary to complete the appeal is received; and

(C) an expedited appeal determination may be provided by telephone or electronic transmission but must be followed with a letter within three working days of the initial telephonic or electronic notification.

(8) After the URA has sought review of the appeal of the adverse determination, the URA must issue a response letter to the enrollee or an individual acting on behalf of the enrollee, and the provider of record, explaining the resolution of the appeal. If there is an adverse determination of the appeal, the letter must include:

(A) a statement of the specific medical, dental, or contractual reasons for the resolution;

(B) the clinical basis for the decision;

(C) a description of or the source of the screening criteria that were utilized in making the determination;

(D) the professional specialty of the physician who made the determination;

(E) notice of the appealing party's right to seek review of the adverse determination by an IRO under §19.1717 of this title (relating to Independent Review of Adverse Determinations);

(F) notice of the independent review process;

(G) a copy of a request for a review by an IRO form; and

(H) procedures for filing a complaint as described in §19.1705(f) of this title (relating to General Standards of Utilization Review).

(9) A statement that the appeal must be resolved as soon as practical, but, under Insurance Code §4201.359 and §1352.006, in no case later than 30 calendar days after the date the URA receives the appeal from the appealing party referenced under paragraph (3) of this subsection.

(10) In a circumstance involving an enrollee's life-threatening condition or the denial of prescription drugs or intravenous infusions for which the enrollee is receiving benefits under the health insurance policy, the enrollee is entitled to an immediate appeal to an IRO and is not required to comply with procedures for an appeal of the URA's adverse determination.

(b) Appeal of retrospective review adverse determinations. A URA must maintain and make available a written description of the appeal procedures involving an adverse determination in a retrospective review. The written procedures for appeals must specify that an enrollee, an individual acting on behalf of the enrollee, or the provider of record may appeal the adverse determination orally or in writing. The appeal procedures must comply with:

(1) Chapter 21, Subchapter T, of this title (relating to Submission of Clean Claims), if applicable;

(2) Section 19.1709 of this title (relating to Notice of Determinations Made in Utilization Review), for retrospective utilization review adverse determination appeals; and

(3) Insurance Code §4201.359.

(c) Appeals concerning an acquired brain injury. A URA must comply with this subsection in regard to a determination concerning an acquired brain injury as defined by §21.3102 of this title (relating to Definitions). Not later than three business days after the date on which an individual requests utilization review or requests an extension of coverage based on medical necessity or appropriateness, a URA must provide notification of the determination through a direct telephone

contact to the individual making the request. This subsection does not apply to a determination made for coverage under a small employer health benefit plan.

§19.1716. Specialty URA.

(a) Application. To be certified or registered as a specialty URA, an applicant must submit to TDI the application, information, and fee required in §19.1704 of this title (relating to Certification or Registration of URAs).

(b) Same specialty required. A specialty URA must conduct utilization review under the direction of a health care provider who is of the same specialty as the agent and who is licensed or otherwise authorized to provide the specialty health care service in Texas [by a state licensing agency in the United States]. To conduct utilization review, a specialty URA must be of the same specialty as the health care provider who ordered the service. For example, when conducting utilization review of prescription drugs prescribed by a physician with a specialty in neurological surgery, the specialty URA must be a physician with a specialty in neurological surgery.

(c) Rule requirements. A specialty URA is subject to the requirements of this subchapter, except for the following provisions:

(1) Section 19.1705(a) of this title (relating to General Standards of Utilization Review);

(2) Section 19.1706(a), (c), and (d) of this title (relating to Requirements and Prohibitions Relating to Personnel);

(3) Section 19.1710 of this title (relating to Requirements Prior to Issuing Adverse Determination); and

(4) Section 19.1711(a)(4) - (6) of this title (relating to Written Procedures for Appeal of Adverse Determination).

(d) Utilization review plan. A specialty URA must have its utilization review plan, including appeal requirements, reviewed by a health care provider of the appropriate specialty who is licensed or otherwise authorized to provide the specialty health care service in Texas, and the plan must be implemented under standards developed with input from a health care provider of the appropriate specialty who is licensed or otherwise authorized to provide the specialty health care service in Texas. The specialty URA must have written procedures to ensure that these requirements are implemented.

(e) Requirements of employed or contracted physicians, doctors, other health care providers, and personnel.

(1) Physicians, doctors, other health care providers, and personnel employed by or under contract with the specialty URA to perform utilization review must be appropriately trained, qualified, and currently licensed.

(2) Personnel conducting specialty utilization review must hold an unrestricted license, an administrative license issued by a state licensing board, or be otherwise authorized to provide health care services by a licensing agency in the United States.

(f) Reasonable opportunity for discussion. In any instance in which a specialty URA questions the medical necessity, the [or] appropriateness, or the experimental or investigational nature^[3] of the health care services, the health care provider of record must, prior to the issuance of an adverse determination, be afforded a reasonable opportunity to discuss the plan of treatment for the patient and the clinical basis for the decision of the URA with a health care provider of the same specialty as the URA. The discussion must include, at a minimum, the clinical basis for the specialty URA's decision and a description of documentation or evidence, if any, that can be submitted by the provider

of record that, on appeal, might lead to a different utilization review decision.

(1) The specialty URA's telephone number must be provided to the provider of record so that the provider of record may contact the specialty URA to discuss the pending adverse determination. For a retrospective utilization review, the specialty URA must allow the provider of record five working days to respond orally or in writing.

(2) The specialty URA must maintain, and submit to TDI on request, documentation that details the discussion opportunity provided to the provider of record, including the date and time the specialty URA offered the opportunity to discuss the adverse determination; the date and time that the discussion, if any, took place; and the discussion outcome.

(g) Appeal. The decision in any appeal of an adverse determination by a specialty URA must be made by a physician or other health care provider who has not previously reviewed the case and who is of the same specialty as the specialty URA that made the adverse determination.

§19.1717. Independent Review of Adverse Determinations.

(a) Notification for life-threatening conditions. For life-threatening conditions, notification of adverse determination by a URA must be provided within the timeframes specified in §19.1709(e)(3) [~~§19.1709(d)(3)~~] of this title (relating to Notice of Determinations Made in Utilization Review).

(1) At the time of notification of the adverse determination, the URA must provide to the enrollee or individual acting on behalf of the enrollee, and to the enrollee's provider of record, the notice of the independent review process and a copy of the request for a review by an IRO form. The notice must describe how to obtain independent review of the adverse determination.

(2) The enrollee, individual acting on behalf of the enrollee, or the enrollee's provider of record must determine the existence of a life-threatening condition on the basis that a prudent layperson possessing an average knowledge of medicine and health would believe that the enrollee's disease or condition is a life-threatening condition.

(b) Appeal of adverse determination involving life-threatening condition. Any party who receives an adverse determination involving a life-threatening condition or whose appeal of an adverse determination is denied by the URA may seek review of that determination or denial by an IRO assigned under Insurance Code Chapter 4202 and Chapter 12 of this title (relating to Independent Review Organizations).

(c) Independent review involving life-threatening and non life-threatening conditions. A URA, or insurance carrier that made the adverse determination, must notify TDI within one working day from the date the request for an independent review is received. The URA, or insurance carrier that made the adverse determination, must submit the completed request for a review by an IRO form to TDI through TDI's internet [~~Internet~~] website.

(1) Assignment of IRO. TDI will, within one working day of receipt of a complete request for independent review, randomly assign an IRO to conduct an independent review and notify the URA, payor, IRO, the enrollee or individual acting on behalf of the enrollee, enrollee's provider of record, and any other providers listed by the URA as having records relevant to the review of the assignment.

(2) Payor and URA compliance. The payor and URA must comply with the IRO's determination with respect to the medical ne-

cessity, [or] appropriateness, or the experimental or investigational nature[.] of the health care items and services for an enrollee.

(3) Costs of independent review. The URA must pay for the independent review and may recover costs associated with the independent review from the payor.

§19.1718. Preauthorization for Health Maintenance Organizations and Preferred Provider Benefit Plans.

(a) The words and terms defined in Insurance Code Chapter 1301 and Chapter 843 have the same meaning when used in this section, except as otherwise provided by this subchapter, unless the context clearly indicates otherwise.

(b) An HMO or preferred provider benefit plan that requires preauthorization as a condition of payment to a preferred provider must comply with the procedures of this section for determinations of medical necessity, [or] appropriateness, or the experimental or investigational nature[.] of care for those services the HMO or preferred provider benefit plan identifies under subsection (c) of this section.

(c) An HMO or preferred provider benefit plan that uses a preauthorization process for medical care or [and] health care services must provide to each contracted preferred provider, not later than the fifth [10th] working day after the date a request is made, a list of medical care and health care services that allows a preferred provider to determine which services require preauthorization and information concerning the preauthorization process.

(d) An HMO or preferred provider benefit plan must issue and transmit a determination indicating whether the proposed medical or health care services are preauthorized. This determination must be issued and transmitted once a preauthorization request for proposed services that require preauthorization is received from a preferred provider. The HMO or preferred provider benefit plan must respond to a request for preauthorization within the following time periods:

(1) For services not included under paragraphs (2) and (3) of this subsection, a determination must be issued and transmitted not later than the third calendar day after the date the request is received by the HMO or preferred provider benefit plan. If the request is received outside of the period requiring the availability of appropriate personnel as required in subsections (e) and (f) of this section, the determination must be issued and transmitted within three calendar days from the beginning of the next time period requiring appropriate personnel.

(2) If the proposed medical or health care services are for concurrent hospitalization care, the HMO or preferred provider benefit plan must issue and transmit a determination indicating whether proposed services are preauthorized within 24 hours of receipt of the request, followed within three working days after the transmittal of the determination by a letter notifying the enrollee or the individual acting on behalf of the enrollee and the provider of record of an adverse determination. If the request for medical or health care services for concurrent hospitalization care is received outside of the period requiring the availability of appropriate personnel as required in subsections (e) and (f) of this section, the determination must be issued and transmitted within 24 hours from the beginning of the next time period requiring appropriate personnel.

(3) If the proposed medical care or health care services involve post-stabilization treatment, or a life-threatening condition as defined in §19.1703 of this title (relating to Definitions), the HMO or preferred provider benefit plan must issue and transmit a determination indicating whether proposed services are preauthorized within the time appropriate to the circumstances relating to the delivery of the services and the condition of the enrollee, but in no case to exceed one hour from receipt of the request. If the request is received outside of the period

requiring the availability of appropriate personnel as required in subsections (e) and (f) of this section, the determination must be issued and transmitted within one hour from the beginning of the next time period requiring appropriate personnel. The determination must be provided to the provider of record. If the HMO or preferred provider benefit plan issues an adverse determination in response to a request for post-stabilization treatment or a request for treatment involving a life-threatening condition, the HMO or preferred provider benefit plan must provide to the enrollee or individual acting on behalf of the enrollee, and the enrollee's provider of record, the notification required by §19.1717(a) and (b) of this title (relating to Independent Review of Adverse Determinations).

(e) A preferred provider may request a preauthorization determination via telephone from the HMO or preferred provider benefit plan. An HMO or preferred provider benefit plan must have appropriate personnel as described in §19.1706 of this title (relating to Requirements and Prohibitions Relating to Personnel) reasonably available at a toll-free telephone number to provide the determination between 6:00 a.m. and 6:00 p.m., Central Time, Monday through Friday on each day that is not a legal holiday and between 9:00 a.m. and noon, Central Time, on Saturday, Sunday, and legal holidays. An HMO or preferred provider benefit plan must have a telephone system capable of accepting or recording incoming requests after 6:00 p.m., Central Time, Monday through Friday and after noon, Central Time, on Saturday, Sunday, and legal holidays and must acknowledge each of those calls not later than 24 hours after the call is received. An HMO or preferred provider benefit plan providing a preauthorization determination under subsection (d) of this section must, within three calendar days of receipt of the request, provide a written notification to the preferred provider.

(f) An HMO providing routine vision services or dental health care services as a single health care service plan is not required to comply with subsection (e) of this section with respect to those services. An HMO providing routine vision services or dental health care services as a single health care service plan must:

(1) have appropriate personnel as described in §19.1706 of this title reasonably available at a toll-free telephone number to provide the preauthorization determination between 8:00 a.m. and 5:00 p.m., Central Time, Monday through Friday on each day that is not a legal holiday;

(2) have a telephone system capable of accepting or recording incoming requests after 5:00 p.m., Central Time, Monday through Friday and all day on Saturday, Sunday, and legal holidays, and must acknowledge each of those calls not later than the next working day after the call is received; and

(3) when providing a preauthorization determination under subsection (d) of this section, within three calendar days of receipt of the request, provide a written notification to the preferred provider.

(g) If an HMO or preferred provider benefit plan has preauthorized medical care or health care services, the HMO or preferred provider benefit plan may not deny or reduce payment to the physician or provider for those services based on medical necessity, [or] appropriateness, or the experimental or investigational nature[.] of care unless the physician or provider has materially misrepresented the proposed medical or health care services or has substantially failed to perform the preauthorized medical or health care services.

(h) If an HMO or preferred provider benefit plan issues an adverse determination in response to a request made under subsection (d) of this section, a notice consistent with the provisions of §19.1709 of this title (relating to Notice of Determinations Made in Utilization Review) and §19.1710 of this title (relating to Requirements Prior to Issuing Adverse Determination) must be provided to the enrollee or an

individual acting on behalf of the enrollee, and the enrollee's provider of record. An enrollee, an individual acting on behalf of the enrollee, or the enrollee's provider of record may appeal any adverse determination under §19.1711 of this title (relating to Written Procedures for Appeal of Adverse Determination).

(i) This section applies to an agent or other person with whom an HMO or preferred provider benefit plan contracts to perform utilization review, or to whom the HMO or preferred provider benefit plan delegates the performance of preauthorization of proposed medical or health care services. Delegation of preauthorization services does not limit in any way the HMO or preferred provider benefit plan's responsibility to comply with all statutory and regulatory requirements.

(j) The provisions in this subsection apply to an HMO or a preferred provider benefit plan that uses a preauthorization process for medical or health care services.

(1) An HMO or a preferred provider benefit plan must make the requirements and information about the preauthorization process readily accessible to enrollees, physicians, health care providers, and the general public by posting the requirements and information on the HMO's or the preferred provider benefit plan's public internet website.

(2) The preauthorization requirements and information described by paragraph (1) of this section must:

(A) be posted:

(i) conspicuously in a location on the public internet website that does not require the user to login or input personal information to view the information; except as provided by paragraph (3) or (4) of this subsection;

(ii) in a format that is easily searchable; and

(iii) in a format that uses design and accessibility standards defined in Section 508 of the U.S. Rehabilitation Act;

(B) except for the screening criteria under subparagraph (D)(iii) of this paragraph, be written:

(i) using plain language standards, such as the Federal Plain Language Guidelines found on www.PlainLanguage.gov; and

(ii) in language that aims to reach a 6th to 8th grade reading level, if the information is for enrollees and the public;

(C) include a detailed description of the preauthorization process and procedure; and

(D) include an accurate and current list of medical or health care services for which the HMO or the preferred provider benefit plan requires preauthorization that includes the following information specific to each service:

(i) the effective date of the preauthorization requirement;

(ii) a list or description of any supporting documentation that the HMO or preferred provider benefit plan requires from the physician or health care provider ordering or requesting the service to approve a request for that service;

(iii) the applicable screening criteria, which may include Current Procedural Terminology codes and International Classification of Diseases codes; and

(iv) statistics regarding the HMO's or the preferred provider benefit plan's preauthorization approval and denial rates for

the service in the preceding calendar year, including statistics in the following categories:

(I) physician or health care provider type and specialty, if any;

(II) indication offered;

(III) reasons for request denial;

(IV) denials overturned on internal appeal;

(V) denials overturned by an independent review organization; and

(VI) total annual preauthorization requests, approvals, and denials for the service.

(3) This subsection may not be construed to require an HMO or a preferred provider benefit plan to provide specific information that would violate any applicable copyright law or licensing agreement. To comply with a posting requirement described by paragraph (2) of this subsection, an HMO or a preferred provider benefit plan may, instead of making that information publicly available on the HMO's or the preferred provider benefit plan's public internet website, supply a summary of the withheld information sufficient to allow a licensed physician or other health care provider, as applicable for the specific service, who has sufficient training and experience related to the service to understand the basis for the HMO's or the preferred provider benefit plan's medical necessity or appropriateness determinations.

(4) If a requirement or information described by paragraph (1) of this subsection is licensed, proprietary, or copyrighted material that the HMO or the preferred provider benefit plan has received from a third party with which the HMO or the preferred provider benefit plan has contracted, to comply with a posting requirement described by paragraph (2) of this subsection, the HMO or the preferred provider benefit plan may, instead of making that information publicly available on the HMO's or the preferred provider benefit plan's public internet website, provide the material to a physician or health care provider who submits a preauthorization request using a nonpublic secured internet website link or other protected, nonpublic electronic means.

(5) The provisions in this paragraph apply when an HMO or a preferred provider benefit plan makes changes to preauthorization requirements.

(A) Except as provided by subparagraph (B) of this paragraph, not later than the 60th day before the date a new or amended preauthorization requirement takes effect, an HMO or a preferred provider benefit plan must provide notice of the new or amended preauthorization requirement and disclose the new or amended requirement in the HMO's or the preferred provider benefit plan's newsletter or network bulletin, if any, and on the HMO's or the preferred provider benefit plan's public internet website.

(B) For a change in a preauthorization requirement or process that removes a service from the list of medical and health care services requiring preauthorization or amends a preauthorization requirement in a way that is less burdensome to enrollees or participating physicians or health care providers, an HMO or a preferred provider benefit plan must provide notice of the change in the preauthorization requirement and disclose the change in the HMO's or the preferred provider benefit plan's newsletter or network bulletin, if any, and on the HMO's or the preferred provider benefit plan's public internet website not later than the fifth day before the date the change takes effect.

(C) Not later than the fifth day before the date a new or amended preauthorization requirement takes effect, an HMO or a

preferred provider benefit plan must update its public internet website to disclose the change to the HMO's or the preferred provider benefit plan's preauthorization requirements or process and the date and time the change is effective.

(6) In addition to any other penalty or remedy provided by law, an HMO or a preferred provider benefit plan that uses a preauthorization process for medical or health care services that violates this subsection with respect to a required publication, notice, or response regarding its preauthorization requirements, including by failing to comply with any applicable deadline for the publication, notice, or response, must provide an expedited appeal under Insurance Code §4201.357 for any health care service affected by the violation.

(7) The provisions of this subsection may not be waived, voided, or nullified by contract.

(k) The provisions of this subsection apply to dental care services under an employee benefit plan or health insurance policy that require prior authorization.

(1) In this subsection, the definitions in Texas Insurance Code §1451.201 for "dental care service," "employee benefit plan," and "health insurance policy" apply.

(2) In this subsection, "prior authorization" means a written and verifiable determination that one or more specific dental care services are covered under the patient's employee benefit plan or health insurance policy and are payable and reimbursable in a specific stated amount, subject to applicable coinsurance and deductible amounts. The term includes preauthorization and similar authorization. The term does not include "predetermination" as that term is defined by Insurance Code §1451.207(c).

(3) For services for which a prior authorization is required, on request of a patient or treating dentist, an employee benefit plan or health insurance policy provider or issuer must provide to the dentist a written prior authorization of benefits for a dental care service for the patient. The prior authorization must include a specific benefit payment or reimbursement amount. Except as provided by paragraph (4) of this subsection, the plan or policy provider or issuer may not pay or reimburse the dentist in an amount that is less than the amount stated in the prior authorization.

(4) An employee benefit plan or health insurance policy provider or issuer that preauthorizes a dental care service under paragraph (3) of this subsection may deny a claim for the dental care service or reduce payment or reimbursement to the dentist for the service only if:

(A) the denial or reduction is in accordance with the patient's employee benefit plan or health insurance policy benefit limitations, including an annual maximum or frequency of treatment limitation, and the patient met the benefit limitation after the date the prior authorization was issued;

(B) the documentation for the claim fails to reasonably support the claim as preauthorized;

(C) the preauthorized dental service was not medically necessary based on the prevailing standard of care on the date of the service, or is subject to denial under the conditions for coverage under the patient's plan or policy in effect at the time the service was preauthorized, because of a change in the patient's condition or because the patient received additional dental care after the date the prior authorization was issued;

(D) a payor other than the employee benefit plan or health insurance policy provider or issuer is responsible for payment of the claim;

(E) the dentist received full payment for the preauthorized dental care service on which the claim is based;

(F) the claim is fraudulent;

(G) the prior authorization was based wholly or partly on a material error in information provided to the employee benefit plan or health insurance policy provider or issuer by any person not related to the provider or the issuer; or

(H) the patient was otherwise ineligible for the dental care service under the patient's employee benefit plan or health insurance policy and the plan or policy issuer did not know, and could not reasonably have known, that the patient was ineligible for the dental care service on the date the prior authorization was issued.

(I) If a health benefit plan issuer subject to Insurance Code Chapter 1222 requires preauthorization as a condition of payment for a medical or health care service, the health benefit plan issuer must provide a preauthorization renewal process that allows a physician or health care provider to request renewal of an existing preauthorization at least 60 days before the date the preauthorization expires. When practicable, a URA must review and issue a determination on a renewal request before the existing preauthorization expires if the URA receives the request before the existing preauthorization expires. The determination must indicate whether the medical or health care service is preauthorized.

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

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General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 328. WASTE MINIMIZATION AND RECYCLING

SUBCHAPTER K. GOVERNMENTAL ENTITY RECYCLING AND PURCHASING OF RECYCLED MATERIALS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to repeal §328.203 and §328.204; and simultaneously proposes new §328.203 and §328.204.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking implements Texas Health and Safety Code (THSC), §361.425 and §361.426 to exempt certain governmental entities from compliance with recycling requirements. THSC, §361.425 and §361.426 require that governmental enti-

ties establish a recycling program, create procedures for a recycling program, and give preferences in purchasing to products made of recyclable materials if applicable criteria are met.

The proposed rulemaking would apply to governmental entities pertaining to purchasing preferences for products made of recycled materials. The proposed rules would also provide an exemption available to governmental entities, if compliance with the recycling program or purchasing preferences would create a hardship for the governmental entity.

Section by Section Discussion

The commission proposes to repeal existing §328.203 and §328.204 in order to restructure and provide order and clarity to the provisions within Chapter 328, Subchapter K.

§328.203, Purchasing Preference for Recycled Materials

The commission proposes new §328.203 to require certain governmental entities to give preference to purchasing products made of recycled materials. New §328.203 includes the same language as repealed §328.204.

§328.204, Exemptions

The commission proposes new §328.204 to provide specific exemptions that are allowed under the rule as well as opportunities for an exemption request due to a hardship. New §328.204 includes the same language as repealed §328.203.

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 or for other units of state or local government as a result of administration or enforcement of the proposed rules. This rulemaking reorders sections within Chapter 328.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be improved readability of the Texas Administrative Code. The proposed rulemaking is not anticipated to result in fiscal implications 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 does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect.

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 are 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 rulemaking does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal, or limit an existing regulation, nor does the proposed rulemaking 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 commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule with the 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. New §328.203 and §328.204 are proposed to restructure and provide order and clarity to the provisions within Subchapter K.

In addition, a regulatory impact analysis is not required because the proposed rulemaking does not meet any of the applicability criteria for requiring a regulatory analysis of a "Major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, or; 4) adopt a rule solely under the general authority of the commission. Proposed new §328.203 and §328.204 do not exceed an express requirement of state law, federal law, or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the THSC that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007.

The commission's preliminary assessment indicates Texas Government Code, Chapter 2007, does not apply.

Under Texas Government Code, §2007.002(5), taking means: (A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

Promulgation and enforcement of the proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to restructure and provide order and clarity to the provisions within Subchapter K. The proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

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 will 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 17, 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 (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 13, 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 16, 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/join/19%3ameeting_MjY1NDk1NzctNDFIMI00MzQ0LTh-iNTEtYTNmOWJkMDQxZTAz%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%3atruer%7d.

Submittal of Comments

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. 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 2020-041-328-AD. The comment period closes on November 24, 2020. Please only choose one form of submittal when submitting written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/proposal_adopt.html. For further information, please contact Calen Roome, Public Education Unit, (512) 239-4621.

30 TAC §328.203, §328.204

Statutory Authority

The rules are repealed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The proposed rules are also repealed under Texas Health and Safety Code (THSC), §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.425, which provides that the commission shall adopt rules for administering governmental entity recycling programs; and THSC, §361.426, which provides that the commission shall adopt rules for administering governmental entity preferences for recycled products.

The proposed repealed rules implement TWC, §§5.102, 5.103, and 5.105 and THSC, §§361.024, 361.425, and 361.426.

§328.203. *Exemptions.*

§328.204. *Purchasing Preference for Recycled Materials.*

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 9, 2020.

TRD-202004205
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: November 22, 2020
For further information, please call: (512) 239-2678



SUBCHAPTER K. GOVERNMENTAL ENTITY RECYCLING AND PURCHASING OF RECYCLED MATERIALS

30 TAC §328.203, §328.204

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The new rules are also proposed under Texas Health and Safety Code (THSC), §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.425, which provides that the commission shall adopt rules for administering governmental entity recycling programs; and THSC, §361.426, which provides that the commission shall adopt rules for administering governmental entity preferences for recycled products.

The proposed new rules implement TWC, §§5.102, 5.103, and 5.105 and THSC, §§361.024, 361.425, and 361.426.

§328.203. Purchasing Preference for Recycled Materials.

A state agency, state court, or judicial agency not subject to Texas Government Code, Title 10, Subtitle D, and a county, municipality, school district, junior or community college, or special district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality and the average price of the product is not more than 10% greater than the price of comparable nonrecycled products. Preferences will be applied in accordance with state procurement statutes and rules.

§328.204. Exemptions.

(a) This subchapter does not apply to:

(1) a school district with a student enrollment of less than 10,000 students; and

(2) a municipality with a population of less than 5,000, if compliance with this subchapter would create a hardship.

(b) A governmental entity may exclude one or more recyclable materials from their program if the commission finds that:

(1) a recycling program for a recyclable material is not available through their solid waste provider; or

(2) the inclusion of a recyclable material would create a hardship.

(c) A governmental entity may request additional consideration from the commission if compliance with this subchapter would create a hardship.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678



TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 63. BOARD OF TRUSTEES

34 TAC §63.3, §63.4

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 63, concerning Board of Trustees, by amending §63.3 (Election of Trustees (Nomination Process)) and §63.4 (Election of Trustees (Ballot)).

ERS is a constitutional trust fund established as set forth in Article XVI, §67, Texas Constitution, and further organized pursuant to Title 8, Tex. Gov't Code, as well as 34 Texas Administrative Code, §§61.1 *et seq.*

Section 63.3, concerning Election of Trustees (Nomination Process), is proposed to be amended to allow ERS to collect required signatures for potential candidates for election to the ERS Board of Trustees through a secure and efficient electronic verification process in addition to the current paper-based process and to allow for the use of personal identifiers that are not based on social security numbers. Section 63.4, concerning Election of Trustees (Ballot), is proposed to be amended to make its language consistent with the language of §63.3.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the amended rule will be in effect:

(1) the proposed rule amendments will not create or eliminate a government program;

(2) implementation of the proposed rule amendments will not require the creation of new employee positions or eliminate existing employee positions;

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

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

(5) the proposed rule amendments will not create a new rule or regulation;

(6) the proposed rule amendments will not expand, limit, or repeal an existing rule or regulation;

(7) the proposed rule amendments will not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the proposed rule amendments will not positively or adversely affect the state's economy.

Mr. Keith Yawn, Director of Strategic Initiatives, has determined that for the first five-year period the rules are in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rules; and small businesses, micro-businesses, and rural communities will not be affected. The proposed rule amendments do not constitute a taking. Mr. Yawn has also determined that, to his knowledge, there are no known anticipated economic effects to persons who are required to comply with the rules as proposed, and the proposed rule amendments do not impose a cost on regulated persons.

Mr. Yawn also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of adopting and complying with the rules would be to clarify the ability of ERS to put a process in place to allow potential candidates for election to the ERS Board of Trustees to collect required signatures through an electronic verification process in addition to the current paper-based process.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.texas.gov. The deadline for receiving comments is November 23, 2020, at 10:00 a.m.

The amendments are proposed under Tex. Gov't Code §815.102, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board.

No other statutes are affected by the proposed amendments.

§63.3. *Election of Trustees (Nomination Process).*

Names may be placed in nomination for the office of trustee of the Employees Retirement System of Texas (system) in the following manner.

(1) A candidate, or his or her agency, must file a petition on a form approved by the system requesting the candidate's name to be placed in nomination. The petition must be signed by 300 or more persons qualified to vote in the trustee election. The system will accept up to 600 signatures from each candidate.

(2) The signature of each person on a petition must be accompanied by that person's printed or typed name, ZIP Code, and any other information requested by the system to confirm the signer's identity [the last four digits of the person's social security number]. No person may sign a petition for more than one candidate. To do so will cause the signatures of the person to be disqualified on all petitions.

(3) Blank petition forms may be reproduced and utilized provided the reproduction is an exact replica of the original document.

~~[(4) Petitions must be received in the system offices on or before the close of business (5 p.m.) of a specific workday set by the trustees. Signatures on petitions received after that time will not be counted.]~~

(4) ~~[(5)]~~ The system must receive signed petitions before the deadline established by the board. A copy of a signed paper petition will not be accepted in lieu of the original signed petition. Electronic petitions must be completed and submitted in accordance with

~~the instructions provided with electronic petition forms. [Reproduced, photocopied, scanned, or faxed copies of signed petitions are not permitted and will be disqualified.]~~

~~(5) [(6)]~~ Only those names of candidates whose petitions comply with this section will be presented on the ballot.

~~(6) [(7)]~~ The board shall establish deadlines and other dates related to trustee elections [adopt a calendar governing the conduct of each trustee election]. Blank petitions shall be made available [distributed] by the system [to state agencies] at least 25 calendar days in advance of the deadline [return due date] established by the board. ~~[trustees. Blank petitions will also be available to any requesting person.]~~

§63.4. *Election of Trustees (Ballot).*

(a) The order of names on the ballot will be set by drawing. All nominated candidates or their representatives are entitled to be present at the drawing. The time and location of the drawing will be set by the system.

(b) All candidates must submit within the time frame established by the system any information requested by the system for presentation on the ballot. Such information may include, but is not limited to:

- (1) name as it is to appear on the ballot;
- (2) current classification/exempt title and position as a state employee;
- (3) name of current employing state agency; and
- (4) other information the system determines may be helpful to persons qualified to vote in the election.

(c) In addition to the information required in subsection (b) of this section, the candidate shall provide, within the time frame provided by the system, his or her state agency mailing address, a statement of qualifications and position on system issues consisting of 250 words or less, and such additional information as the system may request. This information, in addition to that which will appear on an election ballot, will be made available to the electorate through a special system newsletter devoted to the trustee election process. This special edition of the newsletter will be made available to the electorate at the beginning of each election and will describe restrictions on the use of state funds to influence the outcome of any election.

(d) The system may contract with an election administrator to implement and monitor the election process. Balloting may be conducted electronically or in combination with a printed ballot.

(e) The system/election administrator will, at least 25 days in advance of the close of each election established by the election calendar, make ballots available to eligible voters. Upon request of the candidate, the system/election administrator will provide 500 ballots without preprinted names to each candidate.

(f) The system/election administrator will provide a 24-hour toll-free telephone line which eligible voters may use to request a printed ballot.

(g) Electronic ballots must ~~[will]~~ be completed and submitted to the system/election administrator in accordance with the instructions contained in the electronic voting format.

(h) Each candidate may designate one (1) person to observe the ballot counting process. No observer will be permitted to see complete ballots which indicate the identity of a voter and voter's candidate selection. No observer will be permitted to challenge the validity of ballots or disrupt the counting process in any way.

(i) The system/election administrator will disqualify ballots which do not meet the requirements and instructions specified in the electronic format or printed on the ballot.

(j) The Board, or its designee, shall certify the result of the election.

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 8, 2020.

TRD-202004186

Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Earliest possible date of adoption: November 22, 2020

For further information, please call: (877) 275-4377



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 9. PUBLIC SAFETY COMMUNICATIONS

SUBCHAPTER C. AMBER ALERT NETWORK FOR ABDUCTED CHILDREN

37 TAC §§9.21, 9.22, 9.24

The Texas Department of Public Safety (the department) proposes amendments to §§9.21, 9.22, and 9.24, concerning AMBER Alert Network For Abducted Children. The amendments to these rules reflect the removal of the graphic in §9.22 and the rule text indicates the request form for the alert now resides on the department's website. The acronym "Amber" has also been changed in the subchapter title and throughout the rule text to all caps.

Suzy Whittenton, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period this rules are in effect, the public benefit anticipated as a result of these rules will be publication of the new form for the AMBER Alert Network and notification of its new location on the department's website.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure

and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Chief Dale Avant, Texas Department of Public Safety, Intelligence and Counterterrorism Division, P.O. Box 4087, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.353(b), which authorizes the director to adopt rules to ensure proper implementation of the alert.

Texas Government Code, §411.352 - §411.358 is affected by this proposal.

§9.21. *Statewide Coordination of AMBER [Amber] Alert Network.*

The AMBER [Amber] Alert Network was developed as a statewide emergency response system for abducted children. The network is designed to be activated in instances involving true child abductions. Activation of the network outside the established criteria will ultimately cause the public to disregard the notifications and the system will lose effectiveness. In order to maintain a high level of effectiveness, the department and local law enforcement must ensure that the circumstances justifying activation are accurately evaluated in order to implement the network in a responsible manner. AMBER [Amber] Alert activations must be limited to those instances where the statutory criteria for activation are clearly established by the specific facts of the case.

§9.22. *Local Law Enforcement Responsibility.*

A local law enforcement agency with jurisdiction over the investigation of an abducted child may submit a request for activation of the AMBER [Amber] Alert Network. The request must be submitted using the appropriate Texas Department of Public Safety (DPS) form, available on the DPS website [on DPS Form MP-24]. A local law enforcement agency may submit the form after it has verified that all statutory criteria for activation are clearly established by the specific facts of the case.

[Figure: 37 TAC §9.22]

§9.24. *Activation and Deactivation.*

AMBER [Amber] Alert Network activations and deactivations are [will be] made according to the procedures specified in the current Statewide Texas AMBER [Amber] Alert Network Plan.

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 12, 2020.

TRD-202004224

D. Phillip Adkins
General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: November 22, 2020

For further information, please call: (512) 424-5848



SUBCHAPTER D. SILVER ALERT NETWORK

37 TAC §9.32, §9.34

The Texas Department of Public Safety (the department) proposes amendments to §9.32 and 9.34, concerning Silver Alert Network. The amendments to these rules reflect the removal of the graphic in §9.32 and the rule text indicates the request form for the alert now resides on the department's website. Additionally, rule text has been modified from "Silver Alert standard operating procedures" to "Silver Alert standard guidelines".

Suzy Whittenton, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period this rule are in effect, the public benefit anticipated as a result of this rule will be publication of the new form for the Silver Alert Network and notification of its' new location on the department's website.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new

employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Chief Dale Avant, Texas Department of Public Safety, Intelligence and Counterterrorism Division, P.O. Box 4087, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.383(b), which authorizes the director to adopt rules to ensure proper implementation of the alert.

Texas Government Code, §411.381 - §411.389 is affected by this proposal.

§9.32. *Local Law Enforcement Responsibility.*

A local law enforcement agency with jurisdiction over the investigation of a missing person may submit a request for activation of the Silver Alert Network. The request must be submitted using the appropriate Texas Department of Public Safety (DPS) form, available on the DPS website. [The request must be submitted on the Silver Alert Request Form TDEM-26.] A local law enforcement agency may submit the form after it has verified that all statutory criteria for activation are clearly established by the specific facts of the case. Local law enforcement shall provide documentation of a diagnosed impaired mental condition with the request for activation.

[Figure: 37 TAC §9.32]

§9.34. *Activation and Deactivation.*

Silver Alert Network activations and deactivations are [will be] made according to the procedures specified in the current Silver Alert standard operating guidelines [procedures].

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 12, 2020.

TRD-202004225

D. Phillip Adkins
General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: November 22, 2020

For further information, please call: (512) 424-5848



SUBCHAPTER E. ENDANGERED MISSING PERSONS ALERT

37 TAC §9.42, §9.44

The Texas Department of Public Safety (the department) proposes amendments to §9.42 and §9.44, concerning Endangered Missing Persons Alert. The amendments to these rules reflect the removal of the graphic in §9.42 and the rule text indicates the request form for the alert now resides on the department's website. Additional modifications include

changing "Endangered Missing Person Alert standard operating procedures" to "Endangered Missing Person Alert standard guidelines". Sections 411.351 - 411.359 cover both AMBER and Endangered Missing Person Alerts.

Suzy Whittenton, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period this rules are in effect, the public benefit anticipated as a result of these rules will be publication of the new form for the Endangered Missing Persons Alert Network and notification of its' new location on the department's website.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Chief Dale Avant, Texas Department of Public Safety, Intelligence and Counterterrorism Division, P.O. Box 4087, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.353(b), which authorizes the director to adopt rules to ensure proper implementation of the alert.

Texas Government Code, §411.351 - §411.359 is affected by this proposal.

§9.42. *Local Law Enforcement Responsibility.*

A local law enforcement agency with jurisdiction over the investigation of a missing person may submit a request for activation of the Endangered Missing Persons Alert Network. The request must be submitted using the appropriate Texas Department of Public Safety (DPS) form, available on the DPS website. ~~[The request must be submitted on the Endangered Missing Persons Alert Request Form, provided by the department.]~~ If a local law enforcement agency determines to notify the department, the local law enforcement agency shall submit the form after it has verified that all criteria for activation are clearly established by the specific facts of the case. Local law enforcement shall provide documentation of a diagnosed intellectual disability with the request for activation.

[Figure: 37 TAC §9.42]

§9.44. *Activation and Deactivation.*

Endangered Missing Persons Alert Network activations and deactivations are ~~[will be]~~ made according to the procedures specified in the current Endangered Missing Persons Alert standard operating guidelines ~~[procedures]~~.

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 12, 2020.

TRD-202004226

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER G. BLUE ALERT NETWORK

37 TAC §9.82, §9.84

The Texas Department of Public Safety (the department) proposes amendments to §9.82 and 9.84, concerning Blue Alert Network.

The amendments to these rules reflect the removal of the graphic in §9.82 and the rule text indicates the request form for the alert now resides on the department's website. Additionally, rule text has been modified from "Blue Alert standard operating procedures" to "Blue Alert standard guidelines".

Suzy Whittenton, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period this rules are in effect, the public benefit anticipated as a result of these rules will be publication of the new form for the Blue Alert Network and notification of its new location on the department's website.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Chief Dale Avant, Texas Department of Public Safety, Intelligence and Counterterrorism Division, P.O. Box 4087, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.443(b), which authorizes the director to adopt rules to ensure proper implementation of the alert.

Texas Government Code, §411.441 - §411.449 is affected by this proposal.

§9.82. Local Law Enforcement Responsibility.

A local law enforcement agency with jurisdiction over the investigation of a killed or a seriously injured officer may submit a request for activation of the Blue Alert network. The request must be submitted using the appropriate Texas Department of Public Safety (DPS) form, available on the DPS website. ~~[The request must be submitted on the Blue Alert Request Form TDEM-52.]~~ A local law enforcement agency may submit the form after it has verified that all statutory criteria for activation are clearly established by the specific facts of the case. Local law enforcement shall provide a detailed description of the missing suspect and, if applicable, any available portion of the license plate number of a motor vehicle used by the suspect.
[Figure: 37 TAC §9.82]

§9.84. Activation and Deactivation.

Blue Alert network activations and deactivations are [with be] made according to the procedures specified in the current Blue Alert standard operating guidelines [procedures].

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 12, 2020.

TRD-202004228

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 422-5848



SUBCHAPTER H. CAMO ALERT NETWORK

37 TAC §§9.91 - 9.95

The Texas Department of Public Safety (the department) proposes new §§9.91 - 9.95, concerning Camo Alert Network. These rules are necessitated because the 86th Texas Legislature enacted HB 833 which created the Camo Alert Network.

Suzy Whittenton, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period this rules are in effect, the public benefit anticipated as a result of these rules will be publication of the new form for the Camo Alert Network and notification of its new location on the department's website.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect,

the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Chief Dale Avant, Texas Department of Public Safety, Intelligence and Counterterrorism Division, P.O. Box 4087, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.463(b), which authorizes the director to adopt rules to ensure proper implementation of the alert.

Texas Government Code, §411.463 - §411.469 is affected by this proposal.

§9.91. Purpose of Camo Alert Network.

(a) The Camo Alert Network is a statewide emergency response system for registered missing military members, whose whereabouts are unknown, who have registered for the network, and suffer from a mental illness, including post-traumatic stress disorder or a traumatic brain injury. Military members can access the registration form on the Texas Department of Public Safety (DPS) website.

(b) In order to maintain a high level of effectiveness, the department and local law enforcement must accurately evaluate the circumstances according to established criteria to justify activation of the network.

(c) The department has complete discretion in making the final determination about the activation of the Camo Alert Network. Clearly established facts of the case will limit those instances where the statutory criteria for activation are not met.

§9.92. Definitions.

The terms in this section have the following meanings when used in this subchapter unless the context clearly indicates otherwise:

(1) Mental illness--A mental condition or disorder as defined by the current version of the Diagnostic and Statistical Manual as a clinically significant behavioral, or psychological syndrome or pattern that occurs in an individual and that is associated with present distress or disability or with a significantly increased risk of suffering death, pain, disability or an important loss of freedom. This condition must present a significant level of impairment that poses a credible threat to the individual's health and safety or the health and safety of another individual.

(2) Military member--Has the meaning assigned by Texas Government Code, §411.461(3).

§9.93. Local Law Enforcement Responsibility.

A local law enforcement agency with jurisdiction over the investigation of a missing person requests activation by submitting the DPS form, available on the DPS website. A local law enforcement agency may submit the form after it has verified the facts of the case meet the alert activation criteria. Local law enforcement shall verify documentation of a diagnosed mental illness with the request for activation.

§9.94. Department Responsibility.

The department shall review a request for activation to confirm that the request meets the statutory criteria for activation. The department will not activate the network until the local law enforcement agency has clearly established that all statutory criteria for activation are satisfied.

§9.95. Activation and Deactivation.

Camo Alert Network activations and deactivations are made according to the procedures specified in the current Camo Alert standard operating guidelines.

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 12, 2020.

TRD-202004229

D. Phillip Adkins
General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER I. COORDINATED LAW ENFORCEMENT ADULT RESCUE (CLEAR) ALERT NETWORK

37 TAC §§9.101 - 9.105

The Texas Department of Public Safety (the department) proposes new §§9.101 - 9.105, concerning Coordinated Law Enforcement Adult Rescue (CLEAR) Alert Network. These rules are necessitated because the 86th Texas Legislature enacted HB 1769 which created the CLEAR Alert Network.

Suzu Whittenton, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period this rules are in effect, the public benefit anticipated as a result of these rules will be publication of the new form for the CLEAR Alert Network and notification of its' new location on the department's website.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program;

will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Chief Dale Avant, Texas Department of Public Safety, Intelligence and Counterterrorism Division, P.O. Box 4087, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.463(b), which authorizes the director to adopt rules to ensure proper implementation of the alert.

Texas Government Code, §411.463 - §411.469 is affected by this proposal.

§9.101. Purpose of CLEAR Alert Network.

(a) The Coordinated Law Enforcement Adult Rescue (CLEAR) Alert Network ("network") is a statewide emergency response system for missing adults 18 to 64 years of age whose whereabouts are unknown and are in imminent danger of bodily injury or death, or the disappearance is involuntary.

(b) In order to maintain a high level of effectiveness, the department and local law enforcement must accurately evaluate the circumstances according to established criteria to justify activation.

(c) The department has complete discretion in making the final determination about the activation of the CLEAR Alert Network. Clearly established facts of the case will limit those instances where the statutory criteria for activation are not met.

§9.102. Definitions.

The terms in this section have the following meanings when used in this subchapter unless the context clearly indicates otherwise:

(1) Bodily injury--Has the meaning assigned by Penal Code, §1.07.

(2) Imminent danger--Ready to take place, near at hand, impending, hanging threateningly over one's head, menacingly near.

§9.103. Local Law Enforcement Responsibility.

A local law enforcement agency with jurisdiction over the investigation of a missing person requests activation by submitting the appropriate Texas Department of Public Safety (DPS) form, available on the DPS website. A local law enforcement agency may submit the form after it has verified the facts of the case meet the alert activation criteria.

§9.104. Department Responsibility.

The department shall review a request for activation to confirm that the request meets the statutory criteria for activation. The department will not activate the network until the local law enforcement agency has clearly established that all statutory criteria for activation are satisfied.

§9.105. Activation and Deactivation.

CLEAR Alert Network activations and deactivations will be made according to the procedures specified in the current CLEAR Alert standard operating guidelines.

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 12, 2020.

TRD-202004230

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: November 22, 2020

For further information, please call: (512) 424-5848

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 5. PROVIDER CLINICAL RESPONSIBILITIES--INTELLECTUAL DISABILITY SERVICES

SUBCHAPTER C. USE AND MAINTENANCE OF DRUG FORMULARY

40 TAC §§5.101 - 5.114

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §5.101, concerning Purpose; §5.102, concerning Application; §5.103, concerning Definitions; §5.104, concerning General Requirements; §5.105, concerning Organization of TDMHMR Drug Formulary; §5.106, concerning Executive Formulary Committee; §5.107, concerning Responsibilities of the Executive Formulary Committee; §5.108, concerning Applying to Have a Drug Added to the Formulary; §5.109, concerning Changing the TDMHMR Drug Formulary; §5.110, concerning Prescribing Non-formulary Drugs; §5.111, concerning Adverse Drug Reactions; §5.112, concerning Exhibit; §5.113, concerning References; and §5.114, concerning Distribution.

BACKGROUND AND PURPOSE

The proposed repeals are necessary to reflect the transition of programs from the Department of Aging and Disability Services to HHSC. Rules in Texas Administrative Code (TAC) Title 40, Part 1, Chapter 5, Subchapter C are repealed, updated, reorganized, and proposed in 26 TAC Chapter 306, Subchapter G. The new rules are proposed simultaneously elsewhere in this issue of the *Texas Register*.

SECTION-BY-SECTION

The proposed rule repeals delete the rules in 40 TAC Chapter 5, Subchapter C, to reorganize and update the rules to be relocated to 26 TAC Chapter 306, Subchapter G.

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) implementation of the proposed repeals will not affect the number of HHSC employee positions;
- (3) implementation of 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 proposed repeals do not impose any additional costs on small businesses, 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

Timothy E. Bray, Associate Commissioner of State Hospitals, and Scott Schalchlin, Associate Commission of State Supported Living Centers, have determined that for each year of the first five years the repeals are in effect, the public will benefit 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.

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, Health and Specialty Care System, 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 Rules 19R052 Drug Formulary" 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; Texas Health and Safety Code §591.004 which provides that the Executive Commissioner of HHSC shall adopt rules to implement the Persons with an Intellectual Disability Act; and §533A.0355 which provides that the Executive Commissioner of HHSC shall adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code §591.004 and §533A.0355.

- §5.101. *Purpose.*
- §5.102. *Application.*
- §5.103. *Definitions.*
- §5.104. *General Requirements.*
- §5.105. *Organization of TDMHMR Drug Formulary.*
- §5.106. *Executive Formulary Committee.*
- §5.107. *Responsibilities of the Executive Formulary Committee.*
- §5.108. *Applying to Have a Drug Added to the Formulary.*
- §5.109. *Changing the TDMHMR Drug Formulary.*
- §5.110. *Prescribing Non-formulary Drugs.*
- §5.111. *Adverse Drug Reactions.*
- §5.112. *Exhibit.*
- §5.113. *References.*
- §5.114. *Distribution.*

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 6, 2020.
 TRD-202004159
 Karen Ray
 Chief Counsel
 Department of Aging and Disability Services
 Earliest possible date of adoption: November 22, 2020
 For further information, please call: (512) 206-5084



PART 20. TEXAS WORKFORCE COMMISSION

**CHAPTER 800. GENERAL ADMINISTRATION
 SUBCHAPTER L. WORKFORCE DIPLOMA PILOT PROGRAM**

40 TAC §§800.500 - 800.505

The Texas Workforce Commission (TWC) proposes the following new subchapter to Chapter 800, relating to General Administration:

Subchapter L. Workforce Diploma Pilot Program, §§800.500 - 800.505.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Senate Bill (SB) 1055, 86th Texas Legislature, Regular Session (2019), added new Chapter 317 to the Texas Labor Code, requiring TWC, in consultation with the Texas Education Agency (TEA), to create and administer a Workforce Diploma Pilot Program (Program). As outlined in Texas Labor Code, Chapter 317, the Program will allow eligible high school diploma--granting entities to be reimbursed for helping adult students obtain high school diplomas and industry-recognized credentials and develop technical career-readiness and employability skills.

SB 1055 stipulates that Texas Labor Code, Chapter 317 expires on September 1, 2025, and requires TWC to develop rules that:

- outline the application process to become a qualified provider;
- define the minimum performance standards for qualified providers, which include a graduation rate of at least 50 percent and a program cost per graduate of \$7,000 or less for the previous calendar year; and
- develop formulas to make the appropriate calculations to determine the graduation rate and program cost per graduate.

SB 1055 includes the stipulation that TWC "is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the Texas Workforce Commission may, but is not required to, implement a provision of this Act using other appropriations available for that purpose." TWC is developing rules to implement the Program upon allocation of funds for its implementation.

New Chapter 800, Subchapter L, Workforce Diploma Pilot Program, provides the rules for implementing new Texas Labor Code, Chapter 317, as added by SB 1055.

On June 23, 2020, TWC's three-member Commission (Commission) approved a policy concept for the required rule development for the Program under Texas Labor Code, Chapter 317. The policy concept included rule language for the Commission's future consideration and was published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4574) for a 30-day public comment period. The comment period ended on August 3, 2020, and TWC did not receive any comments. The rule language provided in this proposal reflects the rule language included in the published policy concept, with a few minor changes.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER L. WORKFORCE DIPLOMA PILOT PROGRAM

TWC proposes new Subchapter L:

§800.500. Purpose

New §800.500 provides the purpose of the Program, which is to reimburse qualified providers that provide assistance to adult students to obtain high school diplomas and attain industry-recognized credentials and to develop technical career-readiness and employability skills, to the extent that funding is available for this purpose.

§800.501. Definitions

New §800.501 provides the following definitions for Subchapter L:

--"Academic resiliency" is a student's ability to persist and academically succeed despite adversity.

--"Academic skill intake assessment" is a formal and/or informal assessment used at intake to gather information on a student's current knowledge and skills in specific academic areas (for example, literacy and numeracy). That information is then used to determine the student's appropriate instructional level as well as accommodations and/or remediation that the student needs.

--"Career Pathway" is a combination of rigorous and high-quality education, training, and other services that:

--aligns with the skill needs of industries in the economy of the state or regional economy involved;

--prepares an individual to be successful in any of a full range of secondary or postsecondary education options;

--includes counseling to help an individual achieve his or her education and career goals;

--includes, as appropriate, education offered concurrently with, and in the same context as, workforce preparation activities and training for a specific occupation or occupational cluster;

--organizes education, training, and other services to meet the particular needs of an individual in a manner that accelerates his or her educational and career advancement to the extent practicable;

--enables an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized postsecondary credential; and

--helps an individual enter or advance within a specific occupation or occupational cluster (29 USC §3102, Definitions).

--"Eligible participant" is an individual who is over the age of compulsory school attendance prescribed by Texas Education Code, §25.085 and who, as required by TWC:

--is a Texas resident;

--lacks a high school diploma;

--is authorized to work in the United States; and

--is able to work immediately upon graduation from the Program.

--"Employability skills certification program" refers to a certification in general skills that are necessary for success in the labor market at all employment levels and in all industry sectors. Employability skills include problem-solving, collaboration, organization, and adaptability.

--"Half credit" is based on the Carnegie Unit, which refers to the standard award of credit given for a course that lasts one semester. When determining credits, qualified providers should consider instructional time plus the amount of time that the student would take to complete the coursework in a high school semester or academic year. In traditional education models, a student typically attends a class for 55 to 60 minutes a day for four or five days a week, in addition to studying independently.

--"High school diploma" is a credential awarded by an entity based on completion of all state graduation requirements as outlined in Texas Education Code, §28.025 and §39.023 and 19 Texas Administrative Code (TAC) Chapter 74, Curriculum Requirements, and Chapter 101, Assessment.

--"Industry-recognized credential" is a state-approved credential that verifies an individual's qualifications and competence and is issued by a third party with the relevant authority to issue such credentials (US Department of Labor, 2010). Industry-recognized credentials offered by qualified providers must align with TWC's mission to target high-growth, high-demand, and emerging occupations that are crucial to state and local workforce economies and must reflect the target occupations for the local workforce development areas (workforce areas) in which services will be provided. Qualified providers may also reference the list of industry-based certifications for public school accountability that TEA publishes.

--"Learning Plan Development" is the process by which an individualized learning plan is developed after student intake; it is maintained through coaching and mentoring.

--"One credit" is based on the Carnegie Unit, which refers to the standard award credit given for a course that lasts a full academic year. When determining credits, qualified providers should consider instructional time plus the amount of time that the student would take to complete the coursework in a high school semester or academic year. In traditional education models, a student typically attends a class for 55 to 60 minutes a day for four or five days a week in addition to studying independently.

--"Program" refers to the Workforce Diploma Pilot Program set forth in Texas Labor Code, Chapter 317.

--"Qualified provider" that may participate in the Program and receive reimbursement is a provider that:

--is a public, nonprofit, or private entity that is:

--authorized under the Texas Education Code or other state law to grant a high school diploma, or

--accredited by a regional accrediting body, as established by the US Secretary of Education pursuant to 20 USCS §1099b, Recognition of Accrediting Agency or Association;

--has at least two years of experience providing dropout reengagement services to adult students, including recruitment, learning plan development, and proactive coaching and mentoring, leading to the obtainment of a high school diploma;

--is equipped to:

--provide:

--academic skill intake assessment and transcript evaluations;

--remediation coursework in literacy and numeracy;

--a research-validated academic resiliency assessment and intervention;

--employability skills development aligned to employer needs;

--career pathways coursework;

--preparation for the attainment of industry-recognized credentials; and

--career placement services; and

--develop a learning plan that integrates academic requirements and career goals; and

--offers a course catalog that includes all courses necessary to meet high school graduation requirements in Texas, as authorized under 19 TAC Chapter 74, Subchapter B, Graduation Requirements.

--"Regional accrediting body" must meet the criteria established by the US Secretary of Education pursuant to 20 USCS §1099b, Recognition of Accrediting Agency or Association, and appear on the US Secretary of Education's list of federally recognized accrediting agencies in the *Federal Register* as stated in 34 CFR §602.2. A copy of the list may be obtained from the US Department of Education.

§800.502. Request for Qualifications and List of Qualified Providers

New §800.502 describes the Program's Request for Qualifications (RFQ) provisions, as outlined in Texas Labor Code, Chapter 317, to the extent that TWC funding is available.

Texas Labor Code, Chapter 317 requires TWC to publish an RFQ no later than October 15th of each year to identify Program providers. New §800.502 outlines the application process for qualified providers as follows:

TWC will identify qualified providers to participate in the Program through a statewide RFQ process conducted in accordance with state requirements.

Potential providers will apply directly to TWC using the RFQ process, and, once identified as a qualified provider, must meet all deadlines, requirements, and guidelines set forth in the published RFQ.

TWC will publish a list of qualified providers by November 15th of each year to participate in the Program the next calendar year.

Each provider on the qualified provider list will be eligible to receive monthly reimbursements for this Program based on monthly invoices submitted to TWC, as prescribed in the RFQ's terms.

Each year, TWC will review and update the list of qualified providers. Qualified providers that do not meet the minimum performance standards outlined in §800.503 will be placed on probation for the remainder of the calendar year. Failure to meet both minimum performance standards for two consecutive years will result in disqualification from the Program.

TWC's determinations in the RFQ process will be based on the affirmation of the qualified provider to effectively perform all services and activities outlined in Texas Labor Code, Chapter 317.

§800.503. Minimum Performance Standards

As required by Texas Labor Code, Chapter 317, new §800.503 describes the minimum performance standards needed for qualified providers to remain on the qualified provider list.

New §800.503(a) states that the minimum performance standards for the calendar year must include a:

--graduation rate of at least 50 percent; and

--program cost per graduate of \$7,000 or less.

New §800.503(b) provides the requirements for TWC actions if a qualified provider fails to maintain minimum performance standards. Section 800.503(b) requires TWC to annually review data from each participating provider to ensure that the services offered by the provider are meeting the minimum performance standards. If TWC determines that a provider did not meet the minimum performance standards in the previous calendar year, TWC shall place the provider on probationary status for the remainder of the current calendar year.

New §800.503(c) requires TWC to remove any provider that does not meet the minimum performance standards for two consecutive calendar years from the published provider list, as authorized by Texas Labor Code, §317.005.

§800.504. Graduation Rate and Graduate Cost Formulas

As required by Texas Labor Code, Chapter 317, new §800.504(a) and (b) describe the formulas for calculating the graduation rate and Program cost per graduate.

Graduation rate is defined as and determined by dividing the number of students who received a high school diploma from the qualified provider by the number of students for whom the qualified provider sought and received reimbursements.

New §800.504(b) provides the Program cost per graduate formula as the product of the number of students who received a high school diploma during the previous calendar year multiplied by \$7,000; that product may not exceed the total annual cost (reimbursements paid) to the qualified provider for the total number of services provided.

§800.505. Reimbursement Rates

New §800.505 provides the reimbursement amounts that a qualified provider may receive (to the extent that funding is available). Pursuant to Texas Labor Code, §317.006, those reimbursement rates will be as follows:

- \$250 for completion of a half credit
- \$250 for completion of an employability skills certification program equal to at least one credit or the equivalent
- \$250 for the attainment of an industry-recognized credential requiring not more than 50 hours of training
- \$500 for the attainment of an industry-recognized credential requiring at least 50 but not more than 100 hours of training
- \$750 for the attainment of an industry-recognized credential requiring more than 100 hours of training
- \$1,000 for the obtainment of a high school diploma

Additionally, §800.505 clarifies that a provider may not be reimbursed twice for one attainment of an industry-recognized credential.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to outline requirements of the Program under Texas Labor Code, Chapter 317 and

- outline the application process to become a qualified provider;
- describe the minimum performance standards for qualified providers, which include a graduation rate of at least 50 percent and a Program cost per graduate of \$7,000 or less for the previous calendar year; and
- develop formulas to make the appropriate calculations to determine graduation rate and program cost per graduate.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

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

- the rules will not create or eliminate a government program;
- implementation of the rules will not require the creation or elimination of employee positions;
- implementation of the rules will not require an increase or decrease in future legislative appropriations to TWC;
- the rules will not require an increase or decrease in fees paid to TWC;
- the rules will not create a new regulation;
- the rules will not expand, limit, or eliminate an existing regulation;

--the rules will not change the number of individuals subject to the rules; and

--the rules will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide guidance on implementing a Workforce Diploma Pilot Program in Texas.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the policy concept for the new rules to the Boards for consideration and review on June 23, 2020. TWC also conducted a conference call with Board executive directors and Board staff on June 26, 2020, and then on July 2, 2020, with AEL grant recipients to discuss the Policy Concept and comment period.

The policy concept was published in the *Texas Register* for a 30-day comment period that ended on August 3, 2020. During the proposed rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.state.tx.us. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register*.

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement the requirements of Texas Labor Code, Chapter 317.

§800.500. Purpose.

The purpose of the Workforce Diploma Pilot Program is to reimburse qualified providers that provide assistance to adult students to obtain high school diplomas and attain industry-recognized credentials and to develop technical career readiness and employability skills to the extent that funding is available for this purpose.

§800.501. Definitions.

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

(1) Academic resiliency--A student's ability to persist and to academically succeed despite adversity.

(2) Academic skill intake assessment--A formal and/or informal assessment used at intake to gather information on a student's current knowledge and skills in specific academic areas (for example, literacy and numeracy). That information is then used to determine the student's appropriate instructional level as well as accommodations and/or remediation that the student needs.

(3) Career Pathway--A combination of rigorous and high-quality education, training, and other services that:

(A) aligns with the skill needs of industries in the economy of the state or regional economy involved;

(B) prepares an individual to be successful in any of a full range of secondary or postsecondary education options;

(C) includes counseling to support an individual in achieving the individual's education and career goals;

(D) includes, as appropriate, education offered concurrently with, and in the same context as, workforce preparation activities and training for a specific occupation or occupational cluster;

(E) organizes education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;

(F) enables an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized post-secondary credential; and

(G) helps an individual enter or advance within a specific occupation or occupational cluster (29 USC §3102, Definitions).

(4) Eligible participant--An individual who is over the age of compulsory school attendance, as prescribed by Texas Education Code, §25.085, and as required by the Agency, must:

(A) be a Texas resident;

(B) lack a high school diploma;

(C) be authorized to work in the United States; and

(D) be able to work immediately upon graduation from the program.

(5) Employability skills certification program--Refers to a certification in general skills that are necessary for success in the labor market at all employment levels and in all industry sectors. Employability skills include problem-solving, collaboration, organization, and adaptability.

(6) Half credit--The standard award of credit given for a course that lasts one semester, and which is based on the Carnegie Unit. When determining credits, qualified providers should consider instructional time plus the amount of time that the student would take to complete the coursework in a high school semester or academic year. In traditional education models, a student typically attends a class for 55 to 60 minutes a day for four or five days a week in addition to studying independently.

(7) High school diploma--A credential awarded by an entity, based on completion of all state graduation requirements as outlined in Texas Education Code, §28.025 and §39.023 and 19 TAC Chapter 74 (relating to Curriculum Requirements) and Chapter 101 (relating to Assessment).

(8) Industry-recognized credential--A state-approved credential verifying an individual's qualifications and competence and is issued by a third party with the relevant authority to issue such credentials (US Department of Labor, 2010). Industry-recognized credentials

offered by qualified providers must align with the Agency's mission to target high-growth, high-demand, and emerging occupations that are crucial to the state and local workforce economies, and must reflect the target occupations for the workforce areas in which services will be provided. Qualified providers may also reference the list of industry-based certifications for public school accountability published by the Texas Education Agency.

(9) Learning Plan Development--The process by which an individualized learning plan is developed after student intake; it is maintained through coaching and mentoring.

(10) One credit--The standard award credit given for a course that lasts a full academic year, and which is based on the Carnegie Unit. When determining credits, qualified providers should consider instructional time plus the amount of time that the student would take to complete the coursework in a high school semester or academic year. In traditional education models, a student typically attends a class for 55 to 60 minutes a day for four or five days a week, in addition to studying independently.

(11) Program--Refers to the Workforce Diploma Pilot Program, set forth in Texas Labor Code, Chapter 317.

(12) Qualified provider--A provider that may participate in the Program and receive reimbursement and that:

(A) is a public, nonprofit, or private entity that is:

(i) authorized under the Texas Education Code or other state law to grant a high school diploma; or

(ii) accredited by a regional accrediting body, as established by the US Secretary of Education, pursuant to 20 USC §1099b, Recognition of Accrediting Agency or Association;

(B) has at least two years of experience providing dropout reengagement services to adult students, including recruitment, learning plan development, and proactive coaching and mentoring, leading to the obtainment of a high school diploma;

(C) is equipped to:

(i) provide:

(I) academic skill intake assessment and transcript evaluations;

(II) remediation coursework in literacy and numeracy;

(III) a research-validated academic resiliency assessment and intervention;

(IV) employability skills development aligned to employer needs;

(V) career pathways coursework;

(VI) preparation for the attainment of industry-recognized credentials; and

(VII) career placement services; and

(ii) develop a learning plan that integrates academic requirements and career goals; and

(D) offers a course catalog that includes all courses necessary to meet high school graduation requirements in Texas, as authorized under 19 TAC Chapter 74, Subchapter B (relating to Graduation Requirements).

(13) Regional accrediting body--Must meet the criteria established by the US Secretary of Education pursuant to 20 USC

§1099b, Recognition of Accrediting Agency or Association, and appear on the US Secretary of Education's list of federally recognized accrediting agencies in the *Federal Register*, as stated in 34 CFR §602.2. A copy of the list may be obtained from the US Department of Education.

§800.502. Request for Qualifications and List of Qualified Providers.

(a) The Agency will identify qualified providers to participate in the Program through a statewide Request for Qualifications (RFQ) process conducted in accordance with state requirements. The Agency will publish an RFQ no later than October 15th of each year to identify Program providers.

(b) Potential providers will apply directly to the Agency using the RFQ process, and, once identified as a qualified provider, must meet all deadlines, requirements, and guidelines set forth in the published RFQ.

(c) The Agency will publish a list of qualified providers no later than November 15th of each year to participate in the Program the next calendar year.

(d) Each provider on the qualified provider list will be eligible to receive monthly reimbursements for this Program based on monthly invoices submitted to the Agency, as prescribed in the RFQ's terms.

(e) Each year, the Agency shall review and update the list of qualified providers. Qualified providers that do not meet the minimum performance standards outlined in §800.503 of this subchapter will be placed on probation for the remainder of the calendar year. Failure to meet both minimum performance standards for two consecutive years will result in disqualification from the Program.

(f) The Agency's determinations in the RFQ process will be based on the affirmation of the qualified provider to effectively perform all services and activities outlined in Texas Labor Code, Chapter 317.

§800.503. Minimum Performance Standards.

(a) The minimum performance standards for the calendar year must include:

(1) a graduation rate, as defined in §800.504(a) of this subchapter, of at least 50 percent; and

(2) a program cost per graduate of \$7,000 or less, as calculated pursuant to §800.504(b) of this subchapter.

(b) Each year, the Agency shall review data from each participating provider to ensure that the services offered by the provider are meeting the minimum performance standards. If the Agency determines that a provider did not meet the minimum performance standards in the previous calendar year, the Agency shall place the provider on probationary status for the remainder of the current calendar year.

(c) The Agency shall remove any provider that does not meet the minimum performance standards for two consecutive calendar years from the provider list published under Texas Labor Code, §317.005.

§800.504. Graduation Rate and Graduate Cost Formulas.

(a) Graduation rate is defined as and determined by dividing the number of students who received a high school diploma from the qualified provider by the number of students for which the qualified provider sought and received reimbursements.

(b) The Program cost per graduate formula is determined as the product of the number of students who received a high school diploma the previous calendar year multiplied by \$7,000; the product may not exceed the total annual cost (reimbursements paid) to the qualified provider for the total number of services provided.

§800.505. Reimbursement Rates.

(a) The reimbursement amounts that a qualified provider may receive, to the extent that funding is available, shall be as follows:

- (1) \$250 for completion of a half credit;
- (2) \$250 for completion of an employability skills certification program equal to at least one credit or the equivalent;
- (3) \$250 for the attainment of an industry-recognized credential requiring not more than 50 hours of training;
- (4) \$500 for the attainment of an industry-recognized credential requiring at least 50 but not more than 100 hours of training;
- (5) \$750 for the attainment of an industry-recognized credential requiring more than 100 hours of training; and
- (6) \$1,000 for the obtainment of a high school diploma.

(b) A provider shall not be reimbursed more than one time for one attainment of an industry-recognized credential.

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 7, 2020.

TRD-202004172

Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

Earliest possible date of adoption: November 22, 2020

For further information, please call: (512) 689-9855



CHAPTER 809. CHILD CARE SERVICES

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 809, relating to Child Care Services:

Subchapter A. General Provisions, §809.2

Subchapter B. General Management, §§809.12, 809.13, 809.16, 809.18, and 809.19

Subchapter E. Requirements to Provide Child Care, §809.91 and §809.93

Subchapter G. Texas Rising Star Program, §§809.130 - 809.134

TWC proposes the following new sections to Chapter 809, relating to Child Care Services:

Subchapter B. General Management, §809.22

Subchapter E. Requirements to Provide Child Care, §809.96

Subchapter G. Texas Rising Star Program, §809.136

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 809 rule changes is to implement a contracted slots option for child care services, clarify the allowable uses of Child Care Quality (CCQ) funds, update

how the parent co-payment is determined, align the child transfer policy with industry practices, and implement changes to Texas Rising Star policy based on recommendations that arose from the Texas Rising Star four-year review.

House Bill 680

House Bill 680 (HB 680), 86th Texas Legislature, Regular Session (2019), amended the Texas Government Code and the Texas Labor Code regarding TWC's Child Care program. To fully implement HB 680 requirements, Chapter 809 requires amendments to clarify allowable uses of Local Workforce Development Boards' (Boards) CCQ funds to allow Boards to engage in child care provider contract agreements for reserved slots, and to allow direct referrals for eligible children participating in recognized public/private partnerships.

Allowable Uses of Boards' Child Care Quality Funds

HB 680, Section 1 amends Texas Government Code, §2308.317, by adding a new subsection requiring each Board, to the extent practicable, to ensure that any professional development for child care providers, directors, and employees using the Board's allocated quality improvement funds:

--be used toward the requirements for a credential, certification, or degree program; and

--meet the Texas Rising Star program's professional development requirements.

Section 809.16, Quality Improvement Activities, outlines rules related to quality improvement activities that are allowable for Boards. Section 809.16 currently allows Boards to expend quality funds on any quality improvement activity described in 45 Code of Federal Regulations (CFR) Part 98. TWC proposes requiring Boards to align expenditures for child care professional development with applicable state statute and the activities described in the Child Care Development Fund (CCDF) State Plan.

Child Care Provider Contract Agreements

HB 680, Section 5 adds Texas Labor Code, §302.0461, Child Care Provider Contract Agreements, allowing Boards to contract with child care providers to provide subsidized child care. This is congruent with §658E(c)(2)(A) of the Child Care and Development Block Grant (CCDBG) Act of 2014, which authorizes states to offer financial assistance for child care services through grants and contracts. Specific guidance from the US Department of Health and Human Services' Office of Child Care confirms that:

"States can award grants and contracts to providers in order to provide financial incentives to offer care for special populations, require higher quality standards, and guarantee certain numbers of slots to be available for low-income children eligible for Child Care and Development Fund (CCDF) financial assistance. Grants and contracts can provide financial stability for child care providers by paying in regular installments, paying based on maintenance of enrollment, or paying prospectively rather than on a reimbursement basis."

HB 680 requires that any such contract includes the number of slots reserved by a provider for children who participate in the subsidized child care program.

To be eligible for a contract, HB 680 requires that a child care provider be a Texas Rising Star 3- or 4-star provider and meet one of the following priorities:

--Be located in an area:

- where the number of children under age six with working parents is at least three times greater than the capacity of licensed child care providers in the area; or
- determined by TWC to be underserved with respect to child care providers
- Have a partnership with local school districts to provide prekindergarten (pre-K)
- Have a partnership with Early Head Start (EHS) or Head Start (HS)
- Have an increased number of places reserved for infants and toddlers by high-quality child care providers
- Satisfy a priority identified in the Board's plan

HB 680 also requires that Boards choosing to contract with providers submit a report to TWC no later than six months after entering into the contract, and every six months thereafter, determining the contract's effect on the following:

- Financial stability of providers participating in the contract
- Availability of high-quality child care options for participants in TWC's subsidy program
- Number of high-quality providers in any part of the local workforce development area (workforce area) with a high concentration of families with a need for child care
- Percentage of children participating in TWC's subsidized child care program at each Texas Rising Star provider in the Board's workforce area

In December 2019, TWC's Child Care & Early Learning Division assembled a workgroup consisting of TWC staff, Board staff, and Board child care services contractor staff to discuss implementation recommendations related to contracted slots. Recommendations from the contracted slots workgroup informed the revisions described.

Reserved Slots

Currently, §809.93(g) prohibits a Board or its child care contractor from paying providers for holding spaces (slots) open. However, if a Board chooses to contract with child care providers for a specific number of spaces, also known as a Contracted Slots model, the Board would continue payment for reserved slots during the transition time between one child leaving and another child being placed in the slot. TWC proposes allowing transition times to hold slots open for another child participating in the subsidy program and requiring the slots to be filled one month following the month of the vacancy. Adding new §809.96 to define the child care provider contract agreement rules and requirements will clarify the policy and require that Boards choosing to use contracted slots include the program in the Board plan.

Waiting Lists and Priorities

TWC prioritizes services for veterans and foster youth and former foster children in accordance with Texas Labor Code, §302.152 and Texas Family Code, §264.121(a)(3). When providing child care subsidies, Boards are required to prioritize these groups, subject to the availability of funds. Furthermore, §809.18 requires Boards to maintain waiting lists for families that are waiting for child care services. Because HB 680 authorizes Boards to contract with child care providers to reserve a set number of child care slots, the contracted slots workgroup has identified complications with continuing to use the current waiting list system for filling open slots for providers with contracts.

Currently, the Board's waiting list for the subsidy voucher system is for the entire workforce area. Families are contacted in order of priority to select any participating provider in the Board's workforce area. Section 809.43 details the priority groups as follows:

The first priority group is assured child care services and includes children of parents eligible for the following:

- Choices child care
- Temporary Assistance for Needy Families Applicant child care
- Supplemental Nutrition Assistance Program Employment and Training child care
- Transitional child care

The second priority group is served subject to the availability of funds and includes the following, in the order of priority:

1. Children requiring protective services child care
2. Children of a qualified veteran or qualified spouse
3. Children of a foster youth
4. Children experiencing homelessness
5. Children of parents on military deployment whose parents are unable to enroll in military-funded child care assistance programs
6. Children of teen parents
7. Children with disabilities

The third priority group includes any other priority adopted by the Board.

With a Contracted Slots model, the slots need to be filled quickly to avoid Boards paying for vacant reserved slots. TWC proposes allowing families to indicate ZIP code preferences for location of child care and prioritizing children with preferences matching ZIP codes with an available contracted slot.

Eligible Geographic Locations

One of the qualifying priorities identified in HB 680 to allow contracted slots is that the child care provider be located in an area of high need and low capacity, that is, an area:

- where the number of children under age six with working parents is at least three times greater than the capacity of licensed child care providers in the area; or
- that TWC has determined to be "underserved with respect to child care providers."

TWC proposes using data from the state demographer to analyze and publish annual information about geographic areas that meet the requirements described in HB 680 and requiring Boards to use this data to identify providers that are in areas of high need and low capacity.

Direct Referrals from Public Prekindergarten and Head Start/Early Head Start Partnerships

HB 680 explicitly authorizes contracts for Texas Rising Star providers engaged in partnerships with public pre-K or HS/EHS. Additionally, HB 3, 86th Texas Legislature, Regular Session (2019), supports expansion of pre-K partnerships.

Children served through these partnerships are dually enrolled in both early childhood programs. When a child is dually enrolled in child care services and either public pre-K or HS/EHS, part of the cost to CCDF is offset. Through these partnerships, eligible

children can receive the full-day, full-year care that working parents require at a lower cost to the Child Care Services program.

Eligible children served through these partnerships receive early care and education from multiple funding sources. However, each funding source prioritizes certain populations slightly differently (such as a low-income individual, a foster child or child of a foster youth, a veteran or active duty service member, a child with a disability, or a child experiencing homelessness).

These variations can lead to mismatches of when a child is able to access services despite being simultaneously eligible for both programs in a partnership. Operationally, not being able to combine funding for dually eligible children can impact the enrollment efficiency and financial stability of the partnership and limits TWC's ability to implement the contracted slots agreements provisions of HB 680 and to support the pre-K partnership provisions of HB 3.

Chapter 809 does not currently allow for a separate path for enrolling eligible children who are directly referred from a partnering program. Because of this structure, eligible children from partnering programs must be placed on a Board's waiting list despite the federal, state, and local policies that support partnerships and dual enrollment.

TWC proposes creating a separate path for enrollment to support more stable partnerships, maximize available funding to serve more children, and provide improved customer service to participating families.

With a separate enrollment path for partnership direct referrals, services for eligible children who are in TWC's second or third priority group, as defined in §809.43, Priority for Child Care Services, would still be served subject to the availability of funding. Additionally, if the number of referrals from a partnership exceeds the subsidized spots available at a single partnership site, §809.43 would be applied, and any children who did not receive subsidized care through the referring partnership would be placed on the Board's waiting list.

Parent Share of Cost for Part-Time Referrals

A technical change is needed related to how the parent co-payment is determined. Families participating in child care subsidies are responsible for a co-payment, known in Texas as the "parent share of cost," that covers a portion of their child's care and education. Boards assess the parent share of cost on a sliding-fee scale based on income, family size, and other appropriate factors to ensure that the cost is affordable and is not a barrier to families receiving services.

The CCDBG Act of 2014 led to significant changes in the administration of child care services in Texas. In September 2016, TWC adopted amendments to Chapter 809 to align with the new federal requirements and §809.19, Assessing the Parent Share of Cost, was affected. In compliance with federal requirements and guidance, TWC amended §809.19 to limit the basis of the sliding-fee scale to family size and income, including the number of children in care.

With this rule change, Boards were no longer able to offer "discounts" for part-time care, as doing so could have been perceived as using the cost of care or amount of subsidy payment to determine parent share of cost.

The CCDF State Plan template for Federal Fiscal Years 2019 - 2021 (released after the final federal rule) allows the number of

hours the child is in care, in addition to the family's income and size, to be considered when determining parent share of cost.

TWC proposes reducing the financial burden on families that need part-time child care by authorizing Boards to assess the parent share of cost at the full-time rate and allow reductions for families with part-time referrals. If a child's referral changes from part-time to full-time care, the family will no longer qualify for the reduction and must revert to the original parent share of cost assessment amount.

Child Transfer Policies

The CCDBG Act includes provisions to ensure equal access to child care for families receiving subsidies, as compared to families that do not receive subsidies. To support equal access, the final federal rule, 45 CFR §98.45(3), requires states to ensure that payments for subsidized child care "reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF subsidies." Additionally, 45 CFR §98.45(5) requires states to ensure that child care providers receive prompt notice of changes to a family's status, which may impact payment.

Providers commonly have policies for private-pay families that require families to give notice before withdrawing their child from the program. Typically, these policies range from two weeks to a full month. These waiting periods help providers to manage their enrollment efficiently and ensure that they have adequate time to fill empty spots.

Section 809.13(c)(10) requires Boards to establish a policy for transfer of a child from one provider to another. However, the rule does not require Boards to establish a waiting period for families that request to transfer a child.

TWC proposes requiring Boards to institute a waiting period as part of their transfer policy to support better alignment with CCDBG and greater stability for subsidy providers.

Texas Rising Star Four-Year Review Recommendations

Texas Government Code, §2308.3155(b)(2) requires TWC to adopt a timeline and a process for regularly reviewing and updating the Texas Rising Star quality standards. The statute also requires TWC's consideration of input from interested parties regarding the quality standards.

To meet this requirement, on February 23, 2016, TWC's three-member Commission (Commission) adopted §809.130(e)(1), which requires staff to facilitate a review of the Texas Rising Star guidelines every four years.

Beginning in May 2019, TWC convened a workgroup to review the Texas Rising Star guidelines and recommend revisions. The workgroup included early learning program directors from around the state, early childhood advocacy organization representatives, professional development providers, Board staff, and representatives from TWC, the Texas Education Agency, the Texas Health and Human Services Commission's (HHSC) Child Care Regulation Division (formerly Child Care Licensing (CCL)), and the State Center for Early Childhood, Children's Learning Institute (CLI).

Over an eight-month period, the workgroup met regularly to review the Texas Rising Star guidelines in detail and to engage in a collaborative effort to improve guidelines' standards. On January 21, 2020, the Commission approved the publication of the workgroup's recommendations for public comment. During February 2020, TWC partnered with Boards to host seven public

stakeholder meetings across the state. Throughout the review process, TWC also provided the public with a website to view materials related to the review and a dedicated email address to offer input.

The revisions in this proposed rule consider the recommendations of the workgroup as well as stakeholder input received during public meetings or provided to TWC in writing.

Workforce Registry

The Texas Early Childhood Professional Development System (TECPDS) includes the Workforce Registry (WFR), a web-based system for early childhood professionals to track their experience, education, and training. The WFR offers benefits to programs and teachers by streamlining record-keeping of staff qualifications and professional development. The WFR:

- reduces reliance on paper files and ensures reliable access to an employee's professional development records;
- allows teachers to easily share their training records and to see a holistic view of their portfolio of training and education;
- reduces administrative costs and simplifies processes for directors and owners;
- facilitates validation of compliance with CCL standards and documentation of Texas Rising Star points; and
- allows for more efficient and strategic professional development planning.

TWC proposes integrating the WFR into Texas Rising Star, requiring programs applying for certification to agree to participate in the WFR and encourage their staff to participate as well. For all programs, adopting and maintaining use of the WFR will be included in ongoing technical assistance and Continuous Quality Improvement Plans (CQIPs).

During public stakeholder meetings, many child care providers expressed concerns that the WFR could allow competitors to "steal" staff. TWC notes that the WFR does not have a searchable database of teachers or their qualifications. A teacher's record is only available to others when the teacher actively makes it available to a specified provider--typically the teacher's current employer. Additionally, based on comments received, TWC requested that the WFR be modified to no longer include job postings. This functionality is duplicative of the TWC-funded WorkInTexas.com online job-matching portal.

Creating a Pre-Star Provider Designation

TWC proposes a new Pre-Star provider definition in §809.2(18), and a requirement that all CCL-regulated subsidy providers be designated as Pre-Star in §809.91(a)(1). Pre-Star designations are outside of the statutorily defined Texas Rising Star quality-based rating system set forth in Texas Government Code, §2308.3155 and will not receive an enhanced reimbursement rate. Programs wishing to enter the Texas Rising Star system and apply for star-level certification must first meet Pre-Star designation. Pre-Star designations are based upon a child care program's demonstration that they do not have significant licensing findings, as set forth in the Screening Criteria for Subsidized Child Care and defined in the CCDF State Plan.

Continuous Quality Improvement Framework

Another recommendation from the Texas Rising Star four-year review was that TWC develop a framework for CQIPs and require certified programs to engage in a formal CQIP process.

Early childhood programs and their mentors use CQIPs to identify areas for program and staff improvement. The Texas Rising Star CQIP framework will provide targeted technical assistance and customized coaching to set specific improvement goals and monitor progress.

New Training and Certification Requirements for Texas Rising Star Staff

TWC currently defines requirements for educational background, work experience, and minimum annual training hours for Texas Rising Star mentors and assessors. However, there are no uniform training requirements for mentors or assessors to learn the standards, how to consistently measure them, or how to coach programs to improve.

The four-year review recommendations include new requirements for Texas Rising Star assessor and mentor training and certification to ensure valid and consistent star-level certifications across all Texas Rising Star programs and to improve mentoring and coaching to support the CQIP framework.

Based on these recommendations, TWC proposes that assessors be required to take the Texas Rising Star standards training and to obtain the Texas Rising Star Assessment Certification. Additionally, TWC proposes that assessors be required to pass quarterly reliability checks.

TWC also proposes more robust training requirements for mentors. Increasing the number of programs that attain and retain higher levels of quality will require strong mentoring support, and successful implementation of a CQIP framework will depend on skillful coaching from Texas Rising Star mentors. Specifically, TWC proposes requiring mentors to take the Texas Rising Star standards training and to participate in competency-based professional development designed to improve coaching practices.

Streamlining and Reweighting Categories of Texas Rising Star Measures

Section 809.130 defines the five categories of Texas Rising Star measures defined by previous Texas Rising Star guidelines development efforts. Texas Rising Star categories currently are: (1) Director and Staff Qualifications and Training, (2) Caregiver-Child Interactions, (3) Curriculum, (4) Nutrition and Indoor and Outdoor Activities, and (5) Parent Involvement and Education.

Many of the current measures are repetitive across categories or not well-correlated to the category being measured. TWC proposes reorganizing measures under the following four categories: (1) Director and Staff Qualifications and Training, (2) Teacher-Child Interactions, (3) Program Administration, and (4) Indoor/Outdoor Environments.

TWC also proposes changing the relative weight of each category in recognition of the categories that are most closely correlated with child outcomes. The workgroup specifically recognized the importance of teacher-child interactions in child development, also noting that the TWC-funded "Strengthening Texas Rising Star Implementation Study" established validity and reliability for measures within this category. TWC proposes that the teacher-child interactions category be assigned a weight of 40 percent, with the remaining three categories weighted at 20 percent each.

Impact of Certain Deficiencies on Texas Rising Star Certification

Section 809.132 defines the impact of certain child care licensing deficiencies on programs' Texas Rising Star certification status. Certain deficiencies or accumulation of total deficiencies may

result in a decrease in star level or loss of certification. Because enhanced reimbursement rates are tied to star-level certification, the result can be a significant reduction in reimbursements for affected programs.

Stakeholders, including early learning program directors, have observed that financial instability is a barrier to maintaining and increasing quality. The workgroup recommended providing Texas Rising Star programs that receive certain licensing deficiencies with an opportunity to remedy those deficiencies within a six-month probationary period. The workgroup also recommended increasing technical assistance for programs at risk of losing or dropping their Texas Rising Star certification level. Stakeholders that commented on the revisions strongly supported these recommendations.

A review of Texas Rising Star data from 2017 to 2019 showed that almost half of the 300 programs that lost a star level or dropped out of Texas Rising Star did so due to licensing deficiencies. Eighty percent of star-level drops were due to licensing deficiencies, and of those programs that lost their Texas Rising Star certification completely, 54 percent became disqualified for certification due to licensing deficiencies.

TWC proposes a revised structure for considering licensing deficiencies for both new Texas Rising Star applicants and existing certified programs. The revised structure will continue to provide a high level of accountability for the most critical licensing issues, but will also provide opportunities for providers to correct issues that are less correlated with the quality of care children receive.

Minimum Eligibility Requirements for Providers Serving CCDF Subsidized Children

Under federal regulations 45 CFR §98.30(g) regarding Parental Choice, the Administration for Children and Families explicitly allows states to establish policies that requires subsidy providers to meet higher standards of quality, as long as those requirements do not effectively limit parental choice. TWC proposes a new Pre-Star provider designation, indicating those child care programs that demonstrate that they do not have significant licensing findings. Pre-Star designations are outside of the statutorily defined Texas Rising Star quality-based rating system and will not receive an enhanced reimbursement rate. As previously described, programs that meet the criteria for Pre-Star, and would like to enter the Texas Rising Star quality rating improvement system, are eligible to apply for star-level certification.

The Pre-Star designation reviews a provider's licensing findings, as is currently done through the Texas Rising Star Screening Form that is included in the Texas Rising Star guidelines. The new Screening Criteria for Subsidized Child Care criteria have been adapted and included in a proposed amendment of the CCDF State Plan, which is available for public comment in conjunction with these proposed rules (see meeting materials for October 6, 2020 Commission Meeting). Additionally, based on feedback from the four-year review, the total number of licensing deficiencies allowed has increased from 10 to 15.

TWC will establish a five-year timeline for all subsidy providers to achieve at least a Pre-Star designation. TWC will develop a plan to roll out this requirement across the state and will codify the details of this plan in the CCDF State Plan. TWC's rollout plan will consider potential supply challenges, such as those in rural areas of the state which face a potential shortage of child care providers.

During regional stakeholder meetings, many commenters supported this strategy as an effort to ensure that public funds are being invested in child care programs that do not have significant issues with basic licensing requirements and to create a framework for placing these programs on a path to higher quality. At the same time, a few stakeholders also expressed concerns regarding the cost of administering a new Pre-Star designation. TWC notes that the Pre-Star designation may be determined through an automated process that reviews a program's licensing history, as published by Child Care Regulation, and automatically makes the determination of whether a provider may be designated as Pre-Star. Therefore, this proposed change does not require a significant investment of staff resources. Additionally, TWC is also considering the implementation of a continuous quality improvement framework to enhance mentoring and coaching; these resources would be available to Pre-Star programs that would like to enter the state's quality rating improvement system and apply for star-level certification.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§809.2. Definitions

Section 809.2 is amended to add a definition for "Pre-Star provider."

SUBCHAPTER B. GENERAL MANAGEMENT

TWC proposes the following amendments to Subchapter B:

§809.12. Board Plan for Child Care Services (Includes New Regulations)

Section 809.12 is amended to require Boards to include their strategies to use contracted slots agreements, if applicable, in their plans.

§809.13. Board Policies for Child Care Services (Includes New Regulations)

Section 809.13 is amended to require Boards to develop:

--a two-week waiting period policy for a child to transfer to a new provider;

--policies and procedures for contracted slots agreements, if applicable; and

--policies supporting direct referrals from recognized pre-K or HS/EHS partnerships.

§809.16. Quality Improvement Activities

Section 809.16 is amended to allow Boards to expend child care funds on any quality improvement activity described in applicable state laws and the CCDF State Plan.

§809.18. Maintenance of a Waiting List

Section 809.18 is amended to add an allowable exemption from the waiting list for children who are referred directly from a recognized pre-K or HS/EHS partnership to a child care provider to receive services in the contracted partnership program.

§809.19. Assessing the Parent Share of Cost

Section 809.19 is amended to allow Boards to implement a policy to reduce the parent share of cost amount assessed pursuant to §809.19(a)(1)(B) upon the child's referral for part-time care.

§809.22. Partnership Direct Referrals (New Regulation)

New §809.22 adds a requirement for Boards to establish policies and procedures to enroll eligible children who are directly referred by recognized pre-K or HS/EHS partnerships and exempting these children from the waiting list.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

TWC proposes the following amendments to Subchapter E:

§809.91. Minimum Requirements for Providers (Includes New Regulations)

Section 809.91(a)(1) is amended to reference new subsection (g), which requires that all CCL-regulated child care providers be designated as Pre-Star based upon meeting TWC's Screening Criteria for Subsidized Child Care. The Screening Criteria for Subsidized Child Care is proposed for removal in §809.131(a) and (b) as a Texas Rising Star eligibility requirement.

Section 809.91 is also amended to add new subsection (h) to provide additional details regarding Pre-Star designations. The Screening Criteria for Subsidized Child Care will be defined in the CCDF State Plan, as will a statewide rollout plan. TWC will carefully consider how to implement the new requirement for all subsidy providers to be Pre-Star designated to ensure that parent choice is not impacted. TWC plans to roll out this requirement over a five-year period; this is intended to provide child care programs with ample time to ensure that they can attain Pre-Star designation. The new Screening Criteria for Subsidized Child Care criteria are included in a proposed amendment of the CCDF State Plan, which is available for public comment in conjunction with these proposed rules (see meeting materials for October 6, 2020 Commission meeting). The rollout plan will be developed as a future State Plan Amendment.

§809.93. Provider Reimbursement

Section 809.93 is amended to add the option for Boards to pay child care providers for holding spaces open if they have a valid contracted slots agreement.

§809.96. Contracted Slots Agreements (New Regulation)

New §809.96 adds detailed requirements for Boards that use contracted slots agreements.

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

TWC proposes the following amendments to Subchapter G:

§809.130. Short Title and Purpose

Section 809.130(d)(1) is amended to denote that Texas Rising Star measures align with the following four categories:

- Director and Staff Qualifications and Training
- Teacher-Child Interactions
- Program Administration
- Indoor/Outdoor Environments

§809.131. Eligibility for the Texas Rising Star Program (Includes New Regulations)

Section 809.131 is amended to remove §809.131(b), as all CCL-regulated subsidy providers will now be required to be designated as Pre-Star under proposed §809.91(a)(1). Additionally, §809.131 is amended to require Texas Rising Star applicants to agree to participate in the WFR and to encourage staff to create accounts within the WFR.

§809.132. Impact of Certain Deficiencies on Texas Rising Star Certification (Includes New Regulations)

Section 809.132 is amended to add compliance requirements for current Texas Rising Star providers and amends the consequences of certain child care licensing deficiencies for certified Texas Rising Star programs and applicants.

§809.133. Application and Assessments for the Texas Rising Star Program (Includes New Regulations)

Section 809.133 is amended to require all programs to participate in the creation of an online-generated CQIP that focuses on growth and evolving adherence to higher-quality standards and to require Boards to ensure that CQIPs are implemented and supported as described in the Texas Rising Star guidelines.

§809.134. Minimum Qualifications for Texas Rising Star Staff (Includes New Regulations)

Section 809.134 is amended to require all Texas Rising Star staff to complete the Texas Rising Star standards training, require Texas Rising Star assessors to attain and maintain the Texas Rising Star Assessor Certification, and require Texas Rising Star mentors to pursue the coaching micro-credential through the attainment of competency badges over a time period defined by TWC.

Section 809.134 is also amended to move §809.134(d) and (e) to new §809.136.

§809.136. Roles and Responsibilities of Texas Rising Star Staff

New §809.136 defines the separate roles and responsibilities of Texas Rising Star assessors and mentors, including separation of roles; cross-functional collaboration and coordination; and mandated reporting requirements related to observed licensing violations.

New §809.136(4) and (5) clarify the separation of roles and professional development of Texas Rising Star staff.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to implement a contracted slots option for child care services, update the allowable uses of CCQ funds, update how the parent co-payment is calculated, update the child transfer policy, and implement changes to Texas Rising Star policy as recommended by the Texas Rising Star four-year review.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the amendments will be in effect:

- the amendments will not create or eliminate a government program;
- implementation of the amendments will not require the creation or elimination of employee positions;
- implementation of the amendments will not require an increase or decrease in future legislative appropriations to TWC;
- the amendments will not require an increase or decrease in fees paid to TWC;
- the amendments will create new regulations;
- the amendments will expand existing regulations;
- the amendments will not limit or eliminate an existing regulation;
- the amendments will not change the number of individuals subject to the rules; and

--the amendments will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Child Care & Early Learning, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to increase access to high quality child care for Texans.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Boards. TWC provided the policy concept regarding these rule amendments to the Boards for consideration and review on June 23, 2020, for the policy concept relating to contracted slots; July 14, 2020, for the policy concept relating to Texas Rising Star; and July 21, 2020, for the policy concept relating to child transfers. TWC also conducted conference calls to discuss the policy concepts with Board executive directors and Board staff: on June 19, 2020, for the policy concept relating to contracted slots; and July 17, 2020, for the policy concepts relating to Texas Rising Star and child transfers. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §809.2

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement changes made to Texas Labor Code Chapter 302 and Texas Government Code, Chapter 2308, in a manner that comports with the existing requirements of 45 CFR Part 98.

§809.2. Definitions.

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

- (1) Attending a job training or educational program--An individual is attending a job training or educational program if the individual:
 - (A) is considered by the program to be officially enrolled;
 - (B) meets all attendance requirements established by the program; and
 - (C) is making progress toward successful completion of the program as determined by the Board upon eligibility redetermination as described in §809.42(b) of this chapter.

(2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.

(3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and reimbursement process related to child care subsidies, as well as contractors involved in the funding of quality improvement activities as described in §809.16 of this chapter.

(4) Child Care Licensing (CCL)--Division responsible for protecting the health, safety, and well-being of children who attend or reside in regulated child care facilities and homes. Previously a division of the Texas Department of Family and Protective Services (DFPS), CCL is now part of the Texas Health and Human Services Commission (HHSC).

(5) Child care services--Child care subsidies and quality improvement activities funded by the Commission.

(6) Child care subsidies--Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child.

(7) Child experiencing homelessness--A child who is homeless, as defined in the McKinney-Vento Act (42 USC 11434(a)), Subtitle VII-B, §725.

(8) Child with disabilities--A child who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities include, but are not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, or breathing; learning; and working.

(9) Educational program--A program that leads to:

- (A) a high school diploma;
- (B) a Certificate of High School Equivalency; or
- (C) a postsecondary degree from an institution of higher education.

(10) Excessive unexplained absences--More than 40 unexplained absences within a 12-month eligibility period as described in §809.78(a)(3) of this chapter.

(11) Family--Two or more individuals related by blood, marriage, or decree of court, who are living in a single residence and are included in one or more of the following categories:

- (A) ~~two~~ two individuals, married--including by common-law, and household dependents; or
- (B) a ~~[A]~~ parent and household dependents.

(12) Household dependent--An individual living in the household who is ~~[one of the following]~~:

- (A) an ~~[An]~~ adult considered a dependent of the parent for income tax purposes;
- (B) a ~~[A]~~ child of a teen parent; or
- (C) a ~~[A]~~ child or other minor living in the household who is the responsibility of the parent.

(13) Improper payments--Any payment of Child Care Development Fund (CCDF) ~~[CCDF]~~ grant funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds and includes payments:

- (A) to an ineligible recipient;
- (B) for an ineligible service;
- (C) for any duplicate payment; and
- (D) for services not received.

(14) Job training program--A program that provides training or instruction leading to:

- (A) basic literacy;
- (B) English proficiency;
- (C) an occupational or professional certification or license; or
- (D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.

(15) Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, CCL pursuant to Texas Human Resources Code, §42.052(c).

(16) Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents. This includes deployed parents in the regular military, military reserves, or National Guard.

(17) Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.

(18) Pre-Star provider--A designation for subsidy providers licensed or registered by CCL, based on meeting the Screening Criteria for Subsidized Child Care, which is further defined in the CCDF State Plan.

(19) [(18)] Protective services--Services provided when:

- (A) a child is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without DFPS Child Protective Services (CPS) intervention;
- (B) a child is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or
- (C) a child has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.

(20) [(19)] Provider--A provider is defined as:

- (A) a regulated child care provider as defined in paragraph (21) of this section ~~[§809.2(20)]~~;
- (B) a relative child care provider as defined in paragraph (22) of this section ~~[§809.2(21)]~~; or
- (C) a listed family home as defined in paragraph (15) of this section ~~[§809.2(15)]~~, subject to the requirements in §809.91(b) of this chapter.

(21) [(20)] Regulated child care provider--A provider caring for an eligible child in a location other than the eligible child's own residence that is:

- (A) licensed by CCL;
- (B) registered with CCL; or

(C) operated and monitored by the United States military services.

(22) [(21)] Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, the child's [; one of the following]:

(A) [The child's] grandparent;

(B) [The child's] great-grandparent;

(C) [The child's] aunt;

(D) [The child's] uncle; or

(E) [The child's] sibling (if the sibling does not reside in the same household as the eligible child).

(23) [(22)] Residing with--Unless otherwise stipulated in this chapter, a child is considered to be residing with the parent when the child is living with, and physically present with, the parent during the time period for which child care services are being requested or received.

(24) [(23)] Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.

(25) [(24)] Texas Rising Star program--A voluntary, quality-based rating system of child care providers participating in Commission-subsidized child care.

(26) [(25)] Texas Rising Star provider [Provider]--A provider certified as meeting the Texas Rising Star [TRS] program standards. Texas Rising Star [TRS] providers are certified as a [one of the following]:

(A) 2-Star Program Provider;

(B) 3-Star Program Provider; or

(C) 4-Star Program Provider.

(27) [(26)] Working--Working is defined as:

(A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions; or

(B) participation in Choices or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities.

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 9, 2020.

TRD-202004210

Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

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For further information, please call: (512) 689-9855



SUBCHAPTER B. GENERAL MANAGEMENT

40 TAC §§809.12, 809.13, 809.16, 809.18, 809.19, 809.22

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement changes made to Texas Labor Code Chapter 302 and Texas Government Code, Chapter 2308, in a manner that comports with the existing requirements of 45 CFR Part 98.

§809.12. Board Plan for Child Care Services.

(a) A Board shall, as part of its Texas Workforce Development Board Plan (Board plan), develop, amend, and modify the Board plan to incorporate and coordinate the design and management of the delivery of child care services with the delivery of other workforce employment, job training, and educational services identified in Texas Government Code, §2308.304, [§2308.251] et seq., as well as other workforce training and services included in the One-Stop Service Delivery Network.

(b) The goal of the Board plan is to coordinate workforce training and services, to leverage private and public funds at the local level, and to fully integrate child care services for low-income families with the network of workforce training and services under the administration of the Boards.

(c) Boards shall design and manage the Board plan to maximize the delivery and availability of safe and stable child care services that assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or attending a job training or an educational program.

(d) A Board shall include in the Board plan any strategies to use contracted slots agreements, as described in §809.96 of this chapter, including any local priorities and how contracted slots agreements will help increase access to high-quality care for targeted communities and population.

§809.13. Board Policies for Child Care Services.

(a) A Board shall develop, adopt, and modify its policies for the design and management of the delivery of child care services in a public process in accordance with Chapter 802 of this title.

(b) A Board shall maintain written copies of the policies that are required by federal and state law, or as requested by the Commission, and make such policies available to the Commission and the public upon request.

(c) At a minimum, a Board shall develop policies related to:

(1) how the Board determines that the parent is making progress toward successful completion of a job training or educational program, as described in §809.2(1) of this chapter;

(2) maintenance of a waiting list, as described in §809.18(b) of this subchapter;

(3) assessment of a parent share of cost, as described in §809.19(a)(1) of this subchapter, including:

(A) provisions for a parent's failure to pay the parent share of cost, including the reimbursement of providers, as a program violation that is subject to early termination of child care services within a 12-month eligibility period; and

(B) criteria for determining the affordability of the parent share of cost, as described in §809.19(d) and [-] (e) of this subchapter;

(4) maximum reimbursement rates, as provided in §809.20 of this subchapter, including policies related to reimbursement of providers that offer transportation;

(5) family income limits, as described in Subchapter C of this chapter (relating to Eligibility for Child Care Services);

(6) provision of child care services to a child with disabilities under the age of 19, as described in §809.41(a)(1)(B) of this chapter;

(7) minimum activity requirements for parents, as described in §809.48 and §809.50 of this chapter;

(8) time limits for the provision of child care while the parent is attending an educational program, as described in §809.41(b) of this chapter;

(9) Board priority groups, as described in §809.43(a) of this chapter;

(10) transfer of a child from one provider to another, as described in §809.71(3) of this chapter, including a waiting period of two weeks before the effective date of a transfer, except in cases in which the provider is subject to a CCL action, as described in §809.94 of this chapter, or on a case-by-case basis by the Board;

(11) providers charging the difference between their published rate and the Board's reimbursement rate as provided in §809.92(d) of this chapter;

(12) procedures for fraud fact-finding as provided in §809.111 of this chapter; [and]

(13) policies and procedures to ensure that appropriate corrective actions are taken against a provider or parent for violations of the automated attendance requirements specified in §809.115(d) and [-] (e) of this chapter;[-]

(14) policies and procedures for contracted slots agreements as described in §809.96 of this chapter, if the Board opts to enter into such agreements; and

(15) supporting direct referrals from recognized pre-K or HS/EHS partnerships, as described in §809.22 of this subchapter.

§809.16. *Quality Improvement Activities.*

(a) Child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800[; ~~General Administration~~], Subchapter B of this title (relating to Allocations) [; ~~Allocation and Funding~~], and specifically §800.58[;] of this title (relating to Child Care)), including local public transferred funds and local private donated funds, as provided in §809.17 of this subchapter, to the extent they are used for nondirect care quality improvement activities, may be expended on any quality improvement activity described in 45 CFR Part 98, any applicable state laws, and the CCDF State Plan.

(b) Boards must ensure compliance with 45 CFR Part 98 regarding construction expenditures, as follows:

(1) State and local agencies and nonsectarian agencies or organizations.

(A) Funds shall not be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility.

(B) Funds may be expended for minor remodeling, and for upgrading child care facilities to ensure that providers meet state and local child care standards, including applicable health and safety requirements.

(2) Sectarian agencies or organizations.

(A) The prohibitions in paragraph (1) of this subsection apply.

(B) Funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to 45 CFR Part 98.

(c) Expenditures certified by a public entity, as provided in §809.17(b)(3) of this subchapter, may include expenditures for any quality improvement activity described in 45 CFR Part 98.

§809.18. *Maintenance of a Waiting List.*

(a) A Board shall ensure that a list of parents waiting for child care services, because of the lack of funding or lack of providers, is maintained and available to the Commission upon request.

(b) A Board shall establish a policy for the maintenance of a waiting list that includes, at a minimum:

(1) the process for determining that the parent is potentially eligible for child care services before placing the parent on the waiting list; and

(2) the frequency in which the parent information is updated and maintained on the waiting list.

(c) A Board may exempt children from the waiting list who are directly referred from a recognized pre-K or HS/EHS partnership as described in §809.22 of this subchapter to a child care provider to receive services in the contracted partnership program, which is subject to the availability of funding and the availability of subsidized slots at the partnership site.

§809.19. *Assessing the Parent Share of Cost.*

(a) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800[; ~~General Administration~~], Subchapter B of this title (relating to Allocations) [; ~~Allocation and Funding~~], and specifically, §800.58 of this title (relating to[;] Child Care)), including local public transferred funds and local private donated funds, as provided in §809.17 of this subchapter, the following shall apply.

(1) A Board shall set a parent share of cost policy that assesses the parent share of cost in a manner that results in the parent share of cost:

(A) being assessed to all parents, except in instances when an exemption under paragraph (2) of this subsection applies;

(B) being an amount determined by a sliding fee scale based on the family's size and gross monthly income, including a possible reexamination of the sliding fee scale if there are frequent terminations for lack of payment pursuant to subsection (e) of this section, which also may consider the number of children in care;

(C) being an amount that is affordable and does not result in a barrier to families receiving assistance;

(D) being assessed only at the following times:

(i) initial eligibility determination;

(ii) 12-month eligibility redetermination;

(iii) upon the addition of a child in care;

(iv) upon a parent's report of a change in income, family size, or number of children in care that would result in a reduced parent share of cost assessment; and

(v) upon resumption of work, job training, or education activities following temporary changes described in §809.51(a)(2) of this chapter, and upon resumption of work, job training, or education activities during the three-month continuation of care period described in §809.51(c) of this chapter; and

(E) not increasing above the amount assessed at initial eligibility determination or at the 12-month eligibility redetermination based on the factor in subparagraph (B) of this paragraph, except upon

the addition of a child in care as described in subparagraph (D)(iii) [subsection (a)(1)(C)(iii)] of this paragraph [section].

(2) Parents who are one or more of the following are exempt from paying the parent share of cost:

(A) Parents who are participating in Choices or who are in Choices child care described in §809.45 of this chapter;

(B) Parents who are participating in SNAP E&T services or who are in SNAP E&T child care described in §809.47 of this chapter;

(C) Parents of a child receiving Child Care for Children Experiencing Homelessness as described in §809.52 of this chapter; or

(D) Parents who have children who are receiving protective services child care pursuant to §809.49 and §809.54(c) of this chapter, unless DFPS assesses the parent share of cost.

(3) Teen parents who are not covered under exemptions listed in paragraph (2) of this subsection shall be assessed a parent share of cost. The teen parent's share of cost is based solely on the teen parent's income and size of the teen's family as defined in §809.2 of this chapter.

(b) For child care services funded from sources other than those specified in subsection (a) of this section, a Board shall set a parent share of cost policy based on a sliding fee scale. The sliding fee scale may be the same as or different from the provisions contained in subsection (a) of this section.

(c) A Board shall establish a policy regarding reimbursement of providers when parents fail to pay the parent share of cost.

(d) A Board shall establish a policy regarding termination of child care services within a 12-month eligibility period when a parent fails to pay the parent share of cost. The Board's policy must include:

(1) a requirement to evaluate and document each family's financial situation for extenuating circumstances that may affect affordability of the assessed parent share of cost pursuant to paragraph (2) of this subsection, and a possible temporary reduction pursuant to subsection (g) of this section before the Board or its child care contractor may terminate care under this section;

(2) general criteria for determining affordability of a Board's parent share of cost, and a process to identify and assess the circumstances that may jeopardize a family's self-sufficiency under subsection (g) of this section;

(3) maintenance of a list of all terminations due to failure to pay the parent share of cost, including family size, income, family circumstances, and the reason for termination, for use when conducting evaluations of affordability, as required under paragraph (4) of this subsection; and

(4) the Board's definition of what constitutes frequent terminations and its process for assessing the general affordability of the Board's parent share of cost schedule, pursuant to subsection (e) of this section.

(e) A Board with frequent terminations of care for lack of payment of the parent share of cost must reexamine its sliding fee scale and adjust it to ensure that fees are not a barrier to assistance for families at certain income levels.

(f) A Board that does not have a policy to reimburse providers when parents fail to pay the parent share of cost may establish a policy to require the parent to pay the provider before the family can be re-determined eligible for future child care services.

(g) The Board or its child care contractor may review the assessed parent share of cost for a possible temporary reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may temporarily reduce the assessed parent share of cost if warranted by these circumstances. Following the temporary reduction, the parent share of cost amount immediately prior to the reduction shall be reinstated.

(h) If the parent is not covered by an exemption as specified in subsection (a)(2) of this section, then the Board or its child care contractor shall not waive the assessed parent share of cost under any circumstances.

(i) If the parent share of cost, based on family income and family size, is calculated to be zero, then the Board or its child care contractor shall not charge the parent a minimum share of cost amount.

(j) A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to subsection (a)(1)(B) of this section upon the parent's selection of a Texas Rising Star [TRS]--[-]certified provider. Such Board policy shall ensure:

(1) that the parent continue to receive the reduction if:

(A) the Texas Rising Star [TRS] provider loses Texas Rising Star [TRS] certification; or

(B) the parent moves or changes employment within the workforce area and no Texas Rising Star [TRS]--[-]certified providers are available to meet the needs of the parent's changed circumstances; and

(2) that the parent no longer receives the reduction if the parent voluntarily transfers the child from a Texas Rising Star [TRS]--[-]certified provider to a non-Texas Rising Star [TRS]--[-]certified provider.

(k) A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to subsection (a)(1)(B) of this section upon the child's referral for part-time care. Such Board policy shall ensure that:

(1) the parent no longer receives the reduction if the referral is changed to full-time care; and

(2) a parent qualifies for a reduction in parent share of cost for both selecting a Texas Rising Star--certified provider (as defined in subsection (j) of this section) and a child's part-time care referral will receive the greater of the two discounts.

§809.22. Direct Referrals to Recognized Partnerships.

(a) A recognized partnership is a partnership that:

(1) exists between a child care provider and one of the following:

(A) a public school prekindergarten provider;

(B) a local education agency; or

(C) a Head Start/Early Head Start program; and

(2) requires both parties to have entered into an agreement, such as a memorandum of understanding, and serves some number of children under age six who are dually enrolled in both programs.

(b) A Board shall establish policies and procedures to enroll eligible children who are directly referred by a recognized partnership.

(c) A Board's policy shall exempt children directly referred from a recognized partnership from the Board's waiting list, subject to the availability of funding and the availability of subsidized slots at the partnership site.

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

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SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

40 TAC §§809.91, 809.93, 809.96

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement changes made to Texas Labor Code Chapter 302 and Texas Government Code, Chapter 2308, in a manner that comports with the existing requirements of 45 CFR Part 98.

§809.91. *Minimum Requirements for Providers.*

(a) A Board shall ensure that child care subsidies are paid only to:

(1) regulated child care providers as described in §809.2 of this chapter, subject to the requirements in subsection (g) of this section;

(2) relative child care providers, as described in §809.2 of this chapter, subject to the requirements in subsection (e) of this section; or

(3) at the Board's option, child care providers licensed in a neighboring state, subject to the following requirements:

(A) Boards shall ensure that the Board's child care contractor reviews the licensing status of the out-of-state provider every month, at a minimum, to confirm the provider is meeting the minimum licensing standards of the state.^[;]

(B) Boards shall ensure that the out-of-state provider meets the requirements of the neighboring state to serve CCDF-subsidized children.^[; and]

(C) The provider shall agree to comply with the requirements of this chapter and all Board policies and Board child care contractor procedures.

(b) A Board shall not prohibit a relative child care provider that ~~that~~ is listed with CCL and ~~who~~ meets the minimum requirements of this section from being an eligible relative child care provider.

(c) Except as provided by the criteria for Texas Rising Star [TRS] Provider certification, a Board or the Board's child care contractor shall not place requirements on regulated providers that:

(1) exceed Pre-Star designation requirements or the state licensing requirements stipulated in Texas Human Resources Code, Chapter 42; or

(2) have the effect of monitoring the provider for compliance with state licensing requirements stipulated in Texas Human Resources Code, Chapter 42.

(d) When a Board or the Board's child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or its child care contractor shall report the information to the appropriate regulatory agency.

(e) For relative child care providers to be eligible for reimbursement for Commission-funded child care services, the following applies:

(1) Relative child care providers shall list with CCL; however, pursuant to 45 CFR §98.41(e), relative child care providers listed with CCL shall be exempt from the health and safety requirements of 45 CFR §98.41(a).

(2) A Board shall allow relative child care providers to care for a child in the child's home (in-home child care) only for the following:

(A) A child with disabilities as defined in §809.2 of this chapter, and his or her siblings;

(B) A child under 18 months of age^[;] and his or her siblings;

(C) A child of a teen parent; and

(D) When the parent's work schedule requires evening, overnight, or weekend child care in which taking the child outside of the child's home would be disruptive to the child.

(3) A Board may allow relative in-home child care for circumstances in which the Board's child care contractor determines and documents that other child care provider arrangements are not available in the community.

(f) Boards shall ensure that subsidies are not paid for a child at the following child care providers:

(1) Except for foster parents authorized by DFPS pursuant to §809.49 of this chapter, licensed child care centers, including before- or after-school programs and school-age programs, in which the parent or his or her spouse, including the child's parent or stepparent, is the director or assistant director, or has an ownership interest; or

(2) Licensed, registered, or listed child care homes where the parent also works during the hours his or her child is in care.

(g) Regulated child care providers, except those operated and monitored by the US military, must meet Pre-Star provider designation unless exempted under requirements of subsection (h)(3) of this section.

(h) Pre-Star provider designations and exemptions are defined in the Commission-approved CCDF State Plan and include:

(1) minimum Pre-Star criteria required for each provider type;

(2) a progressive statewide roll out plan to require Pre-Star designation for receipt of subsidies; and

(3) limited provider exemption criteria to ensure parent choice is not negatively impacted by the Pre-Star requirements.

§809.93. *Provider Reimbursement.*

(a) A Board shall ensure that reimbursement for child care is paid only to the provider.

(b) A Board or its child care contractor shall reimburse a regulated provider based on a child's monthly enrollment authorization, excluding periods of suspension at the concurrence of the parent, as described in §809.51(d) of this chapter.

(c) A Board shall ensure that a relative child care provider is not reimbursed for days on which the child is absent.

(d) A relative child care provider shall not be reimbursed for more children than permitted by the CCL minimum regulatory standards for Registered Child Care Homes. A Board may permit more children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board.

(e) A Board shall not reimburse providers that are debarred from other state or federal programs unless and until the debarment is removed.

(f) Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, the monthly enrollment authorization described in subsection (b) of this section is based on the unit of service authorized, as follows:

(1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour period; and

(2) A part-day unit of service is fewer than 6 hours of care provided within a 24-hour period.

(g) A Board or its child care contractor shall ensure that providers are not paid for holding spaces open without a valid contracted slots agreement, as described in §809.96 of this subchapter.

(h) A Board or the Board's child care contractor shall not pay providers:

(1) less, when a child enrolled full time occasionally attends for a part day; or

(2) more, when a child enrolled part time occasionally attends for a full day.

(i) The Board or its child care contractor shall not reimburse a provider retroactively for new Board maximum reimbursement rates or new provider published rates.

(j) A Board or its child care contractor shall ensure that the parent's travel time to and from the child care facility and the parent's work, school, or job training site is included in determining whether to authorize reimbursement for full-day or part-day care under subsection (f) of this section.

§809.96. Contracted Slots Agreements.

(a) In this section, the term "contracted slots agreement" is defined as a Board entering into a contract with a child care provider to reserve a specific number of places, or slots, for children participating in the child care subsidy program. This contract shall:

(1) define the number of slots to be reserved by age group (infant, toddler, preschool, or school-age); and

(2) meet the eligibility requirements as described in subsection (e) of this section.

(b) Boards may enter into a contracted slots agreement with providers that agree to provide subsidized child care services to eligible children residing in the Board's workforce area.

(c) A Board that enters into a contracted slots agreement shall include this strategy in the Board Plan, as described in §809.12 of this chapter.

(d) Each contract between a Board and a provider must identify the number of places (slots) to be reserved for children participating in the child care subsidy program.

(e) To be eligible for a contract, a child care provider must be a Texas Rising Star 3-star or 4-star provider and meet one of the following priorities:

(1) Be located:

(A) where the number of children under age six with working parents is at least three times greater than the capacity of licensed child care providers in the area, based on data published annually by the Commission; or

(B) in an underserved area that has been identified by a Board as having an inadequate supply of child care in accordance with the parameters described in the CCDF State Plan.

(2) have a partnership with local school districts to provide pre-K services;

(3) have a partnership with EHS or HS;

(4) increase the number of places reserved for infants and toddlers by high-quality child care providers; and

(5) satisfy a priority identified in the Board's plan, as described in §809.12 of this chapter.

(f) A Board that enters into a contracted slots agreement may continue payment for reserved slots during times of transition between the time that one child leaves the program and another child is placed in the slot. The period of continued payment shall adhere to the Board's policy for contracted slots agreements, as described in §809.13(c)(14) of this chapter, and may not exceed one month following the month of the vacancy.

(g) Except for children directly referred from recognized partnerships, as described in §809.22 of this chapter, to fill open reserved slots, Boards shall contact families in order of the Board's waiting list:

(1) that requested care in the ZIP code where the provider with the open reserved slot is located; and

(2) whose child is in the age group for which a slot is available.

(h) In accordance with Commission guidelines, Boards that enter into contracted slots agreements shall submit a report to the Commission within six months of entering into a contract, determining the contract's effect on the:

(1) financial stability of providers participating in the contract;

(2) availability of high-quality child care options available to participants in the Commission's subsidy program;

(3) number of high-quality providers in any part of the workforce area with a high concentration of families that need child care;

(4) percentage of children participating in the Commission's subsidized child care program at each Texas Rising Star provider in the workforce area; and

(5) additional information as requested by the Commission.

(i) A Board shall resubmit the report every six months from the due date of the Board's initial report to 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.

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SUBCHAPTER G. TEXAS RISING STAR PROGRAM

40 TAC §§809.130 - 809.134, 809.136

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement changes made to Texas Labor Code Chapter 302 and Texas Government Code, Chapter 2308, in a manner that comports with the existing requirements of 45 CFR Part 98.

§809.130. Short Title and Purpose.

(a) The rules contained in this subchapter may be cited as the Texas Rising Star [TRS] Program rules.

(b) The purpose of the Texas Rising Star [TRS] Program rules is to interpret and implement Texas Government Code, §2308.3155(b), which requires~~requiring~~ the Commission to establish rules to administer the Texas Rising Star [TRS] program, including guidelines for rating a child care provider for Texas Rising Star [TRS] certification.

(c) The Texas Rising Star [TRS] Program rules identify the organizational structure and categories of, and the scoring factors that shall be included in, the Texas Rising Star [TRS] guidelines.

(d) The Texas Rising Star [TRS] guidelines for rating a child care provider shall:

(1) describe measures for the Texas Rising Star [TRS] program that contain, at a minimum, measures for child care providers regarding:

- (A) director and staff qualifications and training;
- (B) teacher [caregiver]-child interactions;
- (C) program administration; and [curriculum];
- (D) indoor/outdoor environments; [nutrition and indoor and outdoor activities; and]
- ~~(E) parent involvement and education;~~

(2) specify measures that:

(A) must be met in order for a provider to be certified at each star level; and

(B) are observed and have points awarded through on-site assessments; and

(3) specify the scoring methodology and scoring thresholds for each star level.

(e) The Texas Rising Star [TRS] guidelines:

(1) shall be reviewed and updated by the Commission at a minimum of every four years in conjunction with the rule review of Chapter 809, conducted pursuant to Texas Government Code, §2001.039, and the Texas Rising Star [TRS] guidelines review shall:

(A) consider input from stakeholders; and

(B) include at least one public hearing held prior to submitting the stakeholder input to the Commission;

(2) shall be adopted by the Commission subject to the requirements of the Texas Open Meetings Act; and

(3) ~~[also]~~ may be reviewed and amended as determined necessary by the Commission in accordance with the requirements of the Texas Open Meetings Act.

§809.131. Eligibility for the Texas Rising Star [TRS] Program.

~~[(a)]~~ A child care provider is eligible to apply for the Texas Rising Star [TRS] program if the provider has a current agreement to serve Commission-subsidized children and:

(1) has a permanent (nonexpiring) license or registration from CCL;

(2) has at least 12 months of licensing history with CCL, and is not on:

(A) corrective action with a Board pursuant to Subchapter F of this chapter;

(B) a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213 [of the Texas Labor Code] (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 ~~[of the Texas Labor Code]~~ (Payment of Wages); or

(C) corrective or adverse action with CCL; and ~~[or]~~

(3) meets the requirements to be designated as a Pre-Star provider as specified in §802.2(18) of this chapter.

(4) has director and teaching staff registered in the Texas Early Childhood Professional Development System Workforce Registry; or

(5) ~~[(3)]~~ is regulated by and in good standing with the US Military.

~~[(b)]~~ A child care facility is not eligible to apply for the TRS program if, during the most recent 12-month CCL licensing history, the provider had:

~~[(1) any of the critical licensing deficiencies listed in the TRS guidelines;]~~

~~[(2) five or more of the high or medium-high licensing deficiencies listed in the TRS guidelines; or]~~

~~[(3) 10 or more total licensing deficiencies of any type.]~~

§809.132. Impact of Certain Deficiencies on Texas Rising Star [TRS] Certification.

(a) A Texas Rising Star [TRS] provider shall lose Texas Rising Star [TRS] certification if the provider:

(1) is placed on corrective action with a Board pursuant to Subchapter F of this chapter;

(2) is under a "Notice of Freeze" with the Commission pursuant to Chapter 213 of the Texas Labor Code (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 of the Texas Labor Code (Payment of Wages);

- (3) is placed on corrective or adverse action by CCL; [or]
- (4) had 15 or more total high or medium-high weighted licensing deficiencies [of any type] during the most recent 12-month licensing history;
- (5) had more than four probationary impacts during its three-year certification period;
- (6) had a consecutive third probationary impact; or
- (7) is cited for specified CCL minimum standards regarding weapons and ammunition.

(b) Texas Rising Star [TRS] providers with any of the specified "star level drop" [critical] licensing deficiencies listed in the Texas Rising Star [TRS] guidelines during the most recent 12-month CCL licensing history shall be placed on a six-month Texas Rising Star program probationary period. Furthermore [shall have the following consequences]:

- (1) reduction of one star [one-star] level for each deficiency cited, so a 4-star certified provider [Star Program Provider] is reduced to a 3-star provider [Star Program Provider], a 3-star provider [Star Program Provider] is reduced to a 2-star provider [Star Provider]; or
- (2) a 2-star provider [Star Provider] loses certification.

(c) Texas Rising Star [TRS] providers with any of the specified "probationary" licensing [five or more of the high or medium-high] deficiencies listed in the Texas Rising Star [TRS] guidelines during the most recent 12-month CCL licensing history shall be placed on a six-month Texas Rising Star probationary period. Furthermore: [shall lose a star level with a 2-Star Program Provider losing certification.]

(1) Texas Rising Star providers on a six-month Texas Rising Star probationary period that are cited by CCL for any additional specified probationary deficiencies within the probationary period shall be placed on a second, consecutive probation and lose a star level, with a 2-star certified provider losing certification;

(2) if CCL does not cite any additional specified probationary deficiencies during the probationary period, the provider can be removed from probation status; and

(3) if any additional specified probationary deficiencies are cited by CCL during the second probationary period, the Texas Rising Star provider shall lose certification.

(d) Texas Rising Star [TRS] providers with 10 to 14 total high or medium-high weighted licensing deficiencies [of any type] during the most recent 12-month CCL licensing history shall be placed on a six-month Texas Rising Star [TRS] program probationary period. Furthermore [Further]:

(1) Texas Rising Star [TRS] providers on a six-month probationary period that are cited [re-cited] by CCL within the probationary period for any additional high or medium-high weighted [of the same] deficiencies shall be placed on a second, consecutive probation and lose a star level, with a 2-star provider [Star Program Provider] losing certification;

(2) if no additional high or medium-high weighted deficiencies are cited by CCL during the probationary period, the provider can be removed from probation status [if any new deficiencies--not to exceed 14 total deficiencies--are cited by CCL during the first probationary period; a second six-month probationary period shall be established effective upon the date of final CCL determination of the deficiencies]; and

(3) if any new high or medium-high weighted deficiencies--not to exceed 14 total deficiencies--are cited by CCL during the second

six-month probationary period, a provider shall lose Texas Rising Star [TRS] certification.

(e) Providers losing a star level due to licensing deficiencies shall be reinstated at the former star level if no citations described in subsections (b) - (d) of this section [§809.132(b) - (d)] occur within the six-month reduction time frame.

(f) Providers losing Texas Rising Star [TRS] certification shall be eligible to reapply for certification after six months following the loss of the certification, as long as no [current] deficiencies described in subsections (b) - (d) of this section [are re-cited and no additional licensing deficiencies] are cited during the disqualification period.

§809.133. Application and Assessments for the Texas Rising Star [TRS] Program.

(a) Texas Rising Star certification [TRS program] applicants must complete:

(1) an orientation on the Texas Rising Star [TRS] guidelines, including an overview of the:

- (A) Texas Rising Star [TRS] program application process;
- (B) Texas Rising Star [TRS] program measures; and
- (C) Texas Rising Star [TRS] program assessment process;

(2) the creation of a continuous quality improvement plan; and

(3) [2] a Texas Rising Star [TRS] program self-assessment tool.

(b) Boards shall ensure that:

(1) written acknowledgment of receipt of the application and self-assessment is sent to the provider;

(2) within 20 days of receipt of the application, the provider is sent an estimated time frame for scheduling the initial assessment;

(3) an assessment is conducted for any provider that meets the eligibility requirements in §809.131 of this subchapter and requests to participate in the Texas Rising Star [TRS] program; and

(4) Texas Rising Star [TRS] certification is granted for any provider that is assessed and verified as meeting the Texas Rising Star [TRS] provider certification criteria set forth in the Texas Rising Star [TRS] guidelines.

(c) Boards shall ensure that Texas Rising Star [TRS] assessments are conducted as follows:

(1) On-site assessment of 100 percent of the provider classrooms at the initial assessment for Texas Rising Star [TRS] certification and at each scheduled recertification; and

(2) Recertification of all certified Texas Rising Star [TRS] providers every three years.

(d) Boards shall ensure that certified Texas Rising Star [TRS] providers are monitored on an annual basis and the monitoring includes:

(1) at least one unannounced on-site visit; and

(2) a review of the provider's licensing compliance as described in [new] §809.132 of this subchapter.

(e) Boards shall ensure compliance with the process and procedures in the Texas Rising Star [TRS] guidelines for conducting as-

assessments of nationally accredited child care facilities and child care facilities regulated by the US Military.

(f) Boards shall ensure compliance with the process and procedures in the Texas Rising Star [TRS] guidelines for conducting assessments of certified Texas Rising Star [TRS] providers that have a change of ownership, move, or expand locations.

(g) Boards shall ensure compliance with the process and procedures in the Texas Rising Star guidelines for implementing and supporting a continuous quality improvement framework.

§809.134. Minimum Qualifications for Texas Rising Star Staff [TRS Assessors and Mentors].

(a) Boards shall ensure that Texas Rising Star staff meet the minimum requirements in subsections (b) - (g) of this section.

(b) ~~[(a)]~~ Texas Rising Star staff shall ~~[Boards shall ensure that TRS assessors and mentors]~~ meet the minimum education requirements as follows:

(1) Bachelor's degree from an accredited four-year college or university in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science;

(2) Bachelor's degree from an accredited four-year college or university with at least 18 credit hours in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with at least 12 credit hours in child development; or

(3) Associate's degree in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with two years of experience as a director in an early childhood program, with preference given to experience with a provider that is accredited or Texas Rising Star [TRS] certified.

(c) ~~[(b)]~~ The Commission may grant a waiver of no more than two years to obtain ~~[of]~~ the minimum education requirements in subsection (b) ~~[subsection (a)]~~ of this section if a Board can demonstrate that no applicants in its ~~[local]~~ workforce ~~[development]~~ area meet the minimum education requirements.

(d) ~~[(e)]~~ Texas Rising Star staff shall ~~[Boards shall ensure that TRS assessors and mentors]~~ meet the minimum work experience requirements of one year of full-time early childhood classroom experience in a child care, EHS [Early Head Start], HS [Head Start], or pre-K [prekindergarten] through third-grade school program.

~~[(d)]~~ Boards shall ensure that if an individual performs the duties of both an assessor and a mentor, the individual providing TRS mentoring services to a provider does not act as the assessor of that same provider when determining TRS certification.

~~[(e)]~~ Boards shall ensure that TRS assessors and mentors are required to complete annual professional development and continuing education consistent with the TRS annual minimum training hours requirement for a TRS-certified child care center director.

(e) ~~[(f)]~~ Texas Rising Star staff shall ~~[Boards shall ensure that TRS assessors and mentors]~~ meet the background check requirement consistent with Chapter 745 of this title.

(f) ~~[(g)]~~ Texas Rising Star staff shall ~~[Boards shall ensure that TRS assessors and mentors]~~ demonstrate:

(1) knowledge of best practices in early childhood education; and

(2) understanding of early childhood evaluations, observations, and assessment tools for both teachers and children.

(g) Texas Rising Star staff shall meet the following training and certification criteria:

(1) All staff must complete the Texas Rising Star standards training, as described in the Texas Rising Star guidelines.

(2) All assessors must attain and maintain the Texas Rising Star Assessor Certification, as described in the Texas Rising Star guidelines

(3) All mentors must attain mentor micro-credentialing, as described in the Texas Rising Star guidelines.

§809.136. Roles and Responsibilities of Texas Rising Star Staff.

Boards shall ensure that Texas Rising Star staff members comply with their assigned responsibilities, as applicable.

(1) A mentor is defined as a designated staff member who helps providers obtain, maintain, or achieve higher star levels of certification.

(2) An assessor is defined as a designated staff member who assesses and monitors providers that obtain, maintain, and achieve higher levels of quality.

(3) Dual-role staff is defined as designated staff members who assume the role of the assessor and mentor.

(4) If an individual performs the duties of both an assessor and a mentor, the individual providing Texas Rising Star mentoring services to a provider does not act as the assessor of that same provider when determining Texas Rising Star certification.

(5) Texas Rising Star staff members are required to complete annual professional development and continuing education consistent with the Texas Rising Star annual minimum training hours requirement for a Texas Rising Star--certified child care center director.

(6) Per the Texas Family Code, §261.101, Texas Rising Star staff members are mandated reporters when observing serious incidents as described in the Texas Rising Star guidelines.

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

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Texas Workforce Commission

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For further information, please call: (512) 689-9855



CHAPTER 823. INTEGRATED COMPLAINTS, HEARINGS, AND APPEALS

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 823, relating to Integrated Complaints, Hearings, and Appeals:

Subchapter A. General Provisions, §§823.1 - 823.4

Subchapter B. Board Complaint and Appeal Procedures, §§823.10 - 823.14

Subchapter C. Agency Complaint and Appeal Procedures, §§823.20 - §823.22 and §823.24

Subchapter D. Agency-Level Decisions, Reopenings, and Rehearings, §§823.30 - §823.32

TWC proposes the following new section of Chapter 823, relating to Integrated Complaints, Hearings, and Appeals:

Subchapter D. Agency-Level Decisions, Reopenings, and Rehearings, §823.34

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

TWC Chapter 823 rules set forth uniform procedures and time frames for complaints and appeals processes for all workforce services administered by Local Workforce Development Boards (Boards). The purpose of the proposed Chapter 823 amendments is to specify the parties and programs to which Chapter 823 applies and does not apply, establish a distinction between state-level hearing officers and individuals who handle complaints at the Board level, align Chapter 823 with the Workforce Innovation and Opportunity Act (WIOA), and implement 20 Code of Federal Regulations (CFR) §683.600 relating to participants' and interested or affected parties' right to appeal local-level decisions and TWC's final decisions to the US Secretary of Labor.

This rulemaking serves as a rule review in accordance with Texas Government Code, §2001.039, which requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§823.1. Short Title and Purpose

Section 823.1 is amended to update the list of programs that are subject to Chapter 823, add that Chapter 823 does not apply to contract disputes, and add subsection (c)(9) and (10) to clarify which actions or disputes are not covered by Chapter 823.

§823.2. Definitions

Section 823.2 is amended to add a definition of "Board adjudicator" and to update language to distinguish between individuals who preside over Board-level and Agency-level disputes.

§823.3. Timeliness

Section 823.3 is amended to distinguish between Board-level complaints and reviews and Agency-level appeals.

§823.4. Representation

Section 823.4 is amended to clarify that a party may have a representative at an informal resolution proceeding in addition to a Board adjudication or an Agency hearing.

SUBCHAPTER B. BOARD COMPLAINT AND APPEAL PROCEDURES

TWC proposes the following amendments to Subchapter B:

§823.10. Board-Level Complaints

Section 823.10 is amended to clarify and update language consistent with WIOA and current TWC terminology.

§823.11. Determinations

Section 823.11 is amended to reflect changes from the WIA program name to the current WIOA program name with related section updates.

§823.12. Board Informal Resolution Procedure

Section 823.12 is amended to provide clarity by changing "Boards" to "Each Board."

§823.13. Board Reviews

Section 823.13 is amended to reflect that Boards conduct reviews rather than hearings and the section title is changed from "Board Hearings" to "Board Reviews."

Section 823.13 is also amended to distinguish Board processes from Agency processes and to indicate that Board reviews are conducted by Board adjudicators and hearings are conducted by Agency hearing officers. The amendments also update the mailing address for submitting appeals to the Agency.

§823.14. Board Policies for Resolving Complaints and Appeals of Determinations

Section 823.14 is amended to reflect that individuals handling Board-level complaints are adjudicators and that the process by which they resolve disputes is called Board review.

SUBCHAPTER C. AGENCY COMPLAINT AND APPEAL PROCEDURES

TWC proposes the following amendments to Subchapter C:

§823.20. State-Level Complaints

Section 823.20 is amended to update the mailing address for submitting appeals made directly to the Agency.

§823.21. Hearings

Section 823.21 is amended to update the WIOA program name and to state that parties may request accommodations for Board reviews and Agency hearings.

§823.22. Postponement and Continuance

Section 823.22 is amended to give Agency hearing officers the ability to postpone or continue hearings using their best judgment.

§823.24. Hearing Procedures

Section 823.24 is amended to remove language indicating that would provide transcripts of hearing recordings if a party pays the cost. The Agency does not transcribe hearings.

SUBCHAPTER D. AGENCY-LEVEL DECISIONS, REOPENINGS, AND REHEARINGS

TWC proposes the following amendments to Subchapter D:

§823.30. Hearing Decision

Section 823.30 is amended to specify the number of days a hearing officer has to issue a written decision in WIOA-related cases. Section 823.30 is also amended to add language indicating that the Agency may take continuing jurisdiction over an Agency decision for the purposes of reconsidering issues and taking additional evidence, in addition to issuing a corrected decision. The section is also amended to clarify that representatives and ob-

servers who attended a hearing need to be listed in the Agency's decision.

§823.31. Petition for Reopening

Section 823.31 is amended to update the name of the process by which a party requests that a hearing be reopened to petition. Additionally, the section is amended to state that a party must show good cause for failure to appear at the hearing and that timeliness rules in Chapter 823 apply to the petition.

§823.32. Motion for Rehearing and Decision

Section 823.32 is amended to align with Motion for Rehearing rules for other programs within the Agency which that require a Motion for Rehearing to meet certain criteria. The section is also amended to clarify that the Agency hearing officer may take certain actions in relation to that motion.

§823.34. Federal Appeals

New §823.34 implements 20 CFR §683.600, relating to participants' and interested or affected parties' right to appeal local-level decisions and final Agency decisions to the US Secretary of Labor.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045), does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of

the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to specify the parties and programs to which Chapter 823 applies and does not apply, establish a distinction between state-level hearing officers and individuals who handle complaints at the Board level, align Chapter 823 with WIOA, and implement 20 CFR §683.600 relating to participants' and interested or affected parties' right to appeal local-level decisions and TWC's final decisions to the US Secretary of Labor.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the amendments will be in effect:

- the amendments will not create or eliminate a government program;
- implementation of the amendments will not require the creation or elimination of employee positions;
- implementation of the amendments will not require an increase or decrease in future legislative appropriations to TWC;
- the amendments will not require an increase or decrease in fees paid to TWC;
- the amendments will not create a new regulation;
- the amendments will not expand, limit, or eliminate an existing regulation;
- the amendments will not change the number of individuals subject to the rules; and
- the amendments will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as these rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Clay Cole, Director, Unemployment Insurance Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to ensure that the rules set forth in Chapter 823 align with WIOA, which replaced WIA.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing

the rules will be to ensure that the rules set forth in Chapter 823 align with WIOA, which replaced the WIA.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Boards. TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review on June 23, 2020. TWC also conducted a conference call with Board executive directors and Board staff on June 26, 2020, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.state.tx.us. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§823.1 - 823.4

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement the appeal, complaint, and grievance provisions set forth in Texas Labor Code, Title 4, Subtitle B, Section 301.192, Texas Human Resources Code Section 44.002, as well as those set forth in 29 USC 3241 and 29 USC 3152.

§823.1. Short Title and Purpose.

(a) This chapter provides an appeals process to the extent authorized by federal and state law and by rules administered by the Texas Workforce Commission (Agency).

(b) This section applies only to complaints or determinations regarding federal- or state-funded workforce services administered by the Agency or Local Workforce Development Boards (Boards), as follows:

- (1) Child care;
- (2) Temporary Assistance for Needy Families (TANF)

Choices;

(3) Supplemental Nutrition Assistance Program (SNAP) Employment and Training (E&T) [~~Food Stamp Employment and Training (FSE&T)~~];

~~[(4) Project Reintegration of Offenders (Project RIO)];~~

(4) ~~[(5) Workforce Innovation and Opportunity Act (WIOA) adult, dislocated worker, and youth programs [Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth]; and~~

~~[(5) [(6) Eligible Training Providers (ETPs) [(ETP) receiving WIOA [WIA] funds or other funds for training services.~~

(c) Determinations or complaints relating to the following matters are not governed by this chapter:

(1) Across-the-board reductions of services, benefits, or assistance to a class of recipients;

(2) Matters governed by hearing procedures otherwise provided for in this title;

(3) Alleged violations of nondiscrimination and equal opportunity requirements;

(4) Denial of benefits as related [~~it relates~~] to mandatory work requirements for individuals receiving TANF and SNAP E&T [~~FSE&T~~] services and is administered through the Texas Health and Human Services Commission (HHSC);

(5) Matters governing job service-related complaints as referenced in 20 CFR [~~C.F.R.~~] Part 658, Subpart E, §§658.400, 658.410, 658.411, 658.417, and 658.418 [~~§§400 - 418~~] and the federal Employment Service law;

(6) Services provided by the Commission pursuant to Texas Labor Code §301.023, relating to Complaints Against [~~the~~] Commission; [~~or~~]

(7) Alleged criminal violations of any services referenced in subsection (b) of this section; [~~§823.1(b)-~~]

(8) Disputes between contractors and Boards;

(9) Contract disputes; or

(10) Any other determination or complaint not listed in subsection (b) of this section.

§823.2. Definitions.

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

(1) Adverse action--Any denial or reduction in benefits or services to a party or [~~including~~] displacement of an individual from current employment by a Workforce Solutions Office [~~Texas Workforce Center~~] customer.

(2) Agency decision--The written finding issued by an Agency hearing officer following a hearing before that hearing officer.

(3) Appeal--A written request for a review filed with the Board or the Agency by an individual [~~a person~~] in response to a termination or decision.

(4) Board adjudicator--An impartial individual designated by the Board to participate in informal dispute resolutions and to review and issue Board decisions.

~~(5) [(4)] Board decision--The written finding issued by a Board adjudicator [hearing officer] following a hearing before that adjudicator [hearing officer] in response to an appeal or complaint.~~

~~(6) [(5)] Complaint--A written statement alleging a violation of any law, regulation, or rule relating to any federal- or state-funded workforce service covered by this chapter.~~

~~(7) [(6)] Determination--A written order [statement] issued to a Workforce Solutions Office [Texas Workforce Center] customer by a Board, its designee, or the Agency relating to an adverse action, or to a provider or contractor relating to denial or termination of eligibility under programs administered by the Agency or a Board listed in §823.1(b) of this subchapter (relating to Short Title and Purpose).~~

~~(8) [(7)] Hearing officer--An impartial individual designated by [either the Board or] the Agency to conduct hearings and issue Agency [administrative] decisions.~~

~~(9) [(8)] Informal resolution--Any procedure that results in an agreed final settlement between all parties to a complaint.~~

(10) ~~[(9)]~~ Party--~~An individual~~ [A person] who files a complaint or who appeals a determination or the entity against which the complaint is filed or that issued the determination.

§823.3. *[Agency and Board] Timeliness.*

(a) A properly addressed determination or decision is final for all purposes unless the party to whom it is mailed files an appeal no later than 14 [the ~~fourteenth~~] calendar days [day] after the mailing date.

(b) Each party to a complaint, adjudication, or ~~an~~ appeal shall promptly notify, in writing, the Board, Board's designee, or the Agency with which the complaint or appeal was filed of any change of mailing address. Determinations and decisions shall be mailed to the new [~~this~~] address.

(1) A copy of the determination or decision must be mailed to a properly designated party representative in order for it to become final.

(2) The Board or Agency is responsible for making an address change only if the Board or Agency is specifically directed by the party to mail subsequent correspondence to the new address.

(3) If the Board, Board's designee, or Agency addresses a document incorrectly, but the party receives the document, the time frame for filing an appeal shall begin as of the actual date of receipt by the party, whether or not the party receives the document within the appeal time frame set forth in subsection (a) of this section. However, this does not apply if the party fails to provide a current address or provides an incorrect address.

(c) A determination or decision mailed to a party shall be presumed to have been delivered if the document was mailed as specified in subsection (b) of this section.

(1) A determination or decision shall not be presumed to have been delivered:

(A) if there is tangible evidence of nondelivery, such as being returned to the sender by the US [U.S.] Postal Service; or

(B) if credible and persuasive evidence is submitted to establish nondelivery or delayed delivery to the proper address.

(2) If a party provides the Board or Agency with an incorrect mailing address, a mailing to that address shall be considered a proper mailing, even if there is proof that the party never received the document.

(d) A complaint or an appeal shall be in writing. Complaints or appeals may be filed electronically only if filed in a form approved by the Agency in writing. The filing date for a complaint or an appeal shall be:

(1) the postmark [~~postmarked~~] date or the postal meter date (where there is only one or the other);

(2) the postmark [~~postmarked~~] date, if there is both a postmark date and a postal meter date;

(3) the date the document was delivered to a common carrier, which is equivalent to the postmark [~~postmarked~~] date;

(4) three business days before receipt by the Board or Agency, if the document was received in an envelope bearing no legible postmark, postal meter date, or date of delivery by a common carrier;

(5) the date of the document itself, if the document date is fewer than three days earlier than the date of receipt and if the document was received in an envelope bearing no legible postmark, postal meter date, or date of delivery by a common carrier;

(6) the date of the document itself, if the mailing envelope containing the complaint or appeal is lost after delivery to the Board or Agency. If the document is undated, the filing date shall be deemed to be three business days before receipt by the Board or Agency; or

(7) the date of receipt by the Board or Agency, if the document was filed by fax.

(e) Credible and persuasive testimony under oath, subject to cross-examination, may establish a filing date that is earlier than the dates established under subsection (d) of this section. A party shall be allowed to establish a filing date earlier than a postal meter date or the date of the document itself only upon a showing of extremely credible and persuasive evidence. Likewise, when a party alleges that a complaint or appeal has been filed that the Board or Agency has never received, the party must present [~~extremely~~] credible and persuasive evidence to support the allegation.

(f) A decision or determination shall not be deemed final if a party shows that a representative of the Board, the Board's designee, or Agency has given misleading information on appeal rights to the party. The party shall specifically establish:

(1) how the party was misled; or

(2) what misleading information the party was given, and, if possible, by whom the party was misled.

(g) There is no good cause exception to the timeliness rules.

§823.4. *Representation.*

A [~~Each~~] party may authorize a [hearing] representative to assist with participating in an informal resolution or in presenting a complaint or an appeal on behalf of the party under this chapter. The Agency or Board may require the authorization to be in writing. On behalf of the party, the [hearing] representative may exercise any of the party's rights under this chapter.

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

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Texas Workforce Commission

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For further information, please call: (512) 689-9855



SUBCHAPTER B. BOARD COMPLAINT AND APPEAL PROCEDURES

40 TAC §§823.10 - 823.14

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement the appeal, complaint, and grievance provisions set forth in Texas Labor Code, Title 4, Subtitle B, Section 301.192, Texas Human Resources Code Section 44.002, as well as those set forth in 29 USC 3241 and 29 USC 3152.

§823.10. *Board-Level Complaints.*

(a) Individuals [Persons] who may file a complaint include:

(1) Workforce Solutions Office [Texas Workforce Center] customers;

(2) other interested individuals [persons] affected by the One-Stop Service Delivery System, [Networks], including subrecipients and eligible training providers; and

(3) previously employed individuals who believe they were displaced by a Workforce Solutions Office [Texas Workforce Center] customer participating in work-based services such as subsidized employment, work experience, or workfare.

(b) Complaints shall be in writing and filed within 180 calendar days of the alleged violation.

(c) The complaint shall include:

(1) the complainant's [party's] name and current mailing address; and

(2) a brief statement of the alleged violation stating [identifying] the facts on which the complaint is based.

(d) Each Board shall ensure that information about complaint procedures is provided to individuals, eligible training providers, and subrecipients. The information provided shall be presented in such a manner as to be understood by the affected individuals, including youth, individuals with disabilities, and individuals with limited English proficiency. This information shall be:

(1) posted in a conspicuous public location at each Workforce Solutions Office [Texas Workforce Center];

(2) provided in writing to any customer;

(3) made available in writing to any individual upon request; and

(4) placed in each Workforce Solutions Office [Texas Workforce Center] customer's file.

§823.11. Determinations.

(a) A determination affecting the type and level of services or benefits to be provided by a Board or its designee shall be promptly provided to any individual [person] directly affected.

(b) The determination shall include the following:

(1) a [A] brief statement of the adverse action;

(2) the [The] mailing date of the determination;

(3) an [An] explanation of the individual's right to an appeal;

(4) the [The] procedures for requesting informal resolution with the Board and for filing an appeal to the Board, including applicable time frames as required in §823.3 of this chapter (Timeliness);

(5) the [The] right to have a [hearing] representative, including legal counsel; and

(6) the [The] address and fax number to which a request for informal resolution or appeal may be sent [or fax number to send the appeal].

(c) Boards shall allow training service providers [ef training services] the opportunity to appeal a determination related to the:

(1) denial of eligibility as a training provider under WIOA, §122(b), (c), or (d) [WIA §122(b), §122(e), or §122(e)];

(2) termination of eligibility as a training provider or other action under WIOA, §122(f) [WIA §122(f)]; or

(3) denial of eligibility as a training provider of on-the-job or customized training by the operator of a Workforce Solutions Office [Texas Workforce Center] under WIOA, §122(h) [WIA §122(h)].

(d) An individual who [A person that] receives a determination from a Board or a Board's designee may file an appeal with the Board requesting a review of the determination. The appeal must be submitted in writing, be filed within 14 calendar days of the mailing date of the determination, and include the party's proper mailing address.

§823.12. Board Informal Resolution Procedure.

(a) Each Board [Boards] shall provide an opportunity for informal resolution of a complaint or appeal.

(b) Informal resolution may include, but is not limited to:

(1) informal meetings with case managers or their supervisors;

(2) second reviews of the case file;

(3) telephone calls or conference calls to the affected parties;

(4) in-person interviews with all affected parties; or

(5) written explanations or summaries of the laws or regulations involved in the complaint.

§823.13. Board Reviews [Hearings].

(a) If the informal resolution procedure results in a final agreement between the parties, no hearing shall be held.

(b) If no [final] informal resolution is reached, Boards shall provide an opportunity for a formal review [hearing] to resolve an appeal or complaint.

(c) Either a final agreement resulting from an informal resolution or a hearing and Board decision shall be completed within 60 calendar days of the original filing of the appeal or complaint.

(d) Boards shall provide a process that allows an individual alleging a labor standards violation to submit a complaint to a binding arbitration procedure[;] if a collective bargaining agreement covering the parties to the complaint so provides.

(e) Within 60 calendar days of the filing of the appeal or complaint, the Board shall send the parties a decision setting forth the results of the hearing. The decision shall be issued by a Board adjudicator, [hearing officer, shall] include findings of fact and conclusions of law, and [shall] provide information about appeal rights to the parties.

(f) If no Board decision is mailed within the 60 calendar-day time frame described in subsection (e) of this section, or if any party disagrees with a timely Board decision, a party may file an appeal with the Agency.

(g) An appeal to the Agency shall be filed in writing by mail, fax, or hand delivery with the TWC Commission Appeals Department at its state office, 101 E. 15th Street, CA Hearings Unit, Room 678, Austin, Texas, 78778, or faxed to the number provided in the determination or decision [Appeals, Texas Workforce Commission 101 East 15th St., Room 410, Austin, Texas 78778-0001,] within 14 calendar days after the mailing date of the Board's decision. If the Board does not issue a decision within 60 calendar days of the date of the filing of the original appeal or complaint, an appeal to the Agency must be filed no later than 90 calendar days after the filing date of the original appeal or complaint.

§823.14. Board Policies for Resolving Complaints and Appeals of Determinations.

(a) Each [A] Board shall establish written policies to handle complaints and appeals of determinations, provide the opportunity for informal resolution, and conduct reviews [hearings] in compliance with this subchapter for individuals, eligible training providers, and other individuals [persons] affected by the One-Stop Service Delivery System, [Network,] including subrecipients.

(b) A Board shall maintain written copies of these policies[;] and make them available to the Agency, Workforce Solutions Office [Texas Workforce Center] customers, and other interested individuals [persons] upon request. A Board shall require that its subrecipients provide these policies to Workforce Solutions Office [Texas Workforce Center] customers and other interested individuals [persons] upon request.

(c) At a minimum, a Board shall [develop and approve policies to]:

(1) develop and approve policies to ensure that determinations are provided as specified in §823.11 of this subchapter (relating to Determinations);

(2) develop and approve policies to ensure that information about complaint procedures is available as described in §823.10(d) of this subchapter (Board-Level Complaints);

(3) notify individuals [persons] that complaints must be submitted in writing and set forth the facts on which the complaint is based, and notify them of the time limit in which to file a complaint;

(4) maintain a complaint log and all complaint-related materials in a secure file for a period of three years after final resolution;

(5) designate an individual to be responsible for investigating, documenting, [investigation, documentation,] monitoring, and following up on complaints;

(6) inform individuals [persons] of the:

(A) right to file a complaint;

(B) right to appeal a determination;

(C) opportunity for informal resolution and a Board review [hearing];

(D) time frame in which to either reach informal resolution or to issue a Board decision; and

(E) right to file an appeal to the Agency, including providing information on where to file the appeal;

(7) designate adjudicators [hearing officers] to conduct Board hearings, document actions taken, and render decisions; and

(8) ensure that complaints remanded from the Agency to the Board for resolution are handled in a timely fashion and follow established Board policies and time frames.

(d) Complaints filed directly with the Agency may be remanded to the appropriate Board to be processed in accordance with the Board's policies for resolving complaints.

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 7, 2020.
TRD-202004174

Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

Earliest possible date of adoption: November 22, 2020

For further information, please call: (512) 689-9855

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SUBCHAPTER C. AGENCY COMPLAINT AND APPEAL PROCEDURES

40 TAC §§823.20 - 823.22, 823.24

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement the appeal, complaint, and grievance provisions set forth in Texas Labor Code, Title 4, Subtitle B, Section 301.192, Texas Human Resources Code Section 44.002, as well as those set forth in 29 USC 3241 and 29 USC 3152.

§823.20. *State-Level Complaints.*

(a) A Workforce Solutions Office [Texas Workforce Center] customer or other interested individual [person] affected by the statewide One-Stop Service Delivery System [Network], including service providers that allege a noncriminal violation of the requirements of any federal- or state-funded workforce services, may file a complaint with the Agency.

(b) Complaints shall be in writing and filed within 180 calendar days of the alleged violation. The complaint shall include the party's name, current mailing address, and a brief statement of the alleged violation identifying the facts on which the complaint is based.

(c) The complaint shall be filed with the TWC Commission Appeals Department at its state office, 101 E. 15th Street, CA Hearings Unit, Room 678, Austin, Texas, 78778 [TWC Appeals, Texas Workforce Commission, 101 East 15th St., Room 410, Austin, Texas 78778-0001].

(d) The Agency shall provide an opportunity for informal resolution.

(e) If the informal resolution procedure results in a final agreement between the parties, no hearing shall be held.

(f) If no final informal resolution is reached, the complaint shall be promptly set for a hearing and a decision shall be issued in accordance with the procedures for appeals under this subchapter.

(g) Complaints filed directly with the Agency may be remanded to the appropriate Board to be processed in accordance with the Board's hearing policies.

§823.21. *Hearings* [*Setting a Hearing*].

(a) A WIOA-funded [WIA-funded] training provider or other provider certified by the Agency and later found to be ineligible to receive funding as a training provider may file an appeal directly with the Agency.

(b) Upon receipt of an appeal from a Board decision, an appeal pursuant to subsection (a) of this section, or if no informal resolution of a complaint is successfully reached pursuant to §823.20 of this subchapter (relating to State-Level Complaints), the Agency shall promptly assign a hearing officer and mail a notice of hearing to the parties and/or their designated representatives. The hearing shall be

set and held promptly and in no case later than as provided by applicable statute or rule.

(c) The notice of hearing shall be in writing and include a:

(1) statement of the date, time, place, and nature of the hearing;

(2) statement of the legal authority under which the hearing is to be held; and

(3) short and plain statement of the issues to be considered during the hearing.

(d) The notice of hearing shall be issued at least 10 calendar days before the date of the hearing unless a shorter period is permitted by statute.

(e) Hearings shall be conducted by telephonic means, unless an in-person hearing is required by applicable statute or the Agency determines that an in-person hearing is necessary.

(f) Parties may request accommodations, including interpreters, through the hearing officer or Agency staff [needing special accommodations, including the need for a bilingual or sign language interpreter, shall make this request before the hearing is set, if possible, or as soon as practical].

§823.22. *Postponement and Continuance.*

(a) The hearing officer shall use his or her best judgment to determine when to grant a continuance of postponement of a hearing in order to secure all the evidence that is necessary and to be fair to the parties [may grant a postponement of a hearing for good cause at a party's request. Except in emergencies or unusual circumstances confirmed by a telephone call or other means, no postponements shall be granted within two days of the scheduled hearing].

(b) Before the hearing, requests for a continuance or a postponement of a hearing may be made informally, either orally or in writing, to the hearing officer.

~~[(b) A continuance of a hearing may be ordered at the discretion of the hearing officer if:]~~

~~[(1) there is insufficient evidence upon which to make a decision;]~~

~~[(2) a party needs additional time to examine evidence presented at the hearing;]~~

~~[(3) the hearing officer considers it necessary to enter into evidence additional information or testimony;]~~

~~[(4) an in-person hearing is necessary for proper presentation of the evidence; or]~~

~~[(5) any other reason deemed appropriate by the hearing officer.]~~

~~[(e) The hearing officer shall advise the parties of the reason for the continuance and of any additional information required. At the continuance, the parties shall have an opportunity to rebut any additional evidence.]~~

§823.24. *Hearing Procedures.*

(a) General Procedure. All hearings shall be conducted de novo. The hearing shall be conducted informally and in such manner as to ascertain the substantive rights of the parties. The hearing officer shall develop the evidence. All issues relevant to the appeal shall be considered and addressed.

(1) Presentation of Evidence. The parties to an appeal may present evidence that is material and relevant, as determined by the

hearing officer. In conducting a hearing, the hearing officer shall actively develop the record on the relevant circumstances and facts to resolve all issues. To be considered as evidence in a decision, any document or physical evidence must be entered as an exhibit at the hearing. A party has the right to object to evidence offered at the hearing by the hearing officer or other parties.

(2) Examination of Witnesses and Parties. The hearing officer shall examine parties and any witnesses under oath and shall allow cross-examination to the extent the hearing officer deems necessary to afford the parties due process.

(3) Additional Evidence. The hearing officer, with or without notice to any of the parties, may take additional evidence deemed necessary, provided that a party shall be given an opportunity to rebut the evidence if it is to be used against the party's interest.

(4) Appropriate Hearing Behavior. All parties shall conduct themselves in an appropriate manner. The hearing officer may expel any individual, including a party, who fails to correct behavior the hearing officer identifies as disruptive. After an expulsion, the hearing officer may proceed with the hearing and render a decision.

(b) Records.

(1) The hearing record shall include the audio recording of the proceeding and any other relevant evidence relied on by the hearing officer, including documents and other physical evidence entered as exhibits.

(2) The hearing record shall be maintained in accordance with federal or state law.

(3) Confidentiality of information contained in the hearing record shall be maintained in accordance with federal and state law.

(4) Upon request, a party has the right to obtain a copy of the hearing record, including recordings of the hearing and file documents at no charge. [However, a party requesting a transcript of the hearing record shall pay the costs of the transcription.]

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

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Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

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For further information, please call: (512) 689-9855



SUBCHAPTER D. AGENCY-LEVEL DECISIONS, REOPENINGS, AND REHEARINGS

40 TAC §§823.30 - 823.32, 823.34

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement the appeal, complaint, and grievance provisions set forth in Texas Labor Code, Title 4, Subtitle B, Section 301.192, Texas Human Resources Code

Section 44.002, as well as those set forth in 29 USC 3241 and 29 USC 3152.

§823.30. *Hearing Decision.*

(a) Following the conclusion of the hearing, the hearing officer shall promptly issue a written decision on behalf of the Agency. Decisions issued on state-level complaints and grievances, or appeals of local-level complaints and grievances, made pursuant to provisions of WIOA, must be issued within 60 calendar days of the filing of the complaint, grievance or appeal, whichever comes later.

(b) The Agency decision shall be based exclusively on the evidence of record in the hearing and on matters officially noticed in the hearing. The Agency decision shall include:

- (1) a list of the individuals who appeared at the hearing, including representatives and observers;
- (2) the findings of fact and conclusions of law reached on the issues; and
- (3) the affirmation, reversal, or modification of a determination or Board decision.

(c) Unless a party files a timely motion for rehearing, the Agency may assume continuing jurisdiction to reconsider the issues on appeal, take additional evidence, and issue a corrected decision [to modify or correct a hearing decision] until the expiration of 14 calendar days from the mailing date of the hearing decision.

§823.31. *Petition ~~[Motion]~~ for Reopening.*

(a) If a party fails to appear for a hearing, the hearing officer may hear and record the evidence of the party present and the witnesses, if any, and shall proceed to decide the appeal on the basis of the record unless there appears to be good reason for continuing the hearing. A copy of the decision shall be promptly mailed to the parties with an explanation of the manner in which, and time within which, a request for reopening may be submitted. [If a party does not appear for an Agency hearing, the party has the right to request a reopening of the hearing within 14 calendar days from the date the Agency decision is mailed.]

(b) A party that fails to appear at a hearing may, within 14 calendar days from the date the decision is mailed, petition in writing for a new hearing before the hearing officer. The petition should identify the party requesting the reopening and explain the reason for the failure to appear. The timeliness rules in §823.3 of this chapter (relating to Timeliness) apply to the petition. The petition shall be granted if it appears to the hearing officer that the petitioner has shown good cause for the petitioner's failure to appear at the hearing. [The motion shall be in writing and detail the reason for failing to appear at the hearing.]

(c) The hearing officer may schedule a hearing on whether to grant the reopening.

(d) The hearing officer may deny the petition if no good cause is alleged for the party's nonappearance at the prior hearing. [The motion may be granted if it appears to the hearing officer that the party has shown good cause for failing to appear at the hearing.]

§823.32. *Motion for Rehearing and Decision.*

(a) A party has 14 calendar days from the date the decision is mailed to file a motion for rehearing. A rehearing may be granted only for the presentation of new evidence.

(b) Motions for rehearing shall be in writing and allege the new evidence to be considered. The appellant must show a compelling reason why the ~~[this]~~ evidence was not presented at the hearing and explain how consideration of the evidence would alter the outcome of the case.

(c) If the hearing officer determines that the motion does not meet the criteria in subsection (b) of this section, the hearing officer may issue a decision indicating that they have not been met and that no hearing will be set on the motion.

(d) ~~[(e)]~~ If the hearing officer determines that the appellant has met the requirements of subsection (b) of this section, the hearing officer shall grant the motion and schedule a hearing to consider the new evidence on the record [alleged; new evidence warrants a rehearing, a rehearing shall be scheduled at a reasonable time and place].

(e) ~~[(d)]~~ The hearing officer shall issue a written decision following the hearing to consider the evidence on the Motion for Rehearing.

(f) ~~[(e)]~~ After the hearing on the Motion for Rehearing, the hearing officer shall issue a written decision granting or denying the Motion for Rehearing and may affirm, reverse, leave in effect, void, or modify the prior decision. [The hearing officer may also issue a decision denying a motion for rehearing.]

§823.34. *Federal Appeals.*

(a) Participants and interested or affected parties have a right to appeal to the US Secretary of Labor when decisions are not issued within the time prescribed or when an adverse final Agency decision is issued.

(b) The US Secretary of Labor will investigate appeals under the following circumstances:

(1) A decision on a grievance or complaint has not been reached:

(A) within 60 calendar days of receipt of the grievance or complaint; or

(B) within 60 calendar days of receipt of the request for appeal of a local level grievance and either party appeals to the US Secretary of Labor; or

(2) A state level decision on a grievance or complaint has been reached and the party to which such decision is adverse appeals to the US Secretary of Labor.

(c) Participants and interested or affected parties that wish to appeal to the US Secretary of Labor must adhere to the following time parameters:

(1) Appeals that are based on subsection (b)(1) of this section must be filed within 120 calendar days of filing the grievance or timely appeal with the state.

(2) Appeals that are based upon subsection (b)(2) of this section must be filed within 60 calendar days of receipt of the state-level decision.

(d) Appeals to the US Secretary of Labor must be submitted by certified mail with a return receipt requested. In addition to sending an appeal to the US Secretary of Labor, the party must also simultaneously provide a copy of the appeal to the opposing party and the US Department of Labor Employment and Training Administration regional administrator.

(e) This federal appeals process applies solely to noncriminal grievances and complaints under WIOA, Title I.

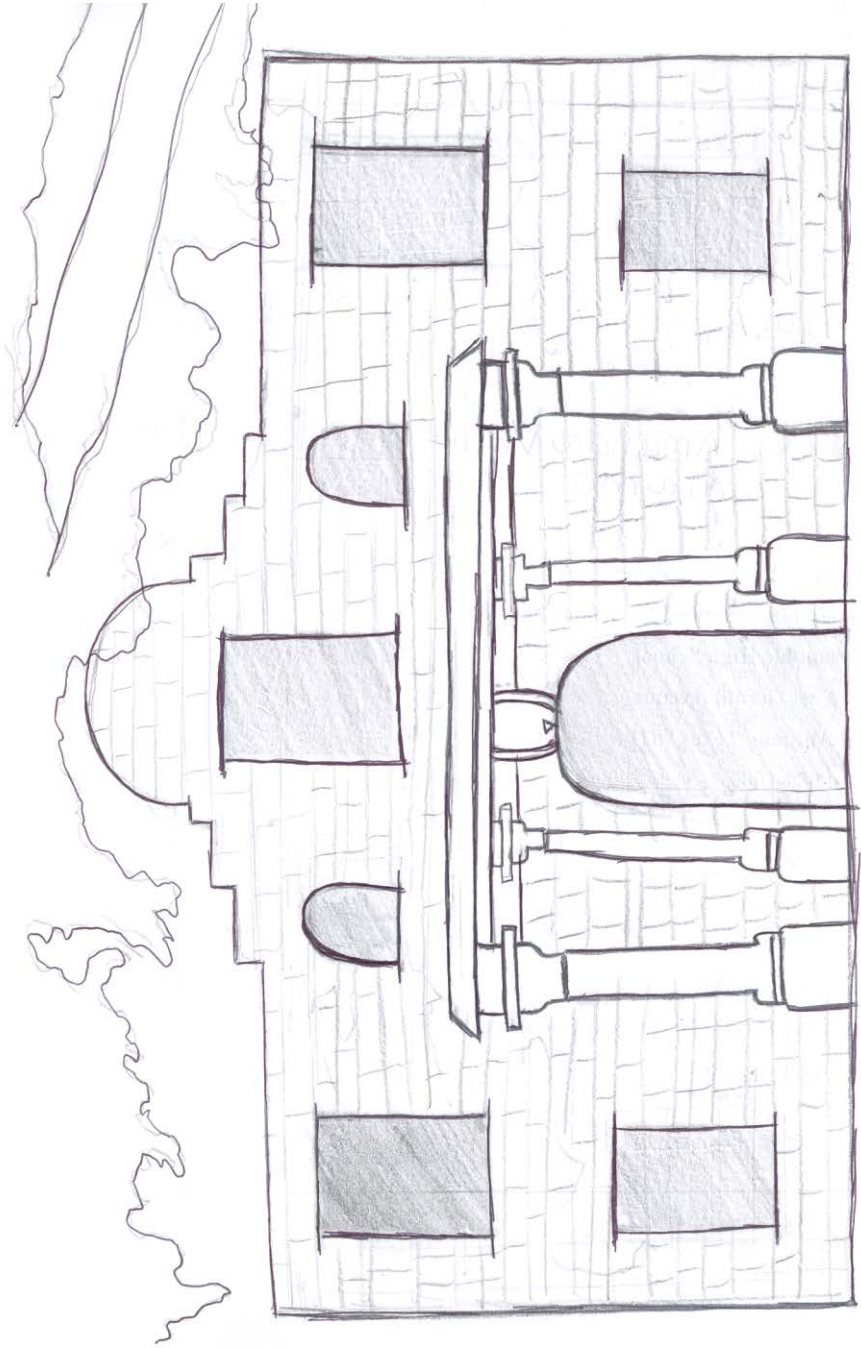
(f) This process does not apply to filing appeals regarding discrimination, or denial or termination of training provider eligibility, for inclusion on the Texas Eligible Training Provider List.

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

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Dawn Cronin
Director, Workforce Program Policy
Texas Workforce Commission
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For further information, please call: (512) 689-9855





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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.21

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.21, Action by Department if Outstanding Balances Exist, without changes to the proposed text as published in the July 31, 2020, issue of the *Texas Register* (45 TexReg 5283). The rule will not be republished. The purpose of the repeal is to clarify the applicability of this rule.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: previous participation reviews.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The repeal will not expand, limit, or repeal an existing regulation.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the changed sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from July 31, 2020, to August 31, 2020. No comment was received. The Department is adopting this rule with no changes to the proposed version published in the July 31, 2020 *Texas Register*.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

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 9, 2020.
TRD-202004208

Brooke Boston
Deputy Executive Director of Programs
Texas Department of Housing and Community Affairs
Effective date: October 29, 2020
Proposal publication date: July 31, 2020
For further information, please call: (512) 475-1762



10 TAC §1.21

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.21, Action by Department if Outstanding Balances Exist, without changes to the proposed text as published in the July 31, 2020, issue of the *Texas Register* (45 TexReg 5283). The rule will not be republished. The purpose of the new section is to make minor clarifications to the handling of requests to the Department when outstanding balances are due. The new rule clarifies that this rule is applicable to cases of applications for awards, and makes other minor modifications.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to changes to an existing activity, previous participation reviews.
2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new section does not require additional future legislative appropriations.
4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new section is not creating a new regulation, except that they are replaced sections being repealed simultaneously to provide for revisions.
6. The new section will not expand, limit, or repeal an existing regulation.
7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that it will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to their possible effects on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be an updated rule. There will not be economic costs to individuals required to comply with the new sections.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from July 31, 2020, to August 31, 2020. No comment was received. The Department is adopting this rule with no changes to the proposed version published in the July 31, 2020 *Texas Register*.

STATUTORY AUTHORITY. The new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the adopted new section affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202004209

Brooke Boston

Deputy Executive Director of Programs

Texas Department of Housing and Community Affairs

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Proposal publication date: July 31, 2020

For further information, please call: (512) 475-1762



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 65. BOILERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 65, Subchapter A, §65.2, and Subchapter I, §65.64, regarding the Boilers Program. The amendments are adopted without changes to the proposed text

as published in the June 5, 2020, issue of the *Texas Register* (45 TexReg 3719). The rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 65, implement Texas Health and Safety Code, Chapter 755, Boilers.

The adopted rules simplify and clarify the process to apply for extensions of the internal inspection interval for boilers (extensions) and add specific conditions under which boiler operators may obtain extensions in §65.64; and add four new related definitions to §65.2. The adopted rules are necessary to provide clarity and certainty to boiler operators to plan the frequency of internal inspections. Health and Safety Code, §755.026 provides for the availability of extensions and the adopted rules supply additional specific conditions under which the Department may approve the extensions.

A task group was first convened on May 22, 2018, to examine and deliberate the criteria under which the Department may approve extension requests. The task group created amendments to the extensions rule and the related definitions. The Board of Boiler Rules (Board) discussed the rules and voted to propose them at its meeting on July 13, 2018. After the public comment period and discussion by the Board at its meeting on December 5, 2018, the Board voted to return the extension rules to the task group for further review and modification. Following communication among staff, task group members, and stakeholders, the Board met on August 19, 2019, and voted to again propose the extension rules. After the public comment period and the receipt of oral and written comments, at its meeting on November 7, 2019, the Board deliberated and voted to return the proposed extension rules to the task group for additional review. Subsequently, the Department communicated with task group members and stakeholders, reviewed the relevant information, and held an informative Boiler Summit public meeting to explain the statutory and rule requirements for extensions and the proposed rule modifications, as well as to collect input and answer questions about applying the rules in the field.

The task group met to discuss the information exchanged in the Summit meeting and recommended one change to the wording of the proposed rules. The Department added the correction of a citation in the rules and presented the changes to the Board at its meeting on February 26, 2020. The Board discussed the input from the Summit and the task group and voted to recommend that the proposed rules without further changes be published in the *Texas Register* for public comment. The Department then submitted the rules to the governor's office for review and they were approved on May 18, 2020.

SECTION-BY-SECTION SUMMARY

The adopted amendments to §65.2 add definitions for "continuous water treatment," "operation," "out of service," and "standby" and relate to the amendments to §65.64. The section is also renumbered accordingly.

The adopted amendments to §65.64 clarify the requirements for extension of the interval between internal inspections, and simplify the language used in the section.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the June 5, 2020, issue of the *Texas Register* (45 TexReg 3719). The deadline for public comments was July 6,

2020. The Department received comments from two interested parties on the proposed rules during the 30-day public comment period. Similar amendments to the rules relating to extensions of the internal inspection interval were formerly proposed and were published for public comment in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6516) and, with modifications, were again proposed and published in the September 13, 2019 issue of the *Texas Register* (44 TexReg 4925).

Because these earlier amendments related to extension of the internal inspection interval were not adopted, the Department did not have the opportunity to address the substance of the public comments that were received in relation to extensions during each comment period. Therefore, the Department takes this opportunity to address both the earlier public comments and those received during the public comment period for the current amendments to the rules. The Department's responses identify certain modifications to the proposed rules that were made over time and not necessarily in response to a particular comment.

The public comments received are summarized below. For brevity, in the Department's responses the term "owner" includes the owner's agents, operators, and Authorized Inspection Agency (AIA).

Comments received during the public comment period October 5 - November 5, 2018.

The Department received four comments relating to extensions of the internal inspection interval from two individuals with Xcel Energy; from Luminant Generation Company, LLC (LGC); and from the Texas Chemical Council (TCC) and Texas Oil and Gas Association (TXOGA), commenting jointly.

Comment: TCC/TXOGA commented that the reference to the "normal operating level" of water in a boiler in the definitions of "out of service" and "standby" is ambiguous as to what is considered a normal operating level and should be modified to reflect that the normal operating level of water falls within a range and may vary between operators.

Department Response: The Department agrees that the level of water in a boiler that is out of service, on standby, or in operation falls within a range. The definitions have been modified to use criteria other than water level to characterize the out of service or standby status of a boiler.

Comment: LGC and one individual from Xcel Energy commented that §65.64 should not be amended as proposed, and one individual from Xcel Energy commented that the notification requirement for periods of time that a boiler will be out of service exceeding 10 consecutive days should not be imposed. They comment that the notification will be burdensome, requires extra tracking of operation time and water levels, adds complexity to the extension process, reduces flexibility for owners, will prohibit optimizing the timing and duration of outages required for internal inspections, imposes costs, and will not provide benefits or add to the safe operation of utility boilers. The commenters stated that the market is increasingly unpredictable and dictates, on short notice, when units must be taken out of service and returned to service, and that the length of periods out of service vary widely.

Department Response: The Department disagrees with the comments asserting that the new rule places significant burdens on owners and that the notification option should not be added. The Department has proposed that owners contact the Department when time out of service exceeds 15 consecutive

days to confirm continuing eligibility for an extension. Section 65.64(b)(4) imposes no requirement to notify the Department of periods of time out of service and imposes no limit on their frequency or duration. Instead, the simple procedure for notifying the Department is an option for owners that is designed to provide certainty for them as to whether their ability to obtain extension of the internal inspection interval may be preserved despite periods out of service. If notification is not made the likelihood of approval of an extension may be greatly reduced. If notification is made by the 15th consecutive day out of service but the Department informs the owner that the extension will not be approved, then the owner may make a business decision as to when to arrange an internal inspection before the certificate of operation expires. Owners may disregard the notification process but will not be assured of obtaining extension of the inspection interval if periods out of service exceed 15 consecutive days. Such periods reduce confidence that a boiler is being safely operated. The boiler law requires owners to maintain safety procedures including a program of continuous water treatment even during time out of service in order to obtain extensions. Owners may opt to place boilers into standby or to reduce the time out of service to help maintain eligibility for extension and to support safe operation. The proposed changes in §65.64 impose no new operating burdens and provide additional options for maintaining eligibility for extensions.

The Department is charged with creating rules to ensure the safe operation of boilers in Texas. It is obligated by law to ensure that certain safety minimums are observed, such as continuous water treatment and daily sampling during operation. The purpose of notification for longer periods out of service during the inspection interval while possibly retaining eligibility for an extension is for safety concerns that arise when a boiler is taken out of service for more than a short time. The proposed rule specifically provides for periods of standby and repair while maintaining eligibility for extension of the internal inspection interval. However; the internal inspection is an annual requirement and periods out of service during which an internal inspection can be performed are opportunities to perform the inspection. The Department believes that the minor burden of notification to support certain extension requests is an appropriate condition to ensure that it is fulfilling its statutory obligations as well as providing certainty and efficiency to owners. There is no cost for the notification and the Department will accept an email message. The rule has been updated to recommend notification after 15 consecutive days to provide owners additional time.

Comment: LGC commented with the following five recommendations for the following changes to §65.64 if the proposed amendments to the section are not withdrawn.

LGC recommendation 1: Add the *italicized* language to §65.64(a)(5): Violations noted during the external inspection *and not resolved to the satisfaction of the Authorized Inspector* may be cause for denial of the extension request.

Department Response: The Department agrees that violations noted during the external inspection that have been properly resolved may not result in denial of an extension request; however, approval of extension requests is always dependent upon the facts and conditions at the time. The Authorized Inspector may not approve or deny extension requests because the decision may only be made upon the agreement of the Executive Director of the Department and the AIA. The Act in §755.026(a) provides the Executive Director and the AIA with discretion to approve extension requests, and violations identified during an

external inspection that have been satisfactorily resolved is one of the factors already considered when making decisions to approve extension requests. The Department has removed this provision from the rules because it is unnecessary to restate it.

LGC recommendation 2: Do not remove the requirement in §65.64(a) to submit requests for extensions not less than 30 days before the expiration date of the certificate of operation, so that the Department will have time to review and timely respond to the operator before the expiration of the current certificate.

Department Response: The Department can review and process most extension requests in significantly less time than 30 days; therefore, the Department disagrees that there is value in continuing to impose the 30-day deadline on all owners. Those owners who need additional time to schedule boiler-related activities after receiving the Department's response to an extension request are not prohibited from submitting such requests well in advance of the expiration of the certificate of operation. The Department has modified the rule to require the owner to request the extension no less than three business days before the expiration of the certificate of operation.

LGC recommendation 3: Retain the language in *italics* that is proposed to be removed from §65.64(a)(6): If the department denies an extension request, the boiler shall be internally inspected before the expiration of the certificate of operation, *unless authorized in writing to continue operation until an internal inspection can be conducted.*

Department Response: The Department disagrees because the operation of a boiler is prohibited unless the boiler has qualified for a current certificate of operation. The language being removed introduces ambiguity because it is unlawful for a boiler to operate beyond the expiration of its certificate of operation. No change has been made to the proposed rules in response to this comment.

LGC recommendation 4: Add the following to §65.64(b) to provide additional conditions under which the internal inspection interval may be extended: (the commenter lists the content of Health and Safety Code §755.026(b)(2) and (b)(3)(A) - (C), Boilers, Extensions).

Department Response: The Department disagrees with the addition because these statutory conditions in the Health and Safety Code, Chapter 755 (the boiler law) for obtaining extension of the interval between internal inspections are fully applicable to all boiler owners requesting extensions and therefore need not be repeated in the boiler rules. Because the approval of extension requests is a decision made by the Executive Director and the AIA having jurisdiction, the proposed rules were crafted to supply owners with criteria under which the approval of an extension request is likely, thus increasing certainty for boiler owners. Decisions about extension requests are invariably based on a demonstrated record of compliance with safe operational standards and compliance with the statute and rules. The Department has made no changes to the rules in response to this comment.

LGC recommendation 5: The requirement in §65.64(b) to notify the Authorized Inspector of outages expected to exceed 10 days, and to obtain confirmation from the Department that eligibility for extensions will be maintained, could compromise the confidentiality of sensitive market information. Information about plant outages is protected under ERCOT rules, must be reported to ERCOT confidentially, and ERCOT may not release the information for 60 days. Therefore, the boiler rules should provide

that this information be considered critical electric infrastructure information and require that it should not be disclosed publicly for at least 60 days.

Department Response: The Department disagrees that the boiler rules should require information about outages to be withheld from public disclosure because the Department is not authorized to create such a rule. The notice provided to the Department of time out of service for a boiler if expected to exceed 15 consecutive days would not fall under the protections provided to the reporting of expected outages required under ERCOT (Electric Reliability Council of Texas) Protocols that are reported to ERCOT. However; because time out of service for a boiler may sometimes coincide with an expected outage that must be reported to ERCOT, and because the information may be afforded other protections under the Public Information Act, the Department would be obligated to seek to protect the outage information from release should it receive a request for that information. The Department is not authorized to independently classify information as confidential and withhold it; instead, the procedure to protect information includes seeking a ruling from the Texas Attorney General's office as to the confidentiality of the information under Government Code Ch. 552, the Public Information Act, or other law. In that process the owner would also be provided the opportunity to make arguments against release of the information. Owners are encouraged to mark and identify as confidential any information that they consider to be sensitive, proprietary, or otherwise warranting confidential treatment when submitting or reporting that information to the Department or any entity. Authorized Inspection Agencies are required to protect the confidential information of their clients in accordance with their National Board accreditation. No change to the rule has been made in response to this comment.

Comments received during the public comment period September 13 - October 14, 2019.

The Department received three comments relating to extensions of the internal inspection interval from Praxair Inc.; Xcel Energy; and the Texas Chemical Council (TCC) and Texas Oil and Gas Association (TXOGA), commenting jointly.

Comment: Xcel Energy commented that the new definitions for "standby," "operation," and "out of service" are adequate and accurate but proposes that the requirement in §65.64 to report outages greater than 10 days be rejected by the board. The commenter states that the requirement will be burdensome and will bring no value to the owner, AIAs, and the Department. Praxair Inc. commented that the notification to the state and to the authorized inspection agency when a boiler is shut down for a period exceeding 10 days is too restrictive for plants that have regular shutdowns for general process maintenance not associated with the boiler. The commenter requests that the notification to the Department be required only after 30 days of shutdown.

Department Response: The Department disagrees with the comments asserting that the new rule places significant burdens on owners and that the notification time should be increased from 10 days to 30. However; the Department has modified the rule to expand the time out of service from 10 to 15 consecutive days to provide owners some additional time before notification should be made, as appropriate. Section 65.64(c) imposes no requirement to notify the Department of periods of time out of service and imposes no limit on their frequency or duration. Instead, the simple procedure for notifying the Department is an option for owners that is designed to provide certainty for them as to whether their ability to obtain extension of the internal

inspection interval may be preserved despite periods out of service. If notification is not made the likelihood of approval of an extension may be greatly reduced. If notification is made by the 15th consecutive day out of service but the Department informs the owner that the extension will not be approved, then the owner will have time to arrange an internal inspection before the certificate of operation expires. Owners may disregard the notification process but will not be assured of obtaining extension of the inspection interval if periods out of service exceed 15 consecutive days. Such periods reduce confidence that a boiler is being safely operated. The Act requires owners to maintain safety procedures including continuous water treatment even during time out of service in order to obtain extensions. The proposed changes in §65.64 impose no new operating burdens and provide additional options for maintaining eligibility for extensions.

The Department is charged with creating rules to ensure the safe operation of boilers in Texas. It is obligated by law to ensure that certain safety minimums are observed, such as continuous water treatment and daily sampling during operation. The purpose of notification for longer periods out of service during the inspection interval while possibly retaining eligibility for an extension is for safety concerns that arise when a boiler is taken out of service for more than a short time. The proposed rule specifically provides for periods of standby and repair while maintaining eligibility for extension of the internal inspection interval. However; the internal inspection is an annual requirement and periods out of service during which an internal inspection can be safely and competently performed are opportunities to perform the inspection. Extensions of the interval normally are not appropriate under those conditions. Owners ordinarily may preserve the ability to obtain an extension if they place a boiler in standby. The information provided by the notification aids the Executive Director and the AIA to evaluate whether an extension will be granted or if the owner can take steps to better ensure that possibility. The Department believes that the minor burden of notification to support certain extension requests is an appropriate condition to ensure that it is fulfilling its statutory obligations as well as providing certainty and efficiency to owners. There is no cost for the notification and the Department will accept an email message.

Comment: TCC/TXOGA commented in support of clarifying the eligibility for an extended interval between internal inspections but requested changes to the proposed text in consideration of the impact to refining and petrochemical industry operations:

Remove the *italicized* text from the definition of "out of service": "A boiler is out of service when it is not in operation *and it is not designated as in standby.*" Also modify the definition of "standby" to allow the boiler to be out of service when there is an unplanned shutdown and no repairs are being performed, to read "A boiler is in standby when the owner or operator has designated it as in standby and it is in operation at low fire or it is designated as in standby and out of service with no repairs" (the Department's proposed language is "A boiler is in standby when the owner or operator has designated it as in standby and it is in operation at low fire or it is designated as in standby and can be placed into operation within a maximum of 48 hours' notice").

Department Response: The Department disagrees with the recommended changes. The purpose of the extension of the interval between internal inspections is to allow a boiler that is operating continuously and safely, or that has periods of standby or brief repair periods when it is out of service, as described, to continue to operate without having to take the boiler out of ser-

vice for an internal inspection that is otherwise required. A boiler that is in standby can be quickly returned to service. A boiler that is out of service for more than a brief period of time may be internally inspected as required before it is returned to service or may require inspection before the Department issues a new certificate of operation. Extended periods out of service indicate that a boiler may not be safe to continue operating without passing an internal inspection. No change has been made to the proposed rules in response to this comment.

Comment: Increase the amount of time from a maximum of 10 consecutive days to a maximum of 30 consecutive days that a boiler can be out of service before notification is required to maintain eligibility for an extension, including times when one or more opportunistic repairs are being made. Amend the rule to not require continuous water treatment when a boiler is out of service with no repairs. Clarify at what point the time period for notification begins if a boiler is in standby before an opportunistic repair begins. Clarify which types of repairs may be made for which eligibility for an extension will be preserved if the time out of service will exceed 10 days.

Department Response: The Department disagrees with the recommended changes. However, the Department has modified the rule to expand the time out of service from 10 to 15 consecutive days to provide owners some additional time before notification should be made, as appropriate. The Act provides the Executive Director and the AIA with discretion to consider the factual circumstances to make decisions regarding the conditions under which the eligibility for an extension of the internal inspection interval may be approved. The rules provide for periods out of service of up to 15 consecutive days without the need to notify but require notification for longer periods of time if the owner desires to obtain a determination that eligibility for an extension has been preserved. Any such request will be confirmed or denied at the discretion of the Executive Director and the AIA based on the conditions existing during the time since the last internal inspection. Notification is not necessary for periods when a boiler is in standby as defined in §65.2 or for periods of time out of service for repair for no longer than 15 consecutive days. The length of periods of time out of service and the nature of repairs are only two of the factors the Executive Director must consider when responding to notifications and when approving or denying extension requests. Owners are welcome to contact the Department to discuss options for operating that may improve the likelihood of obtaining extensions.

Health and Safety code §755.026 requires continuous water treatment, and the rule defines this term as "a verifiable program that controls and limits corrosion and deposits in a boiler." Thus, continuous water treatment calls for uninterrupted attention to controlling and limiting corrosion and deposits in boilers regardless of their day-to-day operating status. The Executive Director must know the conditions under which a boiler is taken out of service to determine whether the time out of service will jeopardize safety. In addition, the required internal inspection may be completed during a lengthy period out of service and an extension of the inspection interval would not be appropriate or in keeping with safe operation. See also, the Department's other responses discussing the request to lengthen from 10 to 30 days the amount of time before notification must be made to preserve eligibility for extension of the internal inspection interval.

Comments received during the public comment period June 5 - July 6, 2020.

The Department received comments from the Texas Oil and Gas Association (TXOGA) and from Dow Chemical Company.

Comment: Dow Chemical Company commented in support of the proposed rule. Dow predicts that the changes should reduce the number of internal inspections, which will improve overall worker safety by reducing confined space entries, scaffold building, equipment openings, etc. Dow also notes that the proposed rules provide certainty for business operations by removing ambiguity that exists in the current regulations and encourages the Department to adopt the proposed changes.

Department Response: The Department appreciates the expression of support and agrees that the proposed amendments clarify the requirements and will operate to improve safety and provide other benefits. No change has been made to the rules in response to this comment.

Comment: TXOGA commented that it disagrees with the Department's analysis and states that the amendments will have significant economic impact to the refining and petrochemical industry. TXOGA disagrees that the amendments will result in the public benefit of increased safety of boiler operation in Texas. Instead, TXOGA states that the amendments will discourage owners from performing opportunistic boiler work and increase health, safety, and environmental risk due to having to inspect boilers more frequently.

Department Response: The Department disagrees that the amendments place significant burdens on owners or result in no benefit or increased risk. The Department is charged by statute with creating rules to ensure the safe operation of boilers in Texas. It is obligated by law to ensure that operators observe certain safety minimums such as continuous water treatment, daily sampling during operation, and annual internal inspections. The purpose of providing notification to the Executive Director and the AIA for longer periods out of service while possibly retaining eligibility for an extension is for safety concerns that arise when a boiler is taken out of service for more than a short time. The proposed rules specifically provide for periods of standby and repair while maintaining eligibility for extension of the internal inspection interval. The rules do not require an internal inspection during most brief opportunistic repairs, but even for longer periods out of service the inspection, if required under the conditions, may be delayed until a more convenient time. Periods out of service when the boiler is in a condition where an inspection can be safely and competently performed are opportunities to perform the required annual inspection. Extensions of the interval normally are not appropriate under those conditions, but the amendments do provide for much greater flexibility than currently exists in the law. For example, owners may now preserve the ability to obtain an extension if they place a boiler in standby, an option that has not been available in the past. In addition, operators may choose to schedule the internal inspection at any time before the expiration of the certificate of operation, even if the boiler experiences extended periods out of service but performing the inspection during those times is not cost-efficient for the operator. No change has been made to the rules in response to these comments.

Comment: TXOGA comments that a facility may be unprepared to conduct an internal inspection during an unplanned shutdown and that requiring it to be performed will cause the outage to take longer and increase risk and cost without increasing the safety of boiler operation. TXOGA suggests edits to the definitions of "operation," "standby," and "out of service" so that a boiler may be out of service when no repairs are being performed for periods

up to 30 consecutive days instead of 15. TXOGA comments that certain repairs can be done without opening the steam drum for internal inspection. Further, the commenter considers a boiler at low fire to be in operation so the definition of standby should not include operation at low fire but should be defined as the condition of an energy source being applied to the boiler to produce steam. The commenter suggests that continuous water treatment should not be required when in standby under its proposed edits.

TXOGA also recommends edits to the text of §65.64(b) and (c) to provide for the availability of extensions if a boiler is out of service for repairs not exceeding 30 consecutive days to allow opportunistic repairs without having to conduct an internal inspection. TXOGA states that this would not discourage owners from performing preventative maintenance because it would remove the risk of being obligated to perform the costly internal inspection that also does not improve boiler safety. TXOGA further recommends loosening the requirements to contact the Department and the AIA when a boiler is out of service for more than 30 consecutive days; reducing the information that must be provided to the Department and the AIA; and removing the obligation to update the information if significant changes in conditions occur.

Department Response: The Department does not agree with the commenter's interpretation of the rule requirements. First, a facility is not required to perform an internal inspection during an unplanned shutdown. The facility may make a business decision to conduct it at that time, but the annual inspection can be conducted at any time before the certificate of operation expires. If the circumstances of the unplanned shutdown are such that the Executive Director agrees that an extension may still be approved, then no inspection will be necessary. For example, if repairs can be conducted without opening the steam drum then the boiler cannot be safely and competently inspected, and an internal inspection would not be required. The rules impose no limit on the frequency or duration of periods of time out of service. Instead, the simple procedure for notifying the Executive Director is an option for owners that is designed to provide certainty for them as to whether their ability to obtain extension of the internal inspection interval may be preserved despite periods out of service. However, periods out of service exceeding 15 consecutive days may not necessarily cause the extension to be denied.

Second, the Act requires owners to maintain safety procedures including continuous water treatment even during time out of service in order to obtain extensions. The definition of "operation" focuses on the energy source being applied to the boiler because the important variable is steam pressure, not temperature or other conditions. The definition provides a narrow but universal factor essential to considering any boiler to be in operation. Third, a boiler that is out of service is not in operation so no energy source is being applied, but a boiler can be in operation in standby at low fire. The law requires continuous water treatment during operation; therefore, the rules require water sampling and treatment during this type of standby only. If a boiler could be out of service for periods of time up to 30 consecutive days but could be considered in standby, this would eviscerate the meaning of standby and open the possibility of unsafe operation. The Department has defined "continuous water treatment" as a program to control and limit corrosion and deposits as an acknowledgment that boilers need to be protected against corrosion and deposits at all times regardless of the quantity of water in them, or lack of it, at any given time, and regardless of their status as in or out of service.

Finally, the proposed changes in §65.64 impose no new operating burdens and provide additional options for maintaining eligibility for extensions. The Department believes that the optional minor burden of notification to support certain extension requests is an appropriate condition to ensure that it is fulfilling its statutory obligations as well as providing certainty and efficiency to owners. There is no cost for the notification and the Department will accept an email message for notification. No changes have been made to the rules in response to this comment.

Comment: TXOGA presents several factual scenarios and asks the Department to clarify when a boiler is designated as out of service and when extensions will be provided under those scenarios.

Department Response: The Executive Director and the AIA's position as to whether an extension will be granted, barring additional changes in conditions following that determination, depends on several factors. One of the most important is the quality of recordkeeping by the operator. A determination can only be made based on the facts presented, so if records are incomplete, inadequate, or absent, this undermines support for the availability of an extension. Therefore, two outwardly similar events could have different outcomes regarding extensions. The purpose of the extension of the interval between internal inspections is to allow a boiler that is operating continuously and safely, or that has periods of standby or brief repair periods when it is out of service, to continue to operate without having to take the boiler out of service for an internal inspection that is otherwise required. A boiler that is in standby can be quickly returned to service. A boiler that is out of service for more than a brief period of time and will not qualify for an extension may be internally inspected as required before it is returned to service, or, at the operator's discretion, may be inspected at any time before the certificate of operation expires.

Operators should compare the rules and definitions to their operating practices and consider expanding or modifying the information they record to support the condition of the boiler when in standby, operation, or out of service; what components of the system are functioning normally or are disabled; what type of repair or maintenance work is being conducted, how long boiler operation is affected and in what way, and so on. The Act requires operators to maintain accurate and complete records. Operators may contact the Department at any time during an event to obtain guidance on how they might best proceed and retain the ability to qualify for extension of the inspection interval. The Department sought and received extensive input from stakeholders to arrive at the rule amendments presented and believes that the rules are workable, efficient, and fulfill the purpose of ensuring safety while offering increased flexibility for operators. Therefore, no changes have been made in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Board of Boiler Rules (Advisory Board) met on August 6, 2020, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register*. Subsequent minor editorial changes were made and at its meeting on September 29, 2020, the Commission adopted the proposed rules.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §65.2

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code Chapter 51 and Texas Health and Safety Code Chapter 755, 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 rules are those set forth in Texas Occupations Code Chapter 51 and Texas Health and Safety Code Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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 9, 2020.

TRD-202004190

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Effective date: October 29, 2020

Proposal publication date: June 5, 2020

For further information, please call: (512) 475-4879



SUBCHAPTER I. INSPECTION OF BOILERS

16 TAC §65.64

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code Chapter 51 and Texas Health and Safety Code Chapter 755, 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 rules are those set forth in Texas Occupations Code Chapter 51 and Texas Health and Safety Code Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1006

The Texas Education Agency (TEA) adopts §61.1006, concerning Foundation School Program funding for reimbursement of disaster remediation costs. The new section is adopted with changes to the proposed text as published in the July 10, 2020 issue of the *Texas Register* (45 TexReg 4612) and will be republished. The adopted new section reflects changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by establishing the criteria, funding sources, and procedures that a school district or an open-enrollment charter school, all or part of which is located in an area declared a disaster area by the governor under Texas Government Code, Chapter 418, must meet in order to receive disaster remediation expense reimbursement.

REASONED JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, added Texas Education Code (TEC), §48.261, Reimbursement for Disaster Remediation Costs. The new statute establishes the criteria, a timeline for application, and funding sources for school districts affected by and within an area declared a disaster area by the governor under Texas Government Code, Chapter 418.

New §61.1006 implements TEC, §48.261, by establishing guidelines and requirements that school districts and open-enrollment charter schools must meet in order to qualify for disaster cost reimbursement from appropriated funds and/or the Foundation School Program.

The adopted new section applies to disasters that occur on or after September 1, 2019. For disasters that occurred prior to September 1, 2019, school districts and open-enrollment charter schools may apply for reimbursement of disaster remediation costs under 19 TAC §61.1013, Foundation School Program Funding for Reimbursement of Disaster Remediation Costs, or 19 TAC §61.1014, Credit Against Recapture for Reimbursement of Disaster Remediation Costs. Because 19 TAC §61.1013 and §61.1014 were adopted in relation to the methods of school finance in place prior to the passage of HB 3, 86th Texas Legislature, 2019, the rules treat school districts that are subject to recapture and those that are not differently. Adopted new §61.1006 is necessary to provide one common rule under the new method of school finance implemented by HB 3.

In response to public comment, subsection (l)(1)(A) has been modified at adoption. New clause (iii) was added to clarify that, except where specifically identified, 19 TAC Chapter 61, Subchapter CC, does not apply to open-enrollment charter schools.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began July 10, 2020, and ended August 24, 2020. Following is a summary of the public comments received and corresponding responses.

Comment: The Texas Public Charter Schools Association (TPCSA) expressed opposition to open-enrollment charter schools being required to follow 19 TAC Chapter 61 designating the use of disaster remediation funds for construction projects. TPSCA stated that charter schools have never been subject to 19 TAC §61.1033 and §61.1036, which regulate the construction of buildings for independent school districts, and that open-enrollment charters have been exempt from specific square footage requirements in order to lease and/or renovate nontraditional spaces. TPSCA stated that subjecting charter schools to highly specific square footage requirements would

cause additional burden when leasing and/or purchasing non-traditional spaces for renovation. TPCSA further commented that new requirements would deny charters the flexibility to design buildings to best meet student needs and that, since public charter schools do not receive full facilities funding, subjecting them to new standards would take away classroom funding.

Response: The agency agrees that open-enrollment charter schools are not subject to the requirements in 19 TAC §61.1033 and §61.1036. Language was added in §61.1006(l)(1)(A)(iii) at adoption to clarify that, except where specifically identified, 19 TAC Chapter 61, Subchapter CC, does not apply to open-enrollment charter schools. The agency anticipates revising rules in 19 TAC Chapter 61, Subchapter CC, to add security and safety provisions that would apply to open-enrollment charter schools in accordance with Senate Bill (SB) 11, 86th Texas Legislature, 2019.

Comment: The law firm of Schulman, Lopez, Hoffer & Adelstein commented in opposition to open-enrollment charter schools being required to follow 19 TAC Chapter 61. The commenter noted that neither TEC, §46.008, which requires the commissioner to establish standards for the adequacy of school facilities, nor TEC, §46.002, applies to charter schools and that these are the statutes authorizing 19 TAC §61.1033 and §61.1036.

Response: The agency agrees that open-enrollment charter schools are not subject to the requirements in TEC, §46.002 or §46.008. Language was added in §61.1006(l)(1)(A)(iii) at adoption to clarify that, except where specifically identified, 19 TAC Chapter 61, Subchapter CC, does not apply to open-enrollment charter schools. The agency anticipates revising rules in 19 TAC Chapter 61, Subchapter CC, to add security and safety provisions that would apply to open-enrollment charter schools in accordance with SB 11, 86th Texas Legislature, 2019.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §48.261, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019, which establishes reimbursement for disaster remediation cost guidelines and applies only to a school district or an open-enrollment charter school located in an area declared a disaster area by the governor under Texas Government Code, Chapter 418, that incurs disaster remediation expenses as a result of the disaster. TEC, §48.261(e), requires that the commissioner of education adopt rules necessary to implement the provisions of the statute.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §48.261.

§61.1006. *Foundation School Program Funding for Reimbursement of Disaster Remediation Costs.*

(a) General provisions. This section implements Texas Education Code (TEC), §48.261 (Reimbursement for Disaster Remediation Costs). The commissioner of education may provide disaster remediation cost reimbursement under this section only if funds are available for that purpose from:

(1) amounts appropriated for that purpose, including amounts appropriated for school districts or open-enrollment charter schools for that purpose to the disaster contingency fund established under Texas Government Code, §418.073; or

(2) Foundation School Program (FSP) funds available for that purpose based on a determination by the commissioner that the amount appropriated for the FSP, including the facilities component as

provided by TEC, Chapter 46, exceeds the amount to which school districts and open-enrollment charter schools are entitled under this subchapter and TEC, Chapter 46.

(b) Eligibility. A school district or an open-enrollment charter school that meets the following criteria is eligible to apply:

(1) all or part of the school district or open-enrollment charter school must be located in an area declared a disaster area by the governor under Texas Government Code, Chapter 418;

(2) the school district or open-enrollment charter school must have incurred and paid disaster remediation costs during the two-year period following the date of the governor's initial proclamation or executive order declaring a state of disaster that the school district or open-enrollment charter school does not anticipate recovering through insurance proceeds, federal disaster relief payments, or another similar source for reimbursement; and

(3) in accordance with TEC, §48.261, the school district or open-enrollment charter school must apply for reimbursement during the two-year period following the date of the governor's initial proclamation or executive order declaring a state of disaster. The school district or open-enrollment charter school must submit a completed application by the application deadline. A school district or an open-enrollment charter school that submits an incomplete application or submits an application after the application deadline may be deemed ineligible for funds.

(c) Definitions. The following terms have the following meanings when used in this section.

(1) Disaster remediation costs--Costs incurred by a school district or an open-enrollment charter school for replacing school facilities; equipment, including, but not limited to, the cost to repair or replace vehicles or computers damaged in the disaster; and supplies needed to provide instruction at a location where students eligible for FSP funding regularly attend classes.

(2) Paid disaster remediation costs--Disaster remediation costs that are paid or remitted resulting in an outflow of cash in exchange for goods or services evidenced by an invoice, receipt, voucher, or other such document, and in accordance with standards found in the Financial Accountability System Resource Guide adopted by reference in §109.41 of this title (relating to Financial Accountability System Resource Guide) and TEC, §48.261, that the school district or open-enrollment charter school does not anticipate recovering through insurance proceeds, federal disaster relief payment, or another similar source of reimbursement in accordance with TEC, §48.261, and that were paid during the two-year period following the governor's initial proclamation or executive order declaring a state of disaster.

(d) Application process. A school district or an open-enrollment charter school seeking disaster reimbursement must submit a new application each time Texas Education Agency (TEA) opens a disaster reimbursement application process on a form prescribed by TEA. The application shall contain, at a minimum, the following:

(1) identification of the governor's initial proclamation or executive order declaring a state of disaster and evidence that all or part of the school district or open-enrollment charter school is in the area subject to the disaster declaration;

(2) the total dollar amount of paid disaster remediation costs during the two-year period following the governor's proclamation or executive order declaring a state of disaster;

(3) the total dollar amount of paid disaster remediation costs paid during the two-year period following the governor's proclamation or executive order declaring a state of disaster that the school

district or open-enrollment charter school anticipates to be reimbursed from insurance proceeds, federal disaster relief payments, or another similar source of reimbursement;

(4) the total difference between the amounts of paid disaster remediation costs specified in paragraphs (2) and (3) of this subsection and, of the total difference, the specific paid disaster remediation costs for which the school district or open-enrollment charter school is seeking reimbursement under TEC, §48.261;

(5) an explanation as to why the school district or open-enrollment charter school does not anticipate being reimbursed from insurance proceeds, federal disaster relief payments, or another similar source of reimbursement for each paid disaster remediation cost identified in paragraph (4) of this subsection;

(6) a certification from the school district or open-enrollment charter school board and superintendent or chief executive officer that all paid disaster remediation costs for which the school district or open-enrollment charter school is seeking reimbursement under paragraph (4) of this subsection qualify as paid disaster remediation costs and that the school district or open-enrollment charter school board and superintendent or chief executive officer do not anticipate recovering these payments through insurance proceeds, federal disaster relief payments, or another similar source of reimbursement; and

(7) a certification from the school district or open-enrollment charter school board and superintendent or chief executive officer that the school district or open-enrollment charter school, for any paid disaster remediation costs for which the school district or open-enrollment charter school is seeking reimbursement under paragraph (4) of this subsection, has made and will continue to make efforts to seek reimbursement from insurance proceeds, federal disaster relief payments, or another similar source of reimbursement as allowable or appropriate.

(c) Updates for new payments. If a school district or open-enrollment charter school makes more paid disaster remediation cost payments after submission of its initial application to the TEA and prior to the deadline announced for disaster reimbursement application submission, the TEA will prescribe a form allowing the school district or open-enrollment charter school to submit additional paid disaster remediation cost payments and information consistent with the application process in subsection (d) of this section and will increase the amount of reimbursement as available and appropriate.

(f) Reporting requirement. Annually after the date of the award under this disaster reimbursement program, the awarded school district or open-enrollment charter school board and superintendent or chief executive officer shall provide a certified report on a form prescribed by TEA until all insurance proceeds, federal disaster relief, or other similar sources of reimbursements related to the disaster are finalized. On the report, the school district or open-enrollment charter school shall identify any insurance proceeds, federal disaster relief payments, or other similar sources of reimbursement that the school district or open-enrollment charter school received for which the school district or open-enrollment charter school previously received reimbursement payment from TEA. TEA will adjust funding for any overpayments made to the school district or open-enrollment charter school based on the final report made under this subsection of the school district or open-enrollment charter school out of the school district's or open-enrollment charter school's future FSP payments or will require a refund from the school district or open-enrollment charter school.

(g) Finality of award. Awards of assistance under this section will be made based only on paid disaster remediation costs. Prior to

making an award, TEA may request additional documentation, including, but not limited to, evidence described in subsection (c)(2) of this section and evidence supporting the certifications required by subsection (d)(6) and (7) of this section. A school district or an open-enrollment charter school is not entitled to any requested reimbursement, and a decision by the commissioner is final and may not be appealed.

(h) Deadlines. The commissioner will announce a deadline for disaster reimbursement applications in conjunction with making a determination of the amount of funds available for the disaster reimbursement program cycle. All applications received by the announced deadline will be reviewed. Applications will be funded if sufficient funds are available to fully fund each application. If sufficient funds are not available to fully fund each application, funding will be prorated proportionately so that every funded application receives the same percentage of requested funding.

(i) Distribution of funds. Funds will be allocated through the FSP and will appear on the school district or open-enrollment charter school payment ledger and be delivered as soon as is practicable after award amounts have been determined.

(j) Finalization of award. When the school district or open-enrollment charter school determines that all insurance proceeds, federal disaster relief payments, or other similar sources of reimbursement that the school district or open-enrollment charter school anticipates receiving are finalized and there are no pending claims, the school district or open-enrollment charter school board and superintendent or chief executive officer shall certify to TEA in writing that the annual report required by subsection (f) of this section is no longer necessary and disaster reporting is finalized.

(k) Record retention and audit. The school district or open-enrollment charter school shall maintain all documents necessary to substantiate payment and certifications made in subsections (c)(2), (d), (g), and (h) of this section, and the school district or open-enrollment charter school is subject to audit by TEA until two years after the school district or open-enrollment charter school certifies to TEA in writing that the disaster is finalized and closed in accordance with subsection (j) of this section.

(l) Replacement of school facilities damaged in the disaster. In accordance with TEC, §48.261, a school district or an open-enrollment charter school is permitted to elect to replace a facility damaged in a disaster instead of repairing that facility, provided that the state funds provided under this section do not exceed the lesser of the amount that would be provided to the district or charter school if the facility were repaired or the amount necessary to replace the facility.

(1) Construction plans and budgeted costs to rebuild the facility must be reasonable and appropriate, as follows.

(A) Construction plans should follow current TEA facility guidelines and physical plant requirements as prescribed in applicable provisions of Chapter 61, Subchapter CC, of this title (relating to Commissioner's Rules Concerning School Facilities) without significant add-ons or upgrades, noting that:

(i) pre-disaster square footage in temporary buildings may be replaced with square footage in permanent buildings;

(ii) pre-disaster square footage amounts may be adjusted to account for additional square footage specifically required by TEA guidelines, if applicable; and

(iii) except where specifically identified, the provisions of Chapter 61, Subchapter CC, of this title do not apply to open-enrollment charter schools.

(B) Budgeted cost per square foot may not be significantly higher than recent comparable construction costs within the region where the facility will be constructed.

(C) Enrollment capacity of the facility may not vary significantly from current common practice for new facilities of a like purpose.

(D) The facility's square footage per unit of enrollment capacity may not significantly exceed current best practice guidelines for new facilities of like purpose.

(E) The requesting school district or open-enrollment charter school is responsible for demonstrating that construction plans and budgeted costs conform to the requirements in this paragraph.

(2) The cost to replace a facility shall be based on the average of the following two methodologies:

(A) replacement cost based on square footage, which is an amount equal to the product of the reasonable and appropriate budgeted costs and the quotient of the square footage of the pre-disaster facility and the square footage of the planned facility, where the replacement cost may not exceed the budgeted cost; and

(B) replacement cost based on enrollment capacity, which is an amount equal to the product of the reasonable and appropriate budgeted costs and the quotient of the pre-disaster facility enrollment capacity and the planned facility enrollment capacity, where the replacement cost may not exceed the budgeted cost.

(3) The commissioner may grant a waiver of one or more of the requirements in paragraph (1) of this subsection if the school district or open-enrollment charter school provides sufficient justification why the requirement should not apply in a particular instance.

(4) The school district or open-enrollment charter school may request an initial reimbursement based on anticipated insurance proceeds, federal disaster relief payments, or other similar sources of reimbursements. When this occurs, TEA will determine at a later date the appropriate reimbursement when actual insurance proceeds, federal disaster relief payments, or other similar sources of reimbursements are known.

(m) Applicability. This section applies to disasters that occur on or after September 1, 2019. Reimbursement requests for disaster remediation costs for disasters that occurred prior to September 1, 2019, are governed by §61.1013 of this title (relating to Foundation School Program Funding for Reimbursement of Disaster Remediation Costs) and §61.1014 of this title (relating to Credit Against Recapture for Reimbursement of Disaster Remediation Costs).

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 7, 2020.

TRD-202004165

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: October 27, 2020

Proposal publication date: July 10, 2020

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



TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.10

The Texas Optometry Board adopts amendments to §273.10 of Chapter 273, Title 22, without changes to the proposed text as published in the June 26, 2020, issue of the *Texas Register* (45 TexReg 4292). The rule will not be republished.

The amendments prohibit disciplinary action by a licensing agency because of a default on a student loan or a breach of a student loan repayment contract or scholarship contract.

No comments were received.

The amendment is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and Senate Bill 37, 86th Legislature, Regular Session.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets Senate Bill 37 (Texas Occupations Code §56.003) to prohibit disciplinary action against a licensee because of a default on a student loan or a breach of a student loan repayment contract or scholarship contract.

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 12, 2020.

TRD-202004221

Kelly Parker

Executive Director

Texas Optometry Board

Effective date: November 1, 2020

Proposal publication date: June 26, 2020

For further information, please call: (512) 305-8502



PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.5

The Texas Board of Physical Therapy Examiners adopts the amendments to 22 Texas Administrative Code (TAC) §329.5. Licensing Procedures for Foreign-Trained Applicants. The amendments are adopted without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5824). The rule will not be republished.

The amendment is adopted to update the Test of English as a Foreign Language (TOEFL) minimum standards accepted by the board as proof of English language proficiency for a foreign-trained licensure applicant. The amendment eliminates outdated scores and adds the most recent TOEFL scores adopted by the Federation of State Boards of Physical Therapy (FSBPT).

No public comment was received.

The amended rules are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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 9, 2020.

TRD-202004216

Ralph A. Harper

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: November 1, 2020

Proposal publication date: August 21, 2020

For further information, please call: (512) 305-6900



CHAPTER 344. ADMINISTRATIVE FINES AND PENALTIES

22 TAC §344.1

The Texas Board of Physical Therapy Examiners adopts the amendments to 22 Texas Administrative Code (TAC) §344.1, regarding changes to the Schedule of Sanctions graphic. The amendments are adopted without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5825). The rule will not be republished.

The amendment is adopted to update the Schedule of Sanctions graphic by removing the sanctions for not registering a physical therapy facility and practicing in an unregistered physical therapy facility pursuant to the repeal of physical therapy facility registration and annual renewal pursuant to SB 317 during the 85th Legislative Session; and to add a range of fines that can be imposed per violation to each category of disciplinary action.

No public comment was received.

The amended rules are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ralph A. Harper

Executive Director

Texas Board of Physical Therapy Examiners

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For further information, please call: (512) 305-6900



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 567. CERTIFICATE OF PUBLIC ADVANTAGE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts new §§567.1 - 567.6, 567.21 - 567.26, 567.31 - 567.33, 567.41, and 567.51 - 567.54 in Texas Administrative Code (TAC) Title 26, Part 1, Chapter 567. The new rules are adopted without changes to the proposed text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4704). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The new sections are necessary to implement House Bill (H.B.) 3301, 86th Legislature, Regular Session, 2019, which added Chapter 314A to Texas Health and Safety Code (HSC). This chapter requires HHSC, as the agency designated by the governor under HSC §314A.004, to adopt rules for the administration and implementation of Chapter 314A. This chapter permits qualifying hospitals in certain counties to apply for a Certificate of Public Advantage (COPA). A COPA grants merging hospitals immunity from federal and state antitrust laws.

The new sections require hospitals eligible to apply for a COPA to pay a fee if applying for a COPA and, if granted a COPA, pay an annual supervision fee, report changes that could affect the COPA, submit an annual report, request approval from HHSC to change rates, and submit a corrective action plan if found to be out of compliance with 26 TAC Chapter 567.

COMMENTS

The 31-day comment period ended August 10, 2020. During this period, HHSC received comments regarding the proposed rules from one commenter. A summary of comments relating to the rules and HHSC's responses follows.

Comment: The commenter made three statements and suggestions surrounding public comment and notification that were not attached to a specific rule. The commenter requested that the rules require public notice that an application has been filed, posting the public version of applications on the HHSC website, or a process for public hearing or comments on the application.

Response: HHSC declines to revise the rule in response to this comment. HSC Chapter 314A does not require HHSC to provide public notice of a COPA application, post the public version of a COPA application on its website, or conduct a public hearing or solicit public comments. HHSC will post the public version of COPA applications under review on its website. HHSC notes that it accepts informal comments on any matter before it.

Comment: The commenter made two statements about the COPA applications that appear to relate to §567.22. The commenter noted that the rules do not have provisions for HHSC or the Office of the Attorney General (OAG) to require a COPA applicant to provide additional information before an application is deemed complete and there is no way for HHSC or the public to challenge whether redactions to the public version of a COPA application were proper. The commenter requested that the rules require a merger agreement, and all financial and market data that may become public in required government reports about the merger, be made available to the public.

Response: HHSC declines to revise the rule in response to this comment and notes that §567.22 provides detailed information about which information is necessary to deem an application complete. Under §567.22(e), "HHSC may request additional information necessary to make the application complete and to meet the requirements of" HSC Chapter 314A and 26 TAC Chapter 567. This permits HHSC to request any additional information needed to deem an application complete. HHSC also notes that it does not have any regulatory authority over the OAG.

HHSC notes §567.22(c) is based directly on HSC §314A.052(b)(2), which requires applicants to "submit duplicate applications, one application that has complete information for the designated agency's use and one redacted application that will be made available for public release." HHSC is required under the statute to accept a redacted application and does not have the legal authority to mandate what information the applicant designates as proprietary. Any request for information an applicant has designated as proprietary must be made under the Texas Public Information Act.

Comment: The commenter made two statements about the rules not allowing for public notice and comment on the terms of a COPA. The commenter noted the rules do not require HHSC to publish a draft COPA or provide a process for holding public hearings or soliciting public comments on a draft COPA.

Response: HHSC declines to revise the rule in response to this comment. HSC Chapter 314A does not require HHSC to solicit public comments regarding the terms of a COPA. HHSC notes that it accepts informal comments on any matter before it.

Comment: The commenter stated that the rules do not allow for the OAG to review or comment on the draft COPA.

Response: HHSC declines to revise the rule in response to this comment and notes that 26 TAC §567.24, based on HSC §314A.056, requires HHSC to consult with the OAG regarding each COPA application.

Comment: The commenter stated that the rules do not allow for public participation regarding the terms of the COPA.

Response: HHSC declines to revise the rule in response to this comment. HHSC notes that it accepts informal comments on any matter before it.

Comment: The commenter made a statement about the scope of the review by the OAG, which appears to relate to §567.24. The commenter requested that the rules explain the scope of the OAG's role in HHSC's review of a COPA application and require the OAG to provide HHSC with an opinion on potential antitrust violations that could result from a merger in the absence of immunity under a COPA.

Response: HHSC declines to revise the rule in response to this comment. Defining the scope of the OAG review is outside HHSC's authority. Section 567.24 is based on HSC §314A.056(a), which mandates only that HHSC, as the designated agency, makes a final decision about issuing a COPA after "reviewing the application and consulting with the attorney general in accordance with Section 314A.055."

Comment: The commenter made three comments that appear to be related to §567.32 and §567.51. The commenter stated the proposed rules make no provision for public input as part of the ongoing state supervision of the monopoly. The commenter noted that the rules do not have a provision related to HHSC or the OAG requiring a COPA holder to provide additional informa-

tion, and HHSC is not required to publish annual COPA reports on its website or obtain public input on the accuracy or adequacy of the annual report or the conduct of the COPA holder.

Response: HHSC declines to revise the rule in response to this comment. HSC Chapter 314A does not require HHSC to post the annual report on its website or solicit input regarding conduct of a COPA holder. HHSC will post information regarding the ongoing supervision of hospitals operating under a COPA on its website. HHSC notes that it accepts informal comments on any matter before it. HHSC also notes that §567.32 specifies the information required in the annual report, including §567.32(5), which states "any other information required by HHSC to ensure compliance with Texas Health and Safety Code Chapter 314A and this chapter, including information relating to compliance with any terms or conditions for issuance of the COPA."

Comment: The commenter made a statement regarding rate adjustments, which appears to relate to §567.41. The commenter noted that the rules do not address a COPA holder's ability to allow a contract with a health plan to expire and adopt an out-of-network business model or what patients and health plans must pay under an out-of-network business model.

Response: HHSC declines to revise the rule in response to this comment. The rules closely follow the direction of the Legislature in H.B. 3301, which does not require hospitals operating under a COPA to follow a specific business model.

Comment: The commenter suggested requiring a separation plan for voluntary terminations, which appears to relate to §567.33. The commenter requested that the rules require an enforceable separation plan if a COPA is voluntarily terminated and that HHSC notify the OAG when a COPA is terminated. The commenter noted that Tennessee COPA rules require a separation plan when a COPA is terminated, and the proposed HHSC rules do not.

Response: HHSC declines to revise the rule in response to this comment. The rules closely follow the direction of the Legislature in H.B. 3301, which does not require a voluntary separation plan. The rules are specific to Texas and the needs of its healthcare community, particularly in rural and underserved areas, and they are not intended to mirror similar rules developed by other states.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §§567.1 - 567.6

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 HSC §314A.005, which requires HHSC, as the agency designated by the governor under HSC §314A.004, to adopt rules for the administration and implementation of Chapter 314A.

The new sections implement Texas Government Code §531.0055 and HSC Chapter 314A.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 834-4591



SUBCHAPTER B. APPLICATION AND ISSUANCE

26 TAC §§567.21 - 567.26

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 HSC §314A.005, which requires HHSC, as the agency designated by the governor under HSC §314A.004, to adopt rules for the administration and implementation of Chapter 314A.

The new sections implement Texas Government Code §531.0055 and HSC Chapter 314A.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §§567.31 - 567.33

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 HSC §314A.005, which requires HHSC, as the agency designated by the governor under HSC §314A.004, to adopt rules for the administration and implementation of Chapter 314A.

The new sections implement Texas Government Code §531.0055 and HSC Chapter 314A.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
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Health and Human Services Commission
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SUBCHAPTER D. RATE REVIEW

26 TAC §567.41

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and HSC §314A.005, which requires HHSC, as the agency designated by the governor under HSC §314A.004, to adopt rules for the administration and implementation of Chapter 314A.

The new section implements Texas Government Code §531.0055 and HSC Chapter 314A.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray

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SUBCHAPTER E. ENFORCEMENT

26 TAC §§567.51 - 567.54

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 HSC §314A.005, which requires HHSC, as the agency designated by the governor under HSC §314A.004, to adopt rules for the administration and implementation of Chapter 314A.

The new sections implement Texas Government Code §531.0055 and HSC Chapter 314A.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202004142



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 281. APPLICATIONS PROCESSING SUBCHAPTER A. APPLICATIONS PROCESSING

30 TAC §281.18

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §281.18 *with changes* to the proposed text as published in the May 15, 2020, issue of the *Texas Register* (45 TexReg 3205).

Background and Summary of the Factual Basis for the Adopted Rule

According to §281.1, it is the intent of the TCEQ to establish a general policy for the processing of applications in order to achieve the greatest efficiency and effectiveness possible. However, §281.18 requires notices of application deficiencies to be sent to the applicant via certified, return receipt mail and allows the applicant 30 days to provide a response. The adopted rulemaking amends §281.18 to allow the use of electronic mail (email) for communicating application deficiencies and receiving responses from applicants. The adopted changes modernize communications between the TCEQ and applicants, reduce TCEQ postage costs, and improve the efficiency of application processing.

Section Discussion

§281.18, *Applications Returned*

The commission adopts the amendment to §281.18(a) to include email as a method of communicating application deficiency notices to applicants and allow the commission to establish a timeframe of less than 30 days for applicants to provide the requested information. The purpose of this change is to reduce the timeframes for obtaining necessary information and to reduce postage costs to the TCEQ. Additionally, the commission amends §281.18(a) by parsing a portion of the requirements into adopted paragraphs (1) and (2) to improve readability. Adopted §281.18(a)(1) provides the timeframe for the executive director to review the applicant's response to the notice of administrative deficiencies. Adopted §281.18(a)(2) provides the executive director's course of action if the applicant fails to submit the requested information within the established timeframe. At least one deficiency notice must be sent via certified mail, return receipt requested providing the applicant 30 days to respond before an application may be returned.

Final Regulatory Impact Determination

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code,

§2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the rulemaking is not to protect the environment or reduce risks to human health from environmental exposure, and the adopted rule is not anticipated to have an adverse effect in a material way on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the adopted amendment is to reduce the timeframe for obtaining necessary information from applicants and reduce postage costs to the TCEQ.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this rulemaking and performed an analysis of whether the adopted rulemaking will constitute a taking. Texas Government Code, §2007.002(5), defines a taking as either: 1) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or section 17 or 19, article I, Texas Constitution; or 2) a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission determined that this adopted rulemaking will not constitute a taking as that term is defined under Texas Government Code, §2007.002(5). Specifically, the adopted rulemaking will not affect any landowners' rights in private real property, and there are no burdens that will be imposed on private real property by the adopted rulemaking; it is solely procedural and does not impact real property.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found it is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4), relating to rules subject to the Texas Coastal Management Program (CMP), which will require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this adopted rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP; therefore, it is consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission invited public comment on the adopted rule-making. The comment period closed on June 16, 2020. The commission received comments from Texas Molecular Holdings LLC (TM). The commenter was generally in support of the rule-making but requested clarifications to the rule language.

Response to Comments

Comment

TM is concerned about possible inconsistencies while determining the appropriate amount of time allotted for a response to application deficiencies. To allow the respondent adequate time to arrange a response or request an extension, 10 working days at a minimum should be afforded.

Response

The commission disagrees that a minimum timeframe should be established for emailed deficiency notices. The timeframe for emailed deficiency notices should be determined based on the type and quantity of information requested. If the applicant fails to provide the requested information within the timeframe specified in the emailed notice, the commission will send a second notice via certified mail that provides the applicant an additional 30 days to provide the requested information, as specified in §281.18(a)(2). No changes were made in response to this comment.

Comment

TM recommended revised language in §281.18(a)(1) to clarify the information that the TCEQ is evaluating.

Response

The commission agrees with this comment and revised the rule language as recommended by the commenter.

Comment

TM recommends changing the language in §281.18(a)(2) to clarify that the application will only be returned if the applicant has failed to respond to both the electronically-delivered deficiency notice and the subsequent notice sent via certified mail return receipt, within the specified timeframe required by each notice.

Response

The commission's intent is to require at least one deficiency notice to be sent via certified mail, return receipt requested that allows the applicant 30 days to respond prior to returning an application. The certified letter may be sent as the initial deficiency notice, in which case the application will be returned if the requested information is not received within 30 days. Alternatively, the certified letter may be sent as a second deficiency notice if the requested information is not received within the timeframe specified in the emailed initial deficiency notice. If the certified letter is sent as a second deficiency notice, the application will be returned if the requested information is not received within 30 days from the date of the certified letter. No changes were made in response to this comment.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; TWC, §5.128, which authorizes the commission to utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §§361.011, 361.017, and 361.024, which establish the commission's jurisdiction over the regulation, management, and control of municipal solid waste, industrial solid waste, and municipal hazardous waste, and authorize the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; and THSC, Solid Waste Disposal Act, §361.018 and THSC, Texas Radiation Control Act, §§401.011, 401.051, and 401.412, which establish the commission's jurisdiction and authorize the commission to adopt rules necessary to carry out its responsibilities to regulate the disposal of radioactive substances and the recovery and processing of source material.

The adopted amendment implements THSC, Chapter 361.

§281.18. Applications Returned.

(a) If an application or petition is received which is not administratively complete, the executive director shall notify the applicant of the deficiencies by electronic mail or certified mail return receipt requested prior to expiration of the applicable review period established by §281.3(a), (b), and (d) of this title (relating to Initial Review).

(1) The executive director will evaluate the applicant's response to the notice of administrative deficiencies within eight working days of receipt and, where applicable, shall prepare a statement of receipt of the application and declaration of administrative completeness in accordance with §281.17 of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness). For applications for radioactive material licenses, the executive director shall evaluate the applicant's response to the notice of administrative deficiencies within 30 days of receipt.

(2) If the required information is not received from the applicant within the timeframe specified in the deficiency notice, the executive director shall return the incomplete application to the applicant. The executive director shall send at least one deficiency notice via certified mail return receipt requested, providing the applicant 30 days to respond, before an application may be returned.

(b) For applications involving industrial, hazardous, or municipal waste, or for new, renewal, or major amendment applications for radioactive material licenses, the executive director may grant an extension of an additional 60 days beyond the original 30 days allowed under the rule for a total response time of 90 days upon sufficient proof from the applicant that an adequate response cannot be submitted within 30 days. Unless there are extenuating circumstances, if an applicant does not submit an administratively complete application as required by this chapter, the application shall be considered withdrawn. However, if applicable, the applicant is responsible for the cost of any notice provided under §281.17 of this title and the costs of such notice shall be deducted from any filing fees submitted by the applicant prior to return of the incomplete application.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-1806



CHAPTER 293. WATER DISTRICTS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§293.3, 293.11, 293.14, 293.15, 293.44, 293.81, 293.94, 293.201, and 293.202; new §293.90 and §§293.132 - 293.137; and the repeal of §§293.132 - 293.136.

The amendments to §§293.3, 293.11, 293.14, 293.81, 293.94, and 293.202; new §293.90 and §§293.132 - 293.137; and the repeal of §§293.132 - 293.136 are adopted *without change* to the proposal as published in the May 15, 2020, issue of the *Texas Register* (45 TexReg 3218) and, therefore, will not be re-published. The amendments to §§293.15, 293.44, and 293.201 are adopted *with change* to the proposal as published in the May 15, 2020, issue of the *Texas Register* and, therefore, will be re-published.

Background and Summary of the Factual Basis for the Adopted Rules

This rulemaking adoption implements Senate Bill (SB) 1234 from the 82nd Texas Legislature, 2011; SB 1987 and SB 2014 from the 85th Texas Legislature, 2017; and House Bill (HB) 304, HB 2590, HB 2914, SB 239, and SB 911 from the 86th Texas Legislature, 2019.

SB 1234 repealed Texas Government Code, §375.021, which allowed creation of a municipal management district (MMD) outside of a municipality.

SB 1987 amended Texas Local Government Code, §375.022(b), the petition requirements for creations of MMDs. SB 2014 amended Texas Water Code (TWC), §49.181, to revise language relating to creation and organization expenses and change orders; and to add language regarding the issuance of bonds to finance the cost of spreading and compacting fill to remove property from the 100-year floodplain or provide drainage made by a levee improvement district (LID) or a municipal utility district (MUD), respectively, if certain requirements are met.

HB 304 amended Texas Local Government Code, §375.022(b), to include language to place further qualifications on the petitioner of a creation application. HB 2590 amended TWC, §54.030 and §54.032(a) relating to notice and proof of hearing. HB 2590 also amended TWC, §54.030 to remove the requirement for a commission hearing for the conversion of certain districts to districts operating under the powers of a MUD. Furthermore, HB 2590 amended TWC, §54.234(a) to update language regarding cost analyses for road projects. HB 2914 added TWC, §49.3225 and amended TWC, §54.030(b) to allow the commission to convert a water district to a MUD and to dissolve a district without having a public hearing. SB 239 amended TWC, §49.062 relating to the process for designation of an alternative meeting place. Senate Bill 911 amended TWC, §12.081(a) to add language regarding issuance of a permit

under Texas Health and Safety Code (THSC), Chapter 361. SB 911 also amended TWC, §49.102(e) and (f) to add language regarding a temporal component and submittal updates and amended TWC, §49.196(a) to add language regarding on-site audit function.

Section by Section Discussion

The commission adopts non-substantive changes, such as grammatical corrections or to clarify language. These changes are considered non-substantive and are not specifically addressed in the Section by Section Discussion of this preamble.

§293.3, Continuing Right of Supervision of Districts and Authorities Created under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution

The commission adopts amended §293.3(a)(1) to reflect the changes made to TWC, §12.081 by SB 911. The commission also adopts §293.3(a)(6) to incorporate the change to TWC, §12.081, which confirmed that the commission may issue a permit under THSC, Chapter 361, regardless of a district's rule or objection. The subsequent paragraph is renumbered accordingly. These amendments implement SB 911.

§293.11, Information Required to Accompany Applications for Creation of Districts

The commission adopts amended §293.11(d)(1) to remove the option for petition by 50 persons if more than 50 people own property in the proposed district to reflect that this option was removed from TWC, Chapter 54 by SB 1987 and SB 2014. The commission also adopts amended §293.11(d)(9) to update the requirements for temporary directors in accordance with TWC, §54.022. The commission adopts amended §293.11(j)(1) to clarify that the petitioners for creation of an MMD must be owners of property that would be subject to assessment by the district. The commission also adopts amended §293.11(j)(1) to remove the option for petition by 50 persons if more than 50 people own property in the proposed district. The commission adopts amended §293.11(j)(1)(F) to remove the language that implies that the commission can create MMDs outside of a municipality to reflect changes made to Texas Local Government Code, Chapter 375 which removed the authority of the commission to create an MMD outside of a city. These amendments implement SB 1234 (82nd Texas Legislature); SB 1987 and SB 2014 (85th Texas Legislature); and HB 304 (86th Texas Legislature).

§293.14, District Reporting Actions Following Creation

The commission adopts amended §293.14(a) to add a requirement that a district must submit a certified copy of an order canvassing results of a confirmation election no later than the 30th day after the date of the election in accordance with TWC, §49.102(e) and (f). This amendment implements SB 911.

§293.15, Addition of Wastewater and/or Drainage Powers and Conversion of Districts into Municipal Utility Districts

The commission adopts amended §293.15 to incorporate the revised process for a district conversion in TWC, §§54.030, 54.032, and 54.033. This amendment implements HB 2590 and HB 2914.

§293.44, Special Considerations

The commission amends §293.44(a)(4) to allow districts to finance the cost of spreading and compacting fill to remove property from the 100-year flood plain or to provide drainage if the costs are less than constructing or improving drainage

facilities. The commission also adopts §293.44(a)(16)(B) and amends existing §293.44(a)(16)(B) and (D) to differentiate types of expenses incurred by districts. The subparagraphs are re-lettered accordingly to account for adopted §293.44(a)(16)(B). The commission also adopts §293.44(b)(8) to add language regarding the issuance of bonds to use a certain return flow of wastewater. This amendment implements SB 2014 (85th Texas Legislature).

§293.81, *Change Orders*

The commission adopts amended §293.81 to reflect the changes made to TWC, §49.273(i) by SB 2014. The commission adopts amended §293.81(1) to better reflect existing statute and to clarify change orders must benefit the district. The commission also adopts §293.81(1)(C) to remove competitive bidding requirements to change orders. These amendments implement SB 2014.

§293.90, *Change in Designated Meeting Location*

The commission adopts new §293.90 to outline procedures for changing a designated meeting place of a district. This adoption implements SB 239.

§293.94, *Annual Financial Reporting Requirements*

The commission adopts amended §293.94(i)(1) and (3) to allow the executive director to review, investigate, conduct on-site audits, and request additional information, and requires a district to submit additional information within 60 days after a request by the executive director. This amendment implements SB 911.

§293.132, *Notice of Hearing*

The commission adopts the repeal of §293.132 and moves the language to new §293.133.

§293.133, *Investigation by the Staff of the Commission*

The commission adopts the repeal of §293.133 and moves the language to new §293.134.

§293.134, *Order of Dissolution*

The commission adopts the repeal of §293.134 and moves the language to new §293.135.

§293.135, *Certified Copy of Order to be Filed in the Deed Records*

The commission adopts the repeal of §293.135 and moves the language to new §293.136.

§293.136, *Filing Fee*

The commission adopts the repeal of §293.136 and moves the language to new §293.137.

§293.132, *Applications for Order without Hearing*

The commission adopts new §293.132 to allow the commission to adopt an order without conducting a hearing if it meets the requirements of TWC, §49.324, and to allow dissolution of districts without a hearing if they meet certain requirements outlined in new §293.132. This adoption implements HB 2914.

§293.133, *Notice of Hearing*

The commission adopts new §293.133. The language in existing §293.132 is moved to this new section with a change to exclude dissolutions that meet the provisions of §293.132. This change implements HB 2914.

§293.134, *Investigation by the Staff of the Commission*

The commission adopts new §293.134. The language in existing §293.133 is moved to this new section.

§293.135, *Order of Dissolution*

The commission adopts new §293.135. The language in existing §293.134 is moved to this new section with a change to include the executive director's authority over an order of dissolution. This amendment implements HB 2914.

§293.136, *Certified Copy of Order to be Filed in the Deed Records*

The commission adopts new §293.136. The language in existing §293.135 is moved to this new section.

§293.137, *Filing Fee*

The commission adopts new §293.137. The language in existing §293.136 is moved to this new section.

§293.201, *Acquisition of Road Powers by a Municipal Utility District*

The commission adopts amended §293.201 to align the commission's rules with TWC, §54.234, as amended by HB 2590. These changes apply to prior orders for the addition of road powers under TWC, §54.234, unless specifically stated otherwise.

§293.202, *Application Requirements for Commission Approval*

The commission adopts amended §293.202(a)(8) to clarify the language regarding cost analysis for adopted road facilities. This amendment implements HB 2590.

Final Regulatory Impact Determination

The commission 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 Texas Administrative Procedure Act. A "Major environmental rule" is a rule that is specifically intended 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.

This rulemaking does not meet the statutory definition of a "Major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The primary purpose of the adopted rulemaking is to implement legislative changes enacted by: SB 1234 (82nd Texas Legislature); SB 1987 and SB 2014 (85th Texas Legislature); and HB 304, HB 2590, HB 2914, SB 239, and SB 911 (86th Texas Legislature).

These bills require the following changes:

SB 1234 - amends requirements for resolutions of a municipality in support of MMD creations;

SB 1987 - amends the petition requirements for creations of MMDs;

SB 2014 - makes revisions relating to creation and organization expenses and change orders for water districts, as well as adds language regarding LID and MUD bond issuances for spreading and compacting fill to provide drainage;

HB 304 - implements further qualifications on the petitioner of an MMD creation application;

HB 2590 - amends notice and proof of hearing language for water districts; and repeals the requirement for a hearing for the conversion of certain districts to districts that operate under the powers of a MUD;

HB 2914 - allows the commission to convert a water district to a MUD without having a public hearing, and allows the commission to dissolve a district without having a public hearing;

SB 239 - adds a new section relating to the process for designating an alternative meeting place for district board meetings; and

SB 911 - adds new language regarding issuance of a permit under THSC, Chapter 361, adds a temporal component and submittal updates in accordance with TWC, Chapter 49, and adds new language regarding on-site audits of districts.

The adopted rulemaking will substantially advance this purpose by amending Chapter 293 rules to incorporate the new statutory requirements.

In addition, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will 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. The cost of complying with the adopted rules is not expected to be significant with respect to the economy.

Furthermore, the adopted rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing the areas of contracts, projects, and authority with respect to water districts. Second, the adopted rulemaking does not exceed an express requirement of state law. Third, the adopted rulemaking 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. Finally, the adopted rulemaking is pursuant to the commission's specific authority in the TWC, §12.081, which allows the commission to issue rules necessary to supervise districts and authorities. Therefore, the rules are not adopted solely under the commission's general powers.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rules and performed an analysis of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The primary purpose of the adopted rulemaking is to implement legislative changes enacted by SB 1234 (82nd Texas Legislature); SB 1987 and SB 2014 (85th Texas Legislature); and HB 304, HB 2590, HB 2914, SB 239, and SB 911 (86th Texas Legislature).

These bills require the following changes:

SB 1234 repealed Local Government Code, §375.021; thus, MMD creation language that reflected such districts can be created outside of a municipality was removed from §293.11(j)(1)(F).

SB 1987 removed the requirement in TWC, §54.014 that petitions for creations of MMDs have to be signed by 50 landowners in the proposed district.

SB 2014 added TWC, §49.181(i) to differentiate types of expenses incurred by districts. SB 2014 added TWC, §49.181(k) to allow districts to finance the cost of spreading and compacting fill to provide drainage in certain situations. SB 2014 also amended TWC, §49.273(i) to clarify that change orders must benefit the district, and removed competitive bidding requirements to change orders.

HB 304 amended Local Government Code, §375.022(b) to require additional information in petitions for creations of MMDs.

HB 2590 amended TWC, Chapter 54 by replacing the requirement that the district request, and the commission holds a hearing for a conversion with the requirement that the district request, and the commission issues an order for conversions.

HB 2914 added TWC, §49.3225 which allows dissolution of districts without a hearing if certain requirements are met. HB 2914 also amended TWC, §54.030(b) by allowing the commission to convert water districts to a MUD without a hearing.

SB 239 amended TWC, §49.062(b) and (c) and added §49.062(c-1) and (e) - (g) to reflect the process for designation of an alternative meeting place.

SB 911 amended TWC, §49.102(e) and (f) to require a district to submit a certified copy of an order canvassing results of a confirmation election no later than the 30th day after the date of the election. SB 911 amended TWC, §49.195(a) to allow the executive director to request additional information from the district after reviewing the audit report, and amended TWC, §49.196(a) to allow the executive director to conduct on-site audits of districts. SB 911 also amended TWC, §12.081(a) by adding language regarding issuance of a permit under THSC, Chapter 361.

The adopted rulemaking will substantially advance this purpose by amending Chapter 293 rules to incorporate the new statutory requirements.

Promulgation and enforcement of these adopted rules will be neither a statutory nor a constitutional taking of private real property. The adopted rules do not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. This rulemaking adoption will primarily affect districts, especially in the areas of creations/conversions, projects, and authority; this will not be an effect on private real property. Therefore, the rulemaking adoption will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The comment period closed on Tuesday, June 16, 2020. The commission received comments from Allen Boone Humphries Robinson LLP (ABHR), the Association of Water Board Directors (AWBD), Masterson Advisors LLC (MALLC), Schwartz, Paige & Harding L.L.P., the Texas Association of Builders (TAB), and Utility District Advisory Corporation (UDAC). Most comments received were neither in support of nor against the rulemaking, rather, suggested changes to the proposed rule language.

Response to Comments

Comment

The AWBD commented that the changes made to §293.15(c)(3) are beyond the requirements enacted by HB 2590 or HB 2914, and that there is no statutory support for the TCEQ to impose these changes. Additional comments were made regarding clarity in §293.15(c)(1)(A) and (B) and (2)(B).

Response

The commission responds that §293.15(c)(3) was previously included in the commission's rules as §293.15(c)(2). This provision has been renumbered but has not been changed through this rulemaking. No changes have been made in response to this comment. Regarding the additional comment concerning the clarity of the rule, the commission has revised language to provide further clarity to the rule language.

Comment

The AWBD commented that to avoid conflict with the rules to §293.44(a)(25) and (26), additional language for the spreading and compacting of fill needs to be added to §293.44(a)(4).

Response

The commission responds that providing the recommended changes allows the rule to flow more concisely, and therefore the suggested changes were made and subsequently §293.44(a)(25) and (26) were removed from the rule language.

Comment

The AWBD commented that making additional changes to §293.44(a)(16) would provide clarity on creation and organizational expenses.

Response

The commission responds that adding this additional language does add clarity to the rule, and thus the recommended changes were made regarding this comment.

Comment

The AWBD commented that suggested changes made to §293.44(a)(25) would provide further clarity on the spreading and compacting of fill.

Response

The commission responds that because of a previous change to the rules responding to a comment on §293.44(a)(4), §293.44(a)(25) was removed, and so no change is needed.

Comment

The ABHR and AWBD commented that the changes made to §293.44(b)(8) and (9) regarding general obligation bonds should be removed from the rule language as it is out of the scope of the TCEQ and not specific to water districts.

Response

The commission responds that removing these sections from the rule more closely aligns with the purview of the TCEQ, therefore, the commission agrees to remove §293.44(b)(8) and (9). The subsequent paragraph is renumbered.

Comment

The ABHR and AWBD commented that in §293.90 regarding meeting place and location, restating the statute verbatim would result in unnecessary changes to the rule when there is a change in the statute.

Response

The commission responds that the legislature was specific on how this process should be implemented in the rule language, and so no change is needed.

Comment

The AWBD commented that amending §293.201 would better conform the rule to TWC, §54.234 and remove any potential confusion.

Response

The commission responds that we agree with the comment and have made the recommended amendments to the rule language.

Comment

The ABHR and AWBD commented that adding §293.201(c) would resolve ambiguity in interpreting the amendment to TWC, §54.234.

Response

The commission responds that we understand the request for clarification on the amendments to §293.201 concerning prior orders. Therefore, we have provided additional language to the Section by Section Discussion of this preamble to address this concern; however, no changes to the rule language were made based on this comment.

Comment

The ABHR and AWBD commented that the amendment to TWC, §49.181(f) needs to be addressed in the rules by amending §293.48 and §293.62 to include an exemption clause.

Response

The commission responds that we have reviewed the requested revisions and have determined that revisions to this section are not necessary, so no changes to the rule were made.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §293.3

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts. Therefore, the TWC authorizes rulemaking that amends §293.3, which relates to the commission's continuing right of supervision of districts.

The adopted amendment implements the language set forth in Senate Bill 911 from the 86th Texas Legislature, 2019, which updated the scope of an inquiry into the officers and directors of any district or authority and added new language regarding issuance of a permit under Texas Health and Safety Code, Chapter 361.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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SUBCHAPTER B. CREATION OF WATER DISTRICTS

30 TAC §§293.11, 293.14, 293.15

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts. Therefore, the TWC authorizes rulemaking that amends §§293.11, 293.14, and 293.15, which relates to district creation applications, required actions after district creations, and conversions of districts.

The adopted amendments implement the language set forth in Senate Bill (SB) 1234 from the 82nd Texas Legislature, 2011; SB 1987 and SB 2014 from the 85th Texas Legislature, 2017; and House Bill (HB) 304, HB 2590, HB 2914, and SB 911 from the 86th Texas Legislature, 2019. These bills require, in part, additional information in municipal management district creation petitions; a timeline for submission of district creation election results; and changes in requirements for the conversion of certain districts to municipal utility districts.

§293.15. Addition of Wastewater and/or Drainage Powers and Conversion of Districts into Municipal Utility Districts.

(a) Any water improvement district, water control and improvement district, fresh water supply district, levee improvement district, irrigation district or any other conservation and reclamation district or any special utility district created under the Texas Constitution, Article XVI, §59, may be converted into a municipal utility district operating under the Texas Water Code (TWC), Chapter 54.

(b) The application for the conversion of a district shall be accompanied by the following:

(1) a certified copy of the resolution adopted by the board of directors in accordance with TWC, §54.030(b) as amended by House Bill (HB) 2914, 86th Texas Legislature, 2019 and §54.030(d). The resolution required by this paragraph may be submitted after the hearing

required by TWC, §54.030(b) as amended by HB 2590, 86th Texas Legislature, 2019;

(2) a \$700 application fee;

(3) unless waived by the executive director, a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain, and any other information pertinent to the project;

(4) unless waived by the executive director, a preliminary engineering report including:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements, if any and itemized cost summary for anticipated bond issue requirements;

(F) projected tax rate and water and wastewater rates;

(G) total tax assessments on all land within the district;

(5) other data and information as the executive director may require.

(c) Prior to commission action on the application for conversion the following requirements shall be met with evidence of such compliance filed with the chief clerk:

(1) Notice of the conversion application filed with the commission shall be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located. The notice shall be published once a week for two consecutive weeks. The notice shall:

(A) set out the resolution provided in subsection (b)(1) of this section in full; and

(B) notify all interested persons how they may offer comments to the commission for or against the proposal contained in the resolution.

(2) Notice of the hearing to be conducted by the district's board as required by TWC, §54.030(b) as amended by HB 2590, shall be given by publishing notice of the hearing in a newspaper with general circulation in the district. The notice shall be published once a week for two consecutive weeks. The notice shall:

(A) set out the resolution adopted by the district in full; and

(B) notify all interested persons how they may offer comments to the district's board for or against the proposal contained in the resolution.

(3) The district shall file its resolution requesting conversion with the city secretary or clerk of each city, in whose corporate limits or extraterritorial jurisdiction any part of the district is located,

concurrently with submitting its application for conversion to the commission.

(d) After the hearing required by TWC, §54.030(b) as amended by HB 2590, the resolution required by TWC, §54.030(d) shall be filed with the commission and mailed to each state senator and representative who represents the area in which the district is located.

(e) A special utility district formed pursuant to the TWC, Chapter 65, which applies for conversion to a district having taxing authority that provides water, wastewater, or other public utility services, must comply with the requirements of Texas Local Government Code, §42.042.

(f) Any water improvement district, water control and improvement district, fresh water supply district, levee improvement district, irrigation district, or any other conservation and reclamation district or any special utility district created under the Texas Constitution, Article XVI, §59, may obtain additional wastewater and/or drainage powers.

(g) The application for the addition of wastewater and/or drainage powers shall be accompanied by the following:

(1) a certified copy of the resolution adopted by the board of directors requesting the commission to hold a hearing on the question of the addition of wastewater and/or drainage powers for the district;

(2) a \$700 application fee;

(3) unless waived by the executive director, a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain, and any other information pertinent to the project;

(4) unless waived by the executive director, a preliminary engineering report including:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements, if any and itemized cost summary for anticipated bond issue requirements;

(F) projected tax rate and water and wastewater rates; and

(G) total tax assessments on all land within the district; and

(5) other data and information as the executive director may require.

(h) Prior to the hearing for the addition of wastewater and/or drainage powers, the following requirements shall be met with evidence of such compliance filed with the chief clerk at or prior to the hearing:

(1) Notice of the hearing in a form issued by the chief clerk shall be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located. The

notice shall be published once a week for two consecutive weeks with the first publication to be made not less than 14 days before the time set for the hearing. The notice shall:

(A) state the time and place of the hearing;

(B) set out the resolution adopted by the district in full; and

(C) notify all interested persons to appear and offer testimony for or against the proposed contained in the resolution.

(2) The district shall file its resolution requesting additional powers with the city secretary or clerk of each city, in whose corporate limits or extraterritorial jurisdiction any part of the district is located, concurrently with submitting its application to the commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Commission on Environmental Quality

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SUBCHAPTER E. ISSUANCE OF BONDS

30 TAC §293.44

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts. Therefore, the TWC authorizes rulemaking that amends §293.44, which relates to several special considerations, including the factors for financing spreading and compacting fill, and the use of bond funds to finance certain district costs and expenses.

The adopted amendment implements the language set forth in Senate Bill 2014 from the 85th Texas Legislature, 2017, which adds language regarding levee improvement district and municipal utility district bond issuances for spreading and compacting fill to provide drainage, and revises creation and organization expenses and change orders for districts.

§293.44. *Special Considerations.*

(a) Developer projects. The following provisions shall apply unless the commission, in its discretion, determines that application to a particular situation renders an inequitable result.

(1) A developer project is a district project that provides water, wastewater, drainage, or recreational facility service for property owned by a developer of property in the district, as defined by Texas Water Code (TWC), §49.052(d).

(2) Except as permitted under paragraph (8) of this subsection, the costs of joint facilities that benefit the district and others should be shared on the basis of benefits received. Generally, the benefits are the design capacities in the joint facilities for each participant. Proposed cost sharing for conveyance facilities should account for both flow and inflow locations.

(3) The cost of clearing and grubbing of district facilities' easements that will also be used for other facilities that are not eligible for district expenditures, such as roads, gas lines, telephone lines, etc., should be shared equally by the district and the developer, except where unusually wide road or street rights-of-way or other unusual circumstances are present, as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer). The applicability of the competitive bidding statutes and/or regulations for clearing and grubbing contracts let and awarded in the developer's name shall not apply when the amount of the estimated district share, including any required developer contribution does not exceed 50% of the total construction contract costs.

(4) A district may finance the cost of spreading and compacting of fill as follows.

(A) A district may finance the cost of spreading and compacting of fill in areas that require the fill for development purposes, such as in abandoned ditches or floodplain areas, only to the extent necessary to dispose of the spoil material (fill) generated by other projects of the district.

(B) A levee improvement district or a district with the powers of a levee improvement district may finance the cost of spreading and compacting fill to remove property from the 100-year floodplain.

(C) A municipal utility district or a district with the powers of a municipal utility district may finance the costs of spreading and compacting fill to provide drainage if the costs are less than the cost of constructing or improving drainage facilities which would have been required to achieve a similar purpose as the fill project, as determined by the district's engineer.

(5) The cost of any clearing and grubbing in areas where fill is to be placed should not be paid by the district, unless the district can demonstrate a net savings in the costs of disposal of excavated materials when compared to the estimated costs of disposal off site.

(6) When a developer changes the plan of development requiring the abandonment or relocation of existing facilities, the district may pay the cost of either the abandoned facilities or the cost of replacement facilities, but not both.

(7) When a developer changes the plan of development requiring the redesign of facilities that have been designed, but not constructed, the district may pay the cost of the original design or the cost of the redesign, but not both.

(8) A district shall not finance the pro rata share of oversized water, wastewater, or drainage facilities to serve areas outside the district unless:

(A) such oversizing:

(i) is required by or represents the minimum approvable design sizes prescribed by local governments or other regulatory agencies for such applications;

(ii) does not benefit out-of-district land owned by the developer;

(iii) does not benefit out-of-district land currently being developed by others; and

(iv) the district agrees to use its best efforts to recover such costs if a future user outside the district desires to use such capacity; or

(B) the district has entered into an agreement with the party being served by such oversized capacity that provides adequate payment to the district to pay the cost of financing, operating, and maintaining such oversized capacity; or

(C) the district has entered into an agreement with the party to be served or benefitted in the future by such oversized capacity, which provides for contemporaneous payment by such future user of the incremental increase in construction and engineering costs attributable to such oversizing and which, until the costs of financing, construction, operation, and maintenance of such oversized facilities are prorated according to paragraph (2) of this subsection, provides that:

(i) the capacity or usage rights of such future user shall be restricted to the design flow or capacity of such oversized facilities multiplied by the fractional engineering and construction costs contemporaneously paid by such future user; and

(ii) such future user shall pay directly allocable operation and maintenance costs proportionate to such restricted capacity or usage rights; or

(D) the district or a developer in the district has entered into an agreement with a municipality or regional water or wastewater provider regarding the oversized facilities and such oversizing is more cost-effective than alternative facilities to serve the district only. For the purposes of this subparagraph, regional water or wastewater provider means a provider that serves land in more than one county. An applicant requesting approval under this subparagraph must provide:

(i) bid documents or an engineer's sealed estimate of probable costs of alternatives that meet minimum acceptable standards based on costs prevailing at the time the facilities were constructed; or

(ii) an engineering feasibility analysis outlining the service alternatives considered at the time the decision to participate in the oversizing was made; or

(iii) any other information requested by the executive director.

(9) Railroad, pipeline, or underground utility relocations that are needed because of road crossings should not be financed by the district; however, if such relocations result from a simultaneous district project and road crossing project, then such relocation costs should be shared equally. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(10) Engineering studies, such as topographic surveys, soil studies, fault studies, boundary surveys, etc., that contain information that will be used both for district purposes and for other purposes, such as roadway design, foundation design, land purchases, etc., should be shared equally by the district and the developer, unless unusual circumstances are present as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(11) Land planning, zoning, and development planning costs should not be paid by the district, except for conceptual land-use plans required to be filed with a city as a condition for city consent to creation of the district.

(12) The cost of constructing lakes or other facilities that are part of the developer's amenities package should not typically be paid by the district; however, the costs for the portion of an amenity lake considered a recreational facility under paragraph (24) of this subsection may be funded by the district. The cost of combined lake and detention facilities should be shared with the developer on the basis of the volume attributable to each use, and land costs should be shared on the same basis, unless the district can demonstrate a net savings in the cost of securing fill and construction materials from such lake or detention facilities, when compared to the costs of securing such fill or construction materials off site for another eligible project. Pursuant to the provisions of TWC, §49.4641, as amended, a district is not required to prorate the costs of a combined lake and detention site between the primary drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary drainage purpose.

(13) Bridge and culvert crossings shall be financed in accordance with the following provisions.

(A) The costs of bridge and culvert crossings needed to accommodate the development's road system shall not be financed by a district, unless such crossing consists of one or more culverts with a combined cross-sectional area of not more than nine square feet. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(B) Districts may fund the costs of bridge and culvert crossings needed to accommodate the development's road system that are larger than those specified in subparagraph (A) of this paragraph, which cross channels other than natural waterways with defined bed and banks and are necessary as a result of required channel improvements subject to the following limitations:

(i) the drainage channel construction or renovation must benefit property within the district's boundaries;

(ii) the costs shall not exceed a pro rata share based on the percent of total drainage area of the channel crossed, measured at the point of crossing, calculated by taking the total cost of such bridge or culvert crossing multiplied by a fraction, the numerator of which is the total drainage area located within the district upstream of the crossing, and the denominator of which is the total drainage area upstream of the crossing; and

(iii) the district shall be responsible for not more than 50% of the pro rata share as calculated under this subsection, subject to the developer's 30% contribution as may be required by §293.47 of this title.

(C) The cost of replacement of existing bridges and culverts not constructed or installed by the developer, or the cost of new bridges and culverts across existing roads not financed or constructed by the developer, may be financed by the district, except that any costs of increasing the traffic-carrying capacity of bridges or culverts shall not be financed by the district.

(14) In evaluating district construction projects, including those described in paragraphs (1) - (12) of this subsection, primary consideration shall be given to engineering feasibility and whether the project has been designed in accordance with good engineering practices, regardless of other acceptable or less costly engineering alternatives that may exist.

(15) Bond issue proceeds will not be used to pay or reimburse consultant fees for the following:

(A) special or investigative reports for projects which, for any reason, have not been constructed and, in all probability, will not be constructed;

(B) fees for bond issue reports for bond issues consisting primarily of developer reimbursables and approved by the commission but which are no longer proposed to be issued;

(C) fees for completed projects which are not and will not be of benefit to the district; or

(D) provided, however, that the limitations shall not apply to regional projects or special or investigative reports necessary to properly evaluate the feasibility of alternative district projects.

(16) Bond funds may be used to finance costs and expenses necessarily incurred in the creation and organization of the district and the operation of the district as follows.

(A) Creation and organization expenses were incurred or projected to incur during the creation and organization period. Operational expenses were incurred or projected to incur during construction periods which include periods during which the district is constructing its facilities or there is construction by third parties of above-ground improvements within the district.

(B) Creation and organization expenses are expenses incurred through the date of the canvassing of the confirmation election.

(C) Construction periods do not need to be continuous; however, once reimbursement for a specific time period has occurred, operational expenses for a prior time period are no longer eligible. Payment of operational expenses during construction periods is limited to five years in any single bond issue.

(D) Any reimbursement to a developer of operational expenses with bond funds is restricted to actual operational expenses paid by the district during the same five-year period for which application is made in accordance with this subsection.

(E) The district may pay interest on the expenses under this paragraph. Section 293.50 of this title (relating to Developer Interest Reimbursement) applies to interest payments for a developer and such payments are subject to a developer reimbursement audit.

(17) In instances where creation costs to be paid from bond proceeds are determined to be excessive, the executive director may request that the developer submit invoices and cancelled checks to determine whether such creation costs were reasonable, customary, and necessary for district creation purposes. Such creation costs shall not include planning, platting, zoning, other costs prohibited by paragraphs (10) and (14) of this subsection, and other matters not directly related to the district's water, wastewater, and drainage system, even if required for city consent.

(18) The district shall not purchase, pay for, or reimburse the cost of facilities, either completed or incomplete, from which it has not and will not receive benefit, even though such facilities may have been at one time required by a city or other entity having jurisdiction.

(19) The district shall not enter into any binding contracts with a developer that compel the district to become liable for costs above those approved by the commission.

(20) A district shall not purchase more water supply or wastewater treatment capacity than is needed to meet the foreseeable capacity demands of the district, except in circumstances where:

(A) lease payments or capital contributions are required to be made to entities owning or constructing regional water supply or wastewater treatment facilities to serve the district and others;

(B) such purchases or leases are necessary to meet minimum regulatory standards; or

(C) such purchases or leases are justified by considerations of economic or engineering feasibility.

(21) The district may finance those costs, including mitigation, associated with flood plain regulation and wetlands regulation, attributable to the development of water plants, wastewater treatment plants, pump and lift stations, detention/retention facilities, drainage channels, and levees. The district's share shall not be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(22) The district may finance those costs associated with endangered species permits. Such costs shall be shared between the district and the developer with the district's share not to exceed 70% of the total costs, unless unusual circumstances are present as determined by the commission. The district's share shall not be subject to the developer's 30% contribution under §293.47 of this title. For purposes of this paragraph, "endangered species permit" means a permit or other authorization issued under §7 or §10(a) of the federal Endangered Species Act of 1973, 16 United States Code, §1536 and §1539(a).

(23) The district may finance 100% of those costs associated with federal storm water permits. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title. For purposes of this paragraph, "federal storm water permit" means a permit for storm water discharges issued under the federal Clean Water Act, including National Pollutant Discharge Elimination System permits issued by the United States Environmental Protection Agency and Texas Pollutant Discharge Elimination System permits issued by the commission.

(24) The district may finance the portion of an amenity lake project that is considered a recreational facility.

(A) The portion considered a recreational facility must be accessible to all persons within the district and is determined as:

(i) the percentage of shoreline with at least a 30-foot wide buffer between the shoreline and private property; or

(ii) the percentage of the perimeter of a high bank of a combination detention facility and lake with at least a 30-foot wide buffer between the high bank and private property.

(B) The district's share of costs for the portion of an amenity lake project that is considered a recreational facility is not subject to the developer's 30% contribution under §293.47 of this title.

(C) The authority for districts to fund recreational amenity lake costs in accordance with this paragraph does not apply retroactively to projects included in bond issues submitted to the commission prior to the effective date of this paragraph.

(b) All projects.

(1) The purchase price for existing facilities not covered by a preconstruction agreement or otherwise not constructed by a developer in contemplation of resale to the district, or if constructed by a developer in contemplation of resale to the district and the cost of the facilities is not available after demonstrating a good faith effort to locate the cost records should be established by an independent appraisal by a licensed professional engineer hired by the district. The appraised value should reflect the cost of replacement of the facility, less repairs and depreciation, taking into account the age and useful life of the fa-

cility and economic and functional obsolescence as evidenced by an on-site inspection.

(2) Contract revenue bonds proposed to be issued by districts for facilities providing water, wastewater, or drainage, under contracts authorized under Texas Local Government Code, §552.014, or other similar statutory authorization, will be approved by the commission only when the city's pro rata share of debt service on such bonds is sufficient to pay for the cost of the water, wastewater, or drainage facilities proposed to serve areas located outside the boundaries of the service area of the issuing district.

(3) When a district proposes to obtain capacity in or acquire facilities for water, wastewater, drainage, or other service from a municipality, district, or other political subdivision, or other utility provider, and proposes to use bond proceeds to compensate the providing entity for the water, wastewater, drainage, or other services on the basis of a capitalized unit cost, e.g., per connection, per lot, or per acre, the commission will approve the use of bond proceeds for such compensation under the following conditions:

(A) the unit cost is reasonable;

(B) the unit cost approximates the cost to the entity providing the necessary facilities, or the providing entity has adopted a uniform service plan for such water, wastewater, drainage, and other services based on engineering studies of the facilities required; and

(C) the district and the providing entity have entered into a contract that will:

(i) specifically convey either an ownership interest in or a specified contractual capacity or volume of flow into or from the system of the providing entity;

(ii) provide a method to quantify the interest or contractual capacity rights;

(iii) provide that the term for such interest or contractual capacity right is not less than the duration of the maturity schedule of the bonds; and

(iv) contain no provisions that could have the effect of subordinating the conveyed interest or contractual capacity right to a preferential use or right of any other entity.

(4) A district may finance those costs associated with recreational facilities, as defined in §293.1(c) of this title (relating to Objective and Scope of Rules; Meaning of Certain Words) and as detailed in §293.41(e)(2) of this title (relating to Approval of Projects and Issuance of Bonds) for all affected districts that benefit and are available to all persons within the district. A district's financing, whether from tax-supported or revenue debt, of costs associated with recreational facilities is subject to §293.41(e)(1) - (6) of this title and is not subject to the developer's 30% contribution as may be required by §293.47 of this title. The automatic exemption from the developer's 30% requirement provided in this paragraph supersedes any conflicting provision in §293.47(d) of this title. In planning for and funding recreational facilities, consideration is to be given to existing and proposed municipal and/or county facilities as required by TWC, §49.465, and to the requirement that bonds supported by ad valorem taxes may not be used to finance recreational facilities, as provided by TWC, §49.464(a), except as allowed in TWC, §49.4645.

(5) The bidding requirements established in TWC, Chapter 49, Subchapter I are not applicable to contracts or services related to a district's use of temporary erosion-control devices or cleaning of silt and debris from streets and storm sewers.

(6) A district's contract for construction work may include economic incentives for early completion of the work or economic disincentives for late completion of the work. The incentive or disincentive must be part of the proposal prepared by each bidder before the bid opening.

(7) A district may utilize proceeds from the sale and issuance of bonds, notes, or other obligations to acquire an interest in a certificate of public convenience and necessity, contractual rights to use capacity in facilities and to acquire facilities, with costs determined in accordance with applicable law such as paragraph (3) of this subsection.

(8) If a district is approved for the issuance of bonds by the commission to use a certain return flow of wastewater, the approval applies to subsequent bond authorizations unless the district seeks approval to use a different return flow of wastewater.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. OTHER ACTIONS REQUIRING COMMISSION CONSIDERATION FOR APPROVAL

30 TAC §293.81, §293.90

Statutory Authority

The amendment and new section are adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts. Therefore, the TWC authorizes rulemaking that amends §293.81, which relates to change orders, and adopts new §293.90, which relates to changes in district board meeting locations.

The adopted amendment and new section implement the language set forth in Senate Bill (SB) 2014, 85th Texas Legislature, 2017; and SB 239, 86th Texas Legislature, 2019. SB 2014 required change orders to benefit the district and removed the competitive bidding requirement to change orders. SB 239 added a process for designating an alternative meeting location for board meetings.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. REPORTS

30 TAC §293.94

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts. Therefore, the TWC authorizes rulemaking that amends §293.94, which relates to the financial reporting requirements for districts.

The adopted amendment implements the language set forth in Senate Bill 911, 86th Texas Legislature, 2019, which in part, allows the executive director to request additional information from the district after reviewing the audit report, and allows the executive director to conduct on-site audits of districts.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. DISSOLUTION OF DISTRICTS

30 TAC §§293.132 - 293.136

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts.

The adopted repeal of the sections implements TWC, §§5.102, 5.103, 5.105, 5.013, and 12.081.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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30 TAC §§293.132 - 293.137

Statutory Authority

The new sections are adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts.

The adopted new sections implement the language set forth in House Bill 2914, 86th Texas Legislature, 2019, which in part, allows the commission to dissolve a district without having a public hearing.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER P. ACQUISITION OF ROAD POWERS BY A MUNICIPAL UTILITY DISTRICT

30 TAC §293.201, §293.202

Statutory Authority

The amendments are adopted under Texas Water Code, (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to

supervise districts. Therefore, the TWC authorizes rulemaking that amends §293.201 and §293.202 which relates to the cost analysis for road projects.

The adopted amendments implement the language set forth in House Bill 2590, 86th Texas Legislature, 2019, which add, in part, additional powers related to road projects which can be included in the petition for road powers.

§293.201. *Acquisition of Road Powers by a Municipal Utility District.*

(a) Texas Water Code (TWC), §54.234, authorizes a municipal utility district, or any petitioner seeking the creation of a municipal utility district, to petition the commission to acquire road powers.

(b) This section and §293.202 of this title (relating to Application Requirements for Commission Approval) provide the requirements for petitioning the commission for road powers.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 305. CONSOLIDATED PERMITS SUBCHAPTER C. APPLICATION FOR PERMIT OR POST-CLOSURE ORDER

30 TAC §305.53

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §305.53.

The amendment to §305.53 is adopted *without change* to the proposed text as published in the May 15, 2020, issue of the *Texas Register* (45 TexReg 3239), and therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

House Bill (HB) 1331, passed by the 86th Texas Legislature, 2019, creates new Texas Health and Safety Code (THSC), §361.0675, to require the commission to increase the application fee for a permit for a municipal solid waste facility from \$100 to \$2,000. The commission determined that the \$2,000 application fee will only apply to applications for a permit, or major permit amendment as provided in §305.62(j)(1), for a municipal solid waste landfill. All other application fees will remain unchanged. Under §305.53(b), the application fee must also include an additional fee of \$50 to be applied toward the cost of providing required notice. This will result in a total application fee of \$2,050.

In corresponding rulemaking published in this issue of the *Texas Register*, the commission also adopts the revision to 30 TAC Chapter 330, Municipal Solid Waste.

Section Discussion

The commission adopts various stylistic, non-substantive changes, such as, grammatical corrections and updating cross-references. These changes are generally not specifically discussed in this preamble.

§305.53, *Application Fee*

The commission adopts the amendment to §305.53(a)(7) to increase the application fee for a permit, or major permit amendment as provided in §305.62(j)(1), for a municipal solid waste landfill to \$2,000. The subsequent paragraph was renumbered.

Final Regulatory Impact Determination

The commission reviewed the adopted rule to determine whether a regulatory analysis is required by Texas Government Code, §2001.0225, and determined that the adopted rule is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. "Major environmental rule" is defined under Texas Government Code, §2001.0225(g)(3) as "a rule the specific intent of which is to protect the environment or reduce risks to human health from the environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

The adopted rule does not meet the two prongs of the major environmental rule standard. First, the rule only changes the required fee for a solid waste permit but does not change any technical or substantive regulatory requirements. Therefore, it does not satisfy the first prong related to intent.

Second, changing the amount of the fee already required by current rules will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, or jobs nor adversely affect in a material way the environment or the public health and safety of the state or a sector of the state. Therefore, the rule also fails the second prong of the major environmental rule standard.

Additionally, the adopted rule does not meet any of the applicability criteria in Texas Government Code, §2001.0225(a)(1-4). The adopted rule will not exceed a standard set by federal or state law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor adopt a rule solely under the general powers of the agency. The adopted rule implements and is adopted under the authority of new state laws and will not exceed any requirements of our delegated authority.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. The commission received no comments on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rule and performed an analysis of whether the adopted rule constitutes a takings under Texas Government Code, Chapter 2007. The specific purpose of this adopted rule is to implement HB 1331, requiring the commission to increase the application fee for a municipal solid waste landfill permit or major permit amendment to \$2,000. The adopted rule will substantially advance this stated purpose by amending §305.53(a)(7) to increase the application fee for a permit, or major permit amendment as provided in §305.62(j)(1), for a municipal solid waste landfill to \$2,000.

Promulgation and enforcement of this adopted rule will be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted regulation increasing application fees does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); 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 regulations. Therefore, the adopted rule will not affect real property in a manner that is different than real property would have been affected without the adopted rule.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) and (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission received no comments regarding consistency with the CMP.

Public Comment

The comment period closed on June 16, 2020. The commission received no comments on Chapter 305.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also adopted under Texas Health and Safety Code (THSC), Texas Solid Waste Disposal Act (TSWDA), §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under the TSWDA; THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and THSC, §361.0675, which requires the commission to increase the application fee for a permit or major permit amendment for a municipal solid waste landfill to \$2,000.

The adopted amendment implements THSC, §361.0675.

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 9, 2020.

TRD-202004189

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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Proposal publication date: May 15, 2020

For further information, please call: (512) 239-1806

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CHAPTER 330. MUNICIPAL SOLID WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §§330.3, 330.13, 330.59, and 330.73; and the repeal of §§330.261, 330.263, 330.265, 330.267, 330.269, 330.271, 330.273, 330.275, 330.277, 330.279, 330.281, 330.283, 330.285, 330.287, and 330.289.

The amendments to §§330.3, 330.13, 330.59, and 330.73; and the repeal of §§330.261, 330.263, 330.265, 330.267, 330.269, 330.271, 330.273, 330.275, 330.277, 330.279, 330.281, 330.283, 330.285, 330.287, and 330.289 are adopted *without changes* to the proposed text as published in the May 15, 2020, issue of the *Texas Register* (45 TexReg 3239), and therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

House Bill (HB) 1331, passed by the 86th Texas Legislature, 2019, creates new Texas Health and Safety Code (THSC), §361.0675, to require the commission to increase the application fee for a permit for a municipal solid waste (MSW) facility from \$100 to \$2,000. The commission determined that the \$2,000 application fee will only apply to applications for a permit, or major permit amendment as provided in 30 Texas Administrative Code (TAC) §305.62(j)(1), for an MSW landfill. All other application fees will remain unchanged. Under §305.53(b), the application fee must also include an additional fee of \$50 to be applied toward the cost of providing required notice. This will result in a total application fee of \$2,050.

HB 1435, passed by the 86th Texas Legislature, 2019, amends THSC, §361.088, to require the commission to confirm information included in an application for a permit for an MSW facility by performing a site assessment before the agency issues the authorization. HB 1435 also requires the commission to specify the information that will be confirmed during the site assessment. The commission determined that the site assessments will only apply to applications for a permit, or major permit amendment as provided in §305.62(j)(1), for an MSW landfill. In addition, the information that will be confirmed during site assessments will be prescribed by the executive director and will be made available to the public.

HB 1953, passed by the 86th Texas Legislature, 2019, creates new THSC, §361.041, and amends THSC, §§361.003, 361.119, and 361.421, to require the commission to exempt facilities that reuse or convert recyclable materials, including post-use polymers and recoverable feedstocks, in a pyrolysis or gasification process, from regulation as an MSW facility.

On October 9, 2019, as a result of the Quadrennial Rules Review, the commission determined that the rules in Chapter 330, Subchapter F, are obsolete because the requirements of Subchapter F expired on January 1, 2009 (2019-066-330-WS).

In corresponding rulemaking published in this issue of the *Texas Register*, the commission also adopts the revision to 30 TAC Chapter 305, Consolidated Permits.

Section by Section Discussion

The commission adopts various stylistic, non-substantive changes, such as, grammatical corrections and updating

cross-references. These changes are generally not specifically discussed in this preamble.

SUBCHAPTER A: GENERAL INFORMATION

§330.3, *Definitions*

The commission adopts the amendment and addition of definitions to exempt pyrolysis and gasification of post-use polymers from regulation under Chapter 330.

The commission adopts the amendment to §330.3(58) to add the definition of "Gasification" to reflect its exclusion from the definition of "processing" by HB 1953.

The commission adopts the amendment to §330.3(59) to add the definition of "Gasification facility" to reflect its exclusion from the definition of "solid waste facility" by HB 1953. The subsequent paragraphs are renumbered.

The commission adopts the amendment to §330.3(117) to add the definition of "Post-use polymers" to reflect its exclusion from the definition of "solid waste" by HB 1953. The subsequent paragraphs are renumbered.

The commission adopts the amendment to renumbered §330.3(120) to specify that pyrolysis facilities and gasification facilities are excluded from the definition of "Processing."

The commission adopts the amendment to §330.3(123) to add the definition of "Pyrolysis" to reflect its exclusion from the definition of "processing" by HB 1953.

The commission adopts the amendment to §330.3(124) to add the definition of "Pyrolysis facility" to reflect its exclusion from the definition of "solid waste facility" by HB 1953. The subsequent paragraphs are renumbered.

The commission adopts the amendment to §330.3(127) to add the definition of "Recoverable feedstock" to reflect its exclusion from the definition of "solid waste" by HB 1953. The subsequent paragraphs are renumbered.

The commission adopts the amendment to renumbered §330.3(128) to include post-use polymers and recoverable feedstocks that are converted through pyrolysis or gasification into valuable raw, intermediate, and final products as a "Recyclable material."

The commission adopts the amendment to renumbered §330.3(151)(D) to exclude pyrolysis facilities and gasification facilities.

§330.13, *Waste Management Activities Exempt from Permitting, Registration, or Notification*

The commission adopts the amendment to §330.13(g) to add an exempt activity for beneficial conversion of plastics and recoverable materials using pyrolysis and gasification processes.

SUBCHAPTER B: PERMIT AND REGISTRATION APPLICATION PROCEDURES

§330.59, *Contents of Part I of the Application*

The commission adopts the amendment to §330.59(h)(1) to increase the application fee for a permit, or major permit amendment as provided in §305.62(j)(1), for an MSW landfill to \$2,050. The subsequent paragraphs are renumbered.

The commission adopts the amendment to renumbered §330.59(h)(2) to indicate that the application fee for a permit,

registration, amendment, modification, or temporary authorization not subject to §330.59(h)(1) will be \$150.

§330.73, *Additional Standard Permit and Registration Conditions for Municipal Solid Waste Facilities*

The commission adopts the amendment to §330.73(c), to require that before an application for a permit, or major permit amendment as provided in §305.62(j)(1) for an MSW landfill, will be issued, the executive director shall perform a site assessment of the facility, as prescribed by the executive director, to confirm information included in the application. The subsequent subsections are re-lettered.

SUBCHAPTER F: ANALYTICAL QUALITY ASSURANCE AND QUALITY CONTROL

The commission adopts the repeal of Subchapter F, §§330.261, 330.263, 330.265, 330.267, 330.269, 330.271, 330.273, 330.275, 330.277, 330.279, 330.281, 330.283, 330.285, 330.287, and 330.289, as a result of the Quadrennial Rules Review of Chapter 330; Subchapter F is no longer needed because it expired on January 1, 2009.

Final Regulatory Impact Determination

The commission reviewed the adopted rules to determine whether a regulatory analysis is required by Texas Government Code, §2001.0225, and determined that the adopted rules are not subject to Texas Government Code, §2001.0225, because they do not meet the definition of a "Major environmental rule" as defined in that statute. "Major environmental rule" is defined under Texas Government Code, §2001.0225(g)(3) as "a rule the specific intent of which is to protect the environment or reduce risks to human health from the environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

The specific intent of the adopted rules satisfies the first prong of the definition. The rules implement the agency's requirement to confirm application information by performing a site assessment and exempt the beneficial conversion of plastics and recoverable materials using pyrolysis and gasification processes, both of which further the intent to protect the environment or reduce risks to human health from environmental exposure.

However, the adopted rules do not meet the second prong of the definition of "Major environmental rule" by adversely affecting, in a material way, the economy, a sector of the economy, productivity, competition, or jobs because the adopted rules do not require more from an applicant than is required by current rules. Additionally, the adopted rules are not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state because the adopted rules specify new administrative requirements and an exemption from the regulatory process for a recycling activity.

In addition, the adopted rules do not meet any of the applicability criteria in Texas Government Code, §2001.0225(a)(1-4). The adopted rules do not exceed a standard set by federal or state law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor adopt a rule solely under the general powers of the agency. The adopted rules implement and are adopted under the authority of new state laws and do not exceed any requirements of our delegated authority.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public

comment period. The commission received no comments on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated these adopted rules and performed analysis of whether these adopted rules would constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these adopted rules is to implement HB 1331, which creates new THSC, §361.0675 to require the commission to increase the application fee for a permit or major permit amendment for an MSW landfill to \$2,000; HB 1435 amends THSC, §361.088 to require the commission to confirm information included in an application for a permit or major permit amendment for an MSW landfill by performing a site assessment of the facility before the agency issues the authorization; and HB 1953 creates new THSC, §361.041, and amends THSC, §§361.003, 361.119, and 361.421 to exempt from regulations the beneficial conversion of plastics and recoverable materials using pyrolysis and gasification processes. The adopted rules will also repeal Chapter 330, Subchapter F which expired on January 1, 2009, and is, therefore, obsolete and no longer needed. The adopted rules will substantially advance this stated purpose by increasing the application fee for a permit or major permit amendment for an MSW landfill to \$2,000; requiring the executive director to confirm information included in an MSW facility application by requiring a site assessment of the proposed facility before a permit or major amendment may be issued; exempting the beneficial conversion of plastics and recoverable materials using pyrolysis and gasification processes from regulation under Chapter 330; and repealing Chapter 330, Subchapter F.

Promulgation and enforcement of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted regulations will not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); 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 regulations. Therefore, the adopted rules will not affect real property in a manner that is different than real property would have been affected without the adopted rules.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The CMP goals applicable to the adopted rules include to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; and to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone.

CMP policies applicable to the adopted rules include the construction and operation of solid waste treatment, storage, and disposal facilities. These rules ensure that new and existing solid waste facilities continue to be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and ensure compliance with federal Solid Waste Disposal Act standards, 42 United States Code, §§6901, *et seq.*

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, do not create or have a direct or significant adverse effect on any CNRAs, and will update and enhance the commission's rules concerning MSW facilities.

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission received no comments regarding consistency with the CMP.

Public Comment

The comment period closed on June 16, 2020. The commission received comments from Dow Inc. (DOW) and the Texas Chemical Council (TCC). The comments received were in support of the rules and did not include any suggested changes.

Response to Comments

Comment

DOW and TCC commented that they support TCEQ's rulemaking to implement HB 1953.

Response

The commission acknowledges the comments. No changes were made in response to these comments.

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §330.3, §330.13

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102 which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also adopted under Texas Health and Safety Code (THSC), Texas Solid Waste Disposal Act (TSWDA), §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under the TSWDA; THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and THSC, §361.041, which allows the commission to exempt from regulations the beneficial conversion of plastics and recoverable materials using pyrolysis and gasification processes.

The adopted amendments implement THSC, §§361.003, 361.041, 361.119, and 361.421.

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 9, 2020.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-1806



SUBCHAPTER B. PERMIT AND REGISTRATION APPLICATION PROCEDURES

30 TAC §330.59, §330.73

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105 (concerning General Policy), which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also adopted under the Texas Health and Safety Code (THSC), Texas Solid Waste Disposal Act (TSWDA), §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under the TSWDA; THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; THSC, §361.0675, which requires the commission to increase the application fee for a permit or major permit amendment for an MSW landfill to \$2,000; and THSC, §361.088, which requires the commission to confirm information included in an application for a permit or major permit amendment for an MSW landfill by performing a site assessment of the facility before the agency issues the authorization.

The adopted amendments implement THSC, §361.0675 and §361.088.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. ANALYTICAL QUALITY ASSURANCE AND QUALITY CONTROL

30 TAC §§330.261, 330.263, 330.265, 330.267, 330.269, 330.271, 330.273, 330.275, 330.277, 330.279, 330.281, 330.283, 330.285, 330.287, 330.289

Statutory Authority

The repeals are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105 which authorize the commission by rule to establish and approve all general policy of the commission. The amendments are also adopted under Texas Health and Safety Code (THSC), Texas Solid Waste Disposal Act (TSWDA) §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under the TSWDA; THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; and THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste.

The adopted repeals implement THSC, §§361.002, 361.011, and 361.024.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-1806



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALUATION PROCEDURES

34 TAC §9.4011

The Comptroller of Public Accounts adopts amendments to §9.4011, concerning appraisal of timberlands, without changes to the proposed text as published in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6218). The rule will not be republished. These amendments are to reflect updates and revisions to the manual for the appraisal of timberland. The amended manual may be viewed at <https://comptroller.texas.gov/taxes/property-tax/rules/index.php>.

The comptroller amends the Manual for the Appraisal of Timberland, adopted by reference, to update and revise the manual for the appraisal of timberland that has been in effect since May 2004. The manual sets forth the methods to apply and the pro-

cedures to use in qualifying and appraising land used for timber production under Tax Code, Chapter 23, Subchapters E and H. The updates and revisions to the manual generally reflect statutory changes; changes dictated by case law; changes to examples to reference more current prices, expenses and values; changes to organization names and information available from different sources; and the addition of footnotes for citations to Tax Code sections and case law referenced. The amendments also provide that appraisal districts are required by law to use this manual in qualifying and appraising timberland. Pursuant to Tax Code, §23.73(b), these rules have been approved by the Comptroller with the review and counsel of the Texas A&M Forest Service.

The comptroller did not receive any comments regarding adoption of the amendment.

The comptroller adopts these amendments under Tax Code, §§5.05 (Appraisal Manuals and Other Materials), 23.73 (Appraisal of Timber Land), and 23.9803 (Appraisal of Restricted-use Timber Land), which provide the comptroller with the authority to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying methods to apply and the procedures to use in appraising qualified timberland and restricted-use timberland for ad valorem tax purposes.

These amendments implement Tax Code §23.73 (Appraisal of Timber Land) and §23.9803 (Appraisal of Restricted-use Timber Land).

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 7, 2020.

TRD-202004163

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Effective date: October 27, 2020

Proposal publication date: September 4, 2020

For further information, please call: (512) 475-2220



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (TWC) adopts the following new section in Chapter 800, relating to General Administration, without changes to the text as published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5139):

Subchapter A. General Provisions, §800.10

TWC adopts amendments to the following section of Chapter 800, relating to General Administration, without changes to the text as published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5139):

Subchapter A. General Provisions, §800.3

TWC adopts the following new subchapters to Chapter 800, relating to General Administration, without changes to the text as published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5139):

Subchapter H. Vendor Protests, §800.300 and §800.301

Subchapter I. Enhanced Contract Monitoring, §§800.350 - 800.352

The rules will not be republished.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 800 rule amendments is to align TWC rules with the following sections of the Texas Government Code requiring state agencies to adopt rules regarding contracting and purchasing:

--Section 2252.202 requires agencies to adopt rules to promote compliance with the requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

--Section 2155.076 requires agencies to establish, by rule, procedures for resolving vendor protests relating to purchasing issues; and

--Section 2261.253 requires agencies to establish, by rule, a procedure to identify each contract that requires enhanced contract performance monitoring.

Additionally, minor nonsubstantive revisions are required to correct the Texas Comptroller of Public Accounts (Comptroller) rule citation and to remove the obsolete Comptroller division reference related to the Historically Underutilized Business (HUB) program.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§800.3. Historically Underutilized Businesses

Section 800.3 is amended to correct the Comptroller rule citation related to the HUB program and to remove the obsolete Comptroller division reference.

§800.10. Purchase of Certain Products

New §800.10 is added to comply with Texas Government Code, Chapter 2252, Subchapter G, §2252.202, requiring that governmental entities adopt rules to promote compliance with the uniform general conditions for a project in which iron or steel products will be used must require that the bid documents provided to all bidders and the contract include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States.

The rule language states that TWC complies with the statutory requirements of Texas Government Code, Chapter 2252, Subchapter G.

SUBCHAPTER H. VENDOR PROTESTS

TWC adopts new Subchapter H:

According to Texas Government Code, §2155.076, each state agency, by rule, "shall develop and adopt protest procedures for resolving vendor protests relating to purchasing issues. An agency's rules must be consistent with the [Comptroller's] rules." TWC has procedures in place, and staff has ensured that its procedures are consistent with the Comptroller's rules in 34 Texas Administrative Code §1.72. However, pursuant to Texas Government Code, §2155.076, these procedures must be in rule.

New Subchapter H language reflects TWC's current procedures regarding bid protest procedures.

New §800.300 provides the following definitions related to vendor protests:

--Interested Parties--Respondents in connection with the solicitation, evaluation, or award that is being protested.

--Protestant--A respondent vendor that submits a protest under TWC vendor protest procedures.

--Respondent--A vendor that submits an offer or proposal in response to a TWC solicitation.

--Solicitation--A document, such as an Invitation for Bids, Request for Offers, Request for Proposals, or Request for Qualifications that contains a request for responses from vendors to provide specified goods and services. The term also refers to the process of obtaining responses from vendors to provide specified goods and services.

--Vendor--A potential provider of goods or services to TWC.

New §800.301 describes the vendor protest procedures. The procedures state that any bid respondent who is allegedly aggrieved in connection with the solicitation, evaluation, or award of a contract by TWC may formally protest, in writing, to the TWC's director of business operations.

The protest must be received by the TWC's director of business operations within 10 working days after the protestant knows, or should have known, of the occurrence of the action that is protested.

The rules state that a protest that is not filed timely shall not be considered unless the director of business operations determines that a protest raises issues that are significant to the TWC's procurement practices or procedures.

The protest must be signed by an authorized representative for the protestant, and the signature notarized and contain the following details:

--the identifying name and number of the solicitation being protested

--identification of the specific statute or regulation that the protestant alleges has been violated

--a specific description of each act or omission alleged to have violated the statutory or regulatory provision identified in §800.301(c)(2)

--a precise statement of the relevant facts, including:

--sufficient documentation to establish that the protest has been timely filed; and

--a description of the resulting adverse impact to the protestant

--a statement of the argument and authorities that the protestant offers in support of the protest

--an explanation of the action the protestant is requesting from TWC

--a statement confirming that copies of the protest have been mailed or delivered to any other interested party known to the protestant.

The protestant may appeal determination of a protest to TWC's deputy executive director. The appeal must be in writing, addressed to TWC's deputy executive director, and the protest must be received by the deputy executive director no later than 10 business days after the date of receipt of the written determination issued by the director of business operations.

Finally, in order to protect the best interests of TWC or the state, the rules provide that TWC may move forward with a solicitation or contract award without delay, in spite of a timely filed protest.

SUBCHAPTER I. ENHANCED CONTRACT MONITORING

TWC adopts new Subchapter I:

Texas Government Code, §2261.253(c) requires state agencies to establish, by rule, a procedure to identify contracts, prior to award, that require enhanced contract or performance monitoring and submit the information to the agency's governing body. In its Procurement and Contract Management Guide, the Comptroller has indicated that this requirement applies to "high-dollar and high-risk contracts." TWC has a procedure implementing the requirement; however, pursuant to Texas Government Code, §2261.253(c), these procedures must be in rule. New Subchapter I language reflects the current TWC procedures regarding enhanced contract monitoring.

New §800.350 describes the purpose and scope of the subchapter. The purpose of Subchapter I is to implement the requirements of Texas Government Code, §2261.253(c) requiring state agencies to establish, by rule, a procedure to identify each contract that requires enhanced contract or performance monitoring.

Pursuant to Texas Government Code, §2261.253(d), Subchapter I does not apply to:

- memoranda of understanding;
- interagency contracts;
- interlocal agreements; or
- contracts for which there is not a cost.

New §800.351 describes the enhanced contract monitoring policy and procedures. The rules state that:

TWC shall identify contracts requiring enhanced monitoring by evaluating the risk factors, which include:

- the complexity of the goods and services to be provided;
- the contract amount;
- the length and scope of the project supported by the contract;
- whether the services are new or have changed significantly since the last procurement of the same services;
- whether TWC has experience with the contractor;
- whether the project affects external stakeholders or is of particular interest to third parties;
- whether TWC data is accessed by the contractor; and

--any other factors TWC determines in a particular circumstance will create a level of risk to the state or TWC such that enhanced monitoring is required.

The rule states that for contracts requiring enhanced monitoring, the contractor shall report to the assigned TWC contract manager on progress toward goals or performance measure achievements, and the status of deliverables, if any, and on issues of which the contractor is aware that may create an impediment to meeting the project timeline or goals.

Enhanced monitoring may also include site visits, additional meetings with contractor staff, and inspection of documentation required by TWC to assess progress toward achieving performance requirements.

Projects deemed medium or high risk shall be monitored by the assigned contract manager and may involve additional team members such as an assigned project manager and staff from the Office of General Counsel or the Finance, Information Technology, or Regulatory Integrity Divisions, if warranted.

Texas Government Code, §2261.253 requires TWC to submit information on each contract identified for enhanced contract monitoring to TWC's three-member Commission (Commission). New §800.352 describes the reporting requirements for enhanced contractor monitoring as follows:

--The director of Procurement and Contract Services (PCS Director) shall immediately notify the Commission of any serious issue or risk that is identified with respect to a contract identified for enhanced contract monitoring.

--The contract manager shall report on the status of all contracts subject to enhanced monitoring to the PCS director quarterly.

--If any serious issues or risks are identified about a contract subject to enhanced monitoring, the PCS director will immediately notify the director of business operations and the executive director.

No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.3, §800.10

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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 6, 2020.

TRD-202004152

Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

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Proposal publication date: July 24, 2020

For further information, please call: (512) 689-9855



SUBCHAPTER H. VENDOR PROTESTS

40 TAC §800.300, §800.301

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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 6, 2020.

TRD-202004153

Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: October 26, 2020

Proposal publication date: July 24, 2020

For further information, please call: (512) 689-9855



SUBCHAPTER I. ENHANCED CONTRACT MONITORING

40 TAC §§800.350 - 800.352

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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 6, 2020.

TRD-202004154

Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: October 26, 2020

Proposal publication date: July 24, 2020

For further information, please call: (512) 689-9855



CHAPTER 813. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM EMPLOYMENT AND TRAINING

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 813, relating to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T), without changes to the text as published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5144):

Subchapter B. Access to Employment and Training Activities and Support Services, §813.11 and §813.14

Subchapter D. Allowable Activities, §813.33, §813.34

TWC adopts amendments to the following section of Chapter 813, relating to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T), with changes to the text as published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5144):

Subchapter B. Access to Employment and Training Activities and Support Services, §813.13

Subchapter D. Allowable Activities, §813.31, §813.32

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 813 rule change is to comply with the Agriculture Improvement Act of 2018 and other federal requirements.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER B. ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES AND SUPPORT SERVICES

TWC adopts the following amendments to Subchapter B:

§813.11. Board Responsibilities Regarding Access to SNAP E&T Activities and Support Services

Section 813.11 is amended to add clarification regarding Local Workforce Development Board (Board) responsibilities in monitoring SNAP E&T participation.

§813.13. Good Cause for Mandatory Work Registrants Who Participate in SNAP E&T Services

Section 813.13 is amended to add clarification regarding actions that Boards must take when a mandatory work registrant fails to respond to an outreach notification or fails to participate in SNAP E&T activities.

At adoption, §813.13(a) is amended to remove the proposed sentence, "A Board shall notify HHSC of a SNAP E&T participant's noncompliance within seven days of the noncompliance." The sentence is removed from §813.13(a) and the reference to the timeline for reporting noncompliance to HHSC is added to the associated guidance document.

§813.14. Special Provisions Regarding Sanctions for Noncooperation

Section 813.14 is amended to revise the 120-hour monthly participation limitation to comply with 7 USC §2015(d)(4)(F)(ii).

SUBCHAPTER D. ALLOWABLE ACTIVITIES

TWC adopted the following amendments to Subchapter D:

§813.31. Activities for Mandatory Work Registrants and Exempt Recipients Who Voluntarily Participate in SNAP E&T Services

Section 813.31 is amended to update the activities that may be provided for SNAP E&T mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services to comply with the requirements of the Agriculture Improvement Act of 2018.

§813.32. SNAP E&T Activities for ABAWDs

Section 813.32 is amended to add, as an allowable SNAP E&T activity, employment and training programs for veterans operated by the US Department of Labor or the US Department of Veterans Affairs.

§813.33. Job Retention Activities

Section 813.33 is amended to update Board requirements regarding the provision of job retention activities to comply with the requirements of the Agriculture Improvement Act of 2018 and offers flexibility to Boards regarding the job retention period.

§813.34. Job Retention Support Services

Section 813.34 is amended to update Board requirements regarding the provision of job retention support services to comply with the requirements of the Agriculture Improvement Act of 2018 and offers flexibility to Boards regarding the job retention period.

No comments were received.

SUBCHAPTER B. ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES AND SUPPORT SERVICES

40 TAC §§813.11, 813.13, 813.14

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§813.13. *Good Cause for Mandatory Work Registrants Who Participate in SNAP E&T Services.*

(a) Good cause applies only to mandatory work registrants who are required to participate in SNAP E&T services. A Board shall ensure that all good cause claims are forwarded to HHSC for determination before SNAP benefits are denied when mandatory work registrants state that they have a reason for failing to:

- (1) respond to the outreach notification; and
- (2) participate in SNAP E&T activities.

(b) For purposes of this chapter, the following are reasons a Board may consider when making a good cause recommendation to HHSC after a SNAP E&T participant fails to respond to outreach notifications or fails to participate in SNAP E&T activities:

- (1) temporary illness or incapacitation;
- (2) court appearance;
- (3) caring for a physically or mentally disabled household member who requires the recipient's presence in the home;
- (4) no available transportation and the distance prohibits walking; or no available job within reasonable commuting distance, as defined by the Board;
- (5) distance from the home of the mandatory work registrant who participates in SNAP E&T services, to the Workforce Solutions Office, or employment service provider requires commuting time of more than two hours a day (not including taking a child to and from a child care facility), the distance prohibits walking, and there is no available transportation;
- (6) farmworkers who are away from their permanent residence or home base, who travel to work in an agriculture or related

industry during part of the year, and are under contract or similar agreement with an employer to begin work within 30 days of the date that the individual notified the Board of his or her seasonal farmwork assignment;

(7) an inability to obtain needed child care, as defined by the Board and based on any of the following reasons:

(A) informal child care by a relative or child care provided under other arrangements is unavailable or unsuitable, and based on, where applicable, Board policy regarding child care. Informal child care may also be determined unsuitable by the parent;

(B) eligible formal child care providers, as defined in Chapter 809 of this title (relating to Child Care Services), are unavailable;

(C) affordable formal child care arrangements within maximum rates established by the Board are unavailable; or

(D) formal or informal child care within a reasonable distance from home or the work site is unavailable;

(8) an absence of other support services necessary for participation;

(9) receiving a job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law;

(10) an individual or family crisis or a family circumstance that may preclude participation, including substance abuse and mental health and disability-related issues, provided that the mandatory work registrant who participates in SNAP E&T services engages in problem resolution through appropriate referrals for counseling and support services; or

(11) a individual is a victim of family violence.

(c) A Board shall ensure that good cause is monitored at least on a monthly basis and results are shared with HHSC if there is a change in the circumstances surrounding the good cause exception.

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 6, 2020.

TRD-202004155

Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: October 26, 2020

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For further information, please call: (512) 689-9855



SUBCHAPTER D. ALLOWABLE ACTIVITIES

40 TAC §§813.31 - 813.34

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§813.31. *Activities for Mandatory Work Registrants and Exempt Recipients Who Voluntarily Participate in SNAP E&T Services.*

The following activities may be provided for SNAP E&T mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services, subject to the limitations specified in §813.32 of this subchapter:

(1) Supervised job search services that shall:

(A) incorporate job readiness, job search training, directed job search, and group job search, and may include the following:

- (i) Employability assessment;
- (ii) Counseling;
- (iii) Information on available jobs;
- (iv) Occupational exploration, including information on local emerging and demand occupations;
- (v) Interviewing skills and practice interviews;
- (vi) Assistance with applications and résumés;
- (vii) Job fairs;
- (viii) Life skills; and
- (ix) Guidance and motivation for development of positive work behaviors necessary for the labor market; and

(B) limit the number of weeks a mandatory work registrant or exempt recipient who voluntarily participates in SNAP E&T services can spend as follows:

(i) ABAWDs shall not be enrolled for more than four weeks, and the job search activity shall be provided in conjunction with the workfare activity, as described in §813.32(a)(4)(D) of this subchapter.

(ii) General Population mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services shall not be enrolled:

(I) for more than four weeks of consecutive activity under this paragraph; or

(II) for more than six weeks of total activity in a federal fiscal year.

(iii) Job search, when offered as part of other SNAP E&T activities, is allowed for more time than the limitations set forth in clauses (i) and (ii) of this subparagraph if the job search activities comprise less than half of the required time spent in other activities.

(2) Vocational training that shall:

(A) relate to the types of jobs available in the labor market;

(B) be consistent with employment goals identified in the employment plan, when possible; and

(C) be provided only if there is an expectation that employment will be secured upon completion of the training.

(3) Nonvocational education that shall increase employability, such as:

(A) enrollment and satisfactory attendance in:

- (i) a secondary school; or
- (ii) a course of study leading to a high school diploma or a certificate of general equivalence;

(B) basic skills and literacy;

(C) English proficiency; or

(D) postsecondary education, leading to a degree or certificate awarded by a training facility, career school or college, or other educational institution that prepares individuals for employment in current and emerging occupations that do not require baccalaureate or advanced degrees;

(4) Work experience, as authorized by 7 USC §2015(d)(4)(B)(iv) and by 20 CFR §663.200(b), for mandatory work registrants who need assistance in becoming accustomed to basic work skills that shall:

(A) occur in the workplace for a limited period of time;

(B) be made in either the private for-profit, the non-profit, or the public sectors; and

(C) be paid or unpaid;

(5) Unsubsidized employment

(6) Other activities approved in the current SNAP E&T state plan of operations

§813.32. *SNAP E&T Activities for ABAWDs.*

(a) Boards shall ensure that SNAP E&T activities for ABAWDs are limited to participating in the following:

(1) Services or activities under the Trade Act of 1974, as amended by the Trade Act of 2002

(2) Activities under Workforce Innovation and Opportunity Act (29 USC §3111 et seq.)

(3) Education and training, which may include:

(A) vocational training as described in §813.31(2) of this subchapter; or

(B) nonvocational education as described in §813.31(3) of this subchapter; and

(4) Workfare activities that shall:

(A) be designed to improve the employability of ABAWDs through actual employment experience or training, or both;

(B) be unpaid job assignments based in the public or private nonprofit sectors;

(C) have hourly requirements based on the ABAWD's monthly household SNAP allotment divided by the number of ABAWDs in the SNAP household, as provided by HHSC and then divided by the federal minimum wage; and

(D) include a four-week job search period before placement in a workfare activity.

(b) Boards shall ensure that ABAWDs who are referred to a Workforce Solutions Office and subsequently become engaged in unsubsidized employment for at least 20 hours per week are not required to continue participation in SNAP E&T services because they have fulfilled their work requirement, as described in 7 USC §2015(o)(2)(A). Additionally, Boards shall ensure that HHSC is notified when ABAWDs obtain employment.

(c) An employment and training program for veterans operated by the US Department of Labor or the US Department of Veterans Affairs, as tracked by HHSC, is an allowable SNAP E&T activity for ABAWDs.

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 6, 2020.
TRD-202004158

Dawn Cronin
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: October 26, 2020
Proposal publication date: July 24, 2020
For further information, please call: (512) 689-9855



REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §151.75, concerning the Standards of Conduct for Financial Advisors and Service Providers. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

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

TRD-202004178

Kristen Worman

General Counsel

Texas Department of Criminal Justice

Filed: October 8, 2020



Adopted Rule Reviews

Texas Optometry Board

Title 22, Part 14

The Texas Optometry Board readopts without change Texas Administrative Code, Title 22, Chapters 271, 272, 273, and 275, pursuant to the Texas Government Code, §2001.039. The agency proposed the review of the chapters in the March 6, 2020, issue of the *Texas Register* (45 TexReg 1722). After reviewing the rules in Chapters 271, 272, 273, and 275, the agency finds that the reasons for initially adopting the rules continue to exist and readopts the rules. No comments were received.

The agency has proposed an amendment to 22 TAC §273.10 to remove an outdated section. The agency has adopted changes to 22 TAC §275.2 during the review process.

The following rules in Chapter 271 are being readopted: §271.1, Definitions; §271.2, Applications; §271.3, Jurisprudence Examination Administration; §271.5, Licensure without Examination; §271.6, National Board Examination; and §271.7, Criminal History Evaluation Letters.

The following rules in Chapter 272 are being readopted: §272.1, Open Records; §272.2, Historically Underutilized Businesses; and §272.3, Contract and Purchasing Procedures.

The following rules in Chapter 273 are being readopted: §273.1, Surrender of License; §273.2, Use of Name of Retired or Deceased Optometrist; §273.3, Contact Lenses as Prize or Premium; §273.4, Fees (Not Refundable); §273.5, Clinical Instruction and Practice Limited License for Clinical Faculty; §273.6, Licenses for a Limited Period; §273.7, Inactive Licenses and Retired License for Volunteer Charity Care; §273.8, Renewal of License; §273.9, Public Interest Information; §273.10, Licensee Compliance with Payment Obligations; §273.11, Public Participation in Meetings; §273.12, Profile Information; §273.13, Contract or Employment with Community Health Centers; and §273.14, License Applications for Military Service Member, Military Veteran, and Military Spouse.

The following rules in Chapter 275 are being readopted: §275.1, General Requirements; and §275.2, Required Education.

This concludes the review of Chapters 271, 272, 273, and 275.

TRD-202004220

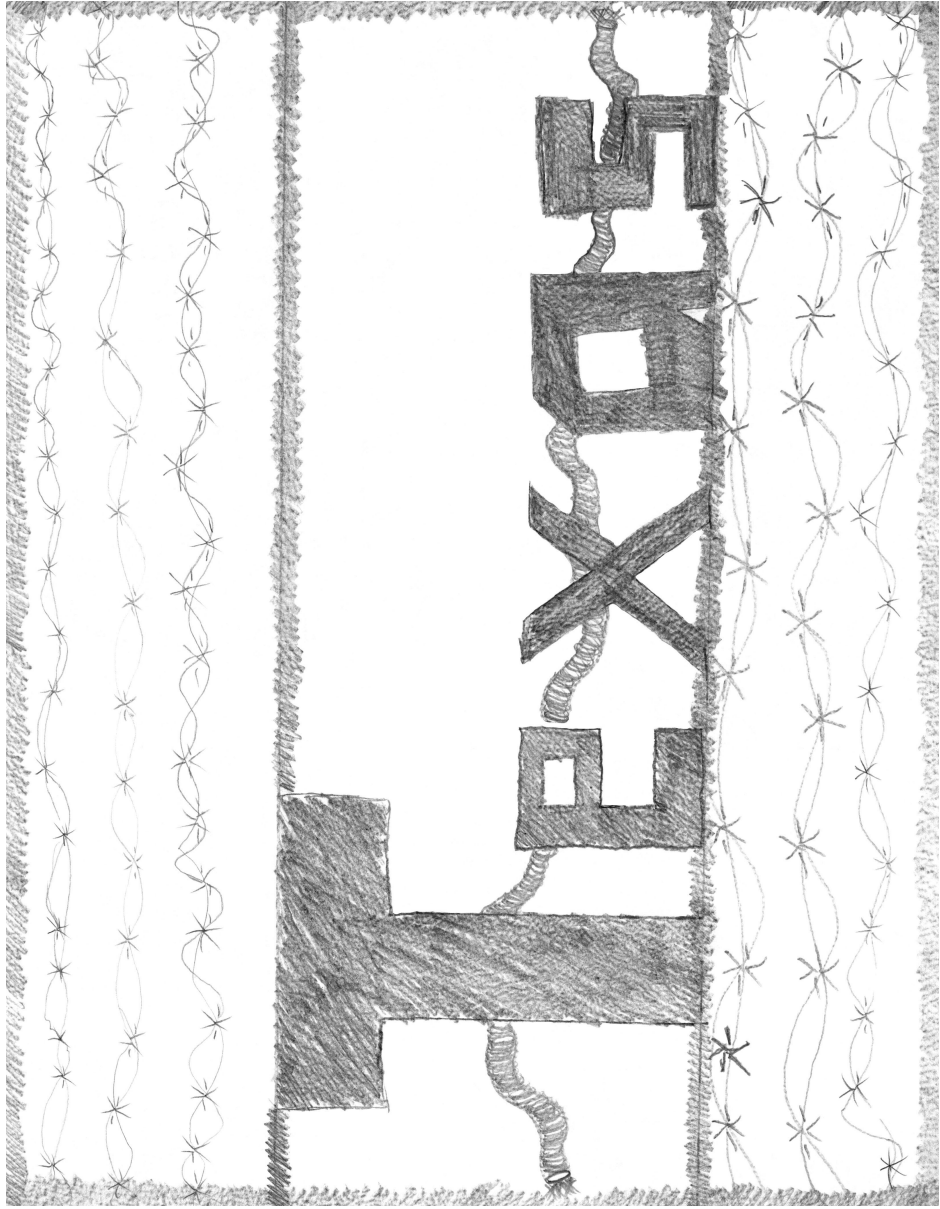
Kelly Parker

Executive Director

Texas Optometry Board

Filed: October 12, 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: 22 TAC §801.305

Rule	Action
801.43(b) Report alleged violations or misrepresentation	<u>Level 5 Reprimand</u> [Warning Letter]
801.43(c) Identify license, status, or other restriction	<u>Level 5 Reprimand</u> [Warning Letter]
801.43(d) Make false statement	Level 5 Reprimand
801.43(g) Make reasonable effort to prevent other's false statement	<u>Level 5 Reprimand</u> [Warning Letter]
801.44(a) Provide services only in the context of a professional relationship	Level 5 Reprimand
801.44(b) Fail to provide written information	Level 5 Reprimand
801.44(c) Fail to obtain appropriate consent or custody order	Level 5 Reprimand
801.44(d) Fail to provide written information regarding confidentiality	Level 5 Reprimand
801.44(e) Refer for pay	Level 3 <u>Suspension</u> [Administrative Penalty]
801.44(f) Exploit trust	Level 4 Probated Suspension
801.44(g) Act to meet personal needs	Level 4 Probated Suspension
801.44(h) Provide services to family, friends, educational or business associates, or others	Level 5 Reprimand
801.44(i) Maintain professional boundaries with clients and former clients	Level 5 Reprimand
801.44(k) Protect individual from harm resulting from group interaction	Warning Letter
801.44(l) Avoid non-therapeutic relationship with clients and former clients	Conditional Letter of Agreement
801.44(m) Bill only for services actually rendered or as agreed in writing	Level 5 Reprimand
801.44(n) End professional relationship when client is not benefitting	Level 4 <u>Reprimand</u> [Probated Suspension]
801.44(n) Provide written referral and facilitate transfer to appropriate care	Conditional Letter of Agreement
801.44(o) Technology-assisted services, provide license number and council's contact information	<u>Level 5 Reprimand</u> [Warning Letter]
801.44(p) Provided services within competency and professional standards	Level 4 Probated Suspension
801.44(q) Base services on client assessment, evaluation, or diagnosis	Level 4 Probated Suspension
801.44(s) Promote or encourage illegal use of alcohol or drugs	Level 1 Revocation
801.44(t) Provide services to client served by another	Level 5 Reprimand
801.44(u) Aid or abet or fail to report unlicensed practice	Level 2/3 Suspension

801.44(v) Enter a non-professional relationship with a client's family member or any person who has a personal or professional relationship with a client	Level 5 Reprimand
801.44(w) Provide services while impaired	Level 2/3 Suspension
801.45(b) Sexual contact with a protected person	Level 1 Revocation
801.45(c) Provide services to a former sexual partner	Level 1 Revocation
801.45(d) Therapeutic deception or sexual exploitation	Level 1 Revocation
801.46(a) Inform clients about testing as part of treatment	<u>Level 5 Reprimand</u> [Warning Letter]
801.46(c) Administer and interpret test with appropriate training, experience	Level 4 Probated Suspension
801.47 Use alcohol or drugs, adversely affecting provision of services	Level 2/3 Suspension
801.48(b) Disclose communication, record, or identity of a client	Level 4 Probated Suspension
801.48(c) Comply with statutes or rules, concerning confidential information	Level 4 Probated Suspension
801.48(d) Report or release information as required by statute	Level 4 Probated Suspension
801.48(d)(4) Report sexual misconduct per TCPRC 81.006	Level 5 Reprimand
801.48(e) Keep accurate records	<u>Level 5 Reprimand</u> [Conditional Letter of Agreement]
801.48(g) Maintain confidentiality in how client records are stored or disposed	Level 4 Probated Suspension
801.48(h) Plan for custody of records	Level 5 Reprimand
801.50 Appropriate use of assumed name	<u>Level 5 Reprimand</u> [Warning Letter]
801.53(a) Advertise with false information	Level 5 Reprimand
801.53(d) Advertisement must state license title	<u>Level 5 Reprimand</u> [Warning Letter]
801.53(e) Ad with confusing membership or certification outside field of therapy	<u>Level 5 Reprimand</u> [Warning Letter]
801.53(f) Advertisement must state provisional license	<u>Level 5 Reprimand</u> [Warning Letter]
801.53(g) Reasonable steps to correct or minimize misuse of license certificate or misrepresentation of licensee's services	<u>Level 5 Reprimand</u> [Warning Letter]
801.55(e) Dual relationship: Provide MFT and parenting coordination services	Level 4 Probated Suspension
801.56(d) Dual relationship: Provide MFT and parenting facilitation services	Level 4 Probated Suspension
801.57(d) Dual relationship: Provide any service and custody evaluation	Level 4 Probated Suspension

801.57(e) Offer expert opinion related to child custody	Level 2/3 Suspension
801.57(f) Failure to inform client and proper informed consent	Level 5 Reprimand
801.57(g) Associate must not conduct child custody or adoption evaluations	Level 4 Probated Suspension
801.58(d) Required training for technology-assisted services	Level 5 Reprimand
801.58(h) Failure to inform client and proper informed consent	Level 5 Reprimand
801.58(i) Meet legal requirements of health information privacy and security	Level 4 Probated Suspension
801.143(b) Supervisor may not be employed by supervisee	Level 5 Reprimand
801.143(c) Supervisor may not be related to supervisee	Level 5 Reprimand
801.143(d) Supervisor must timely process and maintain Associate's file	<u>Level 5 Reprimand</u> [Conditional Letter of Agreement]
801.143(e) Supervisor must submit timely written notice when supervision ends	<u>Level 5 Reprimand</u> [Warning Letter]
801.143(f)(1) Supervisor must ensure Associate adheres to all laws and rules	<u>Level 5 Reprimand</u> [Warning Letter]
801.143(f)(2) Supervisor/Associate dual relationship	Level 5 Reprimand
801.143(f)(4) Supervisor must implement Associate's written remediation plan	Level 5 Reprimand
801.143(f)(5) Supervisor must timely submit accurate experience documents	Level 5 Reprimand
801.143(i) Supervisor fails to renew and continues to represent as a supervisor	Level 5 Reprimand
801.143(j) Supervisor with status other than "current, active" or after supervisor status is removed and continues to supervise	Level 4 Probated Suspension
801.143(k) Disciplined supervisor must inform all Associates of council action, refund fees, and assist Associates to find alternate supervision	Level 5 Reprimand
801.143(l) Supervise without being currently approved supervisor	Level 4 Probated Suspension

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 new 16 TAC §§33.50 - 33.63 in the October 9, 2020, issue of the *Texas Register* (45 TexReg 7241). Due to an error by the Texas Register, the effective date for the new sections was incorrectly published as October 15, 2020. The correct effective date is December 31, 2020.

TRD-202004249

Office of the Attorney General

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 such 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: *Texas Commission on Environmental Quality v. All Phase Electrical Service, Inc., et al.*; Cause No. D-1-GN-18-007696; in the 419th Judicial District Court, Travis County, Texas.

Background: This suit seeks to recover from responsible parties the cleanup costs incurred by the Texas Commission on Environmental Quality ("TCEQ") at the San Angelo Electric Service Company ("SESCO") State Superfund Site in San Angelo, Tom Green County, Texas (the "Site"). During SESCO's evolution from an electric engine repair shop to a facility that built, repaired, and serviced electrical transformers, contaminants were spilled onto the soil and into the groundwater on and adjacent to the Site. Defendants in this suit were persons who allegedly arranged for disposal of waste at the Site. On October 31, 2019, and August 14, 2020, agreed final judgments were entered with 13 and 2 settling entities, respectively. Now, one additional party has agreed to contribute to the TCEQ's response costs.

Proposed Settlement: The parties propose an Agreed Final Judgment that provides for a total monetary contribution of \$48,000 from Rio Grande Electric Cooperative, Inc., awarding the TCEQ \$40,800 as reimbursement for its response costs and \$7,200 as attorneys' fees.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Thomas Edwards, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911; email: Thomas.Edwards@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202004218

Lesley French

General Counsel

Office of the Attorney General

Filed: October 12, 2020

Comanche County

Notice of Public Hearing and Seeking Comments - Rural Waiver of Medicaid Beds in Comanche County

Texas Health and Human Services (HHS) rule 40 TAC §19.2322(h)(7) permits the County Commissioners Court of a rural county with a population of less than 100,000 and no more than two Medicaid-certified nursing facilities to request that HHS contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Comanche County Commissioners Court will have a Special Setting to hold a Public Hearing as well as seek written public comments regarding the Court considering requesting that HHS contract for additional Medicaid nursing facility beds in Comanche County. The Commissioners Court is soliciting public input and comments on whether the request should be made to HHS, and to consider proposals from qualified persons or entities interested in providing additional Medicaid nursing home services in Comanche County.

A Special Setting of the Commissioners Court for a Public Hearing on the Rural Waiver of Medicaid Beds in Comanche County will be held on November 9, 2020, at 1:30 p.m. in the District Courtroom at the Comanche County Courthouse, 101 W. Central Ave.* Comments can also be made in writing to Comanche County Commissioners Court via the Comanche County Judge's office at 101 W. Central Ave., Comanche, Texas 76442 within 30 days from the date this notice is published.

Honorable Stephanie L. Davis

Comanche County Judge

Gary "Corky" Underwood

Commissioner, Precinct No. 1

Russell Gillette

Commissioner, Precinct No. 2

Sherman Sides

Commissioner, Precinct No. 3

Jimmy Dale Johnson

Commissioner, Precinct No. 4

*In Accordance with Title III of the Americans with Disabilities Act, we invite all attendees to advise us of any special accommodations due to disability. Please submit your request to (325) 356-2466 as far as possible in advance of the Special Setting Public Hearing.

TRD-202004179

Honorable Stephanie Davis
Comanche County Judge
Comanche County
Filed: October 8, 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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/19/20 - 10/25/20 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 10/19/20 - 10/25/20 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-202004251

Leslie L. Pettijohn
Commissioner

Office of Consumer Credit Commissioner
Filed: October 13, 2020

◆ ◆ ◆
Texas Education Agency

**Request for Applications (RFA) Concerning Generation
Twenty-Six Open-Enrollment Charter Application (RFA
#701-21-104)**

Filing Authority. Texas Education Code (TEC), §12.101

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-21-104 from eligible entities to operate open-enrollment charter schools. Eligible entities include public institutions of higher education, private or independent institutions of higher education, organizations exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)), or governmental entities that are considered new operators and have not operated a charter school. At least one member of the governing board of the group requesting the charter must attend one required applicant information session webinar. Two webinars will be held virtually on Friday, October 30, 2020, and Friday, November 6, 2020. The public may participate virtually in either, or both, webinars by registering in advance at https://us02web.zoom.us/join/wn_rikvlp7cTrORQL68elGLzw. Registrants will receive a confirmation email containing information about joining each webinar. The webinars will also be recorded and made available publicly; however, failure to attend at least one of the mandatory webinars in its entirety will disqualify an applicant from further consideration during the Generation 26 application cycle.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. An approved open-enrollment charter school may be located in a facility of a commercial or nonprofit entity or in a school district facility. If the open-enrollment charter school is to be located in a school district facility, it must be operated under the terms established by the board of trustees or governing body of the school district in an agreement between the charter school and the district.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. An open-enrollment charter school must be nonsectarian in its programs, admissions, policies, employment practices, and all other operations and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Texas Student Data System, Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in TEC, §12.1056, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school or charter holder is immune from liability and suit to the same extent as a school district, and the employees and volunteers of the open-enrollment charter school or charter holder are immune from liability and suit to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability and suit to the same extent as a school district trustee. TEC, §12.1057, states that an employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. The electronic version of the completed application must be submitted to TEA by 5:00 p.m. (Central Time), Wednesday, January 20, 2021, to be eligible for review. Additionally, hard-copy submissions must be postmarked and mailed to TEA on or before 5:00 p.m. Wednesday, January 20, 2021, via U.S. Mail, FedEx, or UPS. In-person submissions will not be accepted. All applications must be addressed to Texas Education Agency, Division of Charter School Authorizing and Administration (Attention: New Schools Team), 1701 North Congress Avenue, Austin, Texas 78701.

Project Amount. TEC, §12.106, specifies the following.

(a) Effective September 1, 2019, a charter holder is entitled to receive for the open-enrollment charter school funding under TEC, Chapter 48, equal to the amount of funding per student in weighted average daily attendance, excluding the adjustment under TEC, §48.052, the funding under TEC, §§48.101, 48.110, 48.111, and 48.112, and enrichment funding under TEC, §48.202(a), to which the charter holder would be entitled for the school under TEC, Chapter 48, if the school were a school district without a tier one local share for purposes of TEC, §48.266.

(a-1) In determining funding for an open-enrollment charter school under subsection (a), the amount of the allotment under TEC, §48.102, is based solely on the basic allotment to which the charter holder is entitled and does not include any amount based on the allotment under TEC, §48.101.

(a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school an allotment per student in average daily attendance in an amount equal to the difference between the product of the quotient of the total amount of funding provided to eligible school districts under TEC, §48.101(b) or (c); and the total number of students in average daily attendance in school districts that receive an allotment under TEC, §48.101(b) or (c); and the sum of one and the quotient of the total number of students in

average daily attendance in school districts that receive an allotment under TEC, §48.101(b) or (c); and the total number of students in average daily attendance in school districts statewide; and §125.

(a-3) In addition to the funding provided by subsections (a) and (a-2), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under TEC, §48.202, based on the state average tax effort.

(a-4) In addition to the funding provided by subsections (a), (a-2), and (a-3), a charter holder is entitled to receive funding for the open-enrollment charter school under TEC, §48.110 and §48.112, and TEC, Chapter 48, Subchapter D, if the charter holder would be entitled to the funding if the school were a school district.

TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. In addition, TEC, Chapter 12, states that an open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, juvenile court adjudication, or a discipline problem under TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The commissioner may approve open-enrollment charter schools as provided in TEC, §12.101. There are currently 177 charters approved under TEC, §12.101 (Subchapter D). There is a cap of 305 charters approved under TEC, §12.101. The commissioner is scheduled to consider awards under RFA #701-21-104 in May 2021.

The commissioner may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The commissioner will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The commissioner may also consider the history of the sponsoring entity and the credentials and background of its board members. The commissioner may not award a charter to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered. The commissioner will not consider an application submitted by an individual that is substantially related to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered.

Requesting the Application. An application must be submitted under commissioner guidelines to be considered. A complete copy of the publication Generation Twenty-Six Open-Enrollment Charter Application (RFA #701-21-104), which includes an application and guidance, may be obtained on the TEA website at http://tea.texas.gov/Texas_Schools/Charter_Schools/.

Further Information. For clarifying information about the open-enrollment charter school application, contact the Division of Charter School Authorizing and Administration, Texas Education Agency, at (512) 463-9575 or charterapplication@tea.texas.gov.

TRD-202004262

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: October 14, 2020



Request for Applications (RFA) Concerning Generation Twenty-Six Open-Enrollment Charter Application (RFA #701-21-105)

Filing Authority. Texas Education Code (TEC), §12.101

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-21-105 from eligible entities to operate open-enrollment charter schools. Eligible entities include public institutions of higher education, private or independent institutions of higher education, organizations exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)), or governmental entities that are considered experienced operators and are operating or have operated a charter school in another portfolio that has not been revoked, returned, non-renewed, or surrendered. At least one member of the governing board of the group requesting the charter must attend one required applicant information session webinar. Two webinars will be held virtually on Friday, October 30, 2020, and Friday, November 6, 2020. The public may participate virtually in either, or both, webinars by registering in advance at https://us02web.zoom.us/webinar/register/WN_RIKvLP7cTrORQL68elGLzw. Registrants will receive a confirmation email containing information about joining each webinar. The webinars will also be recorded and made available publicly; however, failure to attend at least one of the mandatory webinars in its entirety will disqualify an applicant from further consideration during the Generation 26 application cycle.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. An approved open-enrollment charter school may be located in a facility of a commercial or nonprofit entity or in a school district facility. If the open-enrollment charter school is to be located in a school district facility, it must be operated under the terms established by the board of trustees or governing body of the school district in an agreement between the charter school and the district.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. An open-enrollment charter school must be nonsectarian in its programs, admissions, policies, employment practices, and all other operations and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Texas Student Data System, Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in TEC, §12.1056, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school or charter holder is immune from liability and suit to the same extent as a school district, and the employees and volunteers of the open-enrollment char-

ter school or charter holder are immune from liability and suit to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability and suit to the same extent as a school district trustee. TEC, §12.1057, states that an employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. The electronic version of the completed application must be submitted to TEA by 5:00 p.m. (Central Time), Wednesday, January 20, 2021, to be eligible for review. Additionally, hard-copy submissions must be postmarked and mailed to TEA on or before 5:00 p.m. Wednesday, January 20, 2021 via U.S. Mail, FedEx, or UPS. In-person submissions will not be accepted. All applications must be addressed to Texas Education Agency, Division of Charter School Authorizing and Administration (Attention: New Schools Team), 1701 North Congress Avenue, Austin, Texas 78701.

Project Amount. TEC, §12.106, specifies the following.

(a) Effective September 1, 2019, a charter holder is entitled to receive for the open-enrollment charter school funding under TEC, Chapter 48, equal to the amount of funding per student in weighted average daily attendance, excluding the adjustment under TEC, §48.052, the funding under TEC, §§48.101, 48.110, 48.111, and 48.112, and enrichment funding under TEC, §48.202(a), to which the charter holder would be entitled for the school under TEC, Chapter 48, if the school were a school district without a tier one local share for purposes of TEC, §48.266.

(a-1) In determining funding for an open-enrollment charter school under subsection (a), the amount of the allotment under TEC, §48.102, is based solely on the basic allotment to which the charter holder is entitled and does not include any amount based on the allotment under TEC, §48.101.

(a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school an allotment per student in average daily attendance in an amount equal to the difference between the product of the quotient of the total amount of funding provided to eligible school districts under TEC, §48.101(b) or (c); and the total number of students in average daily attendance in school districts that receive an allotment under TEC, §48.101(b) or (c); and the sum of one and the quotient of the total number of students in average daily attendance in school districts that receive an allotment under TEC, §48.101(b) or (c); and the total number of students in average daily attendance in school districts statewide; and \$125.

(a-3) In addition to the funding provided by subsections (a) and (a-2), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under TEC, §48.202, based on the state average tax effort.

(a-4) In addition to the funding provided by subsections (a), (a-2), and (a-3), a charter holder is entitled to receive funding for the open-enrollment charter school under TEC, §48.110 and §48.112, and TEC, Chapter 48, Subchapter D, if the charter holder would be entitled to the funding if the school were a school district.

TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. In addition, TEC, Chapter 12, states that an open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated.

An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, juvenile court adjudication, or a discipline problem under TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The commissioner may approve open-enrollment charter schools as provided in TEC, §12.101. There are currently 177 charters approved under TEC, §12.101 (Subchapter D). There is a cap of 305 charters approved under TEC, §12.101. The commissioner is scheduled to consider awards under RFA #701-21-105 in May 2021.

The commissioner may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The commissioner will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The commissioner may also consider the history of the sponsoring entity and the credentials and background of its board members. The commissioner may not award a charter to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered. The commissioner will not consider an application submitted by an individual that is substantially related to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered.

Requesting the Application. An application must be submitted under commissioner guidelines to be considered. A complete copy of the publication Generation Twenty-Six Open-Enrollment Charter Application (RFA#701-21-105), which includes an application and guidance, may be obtained on the TEA website at http://tea.texas.gov/Texas_Schools/Charter_Schools/.

Further Information. For clarifying information about the open-enrollment charter school application, contact the Division of Charter School Authorizing and Administration, Texas Education Agency, at (512) 463-9575 or charterapplication@tea.texas.gov.

Issued in Austin, Texas, on October 14, 2020.

TRD-202004263

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: October 14, 2020



Request for Applications (RFA) Concerning Generation Twenty-Six Open-Enrollment Charter Application (RFA #701-21-106)

Filing Authority. Texas Education Code (TEC), §12.152

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-21-106 from eligible entities to operate open-enrollment charter schools. Eligible entities are limited to Texas public colleges or universities and Texas public junior colleges. The supervising faculty member with oversight of the college of education requesting the charter must attend one required applicant information session webinar. Two webinars will be held virtually on Friday, October 30, 2020, and Friday, November 6, 2020. The public may participate virtually in either, or both, webinars by

registering in advance at https://us02web.zoom.us/webinar/register/WN_RIKvLP7cTrORQL68eIGLzw. Registrants will receive a confirmation email containing information about joining each webinar. The webinars will also be recorded and made available publicly; however, failure to attend at least one of the mandatory webinars in its entirety will disqualify an applicant from further consideration during the Generation 26 application cycle.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. A public senior college or university, or public junior college open-enrollment charter school may operate on a campus of the public college or university, or public junior college or in the same county in which the public college or university, or public junior college is located and under certain circumstances elsewhere in the state.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. An open-enrollment charter school must be nonsectarian in its programs, admissions, policies, employment practices, and all other operations and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Texas Student Data System, Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in TEC, §12.1056, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school or charter holder is immune from liability and suit to the same extent as a school district, and the employees and volunteers of the open-enrollment charter school or charter holder are immune from liability and suit to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability and suit to the same extent as a school district trustee. TEC, §12.1057, states that an employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. The electronic version of the completed application must be submitted to TEA by 5:00 p.m. (Central Time), Wednesday, January 20, 2021, to be eligible for review. Additionally, hard-copy submissions must be postmarked and mailed to TEA on or before 5:00 p.m. Wednesday, January 20, 2021 via U.S. Mail, FedEx, or UPS. In-person submissions will not be accepted. All applications must be addressed to Texas Education Agency, Division of Charter School Authorizing and Administration (Attention: New Schools Team), 1701 North Congress Avenue, Austin, Texas 78701.

Project Amount. TEC, §12.106, specifies the following.

(a) Effective September 1, 2019, a charter holder is entitled to receive for the open-enrollment charter school funding under TEC, Chapter 48, equal to the amount of funding per student in weighted average daily attendance, excluding the adjustment under TEC, §48.052, the funding under TEC, §§48.101, 48.110, 48.111, and 48.112, and enrichment funding under TEC, §48.202(a), to which the charter holder would be entitled for the school under TEC, Chapter 48, if the school

were a school district without a tier one local share for purposes of TEC, §48.266.

(a-1) In determining funding for an open-enrollment charter school under subsection (a), the amount of the allotment under TEC, §48.102, is based solely on the basic allotment to which the charter holder is entitled and does not include any amount based on the allotment under TEC, §48.101.

(a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school an allotment per student in average daily attendance in an amount equal to the difference between the product of the quotient of the total amount of funding provided to eligible school districts under TEC, §48.101(b) or (c); and the total number of students in average daily attendance in school districts that receive an allotment under TEC, §48.101(b) or (c); and the sum of one and the quotient of the total number of students in average daily attendance in school districts that receive an allotment under TEC, §48.101(b) or (c); and the total number of students in average daily attendance in school districts statewide; and \$125.

(a-3) In addition to the funding provided by subsections (a) and (a-2), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under TEC, §48.202, based on the state average tax effort.

(a-4) In addition to the funding provided by subsections (a), (a-2), and (a-3), a charter holder is entitled to receive funding for the open-enrollment charter school under TEC, §48.110 and §48.112, and TEC, Chapter 48, Subchapter D, if the charter holder would be entitled to the funding if the school were a school district.

TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. In addition, TEC, Chapter 12, states that an open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, juvenile court adjudication, or a discipline problem under TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The commissioner may approve open-enrollment charter schools as provided in TEC, §12.101 and §12.152. There are currently six charters approved under TEC, §12.152 (Subchapter E). There is no cap on the number of charters approved under TEC, §12.152. The commissioner is scheduled to consider awards under RFA #701-21-106 in May 2021.

The commissioner may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The commissioner will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The commissioner may also consider the history of the sponsoring entity and the credentials and background of its board members. The commissioner may not award a charter to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered. The com-

missioner will not consider an application submitted by an individual that is substantially related to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered.

Requesting the Application. An application must be submitted under commissioner guidelines to be considered. A complete copy of the publication College or University Generation Twenty-Six Open-Enrollment Charter Application (RFA #701-21-106), which includes an application and guidance, may be obtained on the TEA website at http://tea.texas.gov/Texas_Schools/Charter_Schools/.

Further Information. For clarifying information about the open-enrollment charter school application, contact the Division of Charter School Authorizing and Administration, Texas Education Agency, at (512) 463-9575 or charterapplication@tea.texas.gov.

TRD-202004261

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: October 14, 2020

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 24, 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 24, 2020**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing

(1) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2020-0665-PWS-E; IDENTIFIER: RN102673894; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code, §341.0351, by failing to notify the commission prior to making any significant change or addition where the change in

the existing distribution system results in an increase or decrease in production, treatment, storage, or pressure maintenance capacity; 30 TAC §290.44(f)(2), by failing to encase the waterline in a separate watertight pipe encasement and provide valves on each side of the crossing when waterlines are laid under any flowing or intermittent stream; 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies (BPAs) tested upon installation and on an annual basis by a recognized BPA tester and certify that they are operating within specifications; 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; and 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; PENALTY: \$9,480; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2020-0902-PWS-E; IDENTIFIER: RN102675535; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service for Well Numbers 1 and 2; PENALTY: \$157; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2020-0856-PWS-E; IDENTIFIER: RN102676434; LOCATION: Magnolia, Montgomery County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; PENALTY: \$1,575; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: BAR Recycling Enterprises, LLC; DOCKET NUMBER: 2019-1327-MSW-E; IDENTIFIER: RN110449063; LOCATION: New Boston, Bowie County; TYPE OF FACILITY: scrap tire transport facility; RULES VIOLATED: 30 TAC §324.15 and 40 Code of Federal Regulations §279.22(d), by failing to immediately clean up and properly dispose of any spills of used oil; 30 TAC §328.54(d), by failing to identify any vehicle or trailer used to transport used or scrap tires or tire pieces on both sides and the rear of the vehicle; 30 TAC §328.56(d)(3), by failing to sort, mark, classify, and arrange in an organized manner good used tires for sale as a commodity; and 30 TAC §328.63(b)(2), by failing to obtain a scrap tire storage site registration for the site prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in trailers; PENALTY: \$22,851; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: BASF TOTAL Petrochemicals LLC and Total Petrochemicals & Refining USA, Incorporated; DOCKET NUMBER: 2020-0543-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 46396, PSDTX1073M2, and N044, Special Conditions Number 1, Federal Operating Permit Number O1267, General Terms and Conditions and Special Terms and Conditions Number 29, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emis-

sions; PENALTY: \$15,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$6,000; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: City of China; DOCKET NUMBER: 2019-1525-MWD-E; IDENTIFIER: RN101721686; LOCATION: China, Jefferson 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 WQ0012104001, Effluent Limitations and Monitoring Requirements Number 1, 2, and 6, by failing to comply with permitted effluent limitations; PENALTY: \$18,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$18,750; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: City of Falls City; DOCKET NUMBER: 2020-0873-PWS-E; IDENTIFIER: RN101234813; LOCATION: Falls City, Karnes County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code, §341.0315, by failing to notify the executive director (ED) prior to making any significant change or addition where the change in existing systems results in an increase or decrease in production, treatment, storage, or pressure maintenance capacity; and 30 TAC §290.46(f)(2) and (3)(B)(v), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; PENALTY: \$100; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: City of Longview; DOCKET NUMBER: 2019-1351-MWD-E; IDENTIFIER: RN102845385; LOCATION: Longview, Gregg County; TYPE OF FACILITY: wastewater treatment facility with an associated collection system; RULES VIOLATED: 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010589002, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of sewage into or adjacent to any water in the state; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: Dean P. Mikeska; DOCKET NUMBER: 2019-1470-WR-E; IDENTIFIER: RN110375821; LOCATION: Holland, Bell County; TYPE OF FACILITY: water diversion point; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.081 and §11.121, by failing to obtain authorization prior to diverting, impounding, storing, taking, or using state water; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Edward Wilson; DOCKET NUMBER: 2020-0827-PST-E; IDENTIFIER: RN101819019; LOCATION: San Augustine, San Augustine County; TYPE OF FACILITY: out-of-service underground storage tank; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an underground storage tank system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator, Class A, Class B, and Class C, for the facility; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Terrany Binford, (512) 567-3302; REGIONAL OF-

FICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: Erling Johnson, LLC; DOCKET NUMBER: 2019-0505-PWS-E; IDENTIFIER: RN101194496; LOCATION: Buchanan Dam, Llano County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(i)(5) and (k) and §290.122(b)(2)(A) and (f), by failing to deliver public education materials following the lead action level exceedance that occurred during the January 1, 2018 - December 31, 2018, monitoring period, and failing to provide the executive director (ED) with copies of the public education materials and certification that distribution of said materials were conducted in a manner consistent with TCEQ requirements. Also, failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to deliver the public education materials for the January 1, 2018 - December 31, 2018, monitoring period; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with a certification that the consumer notification was distributed in a manner consistent with the TCEQ requirements for the January 1, 2016 - December 31, 2016, and January 1, 2018 - December 31, 2018, monitoring periods; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2017 - December 31, 2017, monitoring period; PENALTY: \$240; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(12) COMPANY: G. E. HUEBNER CONCRETE INCORPORATED; DOCKET NUMBER: 2020-0843-WQ-E; IDENTIFIER: RN108713140; LOCATION: Bellville, Austin County; TYPE OF FACILITY: aggregate production operation; RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the aggregate production operation registration annually as regulated activities continued; PENALTY: \$20,000; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Greens Parkway Municipal Utility District; DOCKET NUMBER: 2020-0743-PWS-E; IDENTIFIER: RN102698230; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(Q), by failing to ensure that all openings to the atmosphere are covered with a 16-mesh or finer corrosion-resistant screening material or an acceptable equivalent; 30 TAC §290.46(f)(2) and (3)(B)(v), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director (ED) upon request; 30 TAC §290.46(k), by failing to obtain approval from the ED for the use of interconnections; and 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; PENALTY: \$1,138; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: I.M.C. WASTE DISPOSAL, INCORPORATED; DOCKET NUMBER: 2019-1421-MSW-E; IDENTIFIER: RN101306082; LOCATION: Wichita Falls, Wichita County; TYPE OF FACILITY: liquid waste processing facility; RULES VIOLATED:

30 TAC §30.213(a) and Liquid Waste Processing Permit 2229A, Part IV-Site Operating Plan (SOP), Section 4.1, Personnel Functions, by failing to employ at least one licensed individual who supervises or manages the operations of the municipal solid waste facility; 30 TAC §330.203(c)(2) and Liquid Waste Processing Permit 2229A, Part IV-SOP, Section 4.4, Waste Acceptance and Analysis, Waste Analysis Subsection, by failing to perform sampling and analysis for wastes received; and 30 TAC §330.219(b) and Liquid Waste Processing Permit 2229A, Part IV-SOP, Section 4.3, Facility Inspections and Maintenance, by failing to promptly record and retain all required information in an operating record; PENALTY: \$16,728; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(15) COMPANY: LAHIN ENTERPRISES INCORPORATED dba Superior Mini Mart; DOCKET NUMBER: 2019-0385-PST-E; IDENTIFIER: RN102793619; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 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; PENALTY: \$3,946; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: Lone Star NGL Fractionators LLC; DOCKET NUMBER: 2020-0921-PWS-E; IDENTIFIER: RN108905621; LOCATION: Baytown, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(e), by failing to provide the results of asbestos sampling to the executive director for the January 1, 2019 - December 31, 2019, monitoring period; 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 total trihalomethanes 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.

(17) COMPANY: Lucite International, Incorporated; DOCKET NUMBER: 2020-0781-AIR-E; IDENTIFIER: RN102736089; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: industrial organic chemical manufacturing Plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O1959, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 1743, Special Conditions Number 1, FOP Number O1959, GTC and STC Number 14, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$14,275; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: SOHNA Investments, Incorporated; DOCKET NUMBER: 2020-0560-PWS-E; IDENTIFIER: RN101248029; LOCATION: Spring, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering the land within 150 feet of the facility's Well Number 1; PENALTY: \$350; ENFORCEMENT

COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Superior Silica Sands LLC; DOCKET NUMBER: 2020-0881-AIR-E; IDENTIFIER: RN100846443; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: sand plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), New Source Review Permit Number 150868, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$1,801; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: Tiki Leasing Company, Ltd.; DOCKET NUMBER: 2020-1001-PWS-E; IDENTIFIER: RN101176444; LOCATION: Cove, Chambers County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on a running annual average; PENALTY: \$952; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202004242
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 13, 2020

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Enforcement Order

An agreed order was adopted regarding David Crenshaw dba 281 Speedway, Michael Crenshaw, and C&S Promotions LLP dba 281 Speedway, Docket No. 2019-0741-AIR-E on October 13, 2020, assessing \$1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Vas Manthos, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202004253
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 13, 2020

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Notice of Correction to Agreed Order Number 2

In the May 29, 2020, issue of the *Texas Register* (45 TexReg 3670), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 2, for BALLEE BARK MATERIALS, INC., Docket Number 2019-1583-IWD-E. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "\$36,900."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202004244
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 13, 2020

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Notice of Correction to Agreed Order Number 14

In the July 31, 2020, issue of the *Texas Register* (45 TexReg 5424), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 14, for Robbie Robinson Ltd., Docket Number 2020-0632-WOC-E. The error is as submitted by the commission.

The reference to the Docket Number should be corrected to read: "2020-0632-WQ-E."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202004243

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 13, 2020

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 24, 2020**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 24, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: NORTEX TIRE RECYCLERS LLC; DOCKET NUMBER: 2020-0064-MSW-E; TCEQ ID NUMBER: RN110651676; LOCATION: 6243 East Highway 114, Building 8, Rhome, Wise County; TYPE OF FACILITY: tire transporter and processor business; RULES VIOLATED: 30 TAC §328.57(c)(3), by failing to transport used or scrap tires to an authorized facility; and 30 TAC §328.58(b), by failing to complete the information on the manifest pertaining to: transporter name, registration number, transporter's driver's license

number, state where the license was issued, the number and type of scrap tires removed from the generator and delivered and the location of any whole used or scrap tires removed from the load and delivered, and signature acknowledging that the information on the manifest form is true and correct; PENALTY: \$3,750; STAFF ATTORNEY: Taylor Pearson, Litigation Division, MC 175, (512) 239-5937; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: SAAHEL, INC. dba Snappy Foods 9; DOCKET NUMBER: 2020-0104-PST-E; TCEQ ID NUMBER: RN102978210; LOCATION: 1200 Voss Avenue, Odem, San Patricio County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met - specifically, release detection records, the line and tank tightness test, and financial assurance records were not available at the time of the investigation; and 30 TAC §334.606, by failing to maintain required training certification documentation - specifically, the operator training records were not provided at the time of the investigation; PENALTY: \$1,350; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-202004245

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 13, 2020

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 24, 2020**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's

central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 24, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Reyes Cantu dba Mi Taco Village and Ernesto M. Cantu dba Mi Taco Village; DOCKET NUMBER: 2019-1205-PWS-E; TCEQ ID NUMBER: RN103140802; LOCATION: 220 Regis Street, Lubbock, Lubbock County; TYPE OF FACILITY: public water system; RULE VIOLATED: TCEQ Agreed Order Docket Number 2016-2115-PWS-E, Ordering Provision Number 3.a.ii., by failing to issue public notifications and provide a copy of each public notification to the executive director; PENALTY: \$500; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: Woodhaven MHC, Ltd.; DOCKET NUMBER: 2019-0127-PWS-E; TCEQ ID NUMBER: RN102692886; LOCATION: 4181 Silver Dome Road Lot 300, Denton, Denton County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.46(n)(3), by failing to keep on file, and make available to the executive director upon request, copies of well completion data, as defined in 30 TAC §290.41(c)(3)(A), for as long as the well remains in service; PENALTY: \$50; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202004247

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 13, 2020



Notice of Public Hearing on Proposed Revision to the State Implementation Plan

The Texas Commission on Environmental Quality (TCEQ or commission) will offer a public hearing on December 8, 2020 at 2:00 p.m. Central Standard Time.

The hearing is offered to receive testimony regarding the proposed 2021 Regional Haze State Implementation Plan (SIP) Revision (**Project No. 2019-112-SIP-NR**). The proposed SIP revision would implement the regional haze requirements of the Federal Clean Air Act, §169A and the United States Environmental Protection Agency's (EPA) Regional Haze Rule for the second regional haze planning period. The proposed SIP revision addresses regional haze in Big Bend and Guadalupe National Parks in Texas and Class I areas located outside Texas that may be affected by emissions from within the state. The hearing for the proposed SIP revision is required by 40 Code of Federal Regulations §51.102 concerning SIPs.

The virtual hearing is structured for the receipt of oral comments only. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing. The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing must register by December 1, 2020. To register for the hearing, please email SIPRules@tceq.texas.gov and provide the following information: your name, your affiliation, your email ad-

dress, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on December 4, 2020 to those who registered for the hearing.

Persons who do not have internet access or who have special communication or other accommodation needs who plan to attend the hearing should contact Jamie Zech, Air Quality Division at (512) 239-3935 or (800) RELAY-TX (TDD) to register. Accommodation requests should be made as far in advance as possible.

An electronic version of this proposed SIP revision and appendices is available at https://www.tceq.texas.gov/airquality/sip/bart/haze_sip.html.

The comment period for this SIP revision (**Project No. 2019-112-SIP-NR**) closes December 9, 2020. Written comments will be accepted through the *eComments* system at <https://www6.tceq.texas.gov/rules/ecomments/>. For additional submission methods, please contact Margaret Earnest at margaret.earnest@tceq.texas.gov.

TRD-202004215

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 9, 2020



Notice of Public Meeting for Air Quality Standard Permit for Concrete Batch Plants: Proposed Registration No. 161495

APPLICATION. United Ready Mix, LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration No. 161495, which would authorize construction of a permanent concrete batch plant located at the following driving directions: from the intersection of Sanders Road and Bullard Road, go north on Sanders Road for approximately 0.15 mile, site entrance will be on the right, Iowa Colony, Brazoria County, Texas 77583. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.470355&lng=-95.420037&zoom=13&type=r>. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has completed the administrative and technical reviews of the application and determined that the application meets all of the requirements of a standard permit authorized by 30 TAC §116.611, which would establish the conditions under which the plant must operate. The executive director has made a preliminary decision to issue the registration because it meets all applicable rules.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided

orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, October 29, 2020 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 559-352-315. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (213) 929-4212 and enter access code 258-856-694. Additional information will be available on the agency calendar of events at the following link:

<https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The application, executive director's preliminary decision, and standard permit will be available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and the Manvel Public Library, 20514 Highway 6, Manvel, Brazoria County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk Street Suite H, Houston, Texas. Visit www.tceq.texas.gov/goto/cbp to review the standard permit. Further information may also be obtained from United Ready Mix, LLC, 7302 San Angelo Street, Houston, Texas 77020-7644 or by calling Mr. Josh Butler, Principal Consultant, Elm Creek Environmental, LLC at (972) 768-9093.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice Issuance Date: October 12, 2020

TRD-202004252

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 13, 2020



Notice of Water Quality Application

The following notice was issued on October 9, 2020.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

The Texas Commission on Environmental Quality has initiated a minor amendment of the Texas Pollutant Discharge Elimination System Permit No. WQ0015478001 issued to Windy Hill Utility Co., LLC to correct the daily average limit for total phosphorus in the Interim I phase of the existing permit. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 680,000 gallons per day. The facility is at 2784 Farm-to-Market Road 2001, in Hays County, Texas 78610.

If you need more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202004254

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 13, 2020



Notice of Water Rights Application

Notices issued October 12, 2020

APPLICATION NO. 13732; Texas GulfLink, LLC, Applicant, 740 E. Campbell Dr., Ste 220, Richardson, Texas 75081, seeks a temporary water use permit to divert and use not to exceed 110 acre-feet of water within a period of three years from the Brazos River, Brazos River Basin at a maximum diversion rate of 22.28 cfs (10,000 gpm) for industrial purposes in Brazoria County. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on April 15, 2020. Additional information and fees were received on May 21, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on June 4, 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 memorandum, 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.

APPLICATION NO. 13680; Treadstone Energy Operating Company, LLC, Applicant, 106 Vintage Park Blvd Ste 100, Houston, Texas 77070, seeks a temporary water use permit to divert and use not to exceed 500 acre-feet of water within a period of three years from a point on Little River, tributary of the Brazos River, Brazos River Basin at a maximum diversion rate 8.47 cfs (3,800 gpm) for industrial purposes in Milam County. More information on the application and how to participate in the permitting process is given below. The ap-

plication was received on February 10, 2020. Additional information and fees were received on April 1, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on April 27, 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.

APPLICATION NO. 5206A; Total Petrochemicals & Refining USA, Inc., 7600 32nd Street, Port Arthur, Texas 77642, Applicant, requests to amend Water Use Permit No.5206 to authorize the diversion of an additional 859.6 acre-feet of water per year from two additional diversion points on the Neches River, Neches River Basin, at a maximum diversion rate of 45.4 cfs (20.375 gpm), for industrial purposes in Jefferson County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on January 10, 2020. Additional information was received on March 24, 2020 and May 18, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 1, 2020. The Executive Director completed the technical review of the application and prepared a draft amendment to the Water Use Permit. The draft Water Use Permit, if granted, would contain special conditions including, but not limited to, installing a measuring device. The application, technical memoranda, and Executive Director's draft amendment 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.

APPLICATION NO. 13475; Wilbow-Fairway Development Corporation, 5307 E Mockingbird Ln, Suite 900, Dallas, Texas 75206, Applicant, has applied for a water use permit to maintain an existing dam and reservoir on an unnamed tributary of Elizabeth Creek, tributary of Denton Creek, tributary of the Elm Fork Trinity River, Trinity River Basin impounding 30.18 acre-feet of water for recreation purposes in Denton County. The applicant also seeks authorization to use the bed and banks of an unnamed tributary of Elizabeth Creek to convey 26.22 acre-feet of groundwater from the Paluxy Aquifer to maintain the reservoir and for subsequent diversion and use of 5.71 acre-feet for domestic and livestock purposes in Denton County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on January 11, 2018. Additional information was received on February 6, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on February 23, 2018. The Executive Director completed the technical review of the application and prepared a draft Water Use Permit. The draft Water Use Permit, if granted, would contain special conditions including, but not limited to, maintaining an alternate source of water and an accounting plan. The application, technical memoranda, and Executive Director's draft amendment 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. 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-202004255

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 13, 2020



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the TCEQ on October 5, 2020, in the matter of the Executive Director of the Texas Commission on Environmental Quality v. 2012 Weatherford Holdings, LLC; SOAH Docket No. 582-19-6975; TCEQ Docket No. 2018-0994-PWS-E. The Commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against 2012 Weatherford Holdings, LLC on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Meghan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-202004266

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TCEQ Notice of Public Hearing and Comment on Proposed
Revisions to 30 TAC Chapter 328

The Texas Commission on Environmental Quality (TCEQ or commission) will offer a virtual public hearing on **November 17, 2020, at 10:00 a.m.** Central Standard Time.

The hearing is offered to receive testimony regarding the restructure of §328.203 and §328.204 of 30 TAC Chapter 328, Waste Minimization and Recycling, to provide additional clarification.

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 13, 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 16, 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_M-jY1NDk1NzctNDFiM00MzQ0LThiNTEtYTNmOWJkMDQxZ-TAz%40hread.v2/0?context=%7b%22id%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22oid%22%3a%220ab3b264-6a49-48c6-afc8-8225e4a7b0ac%22%2c%22lsBroadcastMeeting%22%3atrue%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 (800) RELAY-TX (TDD) to register. Accommodation requests should be made as far in advance as possible.

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. 2020-041-328-AD. **The comment period closes on November 24, 2020.** Please only choose one form of submittal when submitting 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 Calen Roome, Public Education Unit, (512) 239-4621.

TRD-202004204

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Texas Superfund Registry 2020

BACKGROUND

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), Chapter 361, to identify, to the extent feasible, and evaluate facilities which may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first registry identifying these sites was published in the January 16, 1987, issue of the *Texas Register* (12 TexReg 205). Pursuant to THSC, §361.181, the commission must update the state Superfund registry annually to add new facilities that have been proposed for listing in accordance with THSC, §361.184(a) or listed in accordance with THSC, §361.188(a)(1) (see also 30 Texas Administrative Code (TAC) §335.343) or to remove facilities that have been deleted in accordance with THSC, §361.189 (see also 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

SITES LISTED ON THE STATE SUPERFUND REGISTRY

The state Superfund registry identifying those facilities that are *listed* and have been determined to pose an imminent and substantial endangerment are set out in descending order of Hazard Ranking System (HRS) scores as follows.

1. Col-Tex Refinery. Located on both sides of Business Interstate Highway 20 (United States Highway 80) in Colorado City, Mitchell County: tank farm and refinery.
2. First Quality Cylinders. Located at 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.
3. Camtraco Enterprises, Inc. Located at 18823 Amoco Drive in Pearland, Brazoria County: fuel storage/fuel blending/distillation.
4. Pioneer Oil Refining Company. Located at 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.
5. Precision Machine and Supply. Located at 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.
6. Voda Petroleum Inc. Located approximately 1.25 miles west of the intersection of Farm-to-Market Road (FM) 2275 (George Richey Road) and FM 3272 (North White Oak Road), 2.6 miles north-northeast of Clarksville City, Gregg County: waste oil recycling.
7. Sonics International, Inc. Located north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.
8. Maintech International. Located at 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.
9. Federated Metals. Located at 9200 Market Street, Houston, Harris County: magnesium dross/sludge disposal, inactive landfill.
10. International Creosoting. Located at 1110 Pine Street, Beaumont, Jefferson County: wood treatment.

11. McBay Oil and Gas. Located approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.
12. Materials Recovery Enterprises (MRE). Located about four miles southwest of Ovalo, near United States Highway 83 and Farm Road 604, Taylor County: Class I industrial waste management.
13. Hu-Mar Chemicals. Located north of McGlothlin Road, between the old Southern Pacific Railroad tracks and 12th Street, Palacios, Matagorda County: pesticide and herbicide formulation.
14. American Zinc. Located approximately 3.5 miles north of Dumas on United States Highway 287 and five miles east of Dumas on Farm Road 119, Moore County: zinc smelter.
15. Toups. Located on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105, in Sour Lake, Hardin County: fencepost treating and municipal waste.
16. Harris Sand Pits. Located at 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.
17. JCS Company. Located north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.
18. Jerrell B. Thompson Battery. Located north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead-acid battery recycling.
19. Spector Salvage Yard. Located at Jackson Avenue and Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.
20. Hayes-Sammons Warehouse. Located at Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.
21. Jensen Drive Scrap. Located at 3603 Jensen Drive, Houston, Harris County: scrap salvage.
22. State Highway 123 PCE Plume. Located near the intersection of State Highway 123 and Interstate Highway 35 in San Marcos, Hays County: contaminated groundwater plume.
23. Baldwin Waste Oil Company. Located on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.
24. Hall Street. Located north of the intersection of 20th Street East with California Street, north of Dickinson, Galveston County: waste disposal and landfill/open field dumping.
25. Unnamed Plating. Located at 6816 - 6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.
26. Tricon America, Inc. Located at 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.
27. Mineral Wool Insulation Manufacturing Company. Located on Shaw Road at the northwest corner of the city limits of Rogers, Bell County: mineral wool manufacturing.
1. Kingsland. Located in the vicinity of the 2100 and 2400 blocks of FM Road 1431 in the community of Kingsland, Llano County: former coin-operated dry cleaning facility.
2. Angus Road Groundwater Site. Located beneath the 4300 block of Angus Road, west of Odessa, Ector County: groundwater plume of unknown source.
3. Industrial Road/Industrial Metals. Located at 3000 Agnes Street in Corpus Christi, Nueces County: lead acid battery recycling and copper coil salvage.
4. Tenaha Wood Treating. Located at 275 County Road 4382, about a mile and a half south of the city limits and near the intersection of United States Highway 96 and County Road 4382, Tenaha, Shelby County: wood treatment.
5. Poly-Cycle Industries, Inc., Tecula. Located northeast of Tecula on the southeast corner of the intersection of FM 2064 and County Road 4216, Cherokee County: lead acid battery recycling.
6. Process Instrumentation and Electrical (PIE). Located at the northwest corner of 48th Street and Andrews Highway (Highway 385) in Odessa, Ector County: chromium plating.
7. Marshall Wood Preserving. Located at 2700 West Houston Street, Marshall, Harrison County: wood treatment.
8. Avinger Development Company (ADCO). Located on the south side of State Highway 155, approximately 0.25 mile east of the intersection with State Highway 49, Avinger, Cass County: wood treatment.
9. Moss Lake Road Groundwater Site. Located approximately 0.25 mile north of the intersection of North Moss Lake Road and Interstate Highway 20, approximately four miles east of Big Spring, Howard County: groundwater plume of an unknown source.
10. Ballard Pits. Located at the end of Ballard Lane, west of its intersection with County Road 73, approximately 5.8 miles north of Robstown, Nueces County: disposal of oil field drilling muds and petroleum wastes.
11. Cass County Treating Company. Located at 304 Hall Street within the southeastern city limits of Linden, Cass County: wood treatment.
12. Tucker Oil Refinery/Clinton Manges Oil Refinery. Located on the east side of United States Highway 79 in the rural community of Tucker, Anderson County: oil refinery.
13. Bailey Metal Processors, Inc. Located one mile northwest of Brady on Highway 87, McCulloch County: scrap metal dealer, primarily copper and lead reclamation.
14. City View Road Groundwater Plume. Located northwest of the intersection of Interstate Highway 20 and State Highway 158, Midland County: groundwater contamination plume.
15. Scrub-A-Dubb Barrel Company. Located at 1102 North Ash Avenue, Lubbock, Lubbock County: drum cleaning and reconditioning.

CHANGES SINCE THE OCTOBER 2019 SUPERFUND REGISTRY PUBLICATION

No sites were proposed or listed to or deleted from the state Superfund registry since its last publication, in the *Texas Register* on October 4, 2019 (44 TexReg 5817).

SITES DELETED FROM THE STATE SUPERFUND REGISTRY

To date, 57 sites have been *deleted* from the state Superfund registry.

Aluminum Finishing Company, Harris County; Archem Company/Thames Chelsea, Harris County; Aztec Ceramics, Bexar County; Aztec Mercury, Brazoria County; Barlow's Wills Point Plating, Van

SITES PROPOSED FOR LISTING ON THE STATE SUPERFUND REGISTRY

Those facilities that may pose an imminent and substantial endangerment and that have been *proposed* to the state Superfund registry are set out in descending order of HRS scores as follows.

Zandt County; Bestplate, Inc., Dallas County; Butler Ranch, Karnes County; Cox Road Dump Site, Liberty County; Crim-Hammett, Rusk County; Dorchester Refining Company, Titus County; Double R Plating Company, Cass County; El Paso Plating Works, El Paso County; EmChem Corporation, Brazoria County; Force Road Oil, Brazoria County; Gulf Metals Industries, Harris County; Hagerson Road Drum, Fort Bend County; Harkey Road, Brazoria County; Hart Creosoting, Jasper County; Harvey Industries, Inc., Henderson County; Hicks Field Sewer Corp., Tarrant County; Hi-Yield, Hunt County; Higgins Wood Preserving, Angelina County; Houston Lead, Harris County; Houston Scrap, Harris County; J.C. Pennco Waste Oil Service, Bexar County; James Barr Facility, Brazoria County; Kingsbury Metal Finishing, Guadalupe County; LaPata Oil Company, Harris County; Lyon Property, Kimble County; McNabb Flying Service, Brazoria County; Melton Kelly Property, Navarro County; Munoz Borrow Pits, Hidalgo County; Newton Wood Preserving, Newton County; Niagara Chemical, Cameron County; Old Lufkin Creosoting, Angelina County; Permian Chemical, Ector County; Phipps Plating, Bexar County; PIP Minerals, Liberty County; Poly-Cycle Industries, Ellis County; Poly-Cycle Industries, Jacksonville, Cherokee County; Rio Grande Refinery I, Hardin County; Rio Grande Refinery II, Hardin County; Rogers Delinted Cottonseed-Colorado City, Mitchell County; Rogers Delinted Cottonseed-Farmersville, Collin County; Sampson Horrice, Dallas County; SESCO, Tom Green County; Shelby Wood Specialty, Inc., Shelby County; Sherman Foundry, Grayson County; Solvent Recovery Services, Fort Bend County; South Texas Solvents, Nueces County; State Marine, Jefferson County; Stoller Chemical Company, Hale County; Texas American Oil, Ellis County; Thompson Hayward Chemical, Knox County; Waste Oil Tank Services, Harris County; Woodward Industries, Inc., Nacogdoches County; and Wortham Lead Salvage, Henderson County.

REMOVAL FROM INCLUSION

The Lindsay Post Company Site, located in Alto, Cherokee County, was removed from inclusion on the registry as a site that was proposed for listing in the January 22, 1988, issue of the *Texas Register* (13 TexReg 427).

How to Access Agency Records

Agency records for these sites may be accessible for viewing or copying by contacting the TCEQ Central File Room (CFR) Customer Service Center, Building E, North Entrance, at 12100 Park 35 Circle, Austin, Texas 78753, phone number (512) 239-2900, fax (512) 239-1850, or e-mail cfreq@tceq.texas.gov. CFR Customer Service Center staff will assist with providing program area contacts for records not maintained in the CFR. Accessible parking is available on the east side of Building D, located near building ramps, between Buildings D and E. Parking for mobility impaired persons is available on the east side of Building D, convenient to access ramps that are located between Buildings D and E. There is no charge for viewing the files; however, copying of file information is subject to payment of a fee. **(The CFR is currently closed, but information requests can be submitted through their email, or through CENTRAL FILE ROOM ONLINE, or at <https://www.tceq.texas.gov/agency/data/records-services>.)**

Inquiries concerning the agency Superfund program records may also be directed to Superfund staff at the Superfund toll-free line (800) 633-9363 or e-mail superfund@tceq.texas.gov.

TRD-202004248

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 13, 2020

Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Personal Financial Statement due July 31, 2020

Antonio Abad, 304 Fleetwood Dr., San Antonio, Texas 78232

Gilbert Burciaga, 3734 Hunterwood Pt., Austin, Texas 78746

Ramiro A. Cavazos, 200 East Grayson St Suite 203, San Antonio, Texas 78215

Kyle F. Dickson, 4925 Pine Street, Bellaire, Texas 77401

Michael Dokupil, SFC Capital Management, 4212 San Felipe, Ste. 410, Houston, Texas 77027

Viridiana Fernandez, 501 Starling Creek Lp., Laredo, Texas 78045

Abby L. Frank, 2504 Mustang Road, Brenham, Texas 77833

Fred B. Hernandez, 5405 Lake Trail Ct., San Angelo, Texas 76904

Trina Ita, 6330 East Hwy. 290, 3rd Floor, Suite 360, Austin, Texas 78723

Hope L. Knight, P.O. Box 552, Centerville, Texas 75833

Roberto D. Martinez, 2809 Santa Lydia, Mission, Texas 78572

Derrick Maurice Mitchell, 3346 Parkwood Dr., Houston, Texas 77021

Gena N. Slaughter, 10124 Cimmaron Trail, Dallas, Texas 75243

TRD-202004207

Anne Temple Peters

Executive Director

Texas Ethics Commission

Filed: October 9, 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 October 3, 2020, to October 9, 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 16, 2020. The public comment period for this project will close at 5:00 p.m. on Sunday, November 15, 2020.

FEDERAL AGENCY ACTIONS:

Applicant: United States Section, International Boundary and Water Commission

Location: project site is located along approximately 6.3 miles of the Arroyo Colorado. The specific reach is located south and east of Harlingen, Cameron County, Texas between the Arroyo Colorado bridge crossings of Business 77 (South 77 Sunshine Strip) and Highway 574 (Cemetery Road).

Latitude & Longitude (NAD 83): 26.183424, -97.6504040 and 26.183424, -97.6504040

Placement Area: Latitude: 26.193340 North; Longitude: -97.626706 West

Placement Area: Latitude: 26.186123 North; Longitude: -97.622710 West

Project Description: The applicant will use a hydraulic dredge to dredge approximately 6.3 miles to restore the full flood conveyance capacity of the Arroyo Colorado at Harlingen, Texas. The applicant will dredge to approximately -3 feet below the existing bed elevation and maintain a 3:1 side slope to the base of the existing banks. The total dredged volume is 300,000 cubic yards and will be placed in a confined placement area.

Dewatering of accumulated dredge material at the four staging sites will be accomplished via geotextile tubes. Flow of water draining from tubes and discharging back into the Arroyo Colorado will be controlled to prevent erosion of flood plain or banks. Dried sediment will be loaded and hauled by truck from the staging sites to the upland disposal sites. Permanent disposal of the dewatered sediment is proposed at two adjacent upland locations also shown in Figure 3. The dredge material to be permanently deposited on the adjacent upland sites is expected to consist of silt and clay mixture totaling 300,000 cubic yards. The applicant's plans are enclosed in 7 sheets.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2018-00308. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899. The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 21-1049-F1

Applicant: City of Corpus Christi

Location: project site is located along 8 miles of Gulf of Mexico beach of varying width within Nueces and Kleberg Counties, Texas. The Project Area totals approximately 370 acres of Gulf beach from the southern boundary of the City of Port Aransas at Beach Marker 62 on Mustang Island to Beach Marker 103 (4.17 miles), between Beach Marker 203 and Access Road 4 (Viento del Mar) (1.95 miles), and between Beach Markers 236 and 253 (1.79 miles) located approximately 3 miles south of the Nueces-Kleberg County boundary.

Latitude & Longitude (NAD 83): 27.613492, - 97.202432

Project Description: This request is for a standard permit amendment with an extension of time for a permit issued 13 February 2015 and due to expire 31 December 2020. The City proposes to continue mechanical removal of sand and seaweed to create safe access to public beaches as outlined in permit SWG-2006-00647. The current permit authorizes the following activities:

- Removal of all non-natural material such as lumber, plastic, bottles, cans, etc. from the beach and disposing in a sanitary landfill;
- Use of mechanical means to trench and bury seaweed (Sargassum and other natural material) above (landward of) the mean tide line (MTL) and/or relocate seaweed and sand from the driving lanes to other areas above the MTL;

- Repositioning of sand from the seaward edge of the base of the fore-dune area to areas across the beach, stopping short of the MTL in order to maintain clear driving lanes along the beach for public access;

- For a 4.17-mile section of beach between Beach Marker 103 on the north side of Mustang Island State Park to Beach Marker 62 at the southern boundary of the City of Port Aransas, trenching and burial of seaweed below (seaward of) the MTL;

- Maintenance of a safety lane for the ingress and egress of emergency vehicles within a heavy tourist area between Newport Pass Beach Access Road and the north jetty of Packery Channel for 2 weeks every March (during Spring Break) and one additional week between June 1 and September 15. The safety lane includes an approximate 20-foot-wide bermed (two rows) traffic way located between the MTL and the annual high tide (AHT) line. Berms are smoothed out to heights no greater than 2 inches after these special events.

Additionally, the City conducts sargassum management and debris removal following the adopted procedures as outlined in the City of Corpus Christi Beach Adaptive Management Plan.

In addition to continuing the above-mentioned maintenance practices, the applicant is requesting to amend their permit to include mechanically moving sand from staging areas located at the seaward dune toe to a placement area located in front of the North Padre Island (NPI) Seawall and south to Access Road 4. The applicant is required to maintain a minimum beach width of 200 feet in front of the NPI Seawall and prohibit vehicular traffic in front of the seawall when the beach width is less than 150 feet. The applicant also proposes to relocate excess sand that historically accumulates immediately north and south of the Packery Channel jetties (identified as Sand Removal Areas (SRAs)) to historically eroding areas in front of the NPI Seawall and south to Access Road 4 (identified as a Sand Placement Area (SPA)). Re-nourishment of the beach along the NPI Seawall is planned to occur primarily with dedicated sand sourcing from cyclic dredging of Beneficial Use of Dredge Material (BUDM) from Packery Channel, as outlined in more detail in the North Padre Island Storm Damage Reduction and Environmental Restoration Project Final Environmental Impact Statement (USACE, 2003).

Furthermore, the applicant proposes to include moving a total of up to approximately 11,000 cubic yards of beach quality sand, which is compatible with existing material on the beach, to an approximately 5,700-foot stretch of beach in front of the seawall and south to Access Road 4 annually to meet the purpose of the project. The proposed design would maintain a beach width of 150 to 200 feet along the seawall. Coordination with the Texas General Land Office (GLO) on the proposed sand redistribution alongshore was initiated on 3 March 2020 following a Joint Evaluation Meeting. As a result, the proposed SRAs and SPA have been limited to accreting and eroding areas of beach, respectively, as recognized by the GLO. No sand would be imported from, or exported to, offsite locations.

Staged sand from the SRAs would be hauled by truck to the SPA in front of the NPI Seawall and south to Access Road 4. Trucks would utilize existing roads for access, including Zahn Road, Highway 361, Park Road 22, Whitecap Boulevard, Windward Drive, Access Road 3A, and Access Road 4.

As part of formal Section 7 consultation with USFWS, the permit amendment issued on 24 November 2008 for beach maintenance included conservation measures. The Habitat Monitoring Effort was determined complete after Year 5 monitoring and was no longer required in the previous permit extension request issued on 13 February 2015. The most recent authorization by the Corps included the removal of the habitat monitoring effort specified in the former Special Condition 3 and the former Attachment B - Habitat Monitoring Effort,

as stated in the permit letter issued on 13 February 2015, Attachment A - Provisions for Sea Turtle and Piping Plover Monitoring. However, it still references habitat monitoring and the submittal of habitat monitoring reports to the Corps in other parts of the amendment. The City requests that language throughout the amended permit be updated to reflect that no habitat monitoring or habitat monitoring reports are required.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2006-00647. 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 Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 21-1050-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-202004257

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: October 13, 2020



Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Indian Health Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 13, 2020, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for Indian Health Services.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for Medicaid Calendar Fee Review, HCPCS Updates, and Medical Policy Updates to be held on November 13, 2020 9:00 a.m. CST at:

<https://attendee.gotowebinar.com/register/6544792796314405390>

After registering, you will receive a confirmation email containing information about joining the webinar.

HHSC will broadcast the public hearing; the broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Indian Health Services are proposed to be effective January 1, 2020.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code, §355.8620, which addresses the reimbursement methodology for Services Provided in Indian Health Service and Tribal Facilities.

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at <https://rad.hhs.texas.gov/rate-packets> on or after October 30, 2020. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, Brown-Healy Building, 4900 North Lamar Blvd, Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please turn to e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202004239

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 12, 2020



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medicaid Biennial Calendar Fee Review

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 13, 2020, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Medicaid Biennial Calendar Fee Review.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for Medicaid Calendar Fee Review, HCPCS Updates, and Medical Policy Updates to be held on November 13, 2020 9:00 a.m. CST at:

<https://attendee.gotowebinar.com/register/6544792796314405390>

After registering, you will receive a confirmation email containing information about joining the webinar.

HHSC will broadcast the public hearing; the broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medicaid Biennial Calendar Fee Review are proposed to be effective March 1, 2021, for the following services:

Anesthesia

Ambulatory Surgical Center (ASC)/Hospital Based ASC
Birthing Centers
Clinical Labs
Clinical Labs Gapfill
G Codes Hospitals
General and Integumentary System Surgery
Nervous System Surgery
Orthotic Procedures and Devices
Physician Administered Drugs (PAD) Non-Oncology
PAD Oncology
PAD Vaccines
PAD NDCX List

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8023, which addresses the reimbursement methodology for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS);

§355.8061, which addresses outpatient hospital reimbursement;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8121, which addresses the reimbursement for ambulatory surgical centers;

§355.8181, which addresses the reimbursement methodology for birthing center services; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at <https://rad.hhs.texas.gov/rate-packets> on or after October 30, 2020. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd, Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please turn to e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202004235
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 12, 2020



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Colorectal Cancer Screening Policy

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 13, 2020, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Colorectal Cancer Screening Policy.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for Medicaid Calendar Fee Review, HCPCS Updates, and Medical Policy Updates to be held on November 13, 2020, at 9:00 a.m. CST at:

<https://attendeegotowebinar.com/register/6544792796314405390>

After registering, you will receive a confirmation email containing information about joining the webinar.

HHSC will broadcast the public hearing; the broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medical Policy Review of Colorectal Cancer Screening Policy are proposed to be effective March 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps); and

§355.8610, which addresses reimbursement for clinical laboratory services.

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at <https://rad.hhs.texas.gov/rate-packets> on or after October 30, 2020. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd, Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please turn to e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202004238
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 12, 2020



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Digital Breast Tomosynthesis

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 13, 2020, at 9:00 a.m., to receive public comment on proposed Medicaid payment rates for the Medical Policy Review of Digital Breast Tomosynthesis.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for Medicaid Calendar Fee Review, HCPCS Updates, and Medical Policy Updates to be held on November 13, 2020, at 9:00 a.m. CST at:

<https://attendee.gotowebinar.com/register/6544792796314405390>

After registering, you will receive a confirmation email containing information about joining the webinar.

Proposal. The payment rates for the Medical Policy Review of Digital Breast Tomosynthesis are proposed to be effective March 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8061, which addresses outpatient hospital reimbursement;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be available at <https://rad.hhs.texas.gov/rate-packets> on or after October 30, 2020. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, Brown-Heaty Building, 4900 North Lamar Blvd, Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please turn to e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202004233
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 12, 2020



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Nutritional (Enteral) Products, Supplies, and Equipment - Home Health & CCP: Immobilized Lipase Cartridge

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 13, 2020, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Nutritional (Enteral) Products, Supplies, and Equipment - Home Health & CCP: Immobilized Lipase Cartridge.

Due to the declared state of disaster stemming from COVID-19, this hearing will now be conducted online only. No physical entry to the hearing will be permitted.

Please register for the HHSC Public Rate Hearing for Medicaid Calendar Fee Review, HCPCS Updates, and Medical Policy Updates to be held on November 13, 2020, at 9:00 a.m. CST at:

<https://attendee.gotowebinar.com/register/6544792796314405390>

After registering, you will receive a confirmation email containing information about joining the webinar.

Proposal. The payment rates for the Medical Policy Review of Nutritional (Enteral) Products, Supplies, and Equipment - Home Health & CCP: Immobilized Lipase Cartridge are proposed to be effective March 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8023, which addresses the reimbursement methodology for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS); and

§355.8441, which addresses the reimbursement methodology for early and periodic screening, diagnosis, and treatment services.

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at <https://rad.hhs.texas.gov/rate-packets> on or after October 30, 2020. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin,

Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, Brown-Healty Building, 4900 North Lamar Blvd, Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please turn to e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202004234

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 12, 2020



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Stereotactic Radiosurgery

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 13, 2020, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Stereotactic Radiosurgery.

Due to the declared state of disaster stemming from COVID-19, this hearing will now be conducted online only. No physical entry to the hearing will be permitted.

Please register to HHSC Public Rate Hearing for Medicaid Calendar Fee Review, HCPCS Updates, and Medical Policy Updates to be held on November 13, 2020, at 9:00 a.m. CST at:

<https://attendee.gotowebinar.com/register/6544792796314405390>

After registering, you will receive a confirmation email containing information about joining the webinar.

Proposal. The payment rates for the Medical Policy Review of Stereotactic Radiosurgery are proposed to be effective March 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for early and periodic screening, diagnosis, and treatment services.

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at <https://rad.hhs.texas.gov/rate-packets> on or after October 30, 2020. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by

e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, Brown-Healty Building, 4900 North Lamar Blvd, Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please turn to e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202004237

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 12, 2020



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Telemonitoring Update

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 13, 2020, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Telemonitoring Update.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for Medicaid Calendar Fee Review, HCPCS Updates, and Medical Policy Updates to be held on November 13, 2020, at 9:00 a.m. CST at:

<https://attendee.gotowebinar.com/register/6544792796314405390>

After registering, you will receive a confirmation email containing information about joining the webinar.

Proposal. The payment rates for the Medical Policy Review of Telemonitoring Update are proposed to be effective March 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.7001, which addresses the reimbursement methodology for Telemedicine, Telehealth and Home Telemonitoring Services;

§355.8085, which addresses the reimbursement methodology for Physicians and Other Practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps) and the THSteps Comprehensive Care Program (CCP).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at <https://rad.hhs.texas.gov/rate-packets> on or after October 30, 2020. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent

by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd, Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please turn to e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202004240

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 12, 2020



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Review of Healthcare Common Procedure Coding System (HCPCS) Updates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 13, 2020, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Quarterly HCPCS Updates.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for Quarterly HCPCS Updates to be held on November 13, 2020, 9:00 a.m. CST at:

<https://attendee.gotowebinar.com/register/6544792796314405390>

After registering, you will receive a confirmation email containing information about joining the webinar.

Proposal. The payment rates for the Quarterly HCPCS Updates are proposed to be effective March 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at <https://rad.hhs.texas.gov/rate-packets> on or after October 30, 2020. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent

by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd, Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please turn to e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202004236

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 12, 2020



Public Notice - Amendment to the Deaf Blind with Multiple Disabilities (DBMD) Waiver effective February 28, 2021

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request to amend the Deaf Blind with Multiple Disabilities (DBMD) waiver administered under section 1915(c) of the Social Security Act. CMS has approved this waiver through February 28, 2023. The proposed effective date for the amendment is February 28, 2021.

The request proposes to make the following changes:

Appendices B and J will be revised to reduce the unduplicated number of participants that the waiver will serve (Factor C) and increase the maximum number of participants to be served at any point in time (PIT) during waiver years three through five (March 1, 2020 through February 28, 2023) to more accurately reflect current utilization trends. Revising the Factor C and PIT will have an impact on the calculations for the overall projected cost of the waiver services (Factor D) and the overall projected cost of other Medicaid Services furnished to waiver participants (D Prime (D')) for the same waiver years.

The DBMD waiver program serves individuals with legal blindness, deafness, or a condition that leads to deaf-blindness, and at least one additional disability that limits functional abilities. The program serves individuals in the community who would otherwise require care in an intermediate care facility for individuals with intellectual disability or a related condition.

If you want to obtain a free copy of the proposed request to amend the waiver, including the DBMD settings transition plan, or if you have questions, need additional information or want to submit comments regarding this amendment or the DBMD settings transition plan, you may contact Luis Solorio by U.S. mail, telephone, fax, or email as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Luis Solorio, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 487-3449

Fax

Attention: Luis Solorio, Waiver Coordinator, at (512) 487-3403

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

The HHSC local offices will post this notice for 30 days.

The complete request to amend the waiver can be found online on the HHSC website at <https://hhs.texas.gov/laws-regulations/policies-rules/waivers>.

TRD-202004258

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 13, 2020



Public Notice - Proposed Medicaid Payment Rates for the Medical Policy Review of Wound Care

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 13, 2020, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Wound Care.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for Medicaid Calendar Fee Review, HCPCS Updates, and Medical Policy Updates to be held on November 13, 2020, at 9:00 a.m. CST at:

<https://attendee.gotowebinar.com/register/6544792796314405390>

After registering, you will receive a confirmation email containing information about joining the webinar.

Proposal. The payment rates for the Medical Policy Review of Wound Care are proposed to be effective March 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8023, which addresses the reimbursement methodology durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS);

§355.8121, which addresses the reimbursement for ambulatory surgical centers; and

§355.8441, which addresses the reimbursement methodology for early and periodic screening, diagnosis, and treatment services.

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at <https://rad.hhs.texas.gov/rate-packets> on or after October 30, 2020. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services

Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please turn to e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202004232

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 12, 2020



Public Notice - Texas Home Living (TxHmL) Waiver Application

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request to amend the waiver application for the Texas Home Living (TxHmL) waiver program authorized under section 1915(c) of the Social Security Act. CMS has approved the TxHmL waiver application through February 28, 2022. The proposed effective date for this amendment is February 28, 2021.

This request proposes to update Appendix B and Appendix J of the waiver application to reduce the unduplicated number of participants that the waiver program will serve (Factor C) and the maximum number of participants to be served at any point in time (PIT) during waiver year four for the period of March 1, 2020 through February 28, 2021 and waiver year five for the period of March 1, 2021 through February 28 2022. The requested amendment more accurately reflects current utilization trends.

The complete waiver amendment request can be found online on the Health and Human Services website at: <https://hhs.texas.gov/laws-regulations/policies-rules/waivers>.

The TxHmL waiver program provides services and supports to individuals with intellectual disabilities who live in their own homes or in the home of a family member. Services and supports are intended to enhance quality of life, functional independence, and health and well-being in continued community-based living and to enhance, rather than replace, existing informal or formal supports and resources. Services include day habilitation, respite, supported employment, financial management services, support consultation, adaptive aids, audiology services, behavioral support, community support, dental treatment, dietary service, employment assistance, minor home modifications, occupational therapy services, physical therapy services, nursing, and speech-language pathology.

An individual may obtain a free copy of the proposed waiver amendment, including the TxHmL settings transition plan, or ask questions, obtain additional information, or submit comments regarding this amendment or the TxHmL settings transition plan, by contacting Luis

Solorio by U.S. mail, telephone, fax, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Luis Solorio, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 487-3449

Fax

Attention: Luis Solorio, Waiver Coordinator, at (512) 487-3403

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

The HHSC local offices will post this notice for 30 days.

TRD-202004223

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 12, 2020



Department of State Health Services

Order Removing Approved Cannabidiol Drugs from Schedule V, the Addition of Cenobamate to Schedule V and the addition of Isotonitazene to Schedule I Temporarily Scheduled Substances

The Drug Enforcement Administration (DEA) issued an interim final rule to codify statutory amendments to the Controlled Substances Act (CSA) made by the Agriculture Improvement Act of 2018 (AIA), regarding the scope of regulatory controls over marijuana-related constituents. This interim final rule was published in the *Federal Register*, Volume 85, Number 163, Pages 51639-51645, and takes effect August 21, 2020.

The order removes from schedule V a "drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1% (w/w) residual tetrahydrocannabinols."

The Drug Enforcement Administration issued a final rule adopting, without change, an interim final rule with request for comments published in the *Federal Register* on March 10, 2020, placing cenobamate [(1R)-1-(2-chlorophenyl)-2-(tetrazol-2-yl)ethyl] carbamate, including its salts, in schedule V of the Controlled Substances Act. This final rule was published in the *Federal Register*, Volume 85, Number 162, pages 51340-51342, and takes effect August 20, 2020.

The Acting Administrator of the Drug Enforcement Administration issued a temporary order to schedule *N,N*-diethyl-2-(2-(4 isopropoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine (commonly known as isotonitazene), including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible, in schedule I. This

temporary scheduling action was published in the *Federal Register*, Volume 85, Number 162, pages 51342-51346, and takes effect August 20, 2020. The action was taken for the following reasons:

1. Isotonitazene has high potential for abuse;
2. There is currently no accepted medical use in treatment in the United States;
3. There is a lack of accepted safety for use under medical supervision; and
4. Control of isotonitazene is necessary to avoid an imminent hazard to public safety.

Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the *Federal Register*. In the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., does hereby order the removal of approved cannabidiol drugs from Schedule V; adoption of a final rule placing cenobamate in schedule V; and the placement of isotonitazene into schedule I temporarily controlled substances.

-Schedule I temporarily listed substances subject to emergency scheduling by the U.S. Drug Enforcement Administration.

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylpentanamide (Other name: valeryl fentanyl);
- (2) *N*-(4-Methoxyphenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide (Other name: *p*-methoxybutyryl fentanyl);
- (3) *N*-(4-Chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide (Other name: *p*-chloroisobutyryl fentanyl);
- (4) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylisobutyramide (Other name: isobutyryl fentanyl);
- (5) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopentanecarboxamide (Other name: cyclopentyl fentanyl);
- (6) Fentanyl-related substances.

(6-1) Fentanyl-related substance means any substance not otherwise listed under another Administration Controlled Substance Code Number, and for which no exemption or approval is in effect under Section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355], that is structurally related to fentanyl by one or more of the following modifications:

- (6-1-1) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;
- (6-1-2) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxy, hydroxyl, halo, haloalkyl, amino or nitro groups;
- (6-1-3) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxy, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;
- (6-1-4) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or
- (6-1-5) Replacement of the *N*-propionyl group by another acyl group;

(6-2) This definition includes, but is not limited to, the following substances:

(6-2-1) *N*-(1-(2-Fluorophenethyl)piperidin-4-yl)-*N*-(2-fluorophenyl)propionamide (Other name: 2'-fluoro-*o*-fluorofentanyl);

(6-2-2) *N*-(2-Methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)acetamide (Other name: *o*-methyl acetylfentanyl);

(6-2-3) *N*-(1-Phenethylpiperidin-4-yl)-*N*,3-diphenylpropanamide (Other names: β'-phenyl fentanyl; hydrocinnamoyl fentanyl);

(6-2-4) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylthiophene-2-carboxamide (Other name: thiofuranyl fentanyl);

(6-2-5) (E)-*N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylbut-2-enamide (Other name: crotonyl fentanyl);

(7) Naphthalen-1-yl-1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (Other names: NM2201; CBL2201);

(8) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other name: 5F-AB-PINACA);

(9) 1-(4-Cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL-BINACA; CUMYL-4CN-BINACA; SGT-78);

(10) Methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate (Other names: MMB-CHMICA; AMB-CHMICA);

(11) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-*b*]pyridine-3-carboxamide (Other name: 5F-CUMYL-P7AICA);

(12) *N*-ethylpentylone (Other names: ephylone, 1-(1,3-benzodioxil-5-yl)-2-(ethylamino)-pentan-1-one);

(13) Ethyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: 5F-EDMB-PINACA);

(14) Methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other name: 5F-MDMB-PICA);

(15) *N*-(Adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other names: FUB-AKB48; FUB-APINACA; AKB48 *N*-(4-FLUOROBENZYL));

(16) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 5F-CUMYL-PINACA; SGT-25);

(17) 1-(4-Fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other name: FUB-144);

(18) *N*-Ethylhexedrone (Other name: 2-(ethylamino)-1-phenylhexan-1-one);

(19) α-pyrrolidinohexanophenone (Other names: α-PHP; α-pyrrolidinohexanophenone; 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one);

(20) 4-Methyl-α-ethylaminopentiophenone (Other names: 4-MEAP; 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one);

(21) 4-Methyl-α-pyrrolidinohexanophenone (Other names: MPHP, 4'-methyl-α-pyrrolidinohexanophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one);

(22) α-pyrrolidinoheptaphenone (Other names: PV8; 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one); and

(23) 4-Chloro-α-pyrrolidinovalerophenone (Other names: 4-chloro-α-PVP; 4-chloro-α-pyrrolidinovalerophenone; 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one); and

*(24) *N,N*-diethyl-2-(2-(4 isopropoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine, its isomers, esters, ethers, salts and

salts of isomers, esters and ethers (Other names: isotonitazene; *N,N*-diethyl-2-[[4-(1-methylethoxy)phenyl]methyl]-5-nitro-1*H*-benzimidazole-1-ethanamine)

-Schedule V depressants

Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Brivaracetam ((2*S*)-2-[(4*R*)-2-oxo-4-propylpyrrolidin-1-yl]butanamide) (Other names; BRV; UCB-34714; and Briviact);

*(2) Cenobamate [(1*R*)-1-(2-chlorophenyl)-2-(tetrazol-2-yl)ethyl] carbamate;

(3) Ezogabine including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible;

(4) Lacosamide [(*R*)-2-acetoamido-*N*-benzyl-3-methoxy-propionamide];

(5) Lasmiditan [2,4,6-trifluoro-*N*-(6-(1-methylpiperidine-4-carbonyl)pyridine-2-yl)-benzamide]; and

(6) Pregabalin [(*S*)-3-(aminomethyl)-5-methylhexanoic acid].

NUMBER 7 IS REMOVED FROM SCHEDULE V DEPRESSANTS

*(7) Approved cannabidiol drugs. A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1*R*-3-methyl-6*R*-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols.}

TRD-202004270

Barbara L. Klein

General Counsel

Department of State Health Services

Filed: October 14, 2020

Texas Higher Education Coordinating Board

Meeting of Negotiated Rulemaking Committee on Minority Health Research & Education Grant Program

Date of Meeting: October 28, 2020

Start Time of Meeting: 09:30 a.m.

Street Location: This meeting will be held via audio conference. A link to the audio conference will be available at <https://www.highered.texas.gov/>.

Additional Information Obtained From: Laurie Frederick, Convener, (512) 427-6446, Laurie.Frederick@highered.texas.gov.

Agenda:

1. Introductions
2. Brief Overview of the Negotiated Rulemaking Process: What it is, What it's not
3. Brief Overview of Roles and Responsibilities
 - a) Role of Facilitator
 - b) Role of Sponsor Agency
 - c) Role of Committee Members

4. Consideration of Facilitator
5. Procedural Issues
 - a) Discussion and Consideration of Ground Rules
 - b) Discussion and Consideration of Definition of Consensus
6. Discussion of Draft Rule Language on Minority Health Research & Education Grant Program
7. Consideration of Proposed Rule Language on Minority Health Research & Education Grant Program

Individuals who may require auxiliary aids or services for this meeting should contact Glenn Tramel, ADA Coordinator, at (512) 427-6193 at least five days before the meeting so that appropriate arrangements can be made.

Governor Abbott's office approved a request by the Office of the Attorney General to temporarily suspend a limited number of open meeting laws in response to the Coronavirus (COVID-19) disaster. This action will allow governmental bodies to conduct meetings by telephone or video conference to advance the public health goal of limiting face-to-face meetings (also called "social distancing") to slow the spread of the Coronavirus (COVID-19). All persons requesting to address the Committee regarding an item on this agenda should do so in writing at least 24 hours before the start of the meeting at Laurie.Frederick@highered.texas.gov. A toll-free telephone number, free-of-charge video conference link, or other means will be provided by which to do so.

TRD-202004241
 Nichole Bunker-Henderson
 General Counsel
 Texas Higher Education Coordinating Board
 Filed: October 13, 2020

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Texas Department of Housing and Community Affairs

Notice of Funding Availability: 2021 HOME Investment Partnerships Program Single Family Contract for Deed Set-Aside

The Texas Department of Housing and Community Affairs (the Department) is making available 2021 HOME Investment Partnerships Program (HOME) funding for single family activities under the Contract for Deed set-aside.

Funds will be available through the 2021 HOME Investment Partnerships Program Single Family Contract for Deed Set-aside Notice of Funding Availability (NOFA). The NOFA is for approximately \$1,000,000 to be funded through participation in the Reservation System. Funding made available through the Reservation System may be increased from time to time as funds become available. Approval to receive a Reservation System Participant (RSP) agreement is not a guarantee of funding availability.

The availability and use of these funds are subject to the Department's Administrative Rule at 10 TAC Chapter 1, Enforcement Rule at 10 TAC Chapter 2, Single Family Umbrella Rules at 10 TAC Chapter 20, the Minimum Energy Efficiency Requirements for Single Family Construction Activities at 10 TAC Chapter 21, the Department's HOME Program Rule at 10 TAC Chapter 23, and the federal regulation governing the HOME Program at 24 CFR Part 92.

The NOFA is available on the Department's website at <http://www.tdhca.state.tx.us/nofa.htm>.

All Application materials including manuals, NOFA, program guidelines, and applicable HOME rules and regulations are available on the Department's website at <http://www.tdhca.state.tx.us/home-division/applications.htm>.

Applications submitted in response to the NOFA will be accepted in accordance with deadlines based on an open application cycle.

TRD-202004269
 Bobby Wilkinson
 Executive Director
 Texas Department of Housing and Community Affairs
 Filed: October 14, 2020

◆ ◆ ◆

Notice of Funding Availability: 2021 HOME Investment Partnerships Program Single Family General Set-Aside

The Texas Department of Housing and Community Affairs (the Department) is making available 2021 HOME Investment Partnerships Program (HOME) funding for single family activities under the General set-aside.

Funds will be available through the 2021 HOME Investment Partnerships Program Single Family Programs General Set-aside Notice of Funding Availability (NOFA). The NOFA is for approximately \$19,108,348 to be funded through participation in the Reservation System. Funding made available through the Reservation System may be increased from time to time as funds become available. Approval to receive a Reservation System Participant (RSP) agreement is not a guarantee of funding availability.

The availability and use of these funds are subject to the Department's Administrative Rule at 10 TAC Chapter 1, Enforcement Rule at 10 TAC Chapter 2, Single Family Umbrella Rules at 10 TAC Chapter 20, the Minimum Energy Efficiency Requirements for Single Family Construction Activities at 10 TAC Chapter 21, the Department's HOME Program Rule at 10 TAC Chapter 23, and the federal regulation governing the HOME Program at 24 CFR Part 92.

The NOFA is available on the Department's website at <http://www.tdhca.state.tx.us/nofa.htm>.

All Application materials including manuals, NOFA, program guidelines, and applicable HOME rules and regulations are available on the Department's website at <http://www.tdhca.state.tx.us/home-division/applications.htm>.

Applications submitted in response to the NOFA will be accepted in accordance with deadlines based on an open application cycle.

TRD-202004267
 Bobby Wilkinson
 Executive Director
 Texas Department of Housing and Community Affairs
 Filed: October 14, 2020

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Notice of Funding Availability: 2021 HOME Investment Partnerships Program Single Family Persons with Disabilities Set-Aside

The Texas Department of Housing and Community Affairs (the Department) is making available 2021 HOME Investment Partnerships Program (HOME) funding for single family activities under the Persons with Disabilities (PWD) set-aside.

Funds will be available through the 2021 HOME Investment Partnerships Program Single Family Persons with Disabilities Set-aside Notice of Funding Availability (NOFA). The NOFA is for approximately \$1,767,127 to be funded through participation in the Reservation System. Funding made available through the Reservation System may be increased from time to time as funds become available. Approval to receive a Reservation System Participant (RSP) agreement is not a guarantee of funding availability.

The availability and use of these funds are subject to the Department's Administrative Rule at 10 TAC Chapter 1, Enforcement Rule at 10 TAC Chapter 2, Single Family Umbrella Rules at 10 TAC Chapter 20, the Minimum Energy Efficiency Requirements for Single Family Construction Activities at 10 TAC Chapter 21, the Department's HOME Program Rule at 10 TAC Chapter 23, and the federal regulation governing the HOME Program at 24 CFR Part 92.

The NOFA is available on the Department's website at <http://www.tdhca.state.tx.us/nofa.htm>.

All Application materials including manuals, NOFA, program guidelines, and applicable HOME rules and regulations are available on the Department's website at <http://www.tdhca.state.tx.us/home-division/applications.htm>.

Applications submitted in response to the NOFA will be accepted in accordance with deadlines based on an open application cycle.

TRD-202004268

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: October 14, 2020

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Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for SureChoice Underwriters Reciprocal Exchange, a domestic Lloyds/reciprocal company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202004264

James Person

General Counsel

Texas Department of Insurance

Filed: October 14, 2020

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Panhandle Regional Planning Commission

Request for Proposals -- Public Information and Education Campaign

The Panhandle Regional Organization to Maximize Public Transportation (PROMPT) acting through the Panhandle Regional Planning Commission (PRPC) seeks the following:

Proposals -- The Panhandle Regional Organization to Maximize Public Transportation (PROMPT) requests proposals from candidates to develop a public information and education campaign to increase ridership and access to transit information by promoting both awareness and quality of the area's public transportation options.

I. The public information campaign will be designed to increase ridership by promoting both the awareness and quality of the area's public transportation and to educate residents of the region on transit options. The intent of this request for proposal (RFP) is to select the candidate with the most advantageous proposal to develop a campaign that is creative and utilizes a wide range of marketing strategies to: promote public transit information and educate residents of the Texas Panhandle on available transit options.

II. Submission -- RFP packages are available by written request from the Panhandle Regional Planning Commission, P.O. Box 9257, Amarillo, Texas 79105. Telephone (806) 372-3381, email: kpaul@theprpc.org. Emailed requests will be accepted. All inquiries and requests must be directed to the attention of Katie Paul, LGS Coordinator.

Deadline for Submitting Proposals -- **November 12, 2020 at 5:00 p.m.** Please submit five (5) hard copies and one (1) electronic copy of the proposal:

Panhandle Regional Planning Commission

Attn: Katie Paul

P.O. Box 9257

Amarillo, Texas 79105

Proposals received after the stated deadline will not be considered.

PRPC reserves the right to negotiate with any and all individuals and firms that submit proposals, and to award more than one contract or to award no contracts. All potential contracts and tasks arising from this RFP are subject to approval by the PROMPT Advisory Committee and the PRPC Board of Directors.

TRD-202004198

Katie Paul

LGS Coordinator

Panhandle Regional Planning Commission

Filed: October 9, 2020

◆ ◆ ◆

Texas Water Development Board

Applications Received for August 2020

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #21789, a request from the Bluff Dale Water Supply Corporation, 639 Farm to Market Road 2481, Bluff Dale, Texas 76433-0203, received on August 3, 2020, for \$152,000 in financial assistance from the Texas Water Development Fund for refunding the outstanding USDA loan.

Project ID #73894, a request from the Orange County Water Control Improvement District No. 2, 2526 Western Avenue 77630, Orange, Texas 77631-0278, received on August 7, 2020, for \$2,000,000 in financial assistance from the Clean Water State Revolving Fund for replacing collection system lines, manholes, and services.

Project ID #62901, a request from the Orange County Water Control Improvement District No. 2, 2526 Western Avenue 77630, Orange, Texas 77631-0278, received on August 7, 2020, for \$3,980,000 in financial assistance from the Drinking Water State Revolving Fund for replacing aging water mains, services, well pumps, and well motors.

Project ID #73895, a request from Brookeland Fresh Water Supply District, P.O. Box 5350, Sam Rayburn, Texas 75951-7700, received on August 10, 2020, for \$2,345,000 in financial assistance from the Clean Water State Revolving Fund for replacing the vitrified clay piping or

to expand wastewater treatment capacity to remediate the inflow problems.

Project ID #73896, a request from Bay City, 4511 Starling Drive, Bay City, Texas 77414-8277, received on August 20, 2020, for \$38,000,000 in financial assistance from the Clean Water State Revolving fund for wastewater treatment plant improvements.

Project ID #62902, a request from Bay City, 4511 Starling Drive, Bay City, Texas 77414-8277, received on August 20, 2020, for \$21,300,000 in financial assistance from the Drinking Water State Revolving fund for design and construction of Bay City water system improvements.

Project ID #73897, a request from the Guadalupe Blanco River Authority, 933 East Court Street, Seguin, Texas 78155-5819, received on August 26, 2020, for \$120,000,000 in financial assistance from the Clean Water State Revolving Fund for replacement of Guadalupe Valley Hydroelectric System spill gates in Guadalupe and Gonzales Counties.

TRD-202004246
Ashley Harden
General Counsel
Texas Water Development Board
Filed: October 13, 2020



Applications Received for September 2020

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73898, a request from the City of Pflugerville, 100 East Main Street, Pflugerville, Texas 78691-0589, received on September 1, 2020, for \$165,665,000 in financial assistance from the Clean Water State Revolving Fund for the Wilbarger Creek Regional wastewater treatment facility and interceptors project.

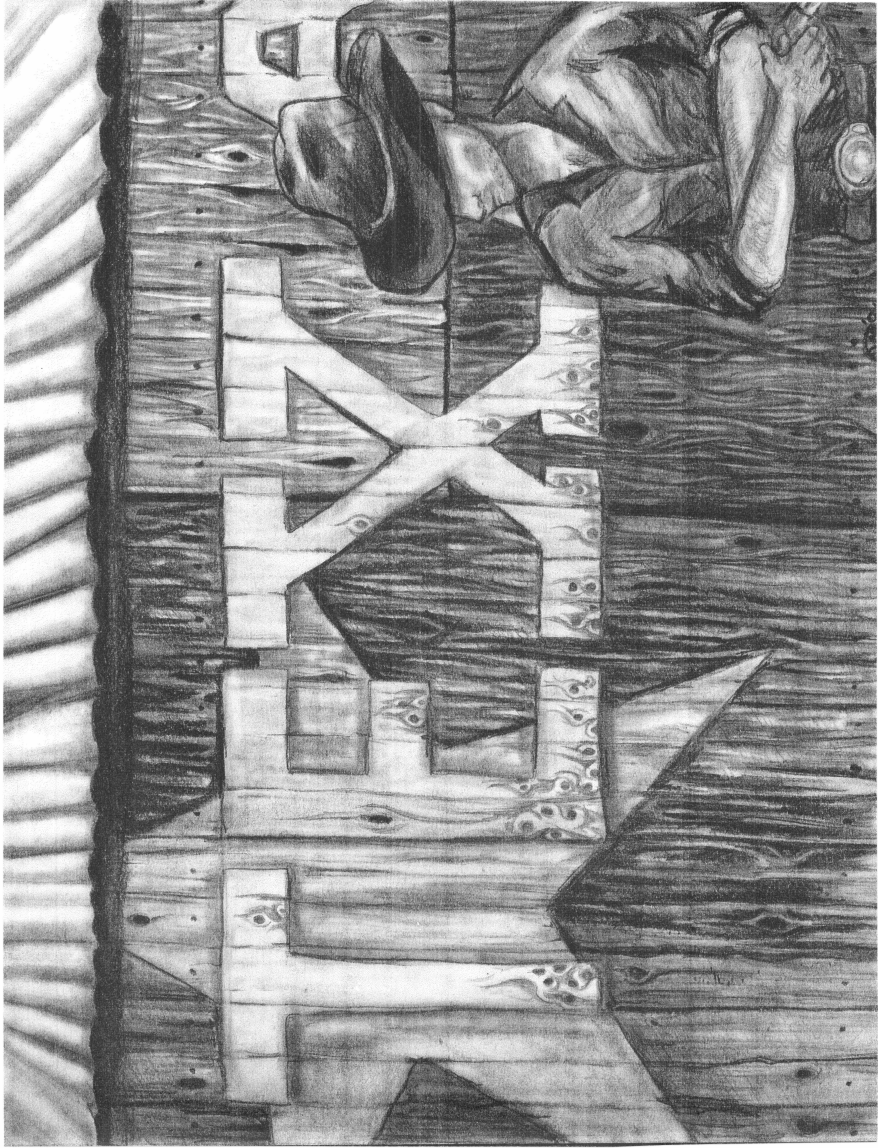
Project ID #73899, a request from Pettus Municipal Utility District, P.O. Box 153, Pettus, Texas 78146-0153, received on September 10, 2020, for \$1,000,000 in financial assistance from the Clean Water State Revolving Fund for a wastewater system improvement project.

Project ID #73900, a request from the City of Seguin, 205 North River Street, Seguin, Texas 78155, received on September 14, 2020, for \$197,000,000 in financial assistance from the Clean Water State Revolving Fund for wastewater treatment and collection system improvements and expansion project.

Project ID #21790, a request from the City of Seagraves, P.O. Box 37, Seagraves, Texas 79359-0037, received on September 16, 2020, for \$2,738,000 in financial assistance from the Texas Water Development Fund for a water system improvement project.

TRD-202004250
Ashley Harden
General Counsel
Texas Water Development Board
Filed: October 13, 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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